

351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: June 1, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-423-808]

Stainless Steel Plate in Coils from Belgium: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel plate in coils (SSPC) from Belgium. For the period of review (POR) May 1, 2007, through April 30, 2008, we have preliminarily determined that U.S. sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the constructed export price (CEP) and NV. See "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 8, 2009.

FOR FURTHER INFORMATION CONTACT: Joy Zhang or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482-1168 or (202) 482-1167, respectively.

Background

On May 5, 2008, the Department issued a notice of opportunity to request

an administrative review of this order for the POR. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 73 FR 24532 (May 5, 2008). On May 30, 2008, the Department received a timely request for an administrative review of this antidumping duty order from Allegheny Ludlum Corporation, North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL-CIO/CLC (collectively, Petitioners). On June 2, 2008, the Department received a timely request for an administrative review from the respondent, Ugine & ALZ Belgium (U&A Belgium), respectively. On June 29, 2007, we published a notice initiating an administrative review of the antidumping duty order on SSPC from Belgium covering one respondent, U&A Belgium. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review*, 72 FR 35690 (June 29, 2007).

In the prior administrative review of this antidumping duty order, U&A Belgium reported that it is wholly owned by Arcelor S.A. and stated that Arcelor S.A. was in the process of merging with Mittal Steel, N.V. (Mittal) to form Arcelor Mittal S.A. See *Stainless Steel Plate in Coils from Belgium: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 32298 (June 6, 2008). In the instant review, U&A Belgium stated "{t}he merger between AMS Belgium's former parent Arcelor S.A. and Mittal Steel N.V. was completed on November 13, 2007. Although this is midway through the review period, AMS Belgium has prepared its responses to the Department's questionnaires as if ArcelorMittal were fully consolidated for the entire reporting period." See U&A Belgium's Section A questionnaire response, dated September 18, 2008, at page 6, footnote 1. Due to the completion of the aforementioned merger and based on U&A Belgium's reporting of a consolidated questionnaire response, we have conducted a successor-in-interest analysis. Based upon our findings, we have changed our reference to this company from U&A Belgium to ArcelorMittal Stainless Belgium (AMS Belgium) hereafter. See the Department's memo to the File titled, "Successor-in-Interest analysis for AMS Belgium," dated June 1, 2009 on file in the Central Records Unit (CRU), room 1117 of the main Department building.

On July 15, 2008, the Department issued an antidumping duty questionnaire to AMS Belgium. We received AMS Belgium's response to Section A of the Department's questionnaire on September 18, 2008, and Sections B-D on October 3, 2008. On December 8, 2008, the Department received comments from the Petitioners on the Sections A through C responses for AMS Belgium. After reviewing the Sections A through D responses from AMS Belgium, the Department issued supplemental questionnaires to AMS Belgium. The Department issued additional supplemental questions, after reviewing AMS Belgium's supplemental questionnaire responses. On January 21, 2009, the Department issued an extension of the deadline for the preliminary results of this antidumping duty administrative review from January 31, 2009, until June 1, 2009. See *Stainless Steel Plate in Coils From Belgium: Notice of Extension of Time Limit for Preliminary Results of Administrative Review*, 74 FR 3563 (January 21, 2009).

Scope of the Order

The product covered by this order is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm¹ or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this order are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or

¹ On May 11, 2007, the Department received a scope inquiry request from U&A Belgium regarding whether the scope of the orders on SSPC from Belgium excludes stainless steel products with an actual thickness less than 4.75mm, regardless of its nominal thickness. The Department conducted a scope inquiry applicable to all countries subject to the SSPC antidumping and countervailing duty orders. In the Department's scope ruling, dated December 3, 2008, the Department determined that SSPC with a nominal thickness of 4.75mm, but with an actual thickness less than 4.75mm, and within the dimensional tolerances for this thickness of plate, is included in the scope of the antidumping duty orders on SSPC from Belgium, Italy, South Africa, the Republic of Korea, and Taiwan and countervailing duty orders on SSPC from Belgium and South Africa. See Memorandum from Melissa G. Skinner to Stephen J. Claeys titled "Stainless Steel Plate in Coils from Belgium: Final Scope Ruling," dated December 3, 2008.

otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this order is dispositive.

Period of Review

The period of review is May 1, 2007, through April 30, 2008.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), we have verified information provided by AMS Belgium and ArcelorMittal Stainless International USA (AMSI USA), AMS Belgium's U.S. affiliated distributor, in the administrative review of the order on subject merchandise from Belgium using standard verification procedures, including the examination of relevant sales and cost information, financial records, and the selection and review of original documentation containing relevant information. Our verification results are outlined in the public version of our verification report, which is on file in the CRU.

Facts Available

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. Section 776(a) of the Act provides that the Department will apply "facts otherwise available" if, inter alia, necessary information is not

available on the record or an interested party: 1) withholds information that has been requested by the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Sweden*, 67 FR 47522, 47523 (July 19, 2002).

A. Certain Selling Expense²

During the sales verification, the Department found that AMS Belgium did not include a certain selling expense in its calculation of indirect selling expenses. The Department inquired about this omission and the company officials explained that this certain selling expense was reported in its general and administrative expenses (G&A). *See* the Department's Sales Verification Report, dated June 1, 2009, at constructed export price (CEP) Verification Exhibit (CEP VE) 16. However, further examination demonstrated that this certain selling expense was not included in the reported G&A. *See* AMS Belgium's Section D Questionnaire Response, dated October 3, 2008, at Exhibit 19. Based upon further inquiry during the sales verification, company officials indicated that AMS Belgium's accounts identify provisions only for a certain selling expense and not an actual (realized) amount of this certain selling expense. *See* CEP VE 16. However, this response contradicted information obtained during the cost verification of AMS Belgium. Specifically, the Department's cost verification team examined G&A (which they calculated based on 2007 COPA financial statements) and noted an amount which was excluded from G&A and listed as a

selling expense. *See* the Department's Cost Verification Report, dated June 1, 2009, at Exhibit 16. This amount includes a net actual (realized) amount of this certain selling expense. Due the proprietary nature of this discussion and data, *see* the Sales and Cost Verification Reports, dated June 1, 2009 (Sales Verification Report, Cost Verification Report), for additional details. *Id.*

Due to the fact that AMS Belgium could not accurately identify where in its response it reported the certain selling expense in question, the Department was unable to verify the certain selling expense. Furthermore, AMS Belgium did not establish whether the specific amount of the certain selling expense in question was attributable to either the home market or the U.S. market. AMS Belgium's contradictory statements regarding the certain selling expense undermined AMS Belgium's reporting of indirect selling expenses. As a result, we find that it is appropriate to resort to facts otherwise available to account for the unreported information. *See Notice of Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Not Revoke Order in Part: Canned Pineapple Fruit from Thailand*, 68 FR 65247 (November 19, 2003), and accompanying Issues and Decision Memorandum at Comment 20b. As facts available, we are applying the certain selling expense obtained from the cost verification and attributing these expenses to home market indirect selling expenses. *See* Cost Verification Exhibit (CVE) 16.

B. Other Transportation Expenses

During the sales verification, AMS Belgium reported a minor correction regarding the U.S. sales other transportation expenses data field (USOTHTR1U). AMS Belgium reported a minor correction that affects only those U.S. sales transactions where USOTHTR1U was based on an average calculation of other transportation expenses. *See* Sales Verification Report at Exhibit VE–1. However, during the CEP sales verification, the Department found that AMS Belgium maintained the actual broker invoices available to calculate the actual transportation expense for the aforementioned U.S. sales observations, rather than apply an average. AMS Belgium provided a recalculation of the other transportation expenses for the U.S. sales in question based on the actual broker invoices. However, the Department found that the recalculated amounts provided by AMS Belgium were in error. Specifically, we

² Due to the proprietary nature of this particular expense, *see* the Department's discussion of this expense in the proprietary version of the Department's Sales Calculation Memorandum, dated June 1, 2009.

calculated USOTHTR1U using the two broker's invoices provided at verification and found that the actual per-unit prices for this field differed from the revised amount reported by AMS Belgium. See CEP Verification Exhibit 19. Therefore, the Department is rejecting AMS Belgium's minor correction number 6, as reported at the sales verification, and its calculation value of other transportation expenses provided in CEP VE 19.

Due to the fact that AMS Belgium was unable to support the amounts calculated and reported for the other transportation expense data field, the Department was unable to verify the other transportation expense for the certain transactions that were reported based on an average. The Department obtained broker invoices during the CEP sales verification that we used to recalculate other transportation expenses for two U.S. sales transactions. As facts available, the Department is using one of the other transportation expenses obtained at the CEP sales verification to replace the other transportation expense reported by AMS Belgium for the transactions that were originally reported by AMS Belgium based on an average amount.

C. Adverse Inferences

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. See, e.g., *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–26 (September 13, 2005); see also *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (August 30, 2002). The Statement of Administrative Action provides guidance by explaining that adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994). Furthermore, “affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.” See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997); see also *Nippon Steel Corp. v.*

United States, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon*).

1. Certain Selling Expense

AMS Belgium had several opportunities to correct the data on the record regarding its exclusion of the certain selling expense from its indirect selling expenses. These include the original questionnaire, subsequent supplemental sales and cost questionnaires, and ultimately during the sales and cost verifications. However, AMS Belgium did not request clarification regarding how it should report its certain selling expense during this administrative review. Instead, AMS Belgium provided contradictory statements to the Department that first indicated that the certain selling expense was included in its reported selling expenses, then subsequently indicated that it was reported in G&A.

AMS Belgium maintained complete information regarding its certain selling expense in its financial information system. See CEP VE 16. However, it failed to properly report the certain selling amount in question, despite statements made to the contrary.

AMS Belgium's exclusion of its certain selling expense from its reported indirect selling expenses is deficient because: 1) AMS Belgium had the necessary information within its control and it did not properly report this information; and 2) it failed to put forth its maximum effort as required by the Department's questionnaire. As a result, we preliminarily find that AMS Belgium failed to cooperate to the best of its ability. Therefore, for the preliminary results we are using facts available with an adverse inference to determine indirect selling expenses. Specifically, with respect to indirect selling expenses, we are attributing the entire certain selling expense amount in question to the calculation of home market indirect selling expenses. As a practice, the Department will normally include these certain selling expenses as part of the respondent's indirect selling expenses. This adjustment is considered adverse to AMS Belgium's interests for reasons that are proprietary in nature. See the Sales Calculation Memorandum for additional details. For more detail concerning the AFA rates, see Memorandum from Joy Zhang, to The File, through James Terpstra titled “Calculation Memorandum for ArcelorMittal Stainless Belgium (AMS Belgium) for the Preliminary Results of the Seventh Administrative Review of Stainless Steel Plate in Coils (SSPC) from Belgium,” dated June 1, 2009 (Sales Calculation Memorandum) on file in the CRU.

2. Other Transportation Expenses

AMS Belgium had several opportunities to correct the data on record regarding its USOTHTR1U expenses reported in both its questionnaire responses and minor corrections obtained at the sales verification. AMS Belgium's USOTHTR1U, for the transactions that were based on an average calculation, were not supported by the corresponding broker's invoices. Furthermore, neither AMS Belgium nor AMSI USA were able to explain to the Department or provide documentation that would clarify why this expense for these transactions was found to be in error.

AMS Belgium's inaccurate reporting for USOTHTR1U is deficient because: 1) AMS Belgium had the necessary information within its control and it did not properly report this information; and 2) it failed to put forth its maximum effort as required by the Department's questionnaire. As a result, we preliminarily find that AMS Belgium failed to cooperate to the best of its ability. Therefore, for the preliminary results we are using facts available with an adverse inference to determine other transportation expenses for certain transactions. Specifically, the Department is applying adverse facts available (AFA) and will use the highest reported expense for this field obtained during the constructed export price (CEP) verification for the U.S. sales transactions where the other transportation expense data field was based on an average calculation. See Sales Calculation Memorandum.

Analysis

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent that are covered by the description contained in the “Scope of the Order” section above and were sold in the home market during the POR, to be the foreign like product for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in Appendix V of the initial antidumping questionnaire we provided to AMS Belgium. See the Department's Antidumping Duty Questionnaire issued to AMS Belgium, dated July 15, 2008, on the record in the CRU, Room 1117 of the Main Commerce Building.

Normal Value Comparisons

To determine whether sales of subject merchandise to the United States were made at less than normal value, we compared CEP to NV, as described in the “Constructed Export Price” and “Normal Value” sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transaction prices.

Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared AMS Belgium’s volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B) and 19 CFR 351.404(b), because AMS Belgium’s aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Moreover, there is no evidence on the record supporting a particular market situation in the exporting company’s country that would not permit a proper comparison of home market and U.S. prices.

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

As stated at 19 CFR 351.401(i), the Department will use the respondent’s invoice date as the date of sale unless another date better reflects the date upon which the exporter or producer establishes the essential terms of sale. AMS Belgium reported the invoice date as the date of sale for both the U.S. market and the home market because the date of invoice reflects the date on which the material terms of sale were finalized.

For purposes of this review, AMS Belgium classified all of its export sales of SSPC to the United States as CEP sales. During the POR, AMS Belgium made sales in the United States through its U.S. affiliate, AMSI USA, which then resold the merchandise to unaffiliated customers in the United States. The

Department calculated CEP based on packed prices to customers in the United States. We made deductions from the starting price, net of discounts, for movement expenses (foreign and U.S. movement, U.S. customs duty and brokerage, and post-sale warehousing) in accordance with section 772(c)(2) of the Act and 19 CFR 351.401(e). In addition, because AMS Belgium reported CEP sales, in accordance with section 772(d)(1) of the Act, we deducted from the starting price, credit expenses, warranty expenses, and indirect selling expenses, including inventory carrying costs, incurred in the United States and Belgium and associated with economic activities in the United States.

Normal Value

In accordance with section 773(a)(1)(B)(i) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade. In addition, because the NV level of trade (LOT) is at a more advanced stage of distribution than the CEP LOT, and available data provide no appropriate basis to determine an LOT adjustment between NV and CEP, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act. See “Level of Trade” section, below.

We used sales to affiliated customers only where we determined such sales were made at arm’s-length prices (*i.e.*, at prices comparable to the prices at which the respondent sold identical merchandise to unaffiliated customers).

Arm’s-Length Test

Sales to affiliated customers in the home market not made at arm’s length were excluded from our analysis. To test whether these sales were made at arm’s length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts, and packing. In accordance with the Department’s current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we consider the sales to be at arm’s-length prices. See 19 CFR 351.403(c). Conversely, where the affiliated party did not pass the arm’s-length test, all sales to that affiliated party have been excluded from the NV calculation. See *Antidumping Proceedings: Affiliated Party Sales in*

the Ordinary Course of Trade, 67 FR 69186 (November 15, 2002).

Calculation of COP

The Department disregarded sales below the cost of production (COP) in the last completed review. See *Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008). We therefore have reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below COP. Thus, pursuant to section 773(b)(1) of the Act, we examined whether AMS Belgium’s sales in the home market were made at prices below the COP.

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for selling, general and administrative expenses (SG&A), interest expenses, and home market packing costs. We relied on the COP data submitted by AMS Belgium, except for the following:

1. Consistent with recent cases,³ we have evaluated whether a shorter cost averaging period methodology is appropriate in this case due to the occurrence of significant cost changes through the POR, rather than our established practice of using annual cost averages. In determining whether distortions result from significant cost fluctuations in the context of our antidumping duty calculations, we considered record evidence using two primary factors: (1) whether the cost changes throughout the POR were significant; and (2) whether sales during the shorter averaging period could be reasonably linked with the COP or CV during the same averaging period. Record evidence indicates that AMS Belgium experienced significant changes in the total cost of manufacturing (COM) during the POR, and that these changes are primarily attributable to the price volatility for

³ See *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 74 FR 6365 (February 9, 2009), and accompanying Issues and Decision Memorandum at Comment 5; *Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398, 75399 (December 11, 2008), and accompanying Issues and Decision Memorandum at Comment 4; and *Certain Steel Concrete Reinforcing Bars from Turkey: Final Results of Antidumping Duty Administrative Review and Determination To Revoke in Part*, 73 FR 66218 (November 7, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

nickel, a major input consumed in the production of the merchandise under consideration. AMS Belgium also showed that through its alloy surcharge levied on sales during the POR there is a reasonable level of correlation between falling direct material costs and final sale prices. Thus, we preliminarily find that the change in COM for AMS Belgium is significant enough to warrant a departure from our standard annual costing approach and that these significant cost changes would create distortions in the Department's sales-below-cost test as well as the overall margin calculation in the preliminary results. Therefore, for the preliminary results, we have applied an alternative cost calculation method where we used indexed quarterly average direct material costs and annual weighted-average conversion costs in the COP and CV calculations. See Memorandum from Ernest Gziryan, Senior Accountant, to Neal Halper, Director, Office of Accounting, titled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results ArcelorMittal Stainless Belgium," dated June 1, 2009. (*Cost Calculation Memorandum*)

2. We increased the reported per-unit COM to include an unreconciled difference which represents additional production costs per books that were not reflected in the reported costs.

3. We revised AMS Belgium's reported general and administrative (G&A) expenses to include certain items recorded on the company's 2007 financial statements that relate to the general operations of the company.

We compared the weighted-average model-specific COPs to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which did not permit recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any movement charges, discounts, and direct and indirect selling expenses.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product were at prices which represent less than the COP, we did not disregard any below-cost sales of that product because

the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of the respondent's sales of a given product were at prices which represented less than the COP, we determined that they were made in substantial quantities within an extended period of time, in accordance with section 773(b)(2)(C) of the Act. Because we compared prices to POR-average costs, we also determined that the below-cost prices did not permit the recovery of costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act. Therefore, we disregarded the below-cost sales and used the remaining sales as the basis for NV, in accordance with section 773(b)(1) of the Act.

CEP to NV Comparison

For those sales at prices above COP, we based NV on home market prices to affiliated (when made at prices determined to be at arm's length) or unaffiliated parties, in accordance with 19 CFR 351.403. Home market starting prices were based on packed prices to affiliated or unaffiliated purchasers in the home market, net of discounts. We made adjustments, where applicable, for packing and movement expenses, in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in costs attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act. For comparison to CEP, we deducted home market direct selling expenses pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c).

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison-market sales, NV may be based on constructed value (CV). Accordingly, for those products for which we could not determine the NV based on comparison-market sales, either because there were no useable sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on CV.

Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise, plus amounts for SG&A and interest expenses, profit, and U.S. packing costs. We calculated the cost of materials and fabrication based on the methodology described in the "Cost of Production Analysis" section, above. We based SG&A and interest expenses and profit on the actual amounts incurred and realized by respondent in connection with the production and sale of the foreign like

product in the ordinary course of trade for consumption in the home market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for differences in circumstances of sale in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to CEP, we made circumstance-of-sale adjustments by deducting comparison market direct selling expenses from CV. See 19 CFR 351.410(c).

Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for export price (EP) and comparison-market sales (*i.e.*, NV based on either home market or third-country prices),⁴ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. See *Micron Technology Inc. v. United States*, 243 F.3d 1301, 1314-1315 (Fed. Cir. 2001). Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive SG&A expenses, and profit for CV, where possible.

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale

⁴ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive SG&A expenses, and profit for CV, where possible.

to sales at a different LOT in the comparison-market. In comparing EP or CEP sales at a different LOT in the comparison-market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa*, 62 FR at 61732-33.

In this administrative review, we obtained information from the respondent, AMS Belgium, regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a description of the selling activities performed by AMS Belgium for each channel of distribution. The Department's LOT findings are summarized below.

AMS Belgium reported two channels of distribution and two LOTs in the U.S. market. AMS Belgium's two U.S. channels of distribution are: 1) direct shipment sales in which the merchandise was shipped directly from AMS Belgium to the final customer; and (2) sales from inventory maintained by ArcelorMittal Stainless International USA (AMSI USA). *See* October 3, 2008, Section C Questionnaire Response at 13. AMS Belgium reported several selling functions for its sales to the United States. *See* selling functions chart included at AMSI USA CEP Verification Report, dated June 1, 2009, at VE 3. During the sales verification, AMS Belgium provided a detailed explanation of its selling activities and indicated that its selling activities for U.S. sales are performed in support of AMSI USA.

Our analysis of these selling functions performed by AMS Belgium in the United States shows that the selling activities and services do not vary according to the channel of distribution. *Id.* We find that there is no variation in type or level of services provided by AMS Belgium for the channels of distribution in the United States. AMS Belgium provides comparable services for the two channels of distribution in the United States, which only differ based on whether the sale is shipped directly to the final customer or to AMSI USA's inventory. Therefore, based on the lack of differentiation between the type and level of activities associated with AMS Belgium's sales into the two distribution channels, we preliminarily determine that there is only one LOT in

the U.S. market. *See* Sales Calculation Memorandum.

With respect to the Belgian market, AMS Belgium reported five customer categories in a single channel of distribution. Specifically, AMS Belgium reported that it sells SSPC to customers in the home market in a single LOT through its affiliated sales agent, ArcelorMittal Stainless Europe S.A (AMSE S.A.). AMS Belgium performs the following selling functions in the home market: strategic and economic planning, market research, technical advice regarding product characteristics and use of product, visiting customers, product information and training sessions, advertising, sales negotiations, communication with mill, scheduling production and freight arrangements, packing, after sales servicing support or claims, and personnel training, personnel exchange and manpower assistance. *See* Sales Verification Report at CEP VE 3. We examined the selling functions performed for the five customer categories and found that the selling activities and services do not vary by customer category. *See* Sales Calculation Memorandum. Therefore, we preliminarily conclude that AMS Belgium's sales in the home market constitute one LOT.

AMS Belgium performed the twelve aforementioned selling activities in the home market. The selling functions for the U.S. market are primarily performed by AMSI USA with the exception of the packing selling function, which is handled solely by AMS Belgium. As indicated above, AMS Belgium's selling activities for its U.S. sales are performed in support of AMSI USA. We analyzed the differences among the reported selling activities which demonstrated that AMS Belgium's sales in the home market were at different stages in the marketing process than the U.S. sales. Finally, we compared the U.S. and home market LOTs. In our comparison of the U.S. and home market LOTs, we eliminated from consideration selling functions performed by AMSI USA and only considered the portion of the selling functions performed by AMS Belgium after making adjustments under section 772(d) of the Act. As a result of our comparison, we preliminarily determined that AMS Belgium's home market LOT is at a more advanced stage of distribution than the CEP LOT.

We then considered whether we could make an LOT adjustment. In this case, AMS Belgium only sold at one LOT in the comparison market; therefore, there is no information available to determine a pattern of consistent price differences between the sales on which NV is based and the

comparison market sales at the LOT of the export transaction, in accordance with the Department's normal methodology as described above. *See* 19 CFR 351.412(d). Further, we do not have record information which would allow us to examine pricing patterns based on the respondent's sales of other products, and there are no other respondents or other record information on which such an analysis could be based. Accordingly, because only one LOT exists in the home market we could not make an LOT adjustment. However, because the LOT in the comparison market is at a more advanced stage of distribution than the LOT of the CEP transactions, we made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). This offset is equal to the amount of indirect selling expenses incurred in the comparison market not exceeding the amount of indirect selling expenses and commissions deducted from the U.S. price in accordance with section 772(d)(1)(D) of the Act. For a detailed discussion, *see* Sales Calculation Memorandum.

Currency Conversion

We made currency conversions pursuant to 19 CFR 351.415 based on the exchange rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that for the period May 1, 2007, through April 30, 2008, the following dumping margin exists:

Manufacturer/Exporter	Margin (percent)
ArcelorMittal Stainless Belgium (AMS Belgium)	6.70

Duty Assessment and Cash Deposit Requirements

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Furthermore, the following cash deposit rates will be effective with respect to all shipments of SSPC from Belgium entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided for by section 751(a)(1) of the Act: (1) for U&A Belgium, the cash

deposit rate will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate shall be the all-others rate established in the LTFV investigation, which is 9.86 percent. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Belgium*, 64 FR 15476 (March 31, 1999). These deposit rates, when imposed, shall remain in effect until further notice.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Also, pursuant to 19 CFR 351.310(c), within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, no later than 120 days after

publication of these preliminary results, unless extended. *See* 19 CFR 351.213(h).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of this administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated June 1, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9-13343 Filed 6-5-09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-803]

Heavy Forged Hand Tools, With or Without Handles From the People's Republic of China (Axes and Adzes): Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* June 8, 2009.

SUMMARY: The Department of Commerce ("Department") is rescinding an administrative review of the antidumping duty order on heavy forged hand tools, with or without handles from the People's Republic of China ("PRC"), with respect to axes and adzes, for the period of review ("POR") February 1, 2008 through January 31, 2009. This rescission is based on the timely withdrawal of request for review by the party that requested the review, Fiskars Brands Inc. ("Fiskars").

FOR FURTHER INFORMATION CONTACT: Alan Ray, Office 9, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482-5403.

Background

On February 4, 2009, the Department published in the **Federal Register** its

notice of opportunity to request an administrative review of the antidumping duty order heavy forged hand tools ("HFHTs"), with or without handles from the PRC with respect to axes and adzes. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review*, 74 FR 6013 (February 4, 2009). On February 27, 2009, Fiskars requested an administrative review of the antidumping duty order on HFHTs, with or without handles from the PRC with respect to axes and adzes. On March 24, 2009, the Department initiated an antidumping duty administrative review on HFHTs, with or without handles from the PRC with respect to axes and adzes. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 12310 (March 24, 2009). On May 18, 2009, Fiskars timely withdrew its request for review.

Scope of the Order

The products covered by this order are HFHTs comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg. (3.33 pounds) ("hammers/sledges"); (2) bars over 18 inches in length, track tools and wedges ("bars/wedges"); (3) picks and mattocks ("picks/mattocks"); and (4) axes, adzes and similar hewing tools ("axes/adzes").

HFHTs include heads for drilling hammers, sledges, axes, mauls, picks and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel woodsplitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently provided for under the following Harmonized Tariff System of the United States ("HTSUS") subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded from these investigations are hammers and sledges with heads 1.5 kg. (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under.