

within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not provide for the recovery of costs within a reasonable period of time. Therefore, we excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1).

#### *E. Calculation of Normal Value Based on Home Market Prices*

We calculated NV based on the price to unaffiliated customers, and an affiliated customer where sales were made at arm's length. We made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act. We also made adjustments, where appropriate, consistent with section 773(a)(6)(B)(ii) of the Act, for the following movement expense: inland freight from the plant to the customer. In addition, we made adjustments for differences in circumstances of sale ("COS") in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments, where appropriate, by deducting direct selling expenses incurred on home market sales (*i.e.*, credit expenses, bank charges, less charges, and letter of credit charges) and adding U.S. direct selling expenses (*i.e.*, credit expenses, bank charges, letter of credit fees, bank document handling charges, term charges, collection charges, postage, and telegram charges).

#### **Preliminary Results of the Review**

We find that the following dumping margins exist for the period May 1, 2002, through April 30, 2003:

Exporter/manufacture	Weighted-average margin percentage
Huvis Corporation .....	1.54
Keon Baek Co., Ltd .....	0.07 ( <i>de minimis</i> )
Saehan Industries, Inc .....	8.33

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument

(1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results.

#### **Assessment Rates and Cash Deposit Requirements**

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer or customer of the subject merchandise. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review. Upon issuance of the final results of this administrative review, if any importer- or customer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will instruct CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered quantity of the merchandise. For assessment purposes, we calculated importer- or customer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer or customer and dividing the amount by the total entered quantity of the sales to that importer or customer.

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of PSF from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rate established in the final results of this administrative review (except no cash deposit will be required if its weighted-average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation or a previous review, the cash deposit rate will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the

exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 7.91 percent, the "all others" rate established in *Certain Polyester Staple Fiber from the Republic of Korea: Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision*, 68 FR 74552 (December 24, 2003).

#### **Notification to Importers**

This notice also 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.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 2, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-13068 Filed 6-9-04; 8:45 am]

**BILLING CODE 3510-DS-P**

## **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 in response to a request by petitioners, Allegheny Ludlum, AK Steel Corporation, Butler Armco Independent Union, United Steelworkers of America, AFL-CIO/CLC, and Zanesville Armco Independent Organization (collectively, petitioners). This review covers sales of subject merchandise to the United States during the period of May 1, 2002, through April 30, 2003.

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 the NV. Interested parties are invited to comment on these preliminary results. See *Preliminary Results of Review* section of this notice.

**DATES:** *Effective Date:* June 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Scot Fullerton or Elfi Blum-Page, Office of Antidumping/Countervailing Duty Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-1386 or (202) 482-0197, respectively.

### Background

The Department published the antidumping duty order on SSPC from Belgium in the **Federal Register** on May 21, 1999 (64 FR 27756). On May 1, 2003, the Department published a notice of opportunity to request administrative review of the antidumping duty order on SSPC from Belgium (68 FR 23281). On May 30, 2003, the Department received a timely request for an administrative review of this order from petitioners. On July 1, 2003, we published a notice initiating an administrative review of SSPC for ALZ, N.V. (ALZ) and its affiliate Arcelor International America, Inc.<sup>1</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 39055 (July 1, 2003).

On December 30, 2003, the Department extended the deadline for the preliminary results of this antidumping duty administrative review from January 30, 2004, until no later than 365 days from the last day of the anniversary month of the order. Since this date falls on a weekend and the next business day is a holiday, the due date is June 1, 2004. See *Notice of Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review: Stainless Steel Plate in Coils from Belgium*, 68 FR 75212 (December 30, 2003). Due to the unexpected emergency closure of the main Commerce building on Tuesday, June 1, 2004, the Department has tolled the deadline for these preliminary/final results by one day to June 2, 2004. On

May 10, 2004, petitioners submitted comments on U&A Belgium's original and first supplemental questionnaire responses. Because these comments were not submitted in time to fully consider them for these preliminary results, we will continue to consider these comments for the final results of this review.

### Scope of the Antidumping Duty Order

Effective March 11, 2003, in accordance with *Allegheny Ludlum Corp. v. United States*, 287 F.3d 1365 (Fed. Cir. 2002) remanded to CIT No. 99-06-00361, slip op. 2002-147 (CIT Dec. 12, 2002), and *Notice of Amended Antidumping Duty Orders: Certain Stainless Steel Plate in Coils from Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan*, 68 FR 11520 (March 11, 2003), the scope of this order was amended. Therefore, for purposes of this review, there were separate scopes in effect. These scopes are set forth below. Respondent has appropriately reported only those U.S. sales during the relevant period covered by each scope.

#### *Scope of Order From May 1, 2002, Through March 10, 2003*

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 mm 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 otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of this order. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings:

7219110030, 7219110060, 7219120005, 7219120020, 7219120025, 7219120050, 7219120055, 7219120065, 7219120070, 7219120080, 7219310010, 7219900010, 7219900020, 7219900025, 7219900060, 7219900080, 7220110000, 7220201010, 7220201015, 7220201060, 7220201080, 7220206005, 7220206010, 7220206015, 7220206060, 7220206080, 7220900010, 7220900015, 7220900060, and 7220900080. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.

#### *Scope of Order On or After March 11, 2003*

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

The merchandise subject to this order is currently classifiable in the HTS 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 HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to these orders is dispositive.

### Analysis

#### *Affiliation of Parties*

U&A Belgium reported that ALZ's parent company Arbed S.A. (Arbed) was acquired by Arcelor S.A. (Arcelor).

<sup>1</sup> Petitioners requested a review of ALZ and its affiliate Arcelor International America, Inc. U&A Belgium claims to be the successor of ALZ N.V. We are making a determination as to whether U&A Belgium is the successor for ALZ N.V. in this review.

Pursuant to section 771(33)(E) of the Tariff Act of 1930, as amended (the Act), the Department preliminarily finds that Arcelor is affiliated with Arbed, by virtue of the merger of those entities and Arcelor's acquisition of 99.45 percent of Arbed.<sup>2</sup> ALZ, a Belgian stainless steel producer, and the original respondent in this case, was a subsidiary of Arbed. As a result of the merger, the Arcelor Group created a new unit that combined Ugine S.A., a French stainless steel producer, and ALZ. The new business unit, called Ugine & ALZ, is part of Arcelor's stainless steel flat sector. As such, the former ALZ now operates as U&A Belgium. *See Successorship* section, below.<sup>3</sup> Further, effective February 2002, Arcelor also merged with Usinor S.A. (Usinor) and Aceralia Corporacion Siderurgica, S.A. (Aceralia), acquiring 97.58 percent and 95.03 percent of the companies' shares, respectively.<sup>4</sup>

According to section 771(33)(E) of the Act, any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization shall be considered affiliated. Since Arcelor owns 99.45 percent of Arbed's shares, 97.58 percent of Usinor's shares, and 95.03 percent of Aceralia's shares, it directly owns more than five percent of the shares of these companies. According to section 771(33)(F) of the Act, two or more persons directly or indirectly controlling, controlled by, or under common control with, any person, shall be considered affiliated. Therefore, the Department preliminarily finds that Arbed is affiliated with Usinor and Aceralia by virtue of the merger with and common ownership by Arcelor. Moreover, we preliminarily find this affiliation between Arbed and Arcelor, Usinor, and Aceralia and their subsidiaries to be effective as of February 28, 2002.<sup>5</sup>

#### Successorship

U&A Belgium reported that ALZ, which was the respondent in the original investigation and subsequent reviews, changed its name on December 31, 2001, prior to the period of review, to U&A Belgium. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils*

*from Belgium (SSPC LTFV Investigation)*, (March 31, 1999) 64 FR 15476; *see also Stainless Steel Plate in Coils From Belgium; Final Results of Antidumping Duty Administrative Review, (SSPC Belgium 00/01)* 67 FR 64352 (October 18, 2002). As requested by U&A Belgium, we have conducted a successorship determination during this administrative review because the sales of SSPC were made under the name of U&A Belgium during this POR.

The Department is making this successorship determination in order to apply the appropriate and necessary company-specific assessment and cash deposit rates. In determining whether U&A Belgium is the successor to ALZ for purposes of applying the antidumping duty law, the Department examines a number of factors, including, but not limited to, changes in: (1) Management, (2) production facilities, (3) suppliers, and (4) customer base. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France*, 68 FR 69379 (December 12, 2003) (*SSSS from France*); *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) (*Brass from Canada*); *Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944 (February 14, 1994); and *Steel Wire Strand for Prestressed Concrete from Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 55 FR 28796 (July 13, 1990). While examining these factors alone will not necessarily provide a dispositive indication of succession, the Department will generally consider one company to have succeeded another if that company's operations are essentially inclusive of the predecessor's operations. *See Brass from Canada*. Thus, if the evidence demonstrates, with respect to the production and sale of the subject merchandise, that the new company is essentially the same business operation as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

The evidence on the record, including U&A Belgium's company brochures, customer lists, and lists of suppliers, and the information provided in U&A Belgium's March 22, 2004, supplemental response, demonstrates that, with respect to the production and sale of the subject merchandise, U&A Belgium is the successor to ALZ. Specifically, the evidence on the record indicates that, under the Arcelor

umbrella, U&A Belgium retained the ownership structure of ALZ, and continued to be a separate company, incorporated in Belgium. The record further indicates that U&A Belgium has the same SSPC production facilities and the same customer and supplier base as ALZ had. However, the management structure and board of directors experienced some changes due to the merger of Arbed into the Arcelor Group.<sup>6</sup> We reviewed U&A Belgium's organizational structure at the time of the merger and after the streamlining/centralization of certain administrative and selling functions with U&A France<sup>7</sup>, and found that there were only minimal changes.<sup>8</sup> Therefore, we preliminarily find that U&A Belgium is the successor to ALZ for purposes of this antidumping proceeding.

#### Start-Up Adjustment

U&A Belgium stated that during the review period, it implemented a pre-existing plan to expand the melt capacity of its Genk facility, and claimed a start-up adjustment for its expansion and renovation. Specifically, U&A Belgium reports that it built a new electric-arc furnace (EAF), and relined and retrofitted the existing EAF from being a fixed vessel to an exchangeable vessel. U&A Belgium further replaced its MRP converter to an AOD converter, and improved its continuous casting capabilities by replacing its fixed-width continuous caster with a variable-width caster. Specifically, section 773(f)(1)(C)(ii) of the Act states that the Department shall make an adjustment for startup costs where the following two conditions are met: (1) A producer is using new production facilities or producing a new product that requires substantial additional investment, and (2) the production levels are limited by technical factors associated with the initial phase of commercial production. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103-316, Vol. I, (1994) at 836 (SAA), provides further guidance as to what constitutes a new production facility or a new product.

We have examined U&A Belgium's claim and determined that the criteria for granting a startup adjustment within the meaning of section 773(f)(1)(C) of

<sup>2</sup> See Section A response of September 11, 2003, at 1 and Exhibit A-17B, at 38. For percent ownership refer to the first supplemental response of March 22, 2004, Exhibit S1-A-17.

<sup>3</sup> See page S1-4 of the first supplemental response.

<sup>4</sup> See page A-1 of the section A response, dated September 11, 2003, and Exhibit A-17B, page 38.

<sup>5</sup> *Id.* At 11 and page S1-A4 of the supplemental response.

<sup>6</sup> See First supplemental response at S1-4 through S1-10, and Exhibits S1-A2 through S1-A4.

<sup>7</sup> See A-17 of the September 11, 2003, section A response. U&A France is owned by Usinor S.A. (67.33 percent) and Valinter (32.37 percent). Valinter, in turn, is wholly owned by Usinor Industriale S.A., which is wholly owned by Usinor S.A.

<sup>8</sup> See pages A-8 through A-10 and Exhibits A-2 through A-3 of the September 11, 2003, section A response.

the Act have not been satisfied in this case. The installation of a new EAF and the relining and retooling of the existing EAF, from being a fixed vessel to an exchangeable vessel; the replacing of an MRP converter with an AOD converter; as well as the replacing of a fixed-width continuous caster with a variable-width caster; does not constitute a "new production facility," nor is U&A Belgium producing a "new product" that required substantial additional investment, within the meaning of section 773(f)(1)(C)(ii)(I) of the Act. Rather, the addition of a new production line within an already existing facility is a "mere improvement" that the SAA at 835 states will not qualify for a startup adjustment. Likewise, an expansion of the current production capacity of a facility will not qualify unless it requires the construction of a new facility. Moreover, U&A Belgium has not identified the actual costs associated with "substantially retooling" its existing facility. Section 773(f)(1)(C)(ii) of the Act establishes that both prongs of the startup test *i.e.*, (1) a producer is using new production facilities or producing a new product, and (2) production levels are limited by technical factors, must be met to warrant a startup adjustment. Therefore, we are not making an adjustment for startup in this case. Based upon our preliminary determination as to the first prong of the analysis, we need not address U&A Belgium's claims concerning technical factors that limit production levels under the second prong of section 773(f)(1)(c)(ii) of the Act, as both prongs must be met for granting a startup adjustment. *See e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms From Chile*, 63 FR 41786, 41788 (August 5, 1998).

#### Country of Origin

Petitioners argue that SSPC hot-rolled by U&A Belgium's German affiliate, and subsequently pickled and annealed in Belgium, is Belgian merchandise and should be included in the analysis of U&A Belgium's sales for purposes of this review. Petitioners claim that the German affiliate cannot be considered the producer, as the hot-rolling by the German affiliate is performed pursuant to a tolling arrangement. Petitioners claim that the hot-rolling does not change the country of origin since the German company neither takes title to the merchandise nor controls the relevant sale of the subject merchandise. In support of their position, petitioners

cite the Department's regulations, at 19 CFR 351.401(h).<sup>9</sup>

Petitioners further state that, in *Stainless Steel Bar from India: Preliminary Results of New Shipper Antidumping Administrative Review*, 66 FR 13496 (March 6, 2001), the Department determined that an Indian company was the producer of merchandise that had been toll-rolled by an unaffiliated subcontractor, where the Indian company (1) produced all of the inputs, (2) paid the subcontractor a processing fee for the toll services, and (3) maintained ownership at all times of the inputs as well as of the final product. *See Petitioners' December 15, 2003, Comments. See also, Petitioners' May 12, 2004, Comments.* Petitioners state that, in this proceeding, U&A Belgium purchases all the inputs used to produce the merchandise, maintains ownership at all times of the inputs as well as of the final product, and is invoiced for services performed by its German affiliate pursuant to the tolling arrangement. Therefore, petitioners claim, the German affiliate cannot be considered the producer, and Belgium must be the country of origin.

U&A Belgium objects to the inclusion of sales of SSPC that have been hot-rolled by its German affiliate, as it claims the material is of German origin, and therefore outside the scope of this review. U&A Belgium states that the material is of German origin, as Germany is where substantial transformation of the merchandise occurs. U&A Belgium cites *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip In Coils from the U.K. (SSSS UK)*, 64 FR 30688 (June 9, 1999), where the Department determined that British slabs hot-rolled in Sweden before being returned to the United Kingdom for finishing were excluded from the scope of that review because the hot-rolling process constitutes substantial transformation. U&A Belgium argues that country of origin for merchandise produced in more than one country is not linked to the country in which the producer is located but, rather, is always determined by where the last substantial transformation occurred. *See U&A Belgium April 5, 2004, Supplemental Questionnaire Response*, pages 3–4.

U&A Belgium argues that the substantial transformation which occurred in Germany, conferring country of origin on Germany, is not

affected by the fact the hot-rolling was performed pursuant to a tolling arrangement with U&A Belgium. It states that the Department has already addressed the issue of whether the country of origin of a particular product can be transformed through a tolling process in *Final Scope Ruling on Antidumping Order on Polyvinyl Alcohol from Taiwan*, December 19, 1996. *See U&A Belgium April 5, 2004, Supplemental Questionnaire Response*, at pages 5–6. U&A Belgium states that in that case, a U.S. manufacturer shipped merchandise to a toll processor in Taiwan that performed two chemical processes, the second of which transformed the product into subject merchandise. U&A Belgium further argues that the fact that the merchandise was processed through a tolling arrangement did not affect the Department's determination that the chemical processes did constitute substantial transformation and, therefore, that the merchandise was of Taiwan origin, and within the scope of the review. U&A Belgium states that the U.S. manufacturer appealed the issue to the U.S. Court of International Trade (CIT), which upheld the Department's determination. U&A Belgium states that the CIT held that the use of the substantial transformation test to determine a product's country of origin was a reasonable interpretation of the antidumping statute.

For purposes of these preliminary results, we have considered the record evidence and arguments, submitted by petitioners and respondent, addressing the treatment of U&A Belgium's SSPC, which were hot-rolled in Germany. As summarized above, petitioners and respondent have commented on the treatment of the merchandise hot-rolled in Germany, in the context of this order's scope, the Department's tolling regulation, and substantial transformation. Considering the specific facts surrounding the small quantity of U&A Belgium's sales in the instant review of SSPC which was hot-rolled in Germany, we preliminarily find that these sales of merchandise that was hot-rolled in Germany and returned to Belgium for pickling and annealing and shipment, are appropriately classified as merchandise of German origin. Therefore, for purposes of the preliminary results, we have not included sales of this merchandise in our NV comparisons. However, we will continue to analyze the record evidence and arguments on the treatment of U&A Belgium sales of SSPC hot-rolled in Germany for purposes of the final results.

<sup>9</sup> *Treatment of subcontractors ("tolling" operations).* The Secretary will not consider a toller or subcontractor to be a manufacturer or producer where the toller or subcontractor does not acquire ownership, and does not control the relevant sale of the subject merchandise or foreign like product.

### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent that are covered by the descriptions in the *Scope of Antidumping Duty Order* section, above, and sold in the home market during the POR, except for merchandise hot-rolled in Germany, 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 U&A Belgium. See *U&A Belgium Antidumping Questionnaire*, dated July 29, 2003.

### Normal Value Comparisons

To determine whether sales of subject merchandise to the United States were made at less than fair value, we compared the 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 U&A 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) of the Act, and section 351.404(b) of the Department's regulations, because U&A 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 for the subject merchandise, we determine 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.

### Arm's Length Test

U&A Belgium reported that it made sales in the home market to affiliated customers, classified into six categories, during the POR. U&A Belgium reported that with one exception, it did not have any sales of subject merchandise to any affiliates which were resold to unaffiliated customers. It reported that

one sale to one affiliate was resold to an unaffiliated customer. See section A response of September 11, 2003, at page 5. For purposes of these preliminary results, we did not include this sale in our analysis.

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 (Nov. 15, 2002).

### 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. U&A 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. We used invoice date as the date of sale in the investigation and prior review. See *SSPC LTFV Investigation* and *SSPC Belgium 00/01*.

For purposes of this review, U&A Belgium classified all of its export sales of SSPC as CEP sales. During the POR, U&A Belgium made sales to the United States through its U.S. affiliate, TrefilARBED and, beginning November 2002, through its affiliate U&A S.A. and its U.S. affiliate, Arcelor Stainless USA, which then resold the merchandise to unaffiliated customers. According to U&A Belgium, Arcelor Stainless USA

has served as the exclusive distributor for U&A Belgium's U.S. sales since November 2002.<sup>10</sup>

The Department calculated CEP for U&A Belgium 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 section 351.401(e) of the Department's regulations. In addition, because U&A Belgium reported CEP sales, in accordance with sections 772(d)(1) of the Act, we deducted from the starting price credit expenses, commissions, 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 more remote from the factory 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).

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. U&A 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.

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

### Cost of Production

The Department disregarded sales below cost of production (COP) in the last completed review. See *SSPC Belgium 00/01*, which incorporated *Stainless Steel Plate in Coils From Belgium: Preliminary Results of*

<sup>10</sup> See page A-21 and A-33-34, section A response of September 11, 2003.

*Antidumping Administrative Review*, 67 FR 39354, 39355 (June 7, 2002). 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 U&A Belgium's sales in the home market were made at prices below the COP.

We compared sales of the foreign like product in the home market with model-specific COP figures for the POR. In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general and administrative (SG&A) expenses and all costs and expenses incidental to placing the foreign like product in packed condition and ready for shipment. In our sales-below-cost analysis, we relied on home market sales and COP information provided by U&A Belgium in its questionnaire responses. We made adjustments to COP and CV to reflect appropriately U&A Belgium's expenses associated with scrap and hot band purchases from affiliates and U&A Belgium's general and administrative expenses.

We compared the weighted-average 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 section 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 less than 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 less than COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of

time, in accordance with sections 773(b)(2)(A) and (C) of the Act. Because we compared prices to POR-average costs, we 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, if any, 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 arm's-length) or unaffiliated parties, in accordance with section 351.403 of the Department's regulations. 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 section 351.410(c) of the Department's regulations.

In accordance with section 773(a)(4) of the Act, we used constructed value (CV) as the basis for NV when there were no above-cost contemporaneous sales of identical or similar merchandise in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses.

#### *Level of Trade*

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determined NV based on sales in the comparison market at the same LOT as the U.S. sales. See 19 CFR 351.412. The NV LOT is the level of the starting-price sale in the comparison market or, when NV is based on CV, the level of the sales from which we derive

SG&A and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer. See 19 CFR 351.412. As noted above, U&A Belgium classified all its exported sales of SSPC as CEP sales.

To determine whether NV sales are at a different LOT than CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See *Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002); see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997) and *Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Italy*, 68 FR 47032 (August 7, 2003). For the 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). We expect that, if claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. See *Porcelain-on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000).

In the current review, U&A Belgium reported five customer categories and one level of trade in the comparison market. U&A Belgium performs a variety of distinct selling functions in each customer category. See Appendix SA–8. We examined the selling functions performed for the five customer categories and found there were no differences in selling functions offered among them. Therefore, we

preliminarily conclude that U&A Belgium's five customer categories in the home market constitute one level of trade.

U&A Belgium reported two channels of distribution and one level of trade in the U.S. market. U&A Belgium's two channels of distribution are: sales shipped directly from U&A Belgium to the customer, and sales of U&A Belgium merchandise which has been stocked by Arcelor Stainless USA. See Appendix SA-8. We examined the selling functions performed for both U.S. sales channels and found that there was only one minor difference in selling functions offered between them. Arcelor Stainless USA performs a variety of functions in both sales channels. U&A Belgium and Arcelor Stainless USA also perform several selling functions jointly in both sales channels. With the exception of one selling function, the selling activities and services do not vary between sales channels. In light of the above, we preliminarily conclude that the U&A Belgium's two U.S. sales channels constitute one level of trade.

The home market selling expenses are attributable to selling activities performed by U&A Belgium, while all the selling functions for the U.S. market are performed by Arcelor Stainless USA, with the exception of a few which are shared with U&A Belgium. Thus, very few of the selling functions performed for home market sales are performed for the constructed sale from the exporter to the U.S. importer. Therefore, we conclude that U&A Belgium's home market sales are made at a different, and more remote, level of trade than its CEP sales.

We therefore examined whether an LOT adjustment or CEP offset may be appropriate. In this case, U&A 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 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 the data available do not provide an appropriate basis for making a LOT adjustment, but 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 deducted from the U.S. price in accordance with section 772(d)(1)(D) of the Act. For a detailed discussion, see *Analysis for Ugine & ALZ, N.V. Belgium (U&A Belgium) for the Preliminary Results of the Fourth Administrative Review of Stainless Steel Plate in Coils (SSPC) from Belgium*, issued concurrently with this notice.

#### *Currency Conversion*

We made currency conversions pursuant to section 351.415 of the Department's regulations based on rates certified by the Federal Reserve Bank.

#### **Preliminary Results of Review**

We preliminarily determine that the following dumping margin exists:

*Manufacturer/Exporter:* U&A Belgium.

*Time Period:* 05/01/02–04/30/03.

*Margin:* 2.40 percent.

#### *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 within 15 days of publication of the final results of review.

Furthermore, the following 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)(c) 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 other rate established in the LTFV investigation, which is 9.86 percent. See *SSPC LTFV Investigation*. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

#### *Public Comment*

Pursuant to section 351.224(b) of the Department's regulations, 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 section 351.309 of the Department's regulations, 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 section 351.303(f) of the Department's regulations.

Also, pursuant to section 351.310(c) of the Department's regulations, 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, not 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 section 351.402(f) of the Department's regulations 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 issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 2, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. 04-13069 Filed 6-9-04; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-449-804]

#### Notice of Preliminary Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bars From Latvia

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

**DATES:** *Effective Date:* June 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Daniel O'Brien or Shane Subler, at (202) 482-5346 or (202) 482-0189, respectively; AD/CVD Enforcement Office 1, Group 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on steel concrete reinforcing bar (rebar) from Latvia. We preliminarily determine that sales of subject merchandise by Joint Stock Company Liepajas Metalurgs (Liepajas Metalurgs) 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 on appropriate entries based on the difference between the export price (EP) and the NV.

Interested parties are invited to comment on these preliminary results. Parties that submit arguments are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. Further, we ask that parties submitting comments provide the Department with an additional copy of the public version of any such comments on diskette.

#### SUPPLEMENTARY INFORMATION:

#### Background

On September 7, 2001, the Department issued an antidumping duty order on rebar from Latvia. *See Antidumping Duty Orders: Steel Concrete Reinforcing Bars From Belarus, Indonesia, Latvia, Moldova, People's Republic of China, Poland, Republic of Korea and Ukraine*, 66 FR 46777 (September 7, 2001). On September 2, 2003, the Department issued a notice of opportunity to request the second administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 52181 (September 2, 2003). On September 17, 2003, in accordance with 19 CFR 351.213(b), Liepajas Metalurgs requested an administrative review. On September 30, 2003, also in accordance with 19 CFR 351.213(b), the petitioners<sup>1</sup> requested an administrative review of Liepajas Metalurgs. On October 24, 2003, the Department published the notice of initiation of this antidumping duty administrative review, covering the period September 1, 2002, through August 31, 2003 (the POR). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 60910 (October 24, 2003).

On November 7, 2003, the Department issued its antidumping questionnaire to Liepajas Metalurgs, specifying that the responses to Section A and Sections B-D would be due on November 28, 2003, and December 14, 2003, respectively.<sup>2</sup> We received timely responses to Sections A-C of the initial antidumping questionnaire and associated supplemental questionnaires. We initiated a cost of production (COP) investigation of Liepajas Metalurgs on April 23, 2004. The company submitted timely responses to Section D of the antidumping questionnaire, as well as to supplemental questionnaires.

Due to the unexpected emergency closure of the main Commerce building on Tuesday, June 1, 2004, the

<sup>1</sup> The petitioners in this case are the Rebar Trade Action Coalition ("RTAC") and its individual members.

<sup>2</sup> Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under review. Section E requests information on further manufacturing.

Department has tolled the deadline for these preliminary results by one day to June 2, 2004.

#### Scope of the Order

For purposes of this review, the product covered by this order is all steel concrete reinforcing bars sold in straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

#### Fair Value Comparisons

We compared the EP to the NV, as described in the *Export Price* and *Normal Value* sections of this notice. We first attempted to compare contemporaneous sales of products sold in the United States and comparison market that are identical with respect to the matching characteristics. Pursuant to section 771(16) of the Act, all products produced by the respondent that fit the definition of the scope of the order and were sold in the comparison market during the POR fall within the definition of the foreign like product. We have relied on three criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: type of steel, yield strength, and size. Where there were no sales of identical merchandise in the comparison market, we compared U.S. sales to sales of the next most similar foreign like product on the basis of the characteristics listed above.

#### Export Price

We calculated an EP for all of Liepajas Metalurgs' sales because the merchandise was sold directly by Liepajas Metalurgs to the first unaffiliated purchaser for delivery to the United States, and constructed export price (CEP) was not otherwise warranted based on the facts of record. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included inland freight and domestic brokerage and handling expenses.

#### Normal Value

##### A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the