

## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-423-805]

**Certain Cut-to-Length Carbon Steel Plate from Belgium; Notice of Amended Final Results of Administrative Review in Accordance With Final Court Decision Affirming Redetermination**

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

**SUMMARY:** On December 4, 2001, the United States Court of International Trade (CIT) affirmed the Department of Commerce's final remand results of the antidumping duty administrative review of certain cut-to-length carbon steel plate from Belgium. As there is now a final and conclusive court decision in this action, we are amending our final results, and we will instruct the Customs Service to liquidate entries subject to the review.

**EFFECTIVE DATE:** May 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mark Hoadley at (202) 482-0666, Office of AD/CVD Enforcement VII, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:****The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2001).

**Background**

On January 20, 1998, the Department of Commerce (the Department) published its final results for the administrative review of certain cut-to-length carbon steel plate from Belgium for the period of review (POR) August 1, 1995 through July 31, 1996. See *Final Results of Antidumping Duty Administrative Review of Certain Cut-to-Length Carbon Steel Plate from Belgium*, 63 FR 2959 (January 20, 1998) (*Final Results*). Fabrique de Fer de Charleroi S.A. (FAFER) appealed the *Final Results* to the Court of International Trade (CIT), challenging the Department's calculation of FAFER's U.S. selling expenses.

During the administrative review, the Department issued its standard and supplemental questionnaires to FAFER instructing FAFER to report expenses, including indirect selling expenses related to its U.S. sales. In its response to the questionnaire, FAFER did not identify these expenses in the manner, and with the specificity, requested by the Department.

FAFER first reported that there were no U.S. indirect selling expenses applicable to its one U.S. sale made during the POR: FAFER's questionnaire stated that "There were no cost of indirect selling expenses for the products under investigation that FAFER have incurred in the United States, either directly or indirectly." FAFER's November 18, 1996 Questionnaire Response, Section C, at 35. In response to a supplemental questionnaire, FAFER added that indirect selling expenses had been allocated based on information in its Section D response. See FAFER's January 17, 1997 Questionnaire Response, at 5. The Department determined that the application of facts available was warranted for both U.S. and home market indirect selling expenses. See *Cut-to-Length Carbon Steel Plate From Belgium: Preliminary Results of Antidumping Duty Administrative Review*, 62 FR 48213, 48215 (September 15, 1997) (*Preliminary Results*) (applying facts available to U.S. indirect selling expenses) and *Final Results*, 63 FR at 2963 (January 20, 1998) (applying facts available to home market indirect selling expenses).

Because FAFER's U.S. sale was made through an affiliate, the Department classified the sale as a constructed export price (CEP) sale, and the price for the sale had to be adjusted pursuant to section 772(d)(1) of the Act (19 U.S.C. § 1677a(d)(1)) to account for FAFER's direct and indirect selling expenses. FAFER had not reported these expenses needed to calculate CEP, and therefore the Department had to resort to facts available to fill in the missing information. In the *Final Results*, the Department used the commission rate FAFER normally paid its U.S. affiliate as a facts available proxy for FAFER's U.S. indirect selling expenses. *Final Results*, 63 FR at 2962 (January 20, 1998). In its opinion, the Court affirmed the Department's use of facts available in determining the appropriate deduction to FAFER's U.S. sales price. The Court, however, ordered the Department to choose another facts available substitute for these expenses, because the record indicated that the Department had determined that no commission was

actually paid on the U.S. sale in question. The Court reasoned that, "[c]onsidering that there is no dispute about the inapplicability of FAFER's actual general commission to the sale at issue, Commerce's use of such commission as a proxy for FAFER's indirect selling expenses is unreasonable." See *FAFER v. U.S.*, Slip. Op. 01-82, at 17 (CIT July 3, 2001). The Court also noted that "[t]he mere possibility that FAFER's indirect selling expenses could be an amount near the amount to which Commerce arrived on the basis of facts available cannot serve as a valid argument in view of Commerce's admitted obligation to arrive to . . . the estimate most rational under the circumstances rather than the most similar." *Id.* at 17-18, note 4.

Pursuant to its receipt of the CIT's remand instructions, on September 6, 2001, the Department released its draft results of redetermination to the plaintiff and defendant-intervenors for comment. See *Certain Cut-to-Length Carbon Steel Plate from Belgium; Draft Results of Redetermination Pursuant to Court Remand* (September 6, 2001) (*Draft Remand Results*).

In the *Draft Remand Results*, we reconsidered our methodology in accordance with the CIT's decision. The Department determined that the selling, general, and administrative (SG&A) expenses detailed on the financial statements of FAFER's U.S. affiliate, submitted in FAFER's October 21, 1996 Questionnaire Response, are a reasonable estimate of FAFER's U.S. indirect selling expenses, as the reported expenses bear a rational relationship to FAFER's missing information. The Act does not use the term indirect selling expenses, but refers to any selling expenses other than direct selling expenses, commission expenses, and expenses paid by the seller on the buyer's behalf. See Section 772(d) of the Act (19 U.S.C. §§ 1677a(d)(1)(D)). Thus, it is appropriate to combine all SG&A expenses for purposes of this CEP deduction. On September 13, 2001, the defendant-intervenors, Bethlehem Steel Corporation and United States Steel LLC, formerly U.S. Steel Group, a unit of USX Corporation, provided a timely brief commenting on the draft results. On September 14, 2001, plaintiff, Usinor Industeel, SA, (formerly FAFER), provided a timely brief commenting on the draft results. On September 19, 2001, the defendant-intervenors in this case provided a timely rebuttal brief.

After reviewing parties comments, on October 1, 2001, the Department issued its final remand results. See *Certain Cut-to-Length Carbon Steel Plate from Belgium Final Results of*

*Redetermination Pursuant to Court Remand* (October 1, 2001) (*Final Remand Results*). In our *Final Remand Results*, we made no changes to the *Draft Remand Results*. Parties comments to our *Draft Remand Results* and the Department's responses are discussed in the *Final Remand Results*.

On December 4, 2001, the CIT affirmed the Department's *Final Remand Results*. See *Fabrique De Fer Charleroi S.A. v. United States*, Slip Op. 01-140 (December 4, 2001). No party appealed the CIT's decision. As this case is now final and conclusive, we are amending the *Final Results* of review. As a result of our recalculations, based upon the changes set forth above, we have revised the dumping margin for respondent.

#### Amendment to Final Results of Review

Because no further appeals have been filed and there is now a final and conclusive decision in the CIT proceeding, effective as of the publication date of this notice, we are amending the *Final Results*, and establishing the following revised weight-averaged dumping margin:

Company Amended Final Results 1995-1996	Margin
Fabrique de Fer de Charleroi S.A.	12.96%

Accordingly, the Department will instruct the Customs Service to assess antidumping duties on all appropriate entries of subject merchandise in accordance with these amended final results.

#### Cash Deposit Requirements

The Department has not conducted a review of this order for any review period subsequent to the review period at issue (August 1, 1995 through July 31, 1996). Therefore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of certain cut-to-length carbon steel plate from Belgium entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for FAFER will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to 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 original 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 merchandise; and, (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be the rate established in the LTFV investigation, which is 6.75 percent. See *Amended Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Belgium*, 63 FR 40698 (July 30, 1998). These deposit rates shall remain in effect until publication of the final results of the next administrative review.

Dated: May 9, 2002

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-201-820]

#### Fresh Tomatoes from Mexico: Extension of Time Limit for Final Results of Five-Year Sunset Review

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

**ACTION:** Notice of Extension of Time Limit for Final Results of Five-Year ("Sunset") Review of the Suspended Antidumping Duty Investigation on Fresh Tomatoes from Mexico.

**SUMMARY:** The Department of Commerce ("the Department") is extending the time limit for final results in the full sunset review of the suspended antidumping duty investigation on fresh tomatoes ("tomatoes") from Mexico. We are extending the full sunset review of the suspended antidumping duty investigation to appropriately address issues relevant in the Department's on-going re-negotiation of the suspended agreement on tomatoes from Mexico. The Department intends to issue final results of this sunset review not later than August 27, 2002.

**EFFECTIVE DATE:** May 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** James P. Maeder or Martha V. Douthit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3330 or (202) 482-5050, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Extension of Final Results:

On October 1, 2001, the Department initiated (66 FR 49926) a sunset review of the suspended antidumping investigation on tomatoes from Mexico pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of the notice of intent to participate filed on behalf of domestic interested parties, and adequate substantive comments filed on behalf of the domestic interested parties and respondent interested parties, the Department determined that a full (240 day) sunset review was warranted of this suspended antidumping duty investigation.

In a sunset review, the Department normally will issue its final results not later than 240 days after the date of publication in the Federal Register of the notice of initiation in accordance with 19 CFR 351.218 (f)(3)(i). However, if the Secretary determines that a full sunset review is extraordinarily complicated under section 751(c)(5)(C) of the Act, the Secretary may extend the period for issuing final results by not more than 90 days (see section 751(c)(5)(B) of the Act).

We find this case to be extraordinarily complicated due to issues related to the on-going re-negotiation of the suspension agreement from Mexico. Therefore, we determine it appropriate to take the maximum amount of time allowed under the statute to conduct this sunset review. For this reason we are extending the period for issuing final results by 90 days. Thus, the Department intends to issue the final results on tomatoes from Mexico, not later than August 27, 2002, in accordance with section 751(c)(5)(B) of the Act.

Dated: May 10, 2002

**Bernard T. Carreau,**

*Acting Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-351-806]

#### Silicon Metal from Brazil: Amended Final Results of Antidumping Duty Administrative Review in Accordance with Court Decision

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

**ACTION:** Notice of Amended Final Results of Antidumping Duty