

October 7, 2002

MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Bernard T. Carreau
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum: Final Results of the Administrative Review of the Countervailing Duty Order on Stainless Steel Wire Rod from Italy - Period of Review Calendar Year 2000

Summary

We have analyzed the comments submitted by interested parties in the Final Results of the Administrative Review of the Countervailing Duty Order on Stainless Steel Wire Rod from Italy (“Final Results”) of the above-mentioned administrative review for January 1, 2000, through December 31, 2000, the period of review (“POR”).¹ Upon review of the comments received, the recommendations in this memorandum remain unchanged from our Stainless Steel Wire Rod from Italy: Notice of Preliminary Results of Countervailing Duty Administrative Review, 67 FR 39357, 39358 (June 7, 2002) (“Preliminary Results”). Below are the “Methodology and Background Information” and “Analysis of Programs” sections of this memorandum that describe the decisions made in this administrative review with respect to Acciaierie Valbruna S.p.A. (“Valbruna”), the producer/exporter of subject merchandise covered by this segment of the proceeding. Also below is the “Analysis of Comments” section in which we discuss the issues raised by interested parties. We recommend that you approve the positions we have developed below in this memorandum.

Methodology and Background Information

I. Background Information

A. Corporate History

¹Acciaierie Valbruna S.p.A. was the only interested party that submitted comments.

From 1985 through 1990, Bolzano was a wholly-owned subsidiary of Acciaierie e Ferriere Lomarde Falck (“Falck”). Bolzano was the main industrial company of Falck, which was a private corporate group with holdings in steel, real estate, environmental technologies, and other sectors. In 1990, ILVA acquired 44.8 percent of the stock in Bolzano. ILVA acquired the shares of Bolzano by exchanging an equal value of shares of its own subsidiary Cogne S.p.A.. ILVA also acquired shares in other Gruppo Falck steel companies. In 1993, ILVA's interest in Bolzano was completely dissolved because of losses, and Falck again held virtually all of the shares in Bolzano. Falck decided to sell Bolzano based on its company-wide strategic decision to withdraw from the steel sector. Falck contacted Valbruna as a potential buyer in late 1994. Subsequently, the parties entered into negotiations for the transfer of Bolzano. Each party had the value of Bolzano independently evaluated. A third study was done to reconcile the points of the first valuations that were in dispute relating to the final net equity and cash flow of Bolzano for purposes of finalizing the purchase price. Valbruna acquired 99.99 percent of the shares of Bolzano for this final price on August 31, 1995. Since then, the two companies have issued consolidated financial statements.

On January 1, 2000, Valbruna and Bolzano were legally merged and the name was changed to Acciaierie Valbruna S.p.A.

B. Changes in Ownership

As explained in the “Corporate History” section of this notice, Valbruna purchased Bolzano from Falck. The Department has previously determined that Bolzano received subsidies prior to being sold to Valbruna that were not fully expensed or allocated prior to the POR. See e.g., Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod from Italy, 63 FR 40474, 40485 (July 29, 1998) (“Wire Rod”). However, subsequent to Wire Rod, the Department determined in the Final Affirmative Countervailing Duty Determination: Stainless Steel Bar from Italy, 67 FR 3163 (January 23, 2002) (“Steel Bar”) not to make a finding as to whether the pre-sale Bolzano and the pre-sale Valbruna were distinct persons from post-sale Valbruna. See the “Changes in Ownership,” “Background” and “Comment 3” sections of the January 23, 2002, Issues and Decision Memorandum that accompanied Steel Bar (“Steel Bar Issues and Decision Memorandum”). Specifically, in Steel Bar Issues and Decision Memorandum, we noted that the potential benefits from any pre-sale subsidies to Bolzano by the Government of Italy (“GOI”) (e.g., such programs as Bolzano Law 25/81 that are explained below in the “Programs Determined To Be Countervailable” section of this notice) remained insignificant, amounting to 0.07 percent ad valorem. Id. In Steel Bar, we further explained that assuming arguendo that these pre-sale subsidies continued to benefit Valbruna in the POI, the final ad valorem rate (reflecting, in full, any POI benefits of pre-sale subsidies) for Valbruna would be de minimis. Id. Therefore, we determined that the application of the change in ownership methodology was not relevant for Valbruna. Id.

In the Preliminary Results, we stated that the overall ad valorem rate is still de minimis, even if one includes the pre-change in ownership subsidies. We further stated that, regardless of our treatment of the pre-change in ownership subsidies in the Preliminary Results, the highest the overall ad valorem rate that could be calculated is 0.42 percent. Id. No new factual information

or comments from interested parties were presented in this administrative review to warrant any reconsideration of this finding.

In these Final Results, we are reviewing the same fact pattern for Valbruna that existed in Steel Bar (e.g., the same company, the same subsidiaries, and the same time period (calendar year 2000)). Thus, we continue to determine that the application of the change in ownership methodology is not relevant for Valbruna.

II. Subsidies Valuation Information

A. Allocation Period

In the Preliminary Results we used an allocation period of 12 years for those subsidies attributable to Valbruna that were allocated over a 12-year period in Wire Rod. See 67 at 39358. In the Preliminary Results, we used a 15-year allocation period from the IRS tables for subsidies attributable to Valbruna that were not countervailed in Wire Rod. Id. No new factual information or comments from interested parties were presented in this administrative review to warrant any reconsideration of this approach.

B. Benchmark for Loans and Discount Rates

In the Preliminary Results, the Department relied on the 1998 Italian Interbank Rate (“ABI”) as the basis for the long-term benchmark rate. See 67 FR at 39359. We then added two amounts to the ABI rate. First, we added a spread of 2.28 percent, which is the average spread applied to the ABI by commercial banks in Italy. Id. Second, we added an additional amount to the benchmark interest rate to reflect the charges associated with long-term lending activities that are levied by commercial banks. Id. No new factual information or comments from interested parties (see Comment 1 below) were presented in this administrative review to warrant any change in this approach.

III. Programs Determined to Be Countervailable

A. Government of Italy Law 451/94 Early Retirement Benefits

Law 451/94 authorized early retirement packages for steel workers for the years 1994 through 1996. The law entitled men of 50 years of age and women of 47 years of age with at least 15 years of pension contributions to retire early. Benefits were applied for between 1994 to 1996 and, upon early retirement, workers received benefits until their normal ages of retirement, for a maximum of ten years. Employees of Bolzano used the measures in all three years of the program. Bolzano, which is wholly-owned by Valbruna, had workers retire and claim benefits under Law 451/94 before or during the POR.

In the Preliminary Results, we found that this program conferred countervailable subsidies on the subject merchandise. See 67 FR at 39359. No new information, evidence of changed circumstances, or comments from interested parties (see Comment 2 below) were

presented in this administrative review to warrant any change in this approach. Accordingly, the net subsidy rate for this program, which is 0.09 percent ad valorem, remains unchanged from the Preliminary Results.

B. Province of Bolzano Law 25/81, Articles 13, 14 and 15

The Province of Bolzano Law 25/81 is a general aid measure that provides grants to companies with limited investments in technical fixed assets. It targets advanced technology, environmental investment, or restructuring projects. Restructuring assistance is provided to companies under Articles 13, 14 and 15. These three articles establish different eligibility requirements, different application procedures, different levels of available aid, and different types of aid (grants and loans) than assistance provided under other Articles of Law 25/81. In the Preliminary Results, we examined Articles 13, 14 and 15 of Law 25/81 as a separate program. See 67 FR at 39360. Bolzano received a total of 18.6 billion lire in disbursements from restructuring grants from 1983 through 1992. Specifically, Bolzano received grants for four restructuring projects under this law: one was approved in 1983, another in 1985, and two in 1988. It also received a small amount from restructuring loans outstanding during the POR, which were provided at concessionary, long-term fixed rates.

In the Preliminary Results, we explained that the countervailable subsidy would be 0.07 percent ad valorem for Valbruna, if we were to assume that all of the pre-change in ownership subsidies were countervailable. See 67 FR 39360. No new information, evidence of changed circumstances, or comments from interested parties were presented in this administrative review to warrant any reconsideration of this approach. Accordingly, our approach with respect to this program remains unchanged from the Preliminary Results.

C. European Social Fund

The European Social Fund ("ESF"), one of the Structural Funds operated by the European Commission ("EC"), was established in 1957 to improve workers' employment opportunities and to raise their living standards. The main purpose of the ESF is to make employing workers easier and to increase the geographical and occupational mobility of workers within the EU. It accomplishes this by providing support for vocational training, employment, and self-employment.

Like the other EC Structural Funds, ESF seeks to achieve six different objectives explicitly identified in the EC's framework regulations for Structural Funds: Objective 1 is to promote development and structural adjustment in underdeveloped regions; Objective 2 is to assist areas in industrial decline; Objective 3 is to combat long-term unemployment and to create jobs for young people, and people excluded from the labor market; Objective 4 is to assist workers adapting to industrial changes and changes in production systems; Objective 5(a) is to speed up the adjustment of agricultural structures; and Objective 5(b) is to promote the development of rural areas.

The EU Member States are responsible for the identification of projects to receive ESF financing and their subsequent implementation. The Member States must also contribute to the

financing of the projects. In general, the maximum benefit provided by ESF is 50 percent of the total cost of projects geared toward Objectives 2, 3, 4, and 5b, and 75 percent of the project's total cost for Objective 1 projects. For Objective 4 programs implemented in Italy, generally 45 percent of the funding is provided by the EC and 35 percent by the GOI. Companies usually receive 50 percent of the aid up-front and the remainder upon satisfactory completion of the training program. According to the questionnaire responses, Valbruna received or benefitted from ESF Objective 4 grants.

In the Preliminary Results, we found that this program constituted a government financial contribution within the meaning of section 771(5)(D)(i) of the Act and that this program provided a benefit, pursuant to 19 CFR 351.513(a). See 67 FR at 39360. Regarding the specificity of the ESF program, in the Preliminary Results, we explained that, in past cases, the Department has applied adverse inferences and, therefore, concluded that the ESF program was de facto specific within the meaning of section 771(5A) of the Act. See Preliminary Results citing to "Comment 14" of the Steel Bar Issues and Decision Memorandum. See also the Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils From Italy, 64 FR 15508, 15517 (March 31, 1999). However, in the Preliminary Results, we further explained that it was not necessary to determine whether an adverse inference was appropriate because, even if the Department were to make such an inference, the overall ad valorem rate would remain de minimis. See 67 FR at 39361. No new information, evidence of changed circumstances, or comments from interested parties were presented in this administrative review to warrant any reconsideration of this approach. Accordingly, our approach with respect to this program remains unchanged from the Preliminary Results.

D. Lease of Bolzano Industrial Site to Valbruna

Falck sold Bolzano to Valbruna in 1995. Concurrent with the change in ownership, Falck and Bolzano sold Bolzano's industrial site to the Government of the Province of Bolzano ("Province"). In Wire Rod, we determined that the Province paid for the property in full. See 63 FR at 40483. Nothing on the record in the current review leads us to a different conclusion. At the same time, Valbruna negotiated with the Province to lease the Bolzano industrial site and, on July 31, 1995, signed a thirty-year lease.

In the Preliminary Results, we found that the Province's lease of the industrial site for less than adequate remuneration conferred countervailable subsidies on the subject merchandise. See 67 FR at 39361. No new information, evidence of changed circumstances, or comments from interested parties (see Comment 4 below) were presented in this administrative review to warrant any change in this approach. Accordingly, the net subsidy rate for this program, which is 0.11 percent ad valorem, remains unchanged from the Preliminary Results.

E. Environmental and Research and Development Assistance to Bolzano Under Law 25/81

Valbruna reported receiving two grants under Law 25/81 for the adaptation of existing facilities to new environmental requirements ("environmental grants").

In the Preliminary Results, we explained that this program was previously found to constitute a government financial contribution and a benefit under sections 771(5)(D)(i) and 771(5)(E) of the act, respectively. See 67 FR at 39361 citing to the "Environmental and Research and Development Assistance to Bolzano Under Law 25/81" section of the Steel Bar Issues and Decision Memorandum. Regarding the specificity of the environmental grants, in the Preliminary Results, we explained that in Steel Bar we found the assistance specific on the basis of an adverse inference because the Province provided insufficient information regarding the specificity of the grants. See 67 FR at 39361. In the Preliminary Results, we further explained that it was not necessary to determine whether an adverse inference was appropriate because, even if the Department were to make such an inference, the over all ad valorem rate would remain de minimis. See 67 FR at 39361. No new information, evidence of changed circumstances, or comments from interested parties were presented in this administrative review to warrant any reconsideration of this approach. Accordingly, our approach with to this program remains unchanged from the Preliminary Results.

IV. Programs Determined To Be Not Used

- A. Capacity Reduction Payments under Articles 3 and 4 of Law 193/1984
- B. Law 796/76 Exchange Rate Guarantees
- C. Article 33 of Law 227/77, Export Credit Financing Under Law 227/77, and Decree Law 143/98
- D. Grants under Laws 46/82 and 706/85
- E. Law 181/89 and Law 120/89
- F. Law 488/922, Legislative Decree 96/93 and Circolare 38522
- G. Law 341/95 and Circolare 50175/95
- H. Law 675/77
 - 1. Interest Grants on Bank Loans
 - 2. Mortgage Loans
 - 3. Interest Contribution on IRI Loans
 - 4. Personnel Retraining Aid
- I. Law 394/81 Export Marketing Loans

J. Law 481/94 (and Precursors) Grants for Reduced Production

K. Law 489/94

L. Law 10/91

V. Total Ad Valorem Rate

The net subsidy rate for Acciaierie Valbruna S.p.A. is 0.27 percent ad valorem.

VI. Analysis of Comments

Comment 1: Selection of Discount Rate

In the Preliminary Results, the Department used the ABI as the basis for the benchmark interest rate used in the subsidy calculations. Valbruna explains that, with respect to the selection of a benchmark interest rate in the Preliminary Results, the Department followed the precedent established in Steel Bar and rejected the borrowing rates reported by the company. Valbruna claims that in Steel Bar, the Department did not accept the information in that investigation because it considered the company-specific loan information, which was presented for the first time at verification, to be untimely. Valbruna argues that the same concern does not apply in the instant review because Valbruna provided the company-specific interest rate information in its initial questionnaire response.

Valbruna further argues that the interest rate applied in the Preliminary Results is so high that it would violate the Italian laws prohibiting the charging of usurious rates on financing.

Department's Position: We disagree with Valbruna. First, regarding Valbruna's claim that the benchmark discount rate used in the Preliminary Results is so high as to be "usurious" under Italian law, we note that the benchmark rate used in the Preliminary Results is comprised of information collected from the GOI and from independent, commercial sources in Italy and, therefore, is appropriate for use in our benefit calculations.

Furthermore, we note that Valbruna bases its claim that the benchmark discount rate used by the Department is "usurious" by selectively comparing it to the maximum interest rates supposedly allowed by the GOI during the years 1999 and 2000. See Exhibit 9 of Valbruna's January 25, 2002 questionnaire response. However, the grant in question was approved by the GOI in 1998 and, thus, pursuant to 19 CFR 351.524(c)(3)(i), the appropriate comparison year is 1998, the year in which the grant was approved. When using the proper comparison year, it is evident that the benchmark discount rate used in the Preliminary Results is, in fact, well below the maximum rate of 12.353 percent supposedly allowed by the GOI during 1998.

In future administrative reviews, we will further examine the GOI's purported ability to cap the interest rates charged on commercial loans.

Second, Valbruna claims that it presented company-specific loan information in its initial questionnaire response, and that this information should have been used in the derivation of the

benchmark interest rate. The loan information in question was identical to that originally submitted at the Steel Bar verification, and stemmed from a bond that Valbruna issued in 1999. We find that it is inappropriate to use the 1999 information for the same reasons we cited in Steel Bar:

Regarding the use of the rate from the 1999 bond issuance as a discount rate, while we agree with Valbruna that the Department's preference is to use a company-specific rate when available, any discount rate must be based upon the year in which the government agreed to provide the subsidy. See 19 CFR 351.524(c)(3)(i). The record evidence indicates that the Law 25/81 environmental aid grants received by Bolzano were approved in 1998. Therefore, for the Final Determination, because Valbruna does not have a company-specific discount rate for 1998, we have continued to use the same discount rate used in the Preliminary Determination to allocate these subsidies.

Id. Thus, as the record evidence and comments submitted by Valbruna have remained unchanged from Steel Bar, and consistent with the Preliminary Determination, we determine to continue to use the ABI benchmark interest rate.

Comment 2: Government of Italy Law 451/94 Early Retirement Benefits

Valbruna argues that the Department should reconsider whether the Law 451/94 early retirement program provides a countervailable subsidy to Valbruna. Specifically, Valbruna argues that Law 451/94 imposed a cost on Valbruna rather than providing it with a benefit. Alternatively, Valbruna argues that if the Department continues to find this program countervailable in the Final Results, then the proper benchmark with which to analyze the program is the actual cost incurred by Bolzano under the Cassa Integrazione Guadagni ("CIG")-Mobility² program.

In support of its allegation that Law 451/94 imposed a cost on rather than provided a benefit to Valbruna, Valbruna argues that the Department's methodology assumes that companies needed to discharge excess employees and that high levels of unemployment in Italy increased the cost of reducing payrolls through lay-offs because companies laying workers off were forced to make concessions to labor unions. Valbruna claims that these assumptions are not correct in Valbruna's case. First, Valbruna maintains that the workers who retired under this program were replaced. Valbruna argues that evidence gathered at the Steel Bar verification

²The CIG-Mobility program was previously used as the best benchmark for comparison with the early retirement benefits bestowed by law 451/94 in place of the CIG-Extraordinary program. See Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Sheet and Strip in Coils from Italy. 63 FR 63900 (November 17, 1998) ("Sheet and Strip: Preliminary Determination") The CIG-Mobility program is a GOI unemployment program under Law 223/91 which serves to identify the minimum payment the company would incur when laying workers off permanently. This choice of benchmark was revised in the Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from Italy 64 FR 30624 (June 8, 1999) ("Sheet and Strip: Final Determination").

documents that total employment at both the Vicenza and Bolzano plant increased from 1994 through the 2000 POR. Second, although average unemployment rates in Italy during the POR surpassed 10 percent, the unemployment rates in Vicenza and Bolzano were 1.5 percent and 2.0 percent, respectively. Therefore, Valbruna argues that although Law 451/94 may have provided a benefit to other companies, it provided no benefit to Valbruna. Valbruna argues that if a benefit was provided under this program, it was to the workers themselves and not to Valbruna.

Valbruna contends that, unlike large, state-owned steel companies, neither the Vicenza plant nor the Bolzano plant experienced massive early retirements resulting from the institution of Law 451/94. Valbruna argues that evidence gathered at verification indicates that employees retiring from both the Vicenza and Bolzano plants represented only 0.7 percent of total retirees under Law 451/94. Thus, Valbruna argues that it was not intended to be, and was not, in fact, a target beneficiary of Law 451/94.

However, if the Department does countervail this program in the Final Results, Valbruna argues that the benefit calculation should be revised. Valbruna points to both Wire Rod and Sheet and Strip: Preliminary Determination as prior cases where the Department's methodology on this issue has differed from that in the instant proceeding. Valbruna argues that the Department's articulated concerns which led to abandoning the Mobility benchmark used in Sheet and Strip: Final Determination are inapplicable to Valbruna. Specifically, Valbruna maintains that there is no need to speculate what the results of the negotiations between labor unions and Valbruna would have been under CIG-Mobility. Because Bolzano did in fact lay off workers under CIG-Mobility, Valbruna argues that this exact ratio should be employed as the benchmark in the instant proceeding. Valbruna argues that the methodology used in the Preliminary Determination should only be used in instances where no information regarding a company's actual expenses are available.

Department's Position: For the Final Determination, we have continued to countervail the benefits under Law 451/94 according to the methodology articulated in the Preliminary Determination.

Regarding Valbruna's contention that Law 451/94 imposed a cost on Valbruna rather than conferring a benefit, we disagree. The CVD regulations at 19 CFR 351.503(c) hold that the Department is not required to consider the effect of the government action on the firm's performance . . . or how the firm's behavior otherwise is altered. Thus, whether Valbruna replaced workers because of the operation of Law 451/94 or not, is extraneous to the Department's analysis. Rather, our analysis is guided by whether the GOI conferred a benefit upon Valbruna by relieving it of an obligation it otherwise would incur but for the operation of Law 451/94. See 19 CFR 351.513(a).

There is also information on the record of this proceeding, collected during verification of Steel Bar, which clearly indicates that Valbruna's employees received payments from the GOI under the program and that both Valbruna and the labor unions representing its workers had knowledge that the government would make these contributions. See "Comment 13" of the Steel Bar Issues and Decision Memorandum. According to the Department's practice, as outlined in the Preamble to the CVD regulations (see, Countervailing Duties; Final Rule, 63 FR 65348, 65379-80 (Nov. 25, 1998) ("Preamble")), the Department infers that knowledge that the

government would make such contributions impacts the negotiations between labor unions and companies; absent the knowledge that the government would provide assistance in the case of layoffs, workers would demand higher pay at the bargaining table. Given this practice, we determine that because Law 451/94 payments did exist and because both Valbruna and the labor unions representing its workers had knowledge that these payments would be made, we could assume that Valbruna would not be relieved from making similar payments absent its operation. On this basis, we determined in Steel Bar that Law 451/94 relieved Valbruna of a financial burden it would have otherwise incurred. Presented with an identical fact pattern in this case, and no new information, we continue to find that this program relieves Valbruna of a financial burden it would have otherwise incurred

Regarding Valbruna's argument that it was not an intended beneficiary of Law 451/94, we note that we do not need to find that a particular enterprise or industry is targeted for benefits under a program in order to find that the program is specific. See Preamble at 63 FR 65379-80.

Regarding the benchmark for measuring the benefit, we continue to find that the benchmark used in the Preliminary Determination is the most appropriate. Consistent with our decision in Steel Bar, we agree with Valbruna that our analysis has evolved over time. However, as stated in Steel Bar, our decision not to use CIG-Mobility program in our derivation of the benchmark is consistent with the Department's recent proceedings involving Law 451/94 (see Steel Bar, Sheet and Strip, 64 FR 30624, 30630; Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From Italy, 64 FR 73244, 73254, (December 29, 1999) ("CTL Carbon Plate")), and we find no basis in the record of the current review to justify deviating from this determination.

Additionally, the CIG-Mobility program is clearly distinct from Law 451/94 and only "identifies the minimum payment the company would incur when laying off workers" (see CTL Carbon Plate, 64 FR 73244, 73252). As in Steel Bar, there is no evidence on the record indicating that minimum Mobility payments were equal to Law 451/94 payments, i.e., 80 percent of a worker's salary. Therefore, given facts identical to those in Steel Bar, the Department continues to reject Valbruna's argument that the Mobility provision could serve as an appropriate benchmark for calculating the benefit under the Law 451/94 program.

As the record evidence and comments submitted by Valbruna have remained unchanged from the Preliminary Determination and from Steel Bar, we continue to find that this program relieved Valbruna of a financial burden that it would have otherwise incurred, and, thus, conferred a countervailable benefit upon the company.

Comment 3: Attribution of Law 25/81 Grants to Valbruna

Respondents argue that no grants under Law 25/81 received by Bolzano should be attributed to Valbruna. Respondents argue that, since the Department did not make a finding as to whether the pre-sale Bolzano and pre-sale Valbruna were distinct "persons" from the respondent Valbruna, there is no basis to attribute to Valbruna in the POR any benefits received by Bolzano prior to the POR.

Department's Position: We note that Valbruna raised the same argument in Steel Bar. In Steel

Bar, we continued to not make a finding with respect to whether Valbruna and Bolzano were, in fact, the same “person” because, even assuming they were the same “person,” Valbruna’s final ad valorem rate would remain de minimis. See “Comment 14” of the Steel Bar Issues and Decision Memorandum. As the evidence and comments submitted by Valbruna on this issue have remained unchanged from the Preliminary Determination and from Steel Bar, we have determined to continue the approach adopted in Steel Bar, and in the Preliminary Determination and, thus, we are not making a finding with respect to whether the pre-sale Bolzano and pre-sale Valbruna were distinct “persons” from the respondent Valbruna.

Comment 4: Bolzano Industrial Site Lease and Extraordinary Maintenance

In the Preliminary Results, the Department did not include the extraordinary maintenance costs assumed by Valbruna when determining whether the Province leased the industrial site to Valbruna for less than adequate remuneration. Valbruna argues that shifting the extraordinary maintenance obligation under the lease from the Province was an integral assumption on which this lease was based. Thus, Valbruna maintains that these expenses must be considered in evaluating adequate remuneration under the lease. Specifically, Valbruna argues that the record of the instant proceeding establishes three facts related to this obligation: 1) no party would accept an additional obligation under a lease, such as the extraordinary maintenance obligation, without receiving consideration; 2) Italian law obliges the landlord to pay for extraordinary maintenance on a leased property; and 3) in practice, the extraordinary maintenance obligation is often shifted to the lessee.

Furthermore, Valbruna argues that using a market benchmark rate of return is appropriate only in circumstances where the standard allocation of rights and responsibilities exists. However, as the foregoing indicates, Valbruna argues that the Bolzano industrial site lease is not one in which the standard allocation of rights and responsibilities exists. Rather, Valbruna argues, this lease shifts the extraordinary maintenance obligation from the landlord, therefore changing the allocation of rights and responsibilities from the standard allocation under Italian law.

Therefore, Valbruna maintains that in comparing the rent paid under the lease to a market benchmark rate of return without accounting for extraordinary maintenance expenses, the Department failed to account for the fact that the reallocation of contractual responsibilities has a value. Valbruna argues that this value is the actual amount that Valbruna has spent on extraordinary maintenance on the GOB’s buildings. Valbruna argues that when these expenses are added to the lease payments, the actual expenses under the lease are nearly equivalent to the Department’s benchmark rate of return for leases whose terms reflect the standard allocation of rights and responsibilities.

Regarding the appropriate market benchmark used in analyzing benefits under the lease, Valbruna argues that the Department should use a region-specific lease benchmark instead of a national average rate of return. Valbruna maintains that the average rate of return for real estate in the Milan area would be an appropriate benchmark for the following reasons: 1) Milan and Bolzano are geographically proximate; and 2) both areas have relatively high real estate values which correlate to lower-than-average returns on real estate investments. Thus, Valbruna argues

that the appropriate benchmark is the return on real estate investments in Milan, or 5.6 percent.

Department's Position: We note that Valbruna raised the same arguments with respect to this program in Steel Bar. In Steel Bar, we determined to continue to use the average rate of return on leased commercial property in Italy as the benchmark for determining whether the Province received adequate remuneration for the Bolzano lease. See "Comment 7" of the Steel Bar Issues and Decision Memorandum. Moreover, in Steel Bar, we did not adjust the benchmark rate to reflect Valbruna's assumption of extraordinary maintenance expenses incurred on the Bolzano plant site. Id.

In Steel Bar, we explained that we did not accept Valbruna's suggested rate of 5.6 percent, which reflects the rate of return on real estate investments in Milan, because Valbruna did not provide evidence to support its claim that the real estate markets in Milan and Bolzano were similar. Valbruna has yet to provide any evidence to this effect in this review. We also noted in Steel Bar that evidence collected during verification indicated that Province officials considered the benchmark rate (i.e., the average rate of return on commercial property in Italy) used in the Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Bar From Italy, 66 FR 30414 (June 6, 2001) to be representative of the rates in Bolzano. See "Comment 12" of the Steel Bar Issues and Decision Memorandum citing to page 10 of the Bolzano Verification Report, which is included as Exhibit 17 of the GOI's January 25, 2002 questionnaire response in this review. Thus, as in Steel Bar, we continue to use the average rate of return on commercial property in Italy as our benchmark. As we stated in Wire Rod, "this rate reflects different terms, lengths, and locations of lease contracts throughout Italy" See 63 FR at 40484. Hence, in Wire Rod, we concluded in that it was a "reliable and representative rate to use in examining whether the facility is being leased for less than adequate remuneration", and we find no basis in the record of the current review to justify deviating from this conclusion. Id.

In Steel Bar, we further explained that, consistent with the approach adopted in Wire Rod, we did not adjust the benchmark rate to reflect the assumption by Valbruna of responsibility for extraordinary maintenance on the facility. See "Comment 12" of the Steel Bar Issues and Decision Memorandum. Although in Steel Bar, we acknowledge that under the law this responsibility falls to the landlord, we found that such responsibilities may be shifted to the lessee under the terms of the lease. Id. In support of this contention, we cited to the Province verification from Steel Bar during which Province officials stated the Province does not assume responsibility for extraordinary maintenance on any of the industrial properties it owns and leases. Id. citing to page 9 of the GOB Verification Report which was included as Exhibit 17 of the GOI's January 25, 2002 questionnaire response in this review. We further noted in Steel Bar that our findings during verification were consistent with our finding in Wire Rod that, "long-term leases often oblige the lessee to bear responsibility for these costs because of the long-term costs involved." Id. citing to Wire Rod, 63 FR at 40484.

As the evidence and comments submitted by Valbruna on this issue have remained unchanged from Steel Bar, we have determined to continue the approach adopted in Steel Bar and, thus, we have determined to continue to use the average rate of return on leased commercial property in Italy as the benchmark for determining whether the Province received adequate

remuneration for the Bolzano lease.

Comment 5: Final Results Should Identify The Producer/Exporter as Acciaiere Valbruna S.p.A.

Valbruna argues that the Department should amend the “Suspension of Liquidation” section of the Final Results so that it identifies Acciaiere Valbruna S.p.A. as the Producer/Exporter subject to the administrative review. Valbruna contends that record evidence indicates that Valbruna and Bolzano were legally merged effective January 1, 2000, and the name of the merged companies was changed to Acciaiere Valbruna S.p.A. Valbruna further contends that it was known as Acciaiere Valbruna S.p.A during the entire POR. Thus, Valbruna argues that Acciaiere Valbruna S.r.l./Acciaiere Bolzano S.r.l. should be used for liquidation purposes while the name Acciaiere Valbruna S.p.A should be used for cash deposit purposes.

Department’s Position: We agree, in part, with Valbruna. Evidence on the record indicates that Valbruna and Bolzano were legally merged effective January 1, 2000 and that the name of the merged companies was changed to Acciaiere Valbruna S.p.A. Therefore, for liquidation purposes we will use the name Acciaiere Valbruna S.r.l./Acciaiere Bolzano S.r.l. However, because it is possible that subject merchandise also entered the United States during the POR under the new name of the merged companies, we will also use the name Acciaiere Valbruna S.p.A. for liquidation purposes. However, as we noted in the Final Results, due to an injunction that bars liquidation of Valbruna’s entries, we will not be issuing liquidation instructions at this time. For cash deposit purposes we will use the name Acciaiere Valbruna S.p.A.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the Final Results of the determination in the Federal Register.

Agree

Disagree

Faryar Shirzad
Assistant Secretary
for Import Administration

Date