

were held by private shareholders who could trade them freely. Usinor's employees owned 5.16 percent of Usinor's shares; Clindus, 2.5 percent; and, the GOF, 0.93 percent. The remaining 14.29 percent of Usinor's shares were held by the so-called "Stable Shareholders." According to Usinor's 2000 annual report, the government-owned Electricite de France continues to own 3.6 percent of Usinor's shares.

In analyzing whether the producers of merchandise subject to review is the same business entity as pre-privatization Usinor, we have examined whether Usinor continued the same general business operations, retained production facilities, had a continuity of assets and liabilities, and retained the personnel of the pre-privatization Usinor. Based on our analysis, we have concluded that the privatized Usinor is, for all intents and purposes, the same person as the GOF-owned steel producer of the same name which existed prior to the privatization. Consequently, the subsidies bestowed on Usinor prior to its 1995 privatization are attributable to present-day Usinor and continue to benefit the subject merchandise during the POR.

1. Continuity of General Business Operations

Usinor has produced the same products and remained the same corporation at least since the late 1980s. In 1987, Usinor became the holding company for the French steel groups, Usinor and Sacilor (the GOF had majority ownership of both Usinor and Sacilor beginning in 1981). Usinor's principal businesses covered flat products, stainless steel and alloys, and specialty products. In 1994, these three product groups were produced by three subsidiaries: Sollac, Ugine and Aster (respectively). See Usinor 12/19/2002 Questionnaire Response, Exhibit 6 at 46. This same structure continued after Usinor's privatization in 1995. Usinor's organizational chart during the original investigation shows the same three major products being produced by the same three subsidiaries. See *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from France*, 64 FR 30774, 30776 (June 8, 1999) ("SSSS from France").

In 1994 (prior to the privatization), flat products constituted 55 percent of consolidated sales, while stainless and specialty products constituted 20 and 18 percent respectively. See Usinor 12/19/2002 Questionnaire Response, Exhibit 6 at 47. In the years following privatization (1995–2000), flat carbon

steels continued to account for between 49 and 58 percent of Usinor's consolidated net sales. See *Stainless Steel Sheet and Strip in Coils from France; Preliminary Results of Countervailing Duty Administrative Review*, 67 FR 31774, 31776 (May 10, 2002) ("First Review Prelim"). Sales of stainless and alloy, and specialty steel accounted for between 23 and 25 percent, and between 19 and 21 percent, respectively, during the post-privatization years, 1995 through 1997. Since then, sales of stainless, alloy, and specialty steel have been combined in Usinor's annual report and a separate category has been reported for "processing and distribution." The combined sales of stainless, alloy and specialty steel ranged from 21 to 28 percent of Usinor's consolidated net sales over the period 1998–2000, while processing and distribution ranged from 6 to 18 percent over the same period. See *Id.* In 1999, Usinor divested itself of its specialty steels business.

We have also examined whether post-privatization Usinor held itself out as the continuation of the previous enterprise (e.g., by retaining the same name). In this instance, Usinor retained its same name and there is no indication that the privatized company held itself out as anything other than a continuation of pre-privatization Usinor.

The continuity of Usinor's business operations is also reflected in Usinor's customer base. Prior to privatization, the automobile industry was a principal purchaser of Usinor's output, accounting for approximately 30 percent of Usinor's sales in 1994 and the construction industry was its second largest purchaser, accounting for approximately 26 percent of Usinor's sales in 1994. See Usinor 12/19/2002 Questionnaire Response, Exhibit 6, 17–18. In 1997 and 2000, the automobile industry was still Usinor's major customer (36 percent of Usinor's sales in 1997 and 38 percent in 2000). The construction industry has continued as the second largest purchaser: 23 percent in 1997, and 15 percent in 2000. See *First Review Prelim*, 67 FR at 31777.

2. Continuity of Production Facilities

Neither product lines nor production capacity changed as a result of the privatization, except those changes that occurred in an ongoing manner in the ordinary course of business. No facilities or production lines were added or eliminated specifically as a result of the sale. A comparison of the Prospectus for the 1995 privatization and Usinor's 1997 Annual Report demonstrates that steel production facilities have

remained intact. The company has continued to focus on an "all steel" strategy, engaging in all aspects of the steel production process and produces a wide variety of steel products. Finally, Usinor's steel production facilities did not change their physical locations.

3. Continuity of Assets and Liabilities

Usinor was sold intact, with all of its assets and liabilities. See Usinor 12/19/2002 Questionnaire Response, Exhibit 21 and *First Review Prelim*, 67 FR at 31777. While the GOF continued to own a small percentage of Usinor's shares, there is no indication that it retained any of Usinor's assets or liabilities.

4. Retention of Personnel

Usinor's Articles of Incorporation changed as a result of the privatization, and the new Articles of Incorporation specified new procedures for electing the Board of Directors. New directors were elected to the Board under the new procedures. However, Usinor's Chairman and Chief Executive Officer remained the same before and after the privatization. Similarly, Usinor's workforce did not change. See *First Review Prelim*, 67 FR at 31777.

Therefore, based on the facts and our analysis of a variety of relevant factors, once privatized, Usinor continued to operate, for all intents and purposes, as the same person that existed prior to the privatization and, thus, the pre-privatization subsidies continued to benefit Usinor even under private ownership.

Use of Facts Available

Sections 776(a)(2)(A) and (B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act, effective January 1, 1995 ("the Act"), require the use of facts available when an interested party withholds information requested by the Department, or when an interested party fails to provide information required in a timely manner and in the format requested. In selecting from among facts available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party if the Department determines that the party has failed to cooperate to the best of its ability. Such adverse inference may include reliance on information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping duty investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 or 762 review; or (4) any other information placed on the record.