



A-122-863  
Investigation  
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**DATE:** August 20, 2018

**MEMORANDUM TO:** Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

**FROM:** James Maeder  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for the Preliminary Determination in the  
Less-Than-Fair-Value Investigation of Large Diameter Welded  
Pipe from Canada

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## **I. SUMMARY**

The Department of Commerce (Commerce) preliminarily determines that large diameter welded pipe (welded pipe) from Canada is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

## **II. BACKGROUND**

On January 17, 2018, Commerce received an antidumping duty (AD) petition covering imports of welded pipe from Canada, filed in proper form on behalf of American Cast Iron Pipe Company, Berg Spiral Pipe Corp., Berg Steel Pipe Corp., Dura-Bond Industries, Skyline Steel, and Stupp Corporation (the petitioners).<sup>1</sup> Commerce initiated this investigation on February 9, 2018.<sup>2</sup>

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<sup>1</sup> See the Petitioners’ Letter, “Large Diameter Welded Pipe from Canada, India, the People’s Republic of China, the Republic of Korea, and the Republic of Turkey: Petition for Imposition of Antidumping and Countervailing Duties,” dated January 17, 2018 (Petition).

<sup>2</sup> See *Large Diameter Welded Pipe from Canada, Greece, India, the People’s Republic of China, the Republic of Korea, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations*, 83 FR 7154 (February 20, 2018) (*Initiation Notice*).

In the *Initiation Notice*, Commerce stated that, where appropriate, it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for certain of the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.<sup>3</sup> Accordingly, on February 1, 2018, Commerce released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.<sup>4</sup> On March 23, 2018, Commerce limited the number of respondents selected for individual examination to the largest producer/exporter of the subject merchandise by volume, Evraz Inc. NA<sup>5</sup> (Evraz),<sup>6</sup> and issued the AD questionnaire to this company on March 26, 2018.<sup>7</sup>

Also in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of welded pipe to be reported in response to Commerce's AD questionnaire.<sup>8</sup> In March 2018, SeAH Steel Corporation (SeAH), a Korean producer of welded pipe, and the petitioners submitted scope comments and rebuttal comments, respectively.<sup>9</sup> In the same month, Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S. (collectively, Borusan), a Turkish producer of welded pipe, Corinth, Evraz, the petitioners, and SeAH submitted comments regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes;<sup>10</sup> these same parties also submitted rebuttal comments.<sup>11</sup>

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<sup>3</sup> See *Initiation Notice*, 83 FR at 7159.

<sup>4</sup> See Commerce's Letter re: Large Diameter Welded Line Pipe Antidumping Duty Petition: Release of Customs Data from U.S. Customs and Border Protection, dated February 1, 2018.

<sup>5</sup> While Commerce listed the name Evraz Inc. in its respondent selection memo based on U.S. Customs Border and Border Protection data, following the receipt of responses from Evraz, Evraz's formal name is Evraz Inc. NA. See Memorandum, "Less-Than-Fair-Value Investigation of Large Diameter Welded Pipe from Canada: Respondent Selection," dated Mar 23, 2018.

<sup>6</sup> See Memorandum, "Less-Than-Fair-Value Investigation of Large Diameter Welded Line Pipe from Canada: Respondent Selection," dated March 23, 2018.

<sup>7</sup> See Commerce's Letter to Evraz, dated March 26, 2018 (Original Questionnaire).

<sup>8</sup> See *Initiation Notice*, 83 FR at 7155-56.

<sup>9</sup> See SeAH's Letter re: Antidumping Duty Investigation of Large Diameter Welded Pipe from Canada, China, Greece, India, Korea, and Turkey and Countervailing Duty Investigations of Large Diameter Welded Pipe from China, India, Korea, and Turkey – Scope Comments, dated March 1, 2018; and Petitioners' Letter re: Large Diameter Welded Pipe from Canada, China, Greece, India, Korea, and Turkey: Scope Rebuttal Comments, dated March 12, 2018.

<sup>10</sup> See Borusan's Letter re: Certain Large Diameter Welded Pipe from Canada, Greece, India, China, Korea, and Turkey, Case Nos. A-122-863, A-484-803, A-533-881, A-570-077, A-580-897, and A-489-833: Comments on Product Characteristics and Model Matching Hierarchy, dated March 1, 2018; Corinth's Letter re: Antidumping Investigations of Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey – CPW's Comments regarding Product Characteristics for Purposes of Model Matching, dated March 1, 2018; EVRAZ's Letter re: Large Diameter Welded Pipe from Canada, China, Greece, India, Korea, and Turkey: EVRAZ's Comments on the Model Match Methodology, dated March 1, 2018; Petitioners' Letter re: Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Petitioners' Comments on Model Match Criteria, dated March 1, 2018; and SeAH's Letter re: Antidumping Duty Investigations of Large Diameter Welded Pipe from Canada, China, Greece, India, Korea, and Turkey – Comments on Product-Matching Criteria, dated March 1, 2018.

<sup>11</sup> See Borusan's Letter re: Certain Large Diameter Welded Pipe from Canada, Greece, India, China, Korea, and Turkey, Case Nos. A-122-863, A-484-803, A-533-881, A-570-077, A-580-897, and A-489-833: Rebuttal

On March 6, 2018, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of welded pipe from the Canada.<sup>12</sup>

On May 23, 2018, the petitioners requested that the date for the issuance of the preliminary determination in this investigation be extended until 190 days after the date of initiation, from an initial deadline of June 29, 2018, to August 20, 2018.<sup>13</sup> Based on the request, and pursuant to section 733(c)(1)(A) of the Act and 19 CFR 351.205(e), on June 15, 2018, Commerce published in the *Federal Register* a postponement of the preliminary determination by 50 days until no later than August 20, 2018.<sup>14</sup>

In July 18, 2018, and August 8, 2018, the petitioners<sup>15</sup> and Evraz,<sup>16</sup> respectively, requested that Commerce postpone the final determination. Evraz additionally requested that provisional measures be extended.<sup>17</sup>

We are conducting this investigation in accordance with section 733(b) of the Act.

### III. PERIOD OF INVESTIGATION

The period of investigation (POI) is January 1, 2017, through December 31, 2017. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, which was January 2018.<sup>18</sup>

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Comments on Product Characteristics and Model Matching Hierarchy, dated March 12, 2018; Corinth's Letter re: Antidumping Investigations of Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey – CPW's Rebuttal Comments on Product Characteristics for Purposes of Model Matching, dated March 12, 2018; EVRAZ's Letter re: Large Diameter Welded Pipe from Canada, China, Greece, India, Korea, and Turkey: EVRAZ's Rebuttal Comments on the Model Matching Methodology, dated March 12, 2018; Petitioners' Letter re: Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Petitioners' Rebuttal Comments on Model Match Criteria, dated March 12, 2018; and SeAH's Letter re: Antidumping Duty Investigations of Large Diameter Welded Pipe from Canada, China, Greece, India, Korea, and Turkey – Comments on Product-Matching Criteria, dated March 12, 2018.

<sup>12</sup> See *Large Diameter Welded Pipe from Canada, China, Greece, India, Korea, and Turkey*, 83 FR 10748 (March 12, 2018).

<sup>13</sup> See Petitioners' Letter, "Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations," dated May 23, 2018.

<sup>14</sup> See *Large Diameter Welded Pipe from India: Postponement of Preliminary Determinations of Antidumping Duty Investigations*, 83 FR 27953 (June 15, 2018).

<sup>15</sup> See Letter from the petitioners, re: Large Diameter Welded Pipe from Canada: Petitioners' Request for Postponement of the Final Determination, dated July 18, 2018.

<sup>16</sup> See Letter from Evraz, re: Large Diameter Welded Pipe from Canada: Request for Postponement of Final Determination, dated August 8, 2018.

<sup>17</sup> *Id.*

<sup>18</sup> See 19 CFR 351.204(b)(1).

## IV. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,<sup>19</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage *i.e.*, scope.<sup>20</sup> Certain interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice*. Based on its analysis of these comments, Commerce made certain preliminary revisions to the scope, which are reflected in Appendix I of the *Federal Register* notice that this preliminary decision memorandum accompanies. For a summary of the scope comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.<sup>21</sup>

## V. AFFILIATION AND COLLAPSING

### A. Affiliation

Section 771(33) of the Act states, in part, that the following persons shall be considered to be "affiliated" or "affiliated persons":

- (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
- (B) Any officer or director of an organization and such organization.
- (C) Partners.
- (D) Employer and employee.
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
- (G) Any person who controls any other person and such other person.

The Act further provides that, for purposes of this provision, "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person."<sup>22</sup> "Actual control . . . is not required by the statute . . . . Rather, a person is considered to be in a position of control if he is legally in a position to exercise restraint or direction over the other person."<sup>23</sup> "Person" is defined to include "any interested party as well as any other individual, enterprise, or entity, as appropriate."<sup>24</sup>

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<sup>19</sup> *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

<sup>20</sup> *See Initiation Notice*, 83 FR at 7155.

<sup>21</sup> *See* Memorandum, "Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations," dated June 19, 2018 (Preliminary Scope Decision Memorandum).

<sup>22</sup> *See* section 771(33) of the Act.

<sup>23</sup> *See TIJID, Inc. v. United States*, 366 F. Supp. 2d 1286, 1293 (CIT 2005) (*TIJID*).

<sup>24</sup> *See* 19 CFR 351.102(b)(37).

The Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316 (1994), indicates that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings, (2) franchises or joint ventures, (3) debt financing, or (4) close supplier relationships in which either party becomes reliant upon the other.<sup>25</sup> With respect to close supplier relationships, Commerce has determined that the threshold issue is whether either the buyer or seller has, in fact, become reliant on the other.<sup>26</sup> Only if such reliance exists does Commerce then determine whether one of the parties is in a position to exercise restraint or direction over the other.<sup>27</sup>

Additionally, 19 CFR 351.102(b)(3) states that, to determine whether control exists within the meaning of section 771(33) of the Act, Commerce will consider the same four SAA factors listed above, among other factors. However, Commerce does not find the existence of control based on these factors “unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.”<sup>28</sup> Also, Commerce “will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.”<sup>29</sup>

### Analysis

#### 1) Evraz’s Affiliation with Evraz Inc. NA Canada (EICA) & Canadian National Steel Corporation (CNSC)

Evraz has affirmatively attested,<sup>30</sup> and the record evidence supports finding, that Evraz is affiliated with both EICA and the CNSC pursuant to sections 771(33)(F) and 771(33)(G) of the Act, respectively. These companies are part of a closely held group directly owned and controlled by the same parent company.<sup>31</sup> For a discussion of our findings, which contains confidential information, see Evraz Preliminary Determination Calculation Memo.<sup>32</sup>

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<sup>25</sup> See SAA at 838.

<sup>26</sup> See, e.g., *Stainless Steel Wire Rod from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 59739, 59739-40 (October 11, 2006) (finding affiliation via a close supplier relationship where key input could be sourced from only one company), unchanged in *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 72 FR 6528 (February 12, 2007); see also *TIJD*, 366 F. Supp. 2d at 1298-99.

<sup>27</sup> See *Catfish Farmers of Am. v. United States*, 641 F. Supp. 2d 1362, 1373-74 (CIT 2009); see also *TIJD*, 366 F. Supp. 2d 1286 at 1298-99; *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404, 18417 (April 15, 1997).

<sup>28</sup> See 19 CFR 351.102(b)(3).

<sup>29</sup> *Id.*

<sup>30</sup> See, e.g., Letter from Evraz, re: Large Diameter Welded Pipe from Canada: Evraz’s Section A Response, dated April 23, 2018 (Evraz SAR) at 6.

<sup>31</sup> For the specific details regarding the ownership structure and percentages of ownership for these companies, which is business proprietary information (BPI), see Memorandum, “Preliminary Determination Calculation for Evraz,” dated concurrently with this memorandum (Evraz Preliminary Calculation Memo) at 2; see also Evraz SAR response at Exhibit A-2.

<sup>32</sup> See Evraz Preliminary Calculation Memo at 2.

2) The Petitioners' Allegation of Affiliation Between Evraz and Enbridge, Inc.  
(Enbridge)

Additionally, we have considered evidence on the record with respect to Evraz and its customer Enbridge and preliminarily determine that affiliation exists between the two companies. The petitioners assert that Evraz and Enbridge may, in fact, be affiliated under 771(33)(G) of the Act, which defines as affiliated persons “any person who controls any other person and such other person.”<sup>33</sup> Section 771(33) of the Act further provides that “{f}or purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.”

Pursuant to 19 CFR 351.102(b), in determining whether control over another person exists, within the meaning of section 771(33) of the Act, “Commerce will consider the following factors among others: Corporate or family groupings; franchise or joint venture agreements; debt financing and close supplier relationships.” Commerce’s regulations further provide at 19 CFR 351.102(b) that control will not exist on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise. With respect to close supplier relationships, Commerce has determined that the threshold issue is whether either the buyer or seller has, in fact, become reliant on the other.<sup>34</sup> Only if such reliance exists does Commerce then determine whether one of the parties is in a position to exercise restraint or direction over the other.

We have reviewed record evidence with respect to Evraz’s and Enbridge’s relationship, and have preliminarily determined that they are affiliated pursuant section 771(33)(G) of the Act, because the evidence suggests that Enbridge has the ability to exert control over Evraz. Specifically, we have determined that, in an agreement between the two companies, Evraz is obligated to give notice to Enbridge when certain commercial circumstances arise, and Enbridge, as a result, can, in turn, make certain demands of Evraz.<sup>35</sup> In addition, under the same agreement, the unique nature of Evraz’s supply of merchandise to Enbridge suggests that Enbridge has a certain amount of control over Evraz’s production decisions.<sup>36</sup>

Furthermore, we reviewed information from Enbridge’s own website, describing its relationship with Evraz, and stating that it requires that Evraz meet more rigorous and frequent testing than the industry standards for the merchandise at issue.<sup>37</sup> In addition, the website states that

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<sup>33</sup> See Letter from the petitioners, re: Large Diameter Welded Pipe from Canada: Pre-Preliminary Determination Comments, dated July 31, 2018 (the petitioners’ Preliminary Determination Comments) at 13.

<sup>34</sup> See, e.g., *Multilayered Wood Flooring from the People’s Republic of China, Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011), and accompanying IDM at Comment 21; *Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from the Republic of Korea*, 77 FR 75988 (December 26, 2012), and accompanying IDM at Comment 8; *Large Residential Washers From The Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 42788 (September 12, 2017), and accompanying IDM at Comment 2.

<sup>35</sup> Letter from Evraz re: Large Diameter Welded Pipe from Canada: Evraz’s Supplemental Section A Response, dated June 12, 2018 (Evraz SAR) at Exhibit SA-7A.

<sup>36</sup> *Id.*

<sup>37</sup> See Letter from the petitioners, re: Large Diameter Welded Pipe from Canada: Submission of Factual Information to Rebut, Clarify, or Correct Evraz’s Section A Initial Questionnaire Response, dated May 4, 2018 (the petitioners’

Enbridge has unlimited access to Evraz's facilities during the manufacturing process.<sup>38</sup>

We also considered the quantity of merchandise sold by Evraz to Enbridge, as well as the financing arrangements between those companies. Like much of the information derived from the agreement between the parties, the quantity and financing information are proprietary in nature and are described and analyzed in greater detail in the Evraz Preliminary Calculation Memo.<sup>39</sup>

As discussed above, we preliminarily determine that Evraz and Enbridge have a close supplier relationship pursuant to 19 CFR 351.102(a)(3). Accordingly, for this preliminary determination, we will test whether Evraz's sales of foreign like product in the home market to Enbridge were made at arm's-length prices.<sup>40</sup> With respect to Evraz's U.S. market sales to Enbridge, we will be excluding them from margin calculation for this preliminary determination.

## B. Collapsing

Under 19 CFR 351.401(f), Commerce will treat two or more affiliated producers as a single entity for purposes of antidumping proceedings if: (1) the companies have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (2) there is a significant potential for the manipulation of price or production.<sup>41</sup> In determining whether there is a significant potential for manipulation, Commerce considers the following non-exhaustive list of factors: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether the firm's operations are intertwined such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.<sup>42</sup>

Commerce has long recognized that it is appropriate to treat certain groups of companies as a single entity.<sup>43</sup> While section 19 CFR 351.401(f) explicitly applies to producers, Commerce has found this provision to be instructive in determining whether affiliated non-producers should be collapsed and has used the criteria outlined in the regulation in its analysis. In a number of past cases, Commerce has treated affiliated producers and non-producers, such as exporters, trading

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Factual Information) at Exhibit 8 (pages from Enbridge's website, found at <http://www.enbridge.com>).

<sup>38</sup> *Id.*

<sup>39</sup> See Evraz Preliminary Calculation Memo.

<sup>40</sup> See "Affiliated-Party Transactions and Arm's Length Test" section below.

<sup>41</sup> See 19 CFR 351.401(f)(1).

<sup>42</sup> See 19 CFR 351.401(f)(2); see also *Queen's Flowers de Colombia v. United States*, 981 F. Supp. 617 (CIT 1997).

<sup>43</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 5.

companies, invoicing companies, and input suppliers, as a single entity where the criteria under the 19 CFR 351.401(f) is met.<sup>44</sup>

Furthermore, the CIT has upheld Commerce's practice of collapsing two entities that were sufficiently related to prevent the possibility of price manipulation, even when those entities were not both producers.<sup>45</sup> For example, in *Hontex II*,<sup>46</sup> the Court of International Trade held that, once a finding of affiliation is made, affiliated exporters can be considered a single entity where their relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise.<sup>47</sup>

### Analysis

Following on the discussion in the affiliation section above, Evraz has also stated,<sup>48</sup> and the record evidence similarly supports finding, that Evraz, EICA, and CNSC comprise a single entity. We preliminarily determine that the criteria of 19 CFR 351.401(f) have been satisfied and are preliminarily treating these companies as a single entity.

As described above, we find that Evraz and EICA are affiliated with each other pursuant to section 771(33)(F) of the Act and that Evraz and CNSC are affiliated with each other pursuant to section 771(33)(G) of the Act. Consequently, the first collapsing criterion under 19 CFR 351.401(f)(1) is satisfied.

As indicated above, the second collapsing criterion in 19 CFR 351.401(f)(1) requires that affiliated producers have "production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities." Based on the evidence Evraz has provided us, we find that the three entities have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities.<sup>49</sup> Specifically, we find that the production facilities available to each of the three companies are the same, and that it would not require substantial retooling of the manufacturing facility in order to restructure manufacturing priorities.<sup>50</sup> Thus, we find that the second collapsing criterion in 19 CFR 351.401(f)(1) is satisfied.

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<sup>44</sup> *Id.*; see also *Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Preliminary Determination of No Shipments*, 82 FR 50383 (October 31, 2017), and accompanying Preliminary Decision Memo at "Affiliation and Collapsing of Affiliates," unchanged in *Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Affirmative Final Determination of Sales at Less Than Fair Value and Affirmative Finding of Critical Circumstances*, 83 FR 2141 (January 16, 2018).

<sup>45</sup> See *United States Steel Corporation v. United States*, 179 F. Supp. 3d 1114, 1135-42 (CIT 2016).

<sup>46</sup> See *Hontex Enterprises v. United States*, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004) (*Hontex II*).

<sup>47</sup> *Id.*

<sup>48</sup> See, e.g., Evraz SAR at 6.

<sup>49</sup> See Evraz SAR at 6.

<sup>50</sup> *Id.*



In addition to identifying manufacturing similarities, Commerce also must evaluate the potential for manipulation of price or production between affiliates before treating them as a single entity. Commerce's practice does not require that all three factors listed in its regulation be present in order to find significant potential for manipulation of price or production.<sup>51</sup> In determining whether there is a significant potential for the manipulation of price or production, we analyzed each of the factors set forth in 19 CFR 351.401(f)(2). Our analysis is as follows.

First, as to level of common ownership, we described the level of common ownership in the affiliation section above. Because each of three companies are part of a closely held group directly owned and controlled by the same parent company, we find that there is significant common ownership of Evraz, EICA, and CNSC, in accordance with 19 CFR 351.401(f)(2)(i).

Second, as to the extent of interlocking managers or board members, record evidence indicates an overlap in board of directors or managers. Due to the proprietary nature of this analysis, Commerce provides its explanation in the Evraz Preliminary Calculation Memo.<sup>52</sup> Thus, we find that Evraz, EICA, and CNSC have overlapping managerial employees or board members in accordance with 19 CFR 401(f)(2)(ii).

Finally, 19 CFR 351.401(f)(2)(iii) directs Commerce to consider whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. We find that this criterion is satisfied. Specifically, Evraz, EICA, and CSNC are intertwined, in that they are consolidated for financial reporting under Evraz North America Plc. Furthermore, they are both owned by the Evraz Group SA holding company. As a result, their ultimate parent company is Evraz Plc.<sup>53</sup>

Therefore, based on the foregoing, we preliminarily find that Evraz, EICA and CNSC should be treated as a single entity (*i.e.*, Evraz) pursuant to 19 CFR 351.401(f).

## **VI. DISCUSSION OF THE METHODOLOGY**

### **Comparisons to Fair Value**

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Evraz's sales of subject merchandise from Canada to the United States were made at LTFV, Commerce compared the export price (EP) to the NV, as described in the "Export Price" and "Normal Value" sections of this memorandum.

#### **A) Determination of Comparison Method**

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or constructed export prices (CEPs),

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<sup>51</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 38756, 38778 (July 19, 1999) (*Hot-Rolled Steel from Brazil*).

<sup>52</sup> Evraz Preliminary Calculation Memo at 2.

<sup>53</sup> See Letter from Evraz, re: Large Diameter Welded Pipe from Canada: Evraz's Second Supplemental Sections A-C Response, dated July 27, 2018 at 5.

*i.e.*, the average-to-average method, unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, Commerce examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales, *i.e.*, the average-to-transaction method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In numerous investigations, Commerce has applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>54</sup> Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code, *i.e.*, zip code, and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean, *i.e.*, weighted-average price, of a test group and the mean, *i.e.*, weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the prices of all other

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<sup>54</sup> See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large, *i.e.*, 0.8, threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage, *i.e.*, the Cohen's *d* test and the ratio test, demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.<sup>55</sup>

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<sup>55</sup> The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F.3d 1322 (Fed. Cir. 2017) has affirmed much of Commerce's differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

## B) Results of the Differential Pricing Analysis

For Evraz, based on the results of the differential pricing analysis, Commerce preliminarily finds that 36.23 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>56</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods.

Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for this preliminary determination, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Evraz.

## VII. DATE OF SALE

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>57</sup> However, the burden for establishing a date of sale other than invoice date falls upon the interested party attempting to establish a date other than invoice date.<sup>58</sup> Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.<sup>59</sup>

Evraz reported invoice date as the date of sale in both the Canadian and U.S. markets.<sup>60</sup> The petitioners argue that, with respect to Evraz's sales to Enbridge, the material terms of sale are established on the date of their contract and, therefore, Commerce should use the contract date as the date of sale for those sales.<sup>61</sup> We disagree based on the facts of this investigation. There is information on the record showing instances where quantities have changed after the contract date up to the issuance of the invoice.<sup>62</sup> Accordingly, for sales to Enbridge, we have

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<sup>56</sup> See Evraz Preliminary Calculation Memo.

<sup>57</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

<sup>58</sup> See, e.g., *Ferrovanadium from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 82 FR 14874 (March 23, 2017), and accompanying IDM at Comment 1; see also *Toscelik Profil ve Sac Edustrisi A.S. v. United States*, 256 F. Supp. 3d 1260, 1263 (CIT 2017).

<sup>59</sup> See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007) (*Shrimp from Thailand*), and accompanying IDM at Comment 11; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) (*Steel Beams from Germany*), and accompanying IDM at Comment 2.

<sup>60</sup> See Letter from Evraz, re: Large Diameter Welded Pipe from Canada, dated April 23, 2018 (AQR) at 25.

<sup>61</sup> See Letter from the petitioners, re: Large Diameter Welded Pipe from Canada: Pre-Preliminary Determination Comments," dated July 31, 2018 (the petitioners' Preliminary Determination Comments) at 3-13.

<sup>62</sup> See Evraz SAR at Exhibit A-13.

preliminarily determined that the earlier of invoice date or shipment date reflects the appropriate date of sale for each of Evraz's home market sales to Enbridge.<sup>63</sup> With respect to Evraz's sales to buyers other than Enbridge, the record shows that invoice date is the appropriate date of sale, so we have used the earlier of invoice or shipment date according to our practice.

## VIII. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent, Evraz, in Canada during the POI that fit the description in the "Scope of Investigation" section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by Evraz in the following order of importance: steel chemistry, minimum specified chromium content, minimum specified nickel content, minimum specified molybdenum content, product type, outer coating, minimum specified yield strength, nominal outside diameter, nominal wall thickness, weld type, and inner coating.

## IX. EXPORT PRICE

For all sales made by Evraz, we used the EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was first sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation, and CEP methodology was not otherwise warranted. To the extent that Evraz made sales of subject merchandise to affiliated parties in the United States, and there were no subsequent sales of that particular merchandise to unaffiliated purchasers in the United States, we are not using those sales in calculating an antidumping margin for Evraz. Commerce does not have the statutory authority under section 772 of the Act to compare NV to U.S. affiliated purchaser sales in determining an antidumping margin.

We calculated EP based on packed prices to unaffiliated purchasers in the United States. We made adjustments, where appropriate, from the starting price for billing adjustments, coating revenue, interest revenue, other direct selling expenses, credit expenses, indirect selling expenses, and inventory carrying costs incurred in the country of manufacture. We also made deductions for movement expenses, *i.e.*, brokerage and handling expenses and U.S. inland freight, in accordance with section 772(c)(2)(a) of the Act. Additionally, Commerce has not treated Evraz's reported freight revenue as an addition to Evraz's price, pursuant to 19 CFR 351.401(c). Instead, Commerce followed its normal practice for when the freight revenue exceeds expenses by treating freight revenue as offsets to the corresponding expenses rather than as an addition to U.S. price.<sup>64</sup>

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<sup>63</sup> See, *e.g.*, *Shrimp from Thailand* at Comment 11; see also *Steel Beams from Germany* at Comment 2. As we explained above, we are not using Evraz's sales to Enbridge in the United States in the calculation, so this issue is moot with respect to those sales.

<sup>64</sup> See *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 77 FR 61738 (October 11, 2012) and accompanying Issues and Decision Memorandum at

## X. NORMAL VALUE

### A) Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third-country market as the basis for comparison market sales, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for each respondent was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, we used home market sales as the basis for NV for Evraz, in accordance with section 773(a)(1)(B) of the Act.

### B) Affiliated-Party Transactions and Arm's-Length Test

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.<sup>65</sup>

Commerce excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because Commerce considered them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "{Commerce} may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."<sup>66</sup>

As discussed above in "Affiliation and Collapsing," Commerce preliminarily determines that Evraz and its customer Enbridge are affiliated via a close supplier relationship as defined in section 771(33)F of the Act. Therefore, Commerce tested whether Evraz's sales of foreign-like product in the home market to Enbridge were made at arm's-length prices, in accordance with 19 CFR 351.403(c).

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Comment 3; *see also Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less-Than-Fair-Value*, 76 FR 64318 (October 18, 2011) and accompanying Issues and Decision Memorandum at Comment 39; *Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review; 2011-2012* (78 FR 34337) and accompanying Issues and Decision Memorandum at Comment 5.

<sup>65</sup> See 19 CFR 351.403(c).

<sup>66</sup> See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1367 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011) (*Mexican Pipe*)).

### C) Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, Commerce requested COP information from Evraz. We examined Evraz's cost data and determine that our quarterly cost methodology is not warranted, and therefore, we are applying our standard methodology of using annual costs based on the reported data.

#### 1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses.

We relied on the COP data submitted by Evraz, except as follows:<sup>67</sup>

- We excluded the startup adjustment submitted by Evraz for its steel mill.
- We included a startup adjustment for Evraz's pipe mill covering the first quarter of the POI rather than the entire POI as submitted by Evraz.
- We adjusted the direct materials costs submitted by Evraz to account for unreasonable cost differences between control numbers (CONNUMs) not related to the physical characteristics of the products.
- We reallocated production costs reported for structural pipe products to prime line pipe products consistent with Evraz's normal books and records which we find reasonable.
- We increased Evraz's reported total cost of manufacturing for inputs (i.e., scrap and slabs) purchased from affiliates in accordance with section 773(f)(3) of the Act.
- We revised the calculation of general and administrative expenses to include a portion of the administrative expenses incurred by Evraz Inc. NA Canada and Camrose Works' parent holding company, Evraz Group SA.
- We revised the reported total cost of manufacturing to include the costs associated with coating the merchandise under consideration.

#### 2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

#### 3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were

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<sup>67</sup> See Evraz Preliminary Cost Calculation Memorandum.

made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POI, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Evraz's home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We, therefore, excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

#### D) Calculation of NV Based on Comparison Market Prices

We calculated NV based on delivered or ex-factory prices to unaffiliated customers. We made adjustments to the starting price, where appropriate, for coating revenue. Additionally, we made deductions for movement expenses, including inland freight, under section 773(a)(6)(B)(ii) of the Act. We offset these movement expenses with reported freight revenue, with the latter capped at no higher than the sum of the movement expenses in accordance with our normal practice.

We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act. For comparisons to EP sales, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale. Specifically, we deducted direct selling expenses incurred for home market sales, *i.e.*, credit expenses, interest revenue, warranty expenses, and added U.S. direct selling expenses, *i.e.*, credit expenses, interest revenue, warranty expenses, and coating expenses.

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.<sup>68</sup>

## XI. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

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<sup>68</sup> *Id.*



## XII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.



\_\_\_\_\_  
Agree



\_\_\_\_\_  
Disagree

8/20/2018

X



Signed by: GARY TAVERMAN

\_\_\_\_\_  
Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance