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October 24, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Less-Than-Fair-Value Investigation of Sodium Sulfate
Anhydrous from Canada

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that sodium sulfate anhydrous (sodium sulfate) 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). Commerce preliminarily determines that critical circumstances do not exist for Saskatchewan Mining and Minerals Inc. (SMM) or all other exporters/producers of sodium sulfate. The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On March 27, 2019, Commerce received an antidumping duty (AD) petition covering imports of sodium sulfate from Canada, which was filed in proper form by Cooper Natural Resources, Inc.; Elementis Global LLC; and Searles Valley Minerals, Inc. (collectively, the petitioners).¹ Between April 1 and April 5, 2019, Commerce issued supplemental questions to the petitioners,²

¹ See Petitioners’ Letter, “Petition for the Imposition of Antidumping Duties: Sodium Sulfate Anhydrous from Canada,” dated March 27, 2019 (Petition). The Petition was filed with Commerce and the U.S. International Trade Commission (ITC) on March 27, 2019, after 12:00 noon, and pursuant to 19 CFR 207.10(a), is deemed to have been filed with the ITC on the next business day, March 28, 2019. Because section 732(b)(2) of the Tariff Act of 1930, as amended (the Act) requires simultaneous filing of the petition with Commerce and the ITC, Commerce deemed the petition to have been filed with Commerce on March 28, 2019. See Memorandum, “Decision Memorandum Concerning the Filing Date of the Petition,” dated April 1, 2019.

² See Commerce’s Letter, “Petition for the Imposition of Antidumping Duties on Imports of Sodium Sulfate

to which they responded between April 3 and April 9, 2019.³ Commerce initiated this investigation on April 17, 2019.⁴

In the *Initiation Notice*, Commerce stated that it intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate U.S. Harmonized Tariff System (HTSUS) subheadings listed in the scope of the investigation, which was included in the *Initiation Notice*.⁵ Accordingly, Commerce released the CBP entry data to all interested parties under an administrative protective order, and requested comments regarding the data and respondent selection.⁶ Commerce did not receive comments from interested parties on the CBP data. Based on the CBP data, Commerce selected SMM as the only mandatory respondent because it accounted for virtually all entries of sodium sulfate into the United States from Canada during the period of investigation (POI).⁷

On May 13, 2019, the United States International Trade Commission (ITC) determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of sodium sulfate from Canada.⁸

Also in the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the appropriate physical characteristics of sodium sulfate to be reported in response to Commerce's AD questionnaire.⁹ On May 13, 2019, Commerce issued its Initial Questionnaire to SMM.¹⁰ On May 23, 2019, the petitioners submitted comments on potential physical characteristics regarding the merchandise under consideration to be used for reporting purposes.¹¹ On May 30, 2019, SMM submitted rebuttal comments concerning the Petitioners' Product Characteristics Comments.¹² On June 10, 2019, the petitioners submitted comments in response to SMM's Product Characteristics Rebuttal Comments.¹³ On June 13, 2019, SMM submitted comments

Anhydrous from Canada: Supplemental Questions," dated April 1, 2019; *see also* Memorandum, "Phone Call with Counsel to the Petitioners," dated April 5, 2019.

³ *See* Petitioners' Letters, "Petitioners' Responses to Department of Commerce Deficiency Questions: Sodium Sulfate Anhydrous from Canada," dated April 3, 2019; and "Petitioners' Supplemental Responses to Department of Commerce Deficiency Questions: Sodium Sulfate Anhydrous from Canada," dated April 9, 2019.

⁴ *See Sodium Sulfate Anhydrous from Canada: Initiation of Less-Than-Fair-Value Investigations*, 84 FR 17138 (April 24, 2019) (*Initiation Notice*).

⁵ *See Initiation Notice*, 84 FR at 17141.

⁶ *See* Memorandum, "Less-Than-Fair-Value Investigation of Sodium Sulfate Anhydrous from Canada: Release of U.S. Customs and Border Protection Data," dated April 15, 2019.

⁷ *See* Memorandum, "Less-Than-Fair Value Investigation of Sodium Sulfate Anhydrous from Canada: Respondent Selection," dated May 10, 2019.

⁸ *See Sodium Sulfate Anhydrous from Canada*, Investigation No. 731-TA-1446 (Preliminary), 84 FR 22519 (May 17, 2019).

⁹ *See Initiation Notice*, 84 FR at 17139.

¹⁰ *See* Letter to SMM, dated May 13, 2019 (Initial Questionnaire).

¹¹ *See* Petitioners' Letter, "Sodium Sulfate Anhydrous from Canada: Comments on Product Characteristics," dated May 23, 2019 (Petitioners' Product Characteristics Comments).

¹² *See* SMM's Letter, "Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada: Rebuttal Comments and Factual Information on Petitioners' May 23, 2019 Product Characteristics Letter," dated May 30, 2019 (SMM's Product Characteristics Rebuttal Comments).

¹³ *See* Petitioners' Letter, "Petitioners' Response to Saskatchewan Mining and Minerals Inc.'s Rebuttal Comments: Sodium Sulfate Anhydrous from Canada," dated June 10, 2019.

rebutting, clarifying, and correcting the petitioners' June 10, 2019 comments.¹⁴ Based on the comments received, on June 17, 2019, Commerce identified the product characteristics to be used in responding to the Initial Questionnaire.¹⁵ Between June 10, 2019 and July 16, 2019, SMM submitted its responses to the Initial Questionnaire.¹⁶ Between July 5, 2019 and September 18, 2019, Commerce issued supplemental questionnaires to SMM,¹⁷ to which SMM responded between July 22, 2019 and September 25, 2019.¹⁸

On August 23, 2019, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of sodium sulfate from Canada.¹⁹ On August 28, 2019, Commerce issued a request to SMM for monthly quantity and value shipment data.²⁰ Between September 4, 2019 and October 10, 2019, SMM provided the requested monthly shipment data.²¹

¹⁴ See SMM's Letter, "Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada: Reply to Petitioners' June 10, 2019 Product Characteristics Letter," dated June 13, 2019.

¹⁵ See Commerce's Letter, "Product Characteristics for the Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada," dated June 17, 2019.

¹⁶ See SMM's Letter, "Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada: Section A Response of Saskatchewan Mining and Minerals Inc.," dated June 10, 2019 (SMM Section A Response); *see also* SMM's Letter, "Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada: Section B-D Response of Saskatchewan Mining and Minerals Inc.," dated July 16, 2019 (SMM Section B-D Response).

¹⁷ See Commerce's Letters, "Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada: Section A Supplemental Questionnaire," dated July 5, 2019; "Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada," dated July 24, 2019; "Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada: Sections B-C Supplemental Questionnaire," dated August 5, 2019; "Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada: Revision of Supplemental Questionnaire for Saskatchewan Mining and Minerals Inc.," dated August 13, 2019; and "Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada: Sections B and C Supplemental Questionnaire," dated September 18, 2019.

¹⁸ See SMM's Letters, "Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada: Section A Supplemental Questionnaire Response of Saskatchewan Mining and Minerals Inc.," dated July 22, 2019 (SMM Supplemental A Response); "Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada: Section D Supplemental Questionnaire Response of Saskatchewan Mining and Minerals Inc.," dated August 7, 2019; "Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada: Section BC Supplemental Questionnaire Response of Saskatchewan Mining and Minerals Inc.," dated August 26, 2019; and "Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada: Second Section BC Supplemental Questionnaire Response of Saskatchewan Mining and Minerals Inc.," dated September 25, 2019.

¹⁹ See Petitioners' Letter, "Sodium Sulfate Anhydrous from Canada: Critical Circumstances Allegation," dated August 23, 2019 (Critical Circumstances Allegation).

²⁰ See Commerce's Letter, "Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada: Request for Monthly Quantity and Value Shipment Data," dated August 28, 2019. The dates to which the data request applied were corrected on August 29, 2019. *See* Commerce's Letter, "Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada: Revision of Request for Monthly Quantity and Value Shipment Data," dated August 29, 2019.

²¹ See SMM's Letters, "Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada: Response to Request for Monthly Quantity and Value Shipment Data – Through July 2019," dated September 4, 2019; "Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada: Response to Request for Monthly Quantity and Value Shipment Data – Through August 2019," dated September 13, 2019; and "Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada: Response to Request for Monthly Quantity and Value Shipment Data – Through September 2019," dated October 10, 2019 (collectively, SMM Monthly Shipment Data).

On August 21, 2019, and pursuant to section 733(c)(1) of the Act, and 19 CFR 351.205(e), Commerce published in the *Federal Register* a postponement of the preliminary determination, until no later than October 24, 2019.²²

On September 25, 2019, Commerce provided an opportunity for interested parties to comment and submit factual information on constructed value (CV) profit and selling expenses, in the event that Commerce was unable to calculate CV using the preferred method under section 772(e)(2)(A) of the Act.²³ On October 2, 2019, SMM and the petitioners provided CV comments and information.²⁴ On October 9, 2019, the petitioners submitted rebuttal comments to SMM's CV comments.²⁵

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, 2018 through December 31, 2018. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was March 2019.²⁶

IV. SCOPE OF THE INVESTIGATION

The product covered by this investigation is sodium sulfate from Canada. For a full description of the scope of this investigation, *see* the accompanying preliminary determination *Federal Register* notice of this investigation at Appendix I.

V. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,²⁷ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.²⁸ We received no comments from interested parties regarding the scope of this investigation. Accordingly, we are not modifying the scope language as it appeared in the *Initiation Notice*.

²² See *Sodium Sulfate Anhydrous from Canada: Postponement of Preliminary Determination in the Less-Than-Fair-Value Investigation*, 84 FR 43580 (August 21, 2019).

²³ See Commerce's Letter, "Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada: Request for Constructed Value Profit and Selling Expense Comments and Information," dated September 25, 2019.

²⁴ See SMM's Letter, "Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada: Response to Request for Constructed Value Information," dated October 2, 2019; *see also* Petitioners' Letter, "Sodium Sulfate Anhydrous from Canada: Constructed Value Profit and Selling Expenses Comments," dated October 2, 2019.

²⁵ See Petitioners' Letter, "Sodium Sulfate Anhydrous from Canada: Constructed Value Profit and Selling Expenses Rebuttal Comments," dated October 9, 2019.

²⁶ See 19 CFR 351.204(b)(1).

²⁷ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

²⁸ See *Initiation Notice*, 84 FR at 17139.

VI. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

On October 1, 2019, SMM requested, pursuant to 19 CFR 351.210(b)(2)(ii) and 19 CFR 351.210(e)(2), that, contingent upon an affirmative preliminary determination of sales at LTFV, Commerce postpone the final determination, and that provisional measures be extended to a period not to exceed six months.²⁹ On October 2, 2019, the petitioners consented to SMM's request to postpone the final determination and extend provisional measures.³⁰ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii) and (e)(2), because: (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination.

VII. AFFILIATION

In its initial questionnaire response, SMM reported that it was affiliated with one company involved in the development, production, sale, and/or distribution of the merchandise under investigation, *i.e.*, SLIM Contracting Inc. (SLIM), which SMM stated owns contracting equipment, and completes the raw material harvest at SMM each year.³¹

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

²⁹ See SMM's Letter, "Antidumping Duty Investigation of Sodium Sulfate Anhydrous from Canada: Request for Postponement of Final Determination and Provisional Measures Period," dated October 1, 2019.

³⁰ See Petitioners' Letter, "Sodium Sulfate Anhydrous from Canada: Petitioners' Consent to Postponement of the Final Determination," dated October 2, 2019.

³¹ See SMM Section A Response at 12 and 15.

or direction over the other person.”³² “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.”³³ “Person” is defined to include “any interested party as well as any other individual, enterprise, or entity, as appropriate.”³⁴

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.³⁵ 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.³⁶ 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.³⁷

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.”³⁸ 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.”³⁹

Based on the evidence on the record, we preliminarily find that SMM is affiliated with one additional company involved in the production or sale of subject merchandise, *i.e.*, SLIM, within the meaning of section 771(33) of the Act.⁴⁰

³² See section 771(33) of the Act.

³³ See *TIJID, Inc. v. United States*, 366 F. Supp. 2d 1286, 1293 (CIT 2005) (*TIJID*).

³⁴ See 19 CFR 351.102(b)(37).

³⁵ See SAA at 838.

³⁶ 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); *TIJID*, 366 F. Supp. 2d at 1298-99.

³⁷ See *Catfish Farmers of Am. v. United States*, 641 F. Supp. 2d 1362, 1373-74 (CIT 2009); see also *TIJID*, 366 F. Supp. 2d 1286 at 1298-99; and *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).

³⁸ See 19 CFR 351.102(b)(3).

³⁹ *Id.*

⁴⁰ See SMM Section A Response at 7-12 and Exhibit A-3; see also SMM Supplemental A Response at 6-12.

Because SMM designated information about this company as business proprietary information, for further detail on our affiliation analysis, see Memorandum, “SMM Preliminary Affiliation Memorandum,” dated concurrently with this memorandum.

VIII. 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 SMM's sales of subject merchandise from Canada to the United States were made at LTFV, Commerce compared the export price (EP) and constructed export price (CEP), as appropriate, to the normal value (NV), as described in the "Export Price and Constructed Export Price" and "Normal Value" sections of this memorandum.

A) *Determination of the 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 CEPs), *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.⁴¹ Commerce finds that the differential pricing analysis used in these 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 EPs (or CEPs) 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

⁴¹ See, e.g., *Polyethylene Terephthalate Resin from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 19696 (May 4, 2018), unchanged in *Polyethylene Terephthalate Resin from Taiwan: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 48287 (September 24, 2018); *Large Diameter Welded Pipe from Canada: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 83 FR 43649 (August 27, 2018), unchanged in *Large Diameter Welded Pipe from Canada: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6378 (February 27, 2019); and *Cast Iron Soil Pipe from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 44567 (August 31, 2018), unchanged in *Cast Iron Soil Pipe from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6767 (February 28, 2019).

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 being examined 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 any 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 a particular purchaser, region, or time period differ significantly from the prices of all other 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 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 accounts 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 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 margin 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.⁴²

B) *Results of the Differential Pricing Analysis*

For SMM, based on the results of the differential pricing analysis, Commerce preliminarily finds that 69.43 percent of the value of U.S. sales pass the Cohen's *d* test,⁴³ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, Commerce is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for SMM.

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 will normally use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, 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.⁴⁴ Further, Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, the shipment date better reflects the date on which the

⁴² The CAFC in *Apex Frozen Foods v. United States*, 862 F.3d 1337 (Fed. Cir. 2017) affirmed much of Commerce's differential pricing methodology. We ask interested parties to present only arguments on issues which have not already been decided by the CAFC.

⁴³ See SMM Preliminary Sales Calculation Memorandum.

⁴⁴ 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)).

material terms of sale are established.⁴⁵ For both home market sales and U.S. sales, SMM reported the invoice date as the date of sale.⁴⁶ As we have not found that a different date better reflects the date on which the material terms of sale were set for home market and U.S. sales, we have preliminarily used invoice date as the date of sale.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by SMM 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. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, as appropriate.

In making product comparisons, we matched foreign like products based on the physical characteristics reported by SMM in the following order of importance: (1) percent sodium sulfate, (2) lead content, (3) moisture content, (4) sodium chloride, and (5) selenium content.⁴⁷

Export Price and Constructed Export Price

Section 772(a) of the Act defines EP as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).” Section 772(b) of the Act defines CEP as “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).” In accordance with sections 772(a)-(b) of the Act, we based the U.S. price on both EP and CEP for SMM, as explained below.

For its channel 1 sales to the United States, SMM sold subject merchandise to the United States directly to unaffiliated customers through its Canadian warehouse.⁴⁸ We used the EP methodology, in accordance with section 772(a) of the Act, because the first sale to an unaffiliated party was made by the foreign producer/exporter before the date of importation, and the use of CEP was not otherwise warranted. We calculated EP based on the packed price that SMM charged to the first unaffiliated purchaser in the United States. We made adjustments,

⁴⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying IDM at Comment 10.

⁴⁶ See SMM Section B-D Response, at 19 (Section B) and 17 (Section C).

⁴⁷ See SMM Preliminary Sales Calculation Memorandum.

⁴⁸ *Id.*

where appropriate, from the starting price for movement expenses, *e.g.*, foreign inland freight, in accordance with section 772(c)(2)(A) of the Act.⁴⁹

For SMM's channel 2 sales to the United States, we based the price of SMM's U.S. sales of subject merchandise on CEP, as defined in section 772(b) of the Act, for the subject merchandise sold, before or after importation, by a U.S.-based seller affiliated with the producer to unaffiliated purchasers in the United States.⁵⁰ We made adjustments, where appropriate, from the starting price for billing adjustments, freight revenue (capped by the amount of the associated freight expenses), and certain discounts. We made deductions for any movement expenses (*e.g.*, Canadian inland freight, Canadian brokerage and handling, U.S. brokerage and handling, and U.S. inland freight), where appropriate, in accordance with section 772(c)(2)(A) of the Act.⁵¹

Normal Value

Section 773(a)(1)(B)(i) of the Act defines NV as "the price at which foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as {EP} or {CEP}." Alternatively, section 773(a)(1)(B)(ii) of the Act provides that NV may be based on "the price at which the foreign like product is so sold (or offered for sale) for consumption in a country other than the exporting country or the United States." Section 773(a)(4) of the Act provides that if Commerce determines that NV cannot be determined under section 773(a)(1)(B)(i), "then, notwithstanding section 773(a)(1)(B)(ii)," NV may be based on CV under section 773(e) of the Act.

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 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.

We preliminarily determined that the aggregate volume of home market sales of the foreign like product for SMM was more than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Based on our analysis of information on the record, we preliminarily determine that SMM's home market of Canada is viable.⁵² Therefore,

⁴⁹ *Id.*

⁵⁰ See SMM Section B-D Response, at 15 (Section C).

⁵¹ See SMM Preliminary Sales Calculation Memorandum.

⁵² *Id.*

we used home market sales in Canada as the basis for NV for SMM in accordance with sections 773(a)(1)(A) and (B) of the Act.

B) *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁵³ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁵⁴ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales, *i.e.*, NV based on either home market or third country prices,⁵⁵ we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁵⁶

When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability, *i.e.*, no LOT adjustment is possible, Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁵⁷

In this investigation, we obtained information from SMM regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.⁵⁸ Our LOT findings are summarized below.

In the home market, SMM reported that it made sales through two channels of distribution, *i.e.*, direct sales from its plant that are either delivered or picked up by the customer (Channel 1); and

⁵³ See 19 CFR 351.412(c)(2).

⁵⁴ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*OJ from Brazil*), and accompanying Issues and Decision Memorandum (IDM) at Comment 7.

⁵⁵ Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

⁵⁶ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

⁵⁷ See, *e.g.*, *OJ from Brazil* IDM at Comment 7.

⁵⁸ See SMM Section B-D Response at B-17 and C-15 – C-16.

sales from its warehouse that are either delivered or picked up by the customer (Channel 2).⁵⁹ In the U.S. market, SMM reported that it made sales through two channels of distribution, *i.e.*, direct sales from its Canadian warehouse (Channel 1 EP sales); and sales from U.S. warehouses (Channel 2 CEP sales).⁶⁰

Although SMM reported more than one channel of distribution in both the U.S. market and the home market, SMM reported no differences in levels of trade between those channels of distribution, and did not claim to have different LOTs.⁶¹ Because we determine that substantial differences in SMM's selling activities do not exist between the home market sales channels, we determine that SMM's sales in the home market during the POI were made at the same LOT. Further, because we determine that substantial differences in SMM's selling activities do not exist between the U.S. market sales channels, we determine that SMM's sales in the U.S. market during the POI were made at the same LOT.

Finally, we compared the U.S. LOT to the home market LOT, and found that the selling functions SMM performed for its U.S. and home market customers do not differ significantly.⁶² Specifically, SMM performed the same selling functions in the home market, which are grouped in one LOT, as it performed in the U.S. market, which are also grouped in one LOT, at similar levels of intensity. Thus, we preliminarily determine that SMM's U.S. sales and home market sales during the POI were made at the same LOT and, as a result, no LOT adjustment pursuant to section 773(a)(7)(A) is warranted.

C) *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.⁶³ 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."⁶⁴

During the POI, SMM reported that it did not make sales of the foreign-like product in the home market to any affiliated party, as defined in section 771(33)(F) of the Act.⁶⁵

⁵⁹ See SMM Section B-D Response at B-17.

⁶⁰ See SMM Section B-D Response at C-15 – C-16.

⁶¹ See SMM Section A Response, at 18; *see also* SMM Section B-D Response, at 28 (Section B) and 22 (Section C).

⁶² See SMM Preliminary Sales Calculation Memorandum.

⁶³ See 19 CFR 351.403(c).

⁶⁴ 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)).

⁶⁵ See SMM Section B-D Response, at 5 (Section C).

D) *Cost of Production (COP) Analysis*

In accordance with section 773(b) of the Act, Commerce requested CV and COP information from SMM to determine if there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that are less than the COP of the product. We examined SMM's cost data and determined that our quarterly cost methodology was not warranted, and, therefore, we are applying our standard methodology of using annual costs based on SMM's reported data.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of 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 SMM.⁶⁶

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 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 because: 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 SMM'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

⁶⁶ See SMM Section D Response; see also SMM Supplemental D Response.

used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

E) *Calculation of NV Based on Comparison-Market Prices*

We calculated NV for SMM based on delivered and ex-work prices to unaffiliated customers in the home market. We made deductions, where appropriate, from the starting price for billing adjustments, rebates, and discounts in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for inland freight under section 773(a)(6)(B)(ii) of the Act. We also made circumstance-of-sale adjustments (*i.e.*, credit expenses), pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We added U.S. packing costs and deducted home market 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, where appropriate (*i.e.*, commissions, credit expenses, and bank charges). Specifically, we deducted direct selling expenses incurred for home market sales and added U.S. direct selling expenses.

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, also known as the “commission offset.” Specifically, where commissions were incurred in only one market, we limited the amount of such allowance to the amount of either the indirect selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

IX. PRELIMINARY NEGATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

Section 733(e)(1) of the Act provides that Commerce, upon receipt of a timely allegation of critical circumstances, will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (A)(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury by reason of such sales; and (B) there have been “massive imports” of the subject merchandise over a relatively short period. In accordance with 19 CFR 351.206(c)(2)(i), when a critical circumstances allegation is submitted 20 days or more before the scheduled date of the preliminary determination, Commerce must issue a preliminary critical circumstances determination no later than the date of the preliminary determination.

For the reasons explained below, we preliminarily determine that critical circumstances do not exist for SMM or for all other Canadian exporters and producers.

A. History of Dumping and Material Injury

In order to determine whether there is a history of dumping pursuant to section 733(e)(1)(A)(i) of the Act, Commerce generally considers current or previous antidumping orders on subject merchandise from the country in question in the United States and current orders in any other country with regard to imports of subject merchandise.⁶⁷ The petitioner did not address this criterion in its allegation.⁶⁸ As a result, Commerce does not find that there is a history of injurious dumping of sodium sulfate from Canada, pursuant to section 733(e)(1)(A)(i) of the Act.

B. Knowledge that Exporters Were Dumping and that There Was Likely to Be Material Injury by Reason of Such Sales

Commerce generally bases its decision with respect to knowledge on the weighted-average dumping margins calculated in the preliminary determination and the ITC's preliminary injury determination.⁶⁹ Commerce normally considers margins of 25 percent or more for EP sales and 15 percent or more for CEP sales sufficient to impute importer knowledge of sales at LTFV.⁷⁰ For SMM, we have preliminarily calculated a weighted-average dumping margin of 9.85 percent. As a result, for purposes of this investigation, Commerce preliminarily determines that the knowledge standard is not met because preliminary margins are less than 25 percent for EP sales and less than 15 percent for CEP sales.⁷¹ Accordingly, for SMM, because the statutory criteria of section 733(e)(1)(A) of the Act has not been satisfied, we did not examine whether imports from SMM were "massive" over a relatively short period, pursuant to section 733(e)(1)(B) of the Act.

Likewise, we are preliminarily assigning to all other producers and exporters a rate of 9.85 percent. Thus, for all other producers or exporters of sodium sulfate from Canada, we preliminarily find that the criteria under sections 773(e)(1)(A)(i) and (ii) of the Act have not been met. Accordingly, we preliminarily determine that the margins for SMM and for all others do not provide a sufficient basis for imputing knowledge of sales at LTFV to the importers of subject merchandise, and that critical circumstances do not exist for all other producers or exporters of sodium sulfate from Canada.

⁶⁷ See, e.g., *Certain Oil Country Tubular Goods from the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 74 FR 59117, 59120 (November 17, 2009), unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010).

⁶⁸ See Critical Circumstances Allegation.

⁶⁹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 77 FR 17422, 17425 (March 26, 2012).

⁷⁰ *Id.*

⁷¹ See "Preliminary Determination" section of the accompanying *Federal Register* notice.

X. 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.

XI. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted by SMM in response to Commerce's questionnaires.

XII. CONCLUSION

We recommend applying the above methodology for this preliminary determination.



Agree



Disagree

10/24/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance