



A-122-863
Administrative Review
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July 28, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Results of
Antidumping Duty Administrative Review: Large Diameter
Welded Pipe from Canada; 2018-2020

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on large diameter welded pipe (welded pipe) from Canada. The review covers 41 producers or exporters of the subject merchandise, including one mandatory respondent, Evraz Inc. NA (Evraz).¹ The period of review (POR) is August 27, 2018, through April 30, 2020. We preliminarily find that Evraz has made sales of the subject merchandise at prices below normal value (NV).

II. BACKGROUND

On May 2, 2019, Commerce published the *Order* in the *Federal Register*.² On May 1, 2020, Commerce published a notice of opportunity to request an administrative review of the *Order*.³ On June 1, 2020, Evraz requested an administrative review of sales it made during the POR.⁴ Also on June 1, 2020, the American Cast Iron Pipe Company, Berg Steel Pipe Corp./Berg Spiral Pipe Corp., Dura-Bond Industries, JSW Steel (USA) Inc., Stupp Corporation, and Welspun Global Trade LLC, individually and as members of the American Line Pipe Producers Association; Greens Bayou Pipe Mill, LP; Skyline Steel; and Trinity Products LLC (collectively,

¹ In the underlying investigation, Commerce treated Evraz Inc. NA, Evraz Inc. NA Canada, and the Canadian National Steel Corporation (collectively, Evraz) as a single entity. See *Large Diameter Welded Pipe from Canada: Antidumping Duty Order*, 84 FR 18775, 18776 (May 2, 2019) (*Order*). There is no information on this record of this review that requires reconsideration of this single entity determination.

² See *Order*.

³ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 25394 (May 1, 2020).

⁴ See Evraz's Letter, "Request for Review – AR1: 2018-2020 Review Period," dated June 1, 2020.



the petitioners), requested an administrative review of sales made by the aforementioned Evraz and 40 other companies.⁵ Pursuant to these requests, on July 10, 2020, Commerce published the *Initiation Notice* in the *Federal Register*.⁶

In the *Initiation Notice*, Commerce stated that, in the event that we limited the respondents selected for individual examination in accordance with section 777A(c)(2) of the Act, we intended to select respondents based on U.S. Customs and Border Protection (CBP) data.⁷ On July 13, 2020, we released CBP data to interested parties.⁸ On July 20, 2020, Evraz submitted comments on the CBP data.⁹ On August 5, 2020, we selected Evraz for individual examination pursuant to section 777A(c)(2) of the Act.¹⁰

On July 21, 2020, Commerce tolled all deadlines in administrative reviews by 60 days.¹¹ Between September 2020 and March 2021, Commerce issued its AD questionnaire and supplemental questionnaires to Evraz and received responses between September 2020 and July 2021.¹²

On March 10, 2021, Commerce postponed the preliminary results by 106 days.¹³ On June 28, 2021, Commerce postponed the preliminary results by an additional 14 days. Accordingly, the deadline for the preliminary results of this review is now July 30, 2021.¹⁴

On June 24, 2021, the petitioners filed pre-preliminary results comments.¹⁵ On June 30, 2021, Evraz submitted rebuttal to the petitioners' pre-preliminary results comments.¹⁶

⁵ See Petitioners' Letter, "Request for Administrative Review," dated June 1, 2020.

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 41540 (July 10, 2020) (*Initiation Notice*).

⁷ See *Initiation Notice* at 41541.

⁸ See Memorandum, "Release of Customs and Border Protection (CBP) Data Query," dated July 13, 2020.

⁹ See Evraz's Letter, "Comments on Release of Customs and Border Protection (CBP) Data Query," dated July 20, 2020.

¹⁰ See Memorandum, "Respondent Selection," dated August 5, 2020.

¹¹ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

¹² See Evraz's Letter, "Response to Initial Questionnaire Section A," dated September 16, 2020 (Evraz AQR); see also Evraz's Letter, "Response to Supplemental Section A Questionnaire," dated November 16, 2020 (Evraz SQR1); Evraz's Letter, "Response to Initial Questionnaire Sections B, C, and D," dated October 22, 2020 (Evraz BCDQR); Evraz's Letter, "Response to Supplemental Section B-C Questionnaire," dated April 2, 2021; Evraz's Letter, "Response to Supplemental Section B-D Questionnaire," dated May 28, 2021; and Evraz's Letter, "Response to Supplemental Sections C-D Questionnaire," dated July 8, 2021.

¹³ See Memorandum, "Extension of Deadline for Preliminary Results of 1st Antidumping Duty Administrative Review," dated March 10, 2021.

¹⁴ See Memorandum, "Extension of Deadline for Preliminary Results of 1st Antidumping Duty Administrative Review," dated June 28, 2021.

¹⁵ See Petitioners' Letter, "Pre-Preliminary Results Comments," dated June 24, 2021.

¹⁶ See Evraz's Letter, "Evraz's Rebuttal Response to Petitioners' June 24, 2021, Pre-Preliminary Results Comments," dated June 30, 2021.

III. SCOPE OF THE *ORDER*

The merchandise covered by the *Order* is welded carbon and alloy steel pipe (other than stainless steel pipe), more than 406.4 mm (16 inches) in nominal outside diameter (large diameter welded pipe), regardless of wall thickness, length, surface finish, grade, end finish, or stenciling. Large diameter welded pipe may be used to transport oil, gas, slurry, steam, or other fluids, liquids, or gases. It may also be used for structural purposes, including, but not limited to, piling. Specifically, not included is large diameter welded pipe produced only to specifications of the American Water Works Association (AWWA) for water and sewage pipe.

Large diameter welded pipe used to transport oil, gas, or natural gas liquids is normally produced to the American Petroleum Institute (API) specification 5L. Large diameter welded pipe may also be produced to American Society for Testing and Materials (ASTM) standards A500, A252, or A53, or other relevant domestic specifications, grades and/or standards. Large diameter welded pipe can be produced to comparable foreign specifications, grades and/or standards or to proprietary specifications, grades and/or standards, or can be non-graded material. All pipe meeting the physical description set forth above is covered by the scope of this *Order*, whether or not produced according to a particular standard.

Subject merchandise also includes large diameter welded pipe that has been further processed in a third country, including but not limited to coating, painting, notching, beveling, cutting, punching, welding, or any other processing that would not otherwise remove the merchandise from the scope of the *Order* if performed in the country of manufacture of the in-scope large diameter welded pipe.

The large diameter welded pipe that is subject to this *Order* is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.1060, 7305.19.5000, 7305.31.4000, 7305.31.6090, 7305.39.1000 and 7305.39.5000. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.

IV. PRELIMINARY DETERMINATION OF NO SHIPMENTS

Canam (St Gedeon) (Canam)¹⁷ certified that it had no exports, sales, or entries of subject merchandise during the POR. Consistent with our standard practice,¹⁸ we issued a no-shipment inquiry to CBP and received no information that contradicted Canam's claims.¹⁹ Thus, we

¹⁷ In the *Initiation Notice*, this company was listed as Canam (St Gedeon). However, in its certification of no shipments, it noted that Canam (St Gedeon) is a plant location and not its legal name. See Canam's Letter, "No Shipments Letter for Canam Group Inc. f/k/a Canam Buildings and Structures Inc.," dated August 7, 2020.

¹⁸ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 34863 (July 19, 2019), and accompanying Preliminary Decision Memorandum (PDM) at 4.

¹⁹ See No Shipment Inquiry ACCESS Barcode 4019303-01; see also Memorandum, "Response to No Shipment Inquiry," dated August 20, 2020.

preliminarily find that Canam had no shipments during the POR. Consistent with our practice,²⁰ we will not rescind the review with respect to Canam, but rather, will complete the review with respect to Canam and issue appropriate liquidation instructions to CBP based on the final results of the review.²¹

V. RATE FOR NON-EXAMINED COMPANIES

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a less-than-fair-value investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins based entirely on facts available.

In this review, Commerce calculated an above-*de minimis* rate that is not based entirely on facts available for the single mandatory respondent, Evraz. Consistent with our established practice, when the weighted-average dumping margin for the sole individually examined respondent is above *de minimis* and not based on facts available, the review-specific rate will be equal to that single above-*de minimis* rate.²² Thus, consistent with our practice, we are preliminarily assigning the rate calculated for Evraz as the review-specific weighted-average dumping margin for non-individually examined companies.²³

VI. DISCUSSION OF THE METHODOLOGY

Pursuant to section 773(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.414(c)(1) and (d), to determine whether Evraz's sales of welded pipe from Canada to the United States were made at less than NV, we compared the export price (EP) to the NV, as described in the "Export Price" and "Normal Value" sections of this memorandum.

²⁰ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013*, 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013*, 79 FR 51306 (August 28, 2014).

²¹ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

²² See, e.g., *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 80 FR 51779, 51780 (August 26, 2015).

²³ See *Narrow Woven Ribbons with Woven Selvedge from Taiwan; Preliminary Results of Antidumping Duty Administrative Review; 2013–2014*, 80 FR 60627, 60627 (October 7, 2015), unchanged in *Narrow Woven Ribbons with Woven Selvedge from Taiwan; Final Results of Antidumping Duty Administrative Review; 2013–2014*, 81 FR 22578 (April 18, 2016).

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 constructed export prices (CEPs) (*i.e.*, the average-to-average method) unless Commerce determines that another method is appropriate in a particular situation. In antidumping 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. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is analogous to the issue in antidumping investigations.²⁴

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.²⁵ 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 administrative review. 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 these preliminary results examines whether there exists a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all U.S. sales by purchaser, region, and time period 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 consolidated customer codes

²⁴ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum (IDM) at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014), *aff'd* 862 F. 3d 1322 (Fed. Cir. 2017); and *JBK RAK LLC v. United States*, 790 F. 3d 1358, 1363–65 (Fed. Cir. 2015) (“{t}he fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties”) (citations omitted).

²⁵ 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).

reported by the respondent. 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 POR based upon the U.S. 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 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 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 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 these preliminary results, including arguments for modifying the group definitions used in this proceeding.²⁶

B) Results of the Differential Pricing Analysis

Based on the results of the differential pricing analysis, Commerce preliminarily finds that 47.74 percent of the value of U.S. sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily finds 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 these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Evraz.²⁷

C) Date of Sale

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, Commerce will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business. The date of sale is generally the date on which the parties establish the material terms of the sale,²⁸ which normally include the price, quantity, delivery terms and payment terms.²⁹ Commerce may use a date other than the date of invoice if Commerce is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.³⁰ Furthermore, Commerce has a long-standing practice of finding that, where the shipment date

²⁶ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F. 3d 1322 (Fed. Cir. 2017) 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.

²⁷ See Memorandum, "Preliminary Results Margin Calculation for Evraz, Inc. NA," dated concurrently with this Memorandum (Evraz Preliminary Calculation Memorandum).

²⁸ See 19 CFR 351.401(i).

²⁹ See *USEC Inc. v. United States*, 498 F. Supp. 2d 1337, 1343-1344 (CIT 2007).

³⁰ 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)).

precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.³¹

Evraz reported invoice date as the date of sale in both the home and U.S. markets.³² As the material terms of sale are final as of the invoice date, and because the invoice date is the date reflected in Evraz's normal books and records, we preliminarily find Evraz's reported invoice date reflects the appropriate date of sale in both the home and U.S. markets.³³ Accordingly, consistent with Commerce's established practice, we have used sale invoice date as the date of sale.

D) Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered all products described in the "Scope of the *Order*" section, above, produced and sold by the respondent in the home market that were in the ordinary course of trade, during the POR, to be foreign like products for purposes of determining NV for the merchandise sold by the respondent in the United States. Pursuant to 19 CFR 351.414(f), we compared the respondents' U.S. sales of welded pipe to its sales of welded pipe made in the home market within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the month of the last U.S. sale.

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, in accordance with section 771(16)(B) of the Act, we compared U.S. sales of the subject merchandise to sales of the most similar foreign like product in the ordinary course of trade. Where there were no sales of identical or similar merchandise, we made product comparisons using constructed value (CV), as discussed in the "Calculation of Normal Value Based on Constructed Value" section below. In making the product comparisons, we matched foreign like products to the products sold in the United States based on the products' physical characteristics. In the order of importance, these physical characteristics are steel chemistry, minimum specified chromium content, minimum specified nickel content, minimum specified molybdenum content, product type, outer coating, minimum yield strength, nominal outside diameter, nominal wall thickness, weld type, and inner coating.

E) Treatment of Duties Under Section 232 of the Trade Expansion Act of 1962

In March 2018, the President exercised his authority under section 232 of the Trade Expansion Act of 1962, as amended,³⁴ and issued *Proclamation 9705* that mandated, to address national security concerns, imposition of a global tariff of 25 percent on imports of steel articles in order to reduce imports to a level that Commerce assessed would enable domestic steel producers to use approximately 80 percent of existing domestic production capacity and thereby achieve long-

³¹ 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), and accompanying IDM at Comment 11; and *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

³² See Evraz AQR at A-28.

³³ *Id.* at A-28 to A-29.

³⁴ See 19 U.S.C. § 1862.

term economic viability through increased production. In considering whether U.S. price should be adjusted for section 232 duties, we look to section 772 of the Act. In particular, section 772(c)(2)(A) of the Act directs Commerce to adjust EP and CEP for “the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties...” Therefore, we find that the analysis here depends on whether section 232 duties constitute “United States import duties,” and whether the duties are “included in such price.” The CAFC has previously considered whether certain types of duties constitute “United States import duties” for purposes of section 772(c)(2)(A) of the Act. In *Wheatland*, the CAFC sustained Commerce’s determination not to adjust U.S. price in antidumping proceedings for section 201 safeguard duties under that statutory provision.³⁵ Having acknowledged Commerce’s analysis of the legislative history to the Antidumping Act of 1921, which “referred to ‘United States import duties’ as normal customs duties and referred to antidumping duties as ‘special dumping duties’ and that ‘special dumping duties’ were distinguished and treated differently from normal customs duties,” the CAFC in *Wheatland* agreed that “Congress did not intend all duties to be considered ‘United States import duties.’”³⁶

The CAFC then found reasonable Commerce’s analysis that section 201 duties were more akin to antidumping duties than “ordinary customs duties.”³⁷ In comparing section 201 duties with antidumping duties, the CAFC found that: (1) “{l}ike antidumping duties, {section} 201 duties are remedial duties that provide relief from the adverse effects of imports;” (2) “{n}ormal customs duties, in contrast, have no remedial purpose;” (3) “antidumping and {section} 201 duties, unlike normal customs duties, are imposed based upon almost identical findings that the domestic industry is being injured or threatened with injury due to the imported merchandise;” and (4) “{section} 201 duties are like antidumping duties... because they provide only temporary relief from the injurious effects of imports,” whereas normal customs duties “have no termination provision, and are permanent unless modified by Congress.”³⁸ In sustaining Commerce’s decision regarding section 201 duties in *Wheatland*, the CAFC also held that “{t}o assess both a safeguard duty and an antidumping duty on the same imports without regard to the safeguard duty, would be to remedy substantially overlapping injuries twice.”³⁹

Section 232 duties are not akin to antidumping or 201 duties. *Proclamation 9705* states that it “is necessary and appropriate to adjust imports of steel articles so that such imports will not threaten to impair the national security...”⁴⁰ The text of section 232 of the Trade Expansion Act of 1962 also clearly concerns itself with “the effects on the national security of imports of the

³⁵ See *Wheatland Tube Co. v. United States*, 495 F. 3d 1355, 1363 (Fed. Cir. 2007) (*Wheatland*).

³⁶ *Id.* at 1361.

³⁷ *Id.* at 1362.

³⁸ *Id.* at 1362-63.

³⁹ *Id.* at 1365.

⁴⁰ *Proclamation 9705 of March 8, 2018*, 83 FR at 11625, 11627 (March 15, 2018) (*Proclamation 9705*) (emphasis added); see also *Proclamation 9711 of March 22, 2018*, 83 FR 13361, 13363 (March 28, 2018) (*Proclamation 9711*) (“In proclaiming this tariff, I recognized that our Nation has important security relationships with some countries whose exports of steel articles to the United States weaken our national economy and thereby threaten to impair the national security.”); *Proclamation 9740 of April 30, 2018*, 83 FR 20683 (May 7, 2018) (*Proclamation 9740*) (similar); *Proclamation 9759 of May 31, 2018*, 83 FR 25857 (June 5, 2018) (*Proclamation 9759*) (similar); *Proclamation 9772 of August 10, 2018*, 83 FR 40429 (August 15, 2018) (*Proclamation 9772*) (similar); and *Proclamation 9777 of August 29, 2018*, 83 FR 45025 (September 4, 2018) (*Proclamation 9777*) (similar).

article.”⁴¹ The particular national security risk identified in *Proclamation 9705* is that the “industry will continue to decline, leaving the United States at risk of becoming reliant on foreign producers of steel to meet our national security needs—a situation that is fundamentally inconsistent with the safety and security of the American people.”⁴² In other words, section 232 duties are focused on addressing imports that threaten to impair national security, whereas antidumping and 201 safeguard duties remedy injury to domestic industries.

Furthermore, the Presidential Proclamation states that section 232 duties are to be imposed in addition to other duties unless expressly provided for in the proclamations.⁴³ The Annex to *Proclamation 9740* refers to section 232 duties as “ordinary” customs duties, and it also states that “{a}ll anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein.” Notably, there is no express exception in the HTSUS revision in the Annex. In other words, section 232 duties are intended to be treated as any other duties for purposes of the trade remedy laws. Had the President intended that antidumping duties would be reduced by the amount of section 232 duties imposed, the Presidential Proclamation would have expressed that intent.

For the reasons noted, we have determined that section 232 duties should be treated as “United States import duties” for purposes of section 772(c)(2)(A) of the Act — and thereby as “U.S. Customs duties,” which are deducted from U.S. price.

F) Export Price

We used EP methodology for all sales made by Evraz, in accordance with section 772(a) of the Act, because the subject merchandise was first sold by the producer or exporter outside of the United States directly to an unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted.

We based the starting price on packed prices to unaffiliated purchasers in the United States. We made adjustments, where appropriate, from the starting price for early payment discounts. 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 practice⁴⁴ for when the freight revenue

⁴¹ See section 232(b)(1)(A) of the Trade Expansion Act of 1962 (emphasis added); *see also* section 232(a) of the Trade Expansion Act of 1962 (explaining that “{n}o action shall be taken ... to decrease or eliminate the duty or other import restrictions on any article if the President determines that such reduction or elimination would threaten to impair the national security”).

⁴² See *Proclamation 9705*, 83 FR at 11627.

⁴³ See *Proclamations 9705*, 83 FR at 11627; *see also Proclamation 9711*, 83 FR at 13363; *Proclamation 9740*, 83 FR at 20685-87 (“All anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein.”); *Proclamation 9759*, 83 FR at 25857; *Proclamation 9772*, 83 FR at 40430-31; and *Proclamation 9777*, 83 FR at 45025. The proclamations do not expressly provide that 232 duties receive different treatment.

⁴⁴ See, *e.g.*, *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*; 2011-2012, 78 FR 65272 (October 31, 2013), and accompanying Issues and Decision Memorandum at Comment 5; and *Certain Orange Juice from Brazil: Final Results of Antidumping Duty*

exceeds freight expenses by treating freight revenue as an offset to the corresponding expenses, rather than as an addition to U.S. price.

With respect to section 232 duties, Evraz confirmed that it paid section 232 duties on some of its EP sales. Moreover, we note that, given the terms of delivery for such sales, the price charged to unaffiliated U.S. customers during the POR includes such duties.⁴⁵ The inclusion of those 232 duties in the price of the sales at issue is supported by information reported in the U.S. sales database.⁴⁶ Accordingly, we deducted from EP, as appropriate, the amount of section 232 duties that Evraz reported, consistent with section 772(c)(2)(A) of the Act.⁴⁷

G) Normal Value

1. 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 review, we determined that the aggregate volume of home market sales of the foreign like product for Evraz 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, in accordance with section 773(a)(1)(B) of the Act.

2. 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).⁴⁸ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁴⁹ 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

Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 2 (*Welded Pipe from Thailand*).

⁴⁵ See Evraz BCDQR at C-34 to C-35.

⁴⁶ *Id.*

⁴⁷ We capped section 232 duty revenue by section 232 duties paid by Evraz. See Evraz Preliminary Calculation Memorandum.

⁴⁸ See 19 CFR 351.412(c)(2).

⁴⁹ *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 IDM at Comment 7.

distribution system in each market (*i.e.*, the chain of distribution), including selling functions and 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),⁵⁰ 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.⁵¹

When Commerce is unable to match U.S. 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. sales to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make an 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.⁵²

In this review, we obtained information from Evraz regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities it performed for each channel of distribution.⁵³ Our LOT findings are summarized below.

Evraz reported that it sold welded pipe to home market customers through three distribution channels during the POR, *i.e.*, directly from the factory to unaffiliated end users (Channel 1), directly from the factory to unaffiliated distributors (Channel 2), and downgraded line pipe directly sold from the factory to unaffiliated distributors (Channel 3).⁵⁴ Selling activities can be generally grouped into five selling function categories for analysis, specifically, provision of: 1) sales support; 2) training services; 3) technical support; 4) logistical services; and 5) performance of sales-related administrative activities. Based on Evraz's selling function chart,⁵⁵ we preliminarily find that Evraz performed sales support, technical support, training services, logistical services, and sales-related administrative activities at substantially similar levels of intensity across Channels 1 and 2, with the exception of provision of logistical services. Further, Evraz reported performing only sales-related administrative activities, logistical services, and sales support for Channel 3, all at lower levels of intensity than the other two channels. Therefore, we preliminarily find two LOTs existed in the home market during the POR: 1) sales of welded pipe directly to unaffiliated end users or distributors, *i.e.*, Channels 1 and 2; and 2) sales of downgraded line pipe to unaffiliated distributors, *i.e.*, Channel 3.

⁵⁰ 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 (SG&A) expenses, and profit for CV, where possible. *See* 19 CFR 351.412(c)(1).

⁵¹ *See Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

⁵² *See, e.g., OJ from Brazil* IDM at Comment 7.

⁵³ *See* Evraz AQR at A-29 to A-38.

⁵⁴ *Id.* and Exhibit A-5.

⁵⁵ *See* Evraz SQR1 at Exhibit SA-5.

With respect to the U.S. market, Evraz reported that it made EP sales through one channel of distribution, *i.e.*, direct sales to unaffiliated U.S. end users by Evraz.⁵⁶ For all its U.S. sales, Evraz performed sales support, technical support, logistical services, and sales-related administrative activities.⁵⁷ Based on the selling function categories described above, we find that Evraz performed these selling functions at the same level of intensity for all its U.S. sales. Therefore, we determine that Evraz's sales to the U.S. market during the POR were made at one LOT.

Finally, we compared the U.S. LOT to the home market LOTs. We note that Evraz reported no sales of merchandise in the U.S. market similar to those made through Channel 3 in the home market during the POR. Therefore, we considered only the first home market LOT, *i.e.*, sales of merchandise made directly to unaffiliated end users or distributors, in our LOT comparison. Accordingly, when comparing the home market LOT to the U.S. LOT, we find the Evraz performed the same selling functions at substantially similar levels of intensity during the POR.⁵⁸ Therefore, we preliminarily find that sales to the United States and home market during the POR were made at the same LOT and, as a result, we did not make an LOT adjustment under 19 CFR 351.412(e).

3. 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 determined 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.

i. 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 and financial expenses.⁵⁹

We relied on the COP data submitted by Evraz except as follows.⁶⁰

- We increased Evraz's reported total cost of manufacturing (COM) for inputs (*i.e.*, scrap) purchased from affiliates in accordance with section 773(f)(3) of the Act.
- We revised the reported total COM to include the costs associated with coating the merchandise under consideration.

⁵⁶ See Evraz AQR at Exhibit A-5.

⁵⁷ See Evraz SQR1 at Exhibit SA-5.

⁵⁸ *Id.* We also note that Evraz did not claim a LOT adjustment in its questionnaire responses.

⁵⁹ See "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses.

⁶⁰ See Evraz Preliminary Calculation Memorandum.

ii. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the weighted-average COPs to the home market sales prices of the foreign like product to determine whether the sale 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 billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

iii. 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 a respondent's home market sales of a given product are at prices less than the COP, we do not disregard any of the 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) the sales were made within an extended period of time in accordance with sections 773(b)(2)(B) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POR, the sales 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.

In this review, we found that for certain products more than 20 percent of Evraz's home market sales during the POR were at prices less than the COP and that 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.

4. *Calculation of Normal Value Based on Comparison Market Prices*

For the foreign like products for which there were sales in the ordinary course of trade, we based NV on comparison market prices. We calculated NV based on the prices that Evraz reported for home market sales to unaffiliated customers that we determined were made within the ordinary course of trade. We calculated NV based on packed prices. We made adjustments, where appropriate, for discounts and rebates. We made deductions for inland freight expenses under section 773(a)(6)(B)(ii) of the Act. In addition, 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 and warranty expenses) and added U.S. direct selling expenses (*i.e.*, credit expenses and warranty expenses).

Furthermore, we 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.⁶¹ 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.⁶²

5. Calculation of Normal Value Based on Constructed Value

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of Evraz's material and fabrication costs, SG&A expenses, profit and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Evraz in connection with the production and sale of the foreign like product at the same LOT as the U.S. sale, in the ordinary course of trade, for consumption in the comparison market. We made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

VII. CURRENCY CONVERSION

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

VIII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

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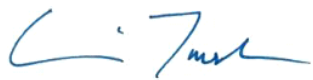
Agree

☐

Disagree

7/28/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

⁶¹ See 19 CFR 351.411(b).

⁶² See Evraz Preliminary Calculation Memorandum.