



A-533-873
Administrative Review
POR: 11/22/17-5/31/19
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October 14, 2020

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 Preliminary Results of Antidumping
Duty Administrative Review: Certain Cold-Drawn Mechanical
Tubing of Carbon and Alloy Steel from India; 2017-2019

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from India for the period of review (POR) November 22, 2017 through May 31, 2019. The review covers one company, Tube Investments of India Ltd. and Tube Products of India (collectively, TII), a producer/exporter of the subject merchandise. We preliminarily find that TTI made sales of subject merchandise at prices below normal value (NV) during the POR.

II. BACKGROUND

On June 11, 2018, Commerce published in the *Federal Register* the AD Order on cold-drawn mechanical tubing from India.¹ On June 3, 2019, Commerce published a notice of opportunity to request an administrative review of the Order for the POR.² Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(1), Commerce received timely requests to conduct an administrative review of the Order on cold-drawn mechanical tubing from India from ArcelorMittal Tubular Products LLC, Michigan Seamless Tube, LLC,

¹ See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the People's Republic of China, the Federal Republic of Germany, India, Italy, the Republic of Korea, and Switzerland: Antidumping Duty Orders; and Amended Final Determinations of Sales at Less Than Fair Value for the People's Republic of China and Switzerland*, 83 FR 26962 (June 11, 2018) (Order).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 25521 (June 3, 2019).



PTC Alliance Corp., and Webco Industries, Inc., (collectively, the petitioners)³ and Goodluck India Limited (Goodluck).⁴ On July 29, 2019, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of 16 companies.⁵

In the *Initiation Notice*, Commerce indicated 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.⁶ On August 28, 2019, we released CBP import data to interested parties.⁷ On September 5, 2019, TII submitted comments on the CBP data.⁸ On October 8, 2019, the petitioners withdrew their request for review for all companies except for Goodluck and TII.⁹

Commerce issued its AD questionnaire to Goodluck and TII on October 18, 2019. Between November 2019 and August 2020, Goodluck and TII responded in a timely manner to Commerce's original¹⁰ and supplemental questionnaires.¹¹

Pursuant to section 751(a)(3)(A) of the Act, Commerce determined that it was not practicable to complete the preliminary results of this review within 245 days and extended the preliminary

³ See Petitioners' Letter, "Cold-Drawn Mechanical Tubing from India - Domestic Industry's Request for First Administrative Review," dated July 1, 2019. The request covered the following producers/exporters: APL Apollo Tubes Ltd. (APL); Automotive Steel Pipe; Goodluck India Limited (Goodluck); Hyundai Steel Pipe India Pvt., Ltd. (Hyundai Steel Pipe); ISMT Limited (ISMT); Jindal (India) Ltd. (Jindal); Jindal Saw Ltd. (Jindal Saw); Khanna Industries Pipes Pvt. Ltd. (Khanna); KLT Automotive Tubular Products Ltd. (KLT); Patton International Ltd. (Patton); Sandvik Asia Pvt. Ltd. (Sandvik); Surya Global Steel Tubes Ltd. (Surya Global); Surya Roshni Ltd. (Surya Roshni); Tata Steel Bsl Ltd. (fka Bhushan Steel Ltd.) (Tata); TII; and Zenith Birla Steels (India) Pvt., Ltd. (Zenith)

⁴ See Goodluck's Letter, "Request for Administrative Review of the Antidumping Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel (A-533-873)," June 28, 2019.

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 36572 (July 29, 2019) (*Initiation Notice*).

⁶ *Id.*

⁷ See Memorandum, "Antidumping Duty Review of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel: Placing Customs Data on the Record," dated August 28, 2019.

⁸ See TII's Letter, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Comments on CBP Data," September 5, 2019.

⁹ See Petitioners' Letter, "Cold-Drawn Mechanical Tubing from India – Domestic Industry's Partial Withdrawal of Request for First Administrative Review," dated October 8, 2019 (Partial Withdrawal of Review Request).

¹⁰ See TII's Letters, "Cold Drawn Mechanical Tubing from India: Section A Questionnaire Response," dated November 15, 2019 (TTI November 15, 2019 AQR); "Cold-Drawn Mechanical Tubing from India: Section C Questionnaire Response," dated December 10, 2019 (TII December 10, 2019 CQR); "Cold-Drawn Mechanical Tubing from India: Section B Questionnaire Response," dated December 12, 2019 (TII December 12, 2019 BQR); and "Cold-Drawn Mechanical Tubing from India: Section D Questionnaire Response," dated December 13, 2019; see also Goodluck's Letters, "Goodluck Section A Response: Antidumping Duty Administrative Review on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India (A-533-873)," dated November 18, 2019; and "Goodluck Sections B, C, and D Questionnaire Response: Antidumping Duty Administrative Review on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India," December 16, 2019 (Goodluck December 16, 2019 BCDQR).

¹¹ See TII's Letter, "Cold Drawn Mechanical Tubing from India: Sections A, B, C, and D Supplemental Questionnaire Response," dated May 26, 2020 (TII May 26, 2020 SQR); and TII's Letter, "Cold Drawn Mechanical Tubing from India: Sections A, B, and C 2nd Supplemental Questionnaire Response," dated August 13, 2020 (TII August 13, 2020 SQR).

results by 117 days.¹² On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.¹³

On May 27, 2020, Commerce published notice of a court decision not in harmony with a final determination in the less-than-fair-value (LTFV) investigation of cold-drawn mechanical tubing from India.¹⁴ At that time, Commerce also published a notice of amended final determination and a notice of partial revocation of the *Order* with respect to Goodluck.¹⁵

On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.¹⁶ The deadline for the preliminary results of this review is now October 14, 2020.¹⁷ We received comments for these preliminary results from the petitioners and TII, which we have considered.

III. PARTIAL RESCISSION AND PARTIAL DISCONTINUATION OF REVIEW

As noted above, subsequent to the initiation of the administrative review, the petitioners timely withdrew their request for an administrative review of 14 companies: APL; Automotive Steel Pipe; Hyundai Steel Pipe; ISMT; Jindal; Jindal Saw; Khanna; KLT; Patton; Sandvik; Surya Global; Surya Roshni; Tata; and Zenith.¹⁸ As a result, Commerce is rescinding this review with respect to these 14 companies.

As noted above, on May 27, 2020, Commerce published notice of a court decision not in harmony with a final determination in the LTFV investigation of cold-drawn mechanical tubing from India.¹⁹ At that time, Commerce amended its final determination in the LTFV investigation and revised Goodluck's antidumping duty margin.²⁰ Additionally, in the *Timken Notice*, Commerce stated that it was implementing a partial exclusion from the antidumping duty order for merchandise produced and exported by Goodluck.²¹ As a result, we are hereby discontinuing

¹² See Memorandum, "Cold-Drawn Mechanical Tubing from India: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated February 24, 2020.

¹³ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.

¹⁴ See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From India: Notice of Court Decision Not in Harmony With Final Determination of Sales at Less Than Fair Value; Notice of Amended Final Determination Pursuant to Court Decision; and Notice of Revocation of Antidumping Duty Order, in Part*, 85 FR 31742 (May 27, 2020) (*Timken Notice*).

¹⁵ *Id.* ("Commerce is amending the final determination ... We are also revoking the {antidumping} order, in part, with respect to Goodluck.").

¹⁶ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

¹⁷ See Petitioners' Letter, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India – Petitioners' Comments on TII's August 13 Supplemental Response and Supplemental Pre-Preliminary Comments," dated September 8, 2020; and TII's Letter, "Cold Drawn Mechanical Tubing from India: Rebuttal to Petitioners' Comments on 2nd Supplemental Questionnaire Response," dated September 16, 2020.

¹⁸ See Partial Withdrawal of Review Request.

¹⁹ See generally *Timken Notice*.

²⁰ *Id.*, 85 FR at 31743.

²¹ *Id.* We implemented a partial exclusion covering merchandise produced and exported by Goodluck. However, entries that were produced, but not exported, by Goodluck, and/or entries that were exported, but not produced, by Goodluck are not covered by the exclusion.

this administrative review with respect to Goodluck because Goodluck only made sales to the United States of merchandise that it produced and exported.²²

IV. SCOPE OF THE *ORDER*

The scope of the *Order* covers cold-drawn mechanical tubing of circular cross-section, 304.8 mm or more in length, in actual outside diameters less than 331mm, and regardless of wall thickness, surface finish, end finish or industry specification. The subject cold-drawn mechanical tubing is a tubular product with a circular cross-sectional shape that has been cold-drawn or otherwise cold-finished after the initial tube formation in a manner that involves a change in the diameter or wall thickness of the tubing, or both. The subject cold-drawn mechanical tubing may be produced from either welded (*e.g.*, electric resistance welded, continuous welded, etc.) or seamless (*e.g.*, pierced, pilgered or extruded, etc.) carbon or alloy steel tubular products. It may also be heat treated after cold working. Such heat treatments may include, but are not limited to, annealing, normalizing, quenching and tempering, stress relieving or finish annealing. Typical cold-drawing methods for subject merchandise include, but are not limited to, drawing over mandrel, rod drawing, plug drawing, sink drawing and similar processes that involve reducing the outside diameter of the tubing with a die or similar device, whether or not controlling the inside diameter of the tubing with an internal support device such as a mandrel, rod, plug or similar device. Other cold-finishing operations that may be used to produce subject merchandise include cold-rolling and cold-sizing the tubing.

Subject cold-drawn mechanical tubing is typically certified to meet industry specifications for cold-drawn tubing including but not limited to:

- (1) American Society for Testing and Materials (ASTM) or American Society of Mechanical Engineers (ASME) specifications ASTM A-512, ASTM A-513 Type 3 (ASME SA513 Type 3), ASTM A-513 Type 4 (ASME SA513 Type 4), ASTM A-513 Type 5 (ASME SA513 Type 5), ASTM A-513 Type 6 (ASME SA513 Type 6), ASTM A-519 (cold-finished);
- (2) SAE International (Society of Automotive Engineers) specifications SAE J524, SAE J525, SAE J2833, SAE J2614, SAE J2467, SAE J2435, SAE J2613;
- (3) Aerospace Material Specification (AMS) AMS T-6736 (AMS 6736), AMS 6371, AMS 5050, AMS 5075, AMS 5062, AMS 6360, AMS 6361, AMS 6362, AMS 6371, AMS 6372, AMS 6374, AMS 6381, AMS 6415;
- (4) United States Military Standards (MIL) MIL-T-5066 and MIL-T-6736;
- (5) foreign standards equivalent to one of the previously listed ASTM, ASME, SAE, AMS or MIL specifications including but not limited to:
 - (a) German Institute for Standardization (DIN) specifications DIN 2391-2, DIN 2393-2, DIN 2394-2;
 - (b) European Standards (EN) EN 10305-1, EN 10305-2, EN 10305-4, EN 10305-6 and European national variations on those standards (*e.g.*, British Standard (BS EN), Irish Standard (IS EN) and German Standard (DIN EN) variations, etc.);
 - (c) Japanese Industrial Standard (JIS) JIS G 3441 and JIS G 3445; and
- (6) proprietary standards that are based on one of the above-listed standards.

²² See Goodluck December 16, 2019 BCDQR, at Section C.

The subject cold-drawn mechanical tubing may also be dual or multiple certified to more than one standard. Pipe that is multiple certified as cold-drawn mechanical tubing and to other specifications not covered by this scope, is also covered by the scope of this order when it meets the physical description set forth above.

Steel products included in the scope of the order is products in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

For purposes of this scope, the place of cold-drawing determines the country of origin of the subject merchandise. Subject merchandise that is subject to minor working in a third country that occurs after drawing in one of the subject countries including, but not limited to, heat treatment, cutting to length, straightening, nondestructive testing, deburring or chamfering, remains within the scope of this order.

All products that meet the written physical description are within the scope of the order unless specifically excluded or covered by the scope of an existing order. Merchandise that meets the physical description of cold-drawn mechanical tubing above is within the scope of the order even if it is also dual or multiple certified to an otherwise excluded specification listed below.

The following products are outside of, and/or specifically excluded from, the scope of the order:

- (1) Cold-drawn stainless steel tubing, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;
- (2) products certified to one or more of the ASTM, ASME or American Petroleum Institute (API) specifications listed below:
 - ASTM A-53;
 - ASTM A-106;
 - ASTM A-179 (ASME SA 179);
 - ASTM A-192 (ASME SA 192);
 - ASTM A-209 (ASME SA 209);
 - ASTM A-210 (ASME SA 210);
 - ASTM A-213 (ASME SA 213);
 - ASTM A-334 (ASME SA 334);
 - ASTM A-423 (ASME SA 423);
 - ASTM A-498;
 - ASTM A-496 (ASME SA 496);
 - ASTM A-199;
 - ASTM A-500;
 - ASTM A-556;
 - ASTM A-565;
 - API 5L; and
 - API 5CT

except that any cold-drawn tubing product certified to one of the above excluded specifications will not be excluded from the scope if it is also dual- or multiple-certified to any other specification that otherwise would fall within the scope of the order.

The products subject to the *Order* are currently classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7304.31.3000, 7304.31.6050, 7304.51.1000, 7304.51.5005, 7304.51.5060, 7306.30.5015, 7306.30.5020, and 7306.50.5030. Subject merchandise may also enter under 7306.30.1000 and 7306.50.1000. The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

V. DISCUSSION OF THE METHODOLOGY

Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether TII's sales of cold-drawn mechanical tubing from India to the United States were made at less than NV, Commerce compared the export price (EP) to NV as described in the "Export Price" and "Normal Value" sections of this memorandum.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates a weighted-average dumping margin 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 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. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of an administrative review, the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is analogous to the issue in LTFV investigations.²³

In recent investigations, Commerce applied a "differential pricing" analysis for determining whether application of the average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.²⁴ Commerce finds that the differential pricing analysis used in those recent investigations

²³ 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 *JBF RAK LLC v. United States*, 790 F. 3d 1358, 1363-65 (Fed. Cir. 2015) ("the 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).

²⁴ 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*,

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 weighted-average dumping margins.

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

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

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).

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

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

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.²⁵

B. Results of the Differential Pricing Analysis

For TII, based on the results of the differential pricing analysis, Commerce preliminarily finds that 86.62 percent of the value of U.S. sales pass the Cohen's *d* test,²⁶ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine that the average-to-average method cannot account for such differences because there is greater than a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-

²⁵ The Court of Appeals for the Federal Circuit (CAFC) has affirmed much of Commerce's differential pricing methodology. *See, e.g., Apex Frozen Foods v. United States*, 862 F. 3d 1322 (Fed. Cir. 2017). We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

²⁶ *See* Memorandum, "Certain Cold Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Preliminary Analysis Memorandum for Tube Investments of India Ltd. and Tube Products of India," dated concurrently with this memorandum (Preliminary Analysis Memorandum).

average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, we are applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for TII.

VI. PRODUCT COMPARISONS

In accordance with section 771(16) of the Act, we considered all products produced and sold by TII in India, as described in the “Scope of the Order” section of this notice, above, that were made in the ordinary course of trade. Commerce 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, Commerce compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

In making product comparisons, Commerce matched foreign like products based on the physical characteristics reported by TII in the following order of importance: tube form, type, grade, outside diameter, wall thickness, heat treatment, plating, painted, length, and surface finish.

Pursuant to 19 CFR 351.414(f), we compared U.S. sales of cold-drawn mechanical tubing to home market sales of cold-drawn mechanical tubing 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, according to section 771(16)(B) of the Act, we compared U.S. sales of cold-drawn mechanical tubing to sales of the most similar foreign like product made in the ordinary course of trade.

VII. DATE OF SALE

Section 351.401(i) of Commerce’s regulations states that, “{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business.” The regulation provides further that 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.²⁷ Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.²⁸

For TII’s home market sales, the reported invoice date and the shipment date were the same. Thus, we used this date as the date of sale. For TII’s U.S. sales, the invoice date was frequently prior to the shipment date. For U.S. sales, we applied Commerce’s long-standing practice of

²⁷ 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)).

²⁸ 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) (*Shrimp from Thailand*), and accompanying IDM at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002) (*Steel Beams from Germany*), and accompanying IDM at Comment 2.

basing the date of sale on the earlier of the shipment date or invoice date, because it is at this time that the material terms of sales are fixed.²⁹

VIII. 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).” For all sales made by TII, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was first sold in the country of manufacture (*i.e.*, India) to an unaffiliated purchaser in the United States prior to importation into the United States, and CEP was not otherwise warranted based on the facts on the record.

We calculated EP based on packed prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for movement expenses, *i.e.*, foreign inland freight, foreign brokerage and handling, international freight, U.S. brokerage and handling, and U.S. duties, in accordance with section 772(c)(2)(A) of the Act. Pursuant to section 772(c)(1)(C) of the Act, we made an adjustment to the reported EP for countervailable export subsidies.³⁰

TII claimed an adjustment for duty drawback.³¹ Commerce applies a two-pronged test to determine whether to grant a respondent a duty drawback adjustment pursuant to section 772(c)(1)(B) of the Act. Specifically, Commerce grants a duty drawback adjustment if it finds that: (1) import duties and rebates are directly linked to, and are dependent upon, one another; and (2) the company claiming the adjustment can demonstrate that there are sufficient imports of raw materials to account for the duty drawback received on exports on the manufactured product.³²

TII reported duty drawback on U.S. sales based on a percentage of the free on board value of the exported merchandise, on a shipment-by-shipment basis.³³ However, TII’s supporting documentation did not demonstrate a link between the amount of import duty paid and the duty drawback it ultimately received upon export.³⁴ Because the amount of the duty drawback that TII receives and the amount of import duties that it pays are not directly linked to, and dependent upon, one another, TII has not met the first prong of Commerce’s test. Accordingly, we have not granted a duty drawback adjustment to TII.

²⁹ See, *e.g.*, *Shrimp from Thailand* IDM at Comment 10; see also *Steel Beams from Germany* IDM at Comment 2.

³⁰ We are using the export subsidy rate calculated in the most recently-completed segment of the countervailing duty proceeding as the source of the export subsidy adjustment (*i.e.*, the final results of the first administrative review).

³¹ See TII December 10, 2019 CQR at 56.

³² See *Steel Wire Rope from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 55965, 55968 (October 30, 1996).

³³ See TII December 10, 2019 CQR at 56 and Exhibit C-17.

³⁴ See TII August 13, 2020 SQR at 28 (“TII cannot link the imported volume directly to the volume exported because it is permitted to use imported raw material for both domestic and export sales per the Government of India duty drawback rules”).

IX. NORMAL VALUE

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), Commerce normally compares 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 Commerce determines that no viable home market exists, Commerce 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, Commerce preliminarily determines that the aggregate volume of home market sales of the foreign like product for TII was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise.³⁵ Therefore, Commerce used the home market sales as the basis for NV for TII, in accordance with section 773(a)(1)(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 of foreign like products 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).³⁶ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.³⁷ In order to determine whether the comparison market sales were 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),³⁸ 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.³⁹

When Commerce is unable to compare the NV based on the prices of the foreign like product in the comparison market with CEP at the same LOT, Commerce may compare the U.S. sale prices

³⁵ See TII May 26, 2020 SQR at Exhibit A-28.

³⁶ See 19 CFR 351.412(c)(2).

³⁷ *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.

³⁸ Where NV is based on constructed value (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).

³⁹ See *Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

to sale prices at a different LOT in the comparison market. In comparing CEP to sale prices 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 sale 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.⁴⁰

In this review, we obtained information from TII regarding the marketing stages involved in making reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution, as well as quantitative support.⁴¹ Our LOT findings are summarized below.

In the home market, TII reported that it sold cold-drawn mechanical tubing in two channels of distribution, *i.e.*, to end-users and traders. TII ranked its selling functions by level of intensity on a scale of zero to ten.⁴² These selling activities⁴³ are grouped into five selling function categories: (1) provision of sales support; (2) provision of training services; (3) provision of technical support; (4) provision of logistical services; and (5) performance of sales related administrative activities.⁴⁴ Based on those categories, TII performed claimed similar selling functions related to each of these categories for its home market sales through both of its reported home market channels, albeit in varying degrees of intensity for select activities.⁴⁵ However, for certain activities, we find that distinctions across home market channels were overstated or unsupported by the record. For instance, with respect to rebates and warranties, TII reported that it “did not offer rebates on its sales of the foreign like product in the home market during the POR” and “did not incur warranty expenses on its sales of the foreign like product in the home market during the POR.”⁴⁶ Similarly, with respect to inventory maintenance, we note that TII reported inventory carrying costs for all home market sales.⁴⁷

According to 19 CFR 351.412(c)(2), Commerce will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. We find that, taken together, the claimed differences in TII’s reported selling function categories across channels are not significant. Accordingly, we preliminarily find that there is one LOT in the home market.⁴⁸

⁴⁰ See *OJ from Brazil* IDM at Comment 7.

⁴¹ See TII November 15, 2019 AQR at 36-37 and Exhibit A-13.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See Commerce’s Letters dated October 18, 2019 (Initial AD Questionnaire) at A-15.

⁴⁵ See TII November 15, 2019 AQR at 36-37 and Exhibit A

⁴⁶ TII December 12, 2019 BQR at 48 and 60.

⁴⁷ *Id.* at 63.

⁴⁸ See, *e.g.*, *Dillinger France S.A. v. United States*, 350 F. Supp. 3d 1349, 1359 (CIT 2018) (“Commerce reasonably concluded that the sales activities of the affiliated service centers {and the factories} did not differ substantially enough to merit a separate level of trade{, where respondent} Dillinger reported two selling functions performed by factories that the affiliated service centers did not -- rebates and personnel training -- while the affiliated service centers performed one selling function -- inventory maintenance -- which Dillinger's factories did not.”);and

With respect to the U.S. market, TII reported that it sold cold-drawn mechanical tubing through two channels of distribution, *i.e.*, distributors and end-users.⁴⁹ As in the home market, TII reported that the majority of selling function intensities were identical across channels; for the limited number of functions for which a difference was reported, the difference was minimal.⁵⁰ Accordingly, based on TII's entire marketing process, including its reported channels of distribution and selling functions described above, we preliminarily find there is one LOT in the U.S. market.

Finally, we compared the U.S. LOT to the home market LOT and found that the differences in the selling functions performed for U.S. and home market customers are limited, as TII performed most of the same selling functions at identical or similar levels of intensity in both markets. We also find that TII's response does not support distinctions across markets for certain categories. For instance, as noted above with respect to rebates, warranties and inventory maintenance, although TII provided a narrative description of differences in selling functions, the supporting documentation and sales data do not provide quantitative support demonstrating significant differences across channel or markets. Therefore, we find that the limited difference across markets are not substantial enough to warrant a finding that the sales are made at different marketing stages. Accordingly, based on the documentation and intensities reported, we preliminarily determine that sales to the U.S. and home markets during the POR were made at the same LOT, and, as a result, no LOT adjustment is warranted.

C. Cost of Production

In accordance with section 773(b)(2)(A)(ii) of the Act, Commerce requested cost of production (COP) and CV information from TII in this review.⁵¹ We examined TII's cost data and determined that our quarterly cost methodology was not warranted; therefore, we applied our standard methodology of using annual costs based on the reported data.

1. Calculation of COP

We calculated the COP for TII based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative and financial expenses, in accordance with section 773(b)(3) of the Act. We relied on the COP data submitted by TII without adjustment.

2. 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 per-unit price of the home market sales of the foreign like product to

Hyundai Steel Company v. United States, 279 F. Supp. 3d 1349, 1370 (CIT 2017) ("Commerce reasonably determined that the differences here were not substantial. According to evidence in the record, overall, only two out of the sixteen selling functions -- cash discounts and direct guarantees -- provided in the home market were not provided in the U.S. market.").

⁴⁹ TII November 15, 2019 AQR at 36-37 and Exhibit A-13.

⁵⁰ *Id.*

⁵¹ *See, e.g.*, Initial AD Questionnaire.

determine whether the sales had been made at prices below the COP. In particular, in determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(2)(B), (C), and (D) of the Act. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts, movement expenses, direct and indirect selling expenses, and packing expenses, where appropriate.

3. Results of the COP Test

Section 773(b)(1) of the Act provides that, where sales made at less than the COP “have been made within an extended period of time in substantial quantities” and “were not at prices which permit recovery of all costs within a reasonable period of time,” Commerce may disregard such sales when calculating NV. Pursuant to section 773(b)(2)(C)(i) of the Act, we did not disregard below-cost sales that were not made in “substantial quantities,” *i.e.*, where less than 20 percent of sales of a given product were made at prices less than the COP. We disregarded below-cost sales when they were made in substantial quantities, *i.e.*, where 20 percent or more of a respondent’s sales of a given product were at prices less than the COP and where “the weighted average per unit price of the sales . . . is less than the weighted average per unit cost of production for such sales.”⁵² Finally, based on our comparison of prices to the weighted-average COPs, we considered whether the prices would permit the recovery of all costs within a reasonable period of time.⁵³

We found that, for certain products, more than 20 percent of TII’s home market sales were sold at prices below the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. Thus, in accordance with section 771(15)(A) of the Act, we disregarded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of NV Based on Comparison Market Prices

We calculated NV based on packed, ex-factory, or delivered prices to unaffiliated customers in India. We made adjustments, where appropriate, to the starting price for billing adjustments and discounts, in accordance with 19 CFR 351.401(c).⁵⁴ We also made deductions, where appropriate, from the starting price for movement expenses, including foreign inland freight to the distribution warehouse, foreign inland freight from distribution warehouse to the customer, and warehousing expenses, pursuant to section 773(a)(6)(B) of the Act. We recalculated TII’s quantity discounts in certain instances involving partial returns.⁵⁵

We made adjustments pursuant to section 773(a)(6)(C) 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.*, imputed credit expenses, and added U.S. direct selling expenses, *i.e.*,

⁵² See section 773(b)(2)(C)(ii) of the Act.

⁵³ See section 773(b)(2)(D) of the Act.

⁵⁴ See Preliminary Analysis Memorandum for a discussion of our modifications to TII’s reported quantity discounts.

⁵⁵ *Id.*

imputed credit expenses. We revised TII's imputed credit expense in the home market to incorporate the adjustments discussed above.⁵⁶

Finally, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

When comparing U.S. sales with home market sales of similar merchandise, we also made adjustments for physical differences in 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 the subject merchandise.⁵⁷

X. 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. The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange>.

XI. RECOMMENDATION

Based on our analysis, we recommend adopting the above positions in these preliminary results. If this recommendation is accepted, we will publish the preliminary results of the review and the preliminary dumping margins in the *Federal Register*.

☒

Agree

☐

Disagree

10/14/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

⁵⁶ *Id.*

⁵⁷ *See* 19 CFR 351.411(b).