



A-533-873
Administrative Review
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June 22, 2021

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

FROM: Irene Darzenta Tzafolias
Director, Office VIII
Antidumping and Countervailing Duty Operations

SUBJECT: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel
from India: Decision Memorandum for Preliminary Results of
Antidumping Duty Administrative Review and Preliminary
Determination of No Shipments; 2019-2020

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) June 1, 2019, through May 31, 2020. The review covers two producers/exporters of the subject merchandise, Goodluck India Limited (Goodluck)¹ and Tube Investments of India Ltd. and Tube Products of India (collectively, TII).² We preliminarily find that TII made sales of subject merchandise at prices below normal value (NV) and Goodluck did not make shipments of subject merchandise 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.³ On June 2, 2020, Commerce published a notice of opportunity

¹ Pursuant to a U.S. Court of International Trade decision, effective May 10, 2020, Commerce excluded from the AD order certain cold-drawn mechanical tubing of carbon and alloy steel that was produced and exported by Goodluck. 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*). Therefore, only entries that were produced, but not exported, by Goodluck, and/or entries that were exported, but not produced, by Goodluck are subject to this administrative review.

² This review previously covered Pennar Industries Limited (Pennar Industries). On October 27, 2020, we rescinded this administrative review with respect to Pennar Industries. See the “Background” section of this memorandum.

³ See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the People's Republic of China, the*



to request an administrative review of the *Order* for the POR.⁴ 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, Plymouth Tube Co., PTC Alliance Corp., Webco Industries, Inc., and Zekelman Industries (collectively, the petitioners)⁵, Goodluck,⁶ and Pennar Industries.⁷ On August 6, 2020, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of three companies.⁸

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.⁹ On August 21, 2020, we released CBP import data to interested parties.¹⁰ On August 28, 2020, TII submitted comments on the CBP data.¹¹ Also on August 28, 2020, Goodluck submitted a no shipment certification.¹² For further discussion of the analysis of Goodluck's no shipment certification, see Section IV. "Preliminary Determination of No Shipments," below.

On September 8, 2020, the petitioners requested that Commerce examine the absorption of antidumping duties pursuant to 19 CFR 351.213(j).¹³ The issue of duty absorption is not applicable in this case, however, because TII does not have an affiliated U.S. importer.¹⁴

Commerce issued its AD questionnaire to Pennar Industries and TII on September 22, 2021. On October 7, 2020, Pennar Industries timely withdrew its request for review with respect to itself.¹⁵ Based on this request, we rescinded this review with respect to Pennar Industries, in accordance

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*).

⁴ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 33628 (June 2, 2020).

⁵ See Petitioners' Letter, "Domestic Industry's Request for Second Administrative Review of the Antidumping Duty Order," dated June 30, 2020. The request covered Goodluck and TII.

⁶ 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)," dated June 30, 2020.

⁷ See Pennar Industries' Letter, "Request for Administrative Review of the Antidumping Duty Order on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel (A-533-873) for the POR: June 1, 2019 to May 31, 2020," dated June 30, 2020.

⁸ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 47731 (August 6, 2020) (*Initiation Notice*).

⁹ *Id.*

¹⁰ See Memorandum, "Release of U.S. Customs and Border Protection Data," dated August 21, 2020.

¹¹ See TII's Letter, "Comments on CBP Data," dated August 28, 2020.

¹² See Goodluck's Letter, "Comments on CBP Data," August 28, 2020 (Goodluck's No Shipment Certification).

¹³ See Petitioners' Letter, "Petitioners' Request to Examine Absorption of Duties," dated September 8, 2020.

¹⁴ See *Argo Dutch Indus., Ltd. V. United States*, 508 F.3d 1024, (Fed. Cir. 2007) (a party cannot be affiliated with itself).

¹⁵ See Pennar Industries Letter, "Withdrawal of Request for the Antidumping Duty of Pennar Industries Limited," dated October 7, 2020.

with 19 CFR 351.213(d)(1).¹⁶ Between October 2020 and June 2021, TII responded in a timely manner to Commerce’s original¹⁷ and supplemental questionnaires.¹⁸

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 results by 120 days.¹⁹ The deadline for the preliminary results of this review is now June 30, 2021. On June 8, 2021, we received comments for these preliminary results from TII, which we have considered.²⁰

III. 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-

¹⁶ See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from India: Partial Rescission of Antidumping Duty Administrative Review; 2019-2020*, 85 FR 68039 (October 27, 2020).

¹⁷ See TII’s Letters, “Section A Questionnaire Response,” dated October 27, 2020 (TII AQR); “Section C Questionnaire Response,” dated November 12, 2020 (TII CQR); “Section B Questionnaire Response,” dated November 25, 2020; and “Section D Questionnaire Response,” dated November 25, 2020.

¹⁸ See TII’s Letters, “Section A Supplemental Questionnaire Response,” dated February 16, 2021 (TII ASQR); “Sections B and C Supplemental Questionnaire Response,” dated March 1, 2021; “Response to Question 4 and Question 7 of the Sections B and C Supplemental Questionnaire,” dated March 4, 2021; “Section D Supplemental Questionnaire Response,” dated March 26, 2021; “Sections B and C 2nd Supplemental Questionnaire Response,” dated May 26, 2021; and “Section D 2nd Supplemental Questionnaire Response,” dated June 7, 2021.

¹⁹ See Memorandum, “Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2019-2020,” dated February 9, 2021.

²⁰ See TII’s Letter, “Pre-Preliminary Results Comments,” dated June 8, 2021.

- 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.

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.

IV. PRELIMINARY DETERMINATION OF NO SHIPMENTS

As stated above, Goodluck properly filed a certification that it made no shipments of subject merchandise to the United States during the POR.²¹ Goodluck stated that all its sales of subject merchandise were produced by Goodluck and, therefore, not subject to this review.²² In its *Timken Notice*, Commerce stated that it was implementing a partial exclusion from the AD *Order* for merchandise produced and exported by Goodluck.²³ As a result, Goodluck stated it had no shipments because it only made sales to the United States of merchandise that it produced and exported.²⁴ On October 19, 2020, we placed on the record of this review entry documents from CBP related to Goodluck's no-shipment claim and offered parties an opportunity to comment on the documents.²⁵ Goodluck filed comments claiming that the entry documents do not contradict its no-shipment certification. Because many of the details of our analysis are business proprietary, we address this issue further in a separate business proprietary

²¹ See Goodluck's No-Shipment Certification.

²² *Id.*

²³ See *Timken Notice*. 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.

²⁴ See Goodluck's No Shipment Certification.

²⁵ See Memorandum, "Entry Documents Requested," dated October 19, 2020.

memorandum.²⁶ Based on the entry documents received from CBP, as well as the certification submitted by Goodluck, we preliminarily determine that Goodluck had no shipments of subject merchandise subject to the *Orders* during the POR.²⁷ Also, consistent with our practice, we will not rescind the review with respect to Goodluck but, rather, will complete the review and issue instructions to CBP upon completion of this review.

V. DISCUSSION OF THE METHODOLOGY

A. 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.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs or constructed export prices (CEPs) (*i.e.*, the average-to-average (A-A) method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value (LTFV) investigations, Commerce examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-transaction (A-T) 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 our examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in LTFV investigations.²⁸

Commerce has applied a "differential pricing" analysis for determining whether application of the A-T method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.²⁹ Commerce finds that the differential pricing analysis used in those 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

²⁶ See Goodluck's Letter, "Comments on Requested Entry Documents," dated October 26, 2020.

²⁷ See Memorandum, "No Shipments Determination – Goodluck India Limited," dated concurrently with this memorandum.

²⁸ 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).

²⁹ See, e.g., *Xanthan Gum LTFV Final Determination; Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

occur when Commerce uses the A-A 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 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 A-A 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 codes) 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 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 A-T method to all sales as an alternative to the A-A 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 the A-T method to those sales identified as passing the Cohen's *d* test as an alternative to the A-A method, and application of the A-A 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 A-A 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 A-A 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 A-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-A 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 A-A 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 A-A 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.³⁰

2. Results of the Differential Pricing Analysis

Based on the results of the differential pricing analysis, we preliminarily find that 27.31 percent of TII’s U.S. sales pass the Cohen’s *d* test, which does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods.³¹ Thus, the results of the Cohen’s *d* and ratio tests do not support consideration of an alternative to the A-A method. Accordingly, Commerce preliminarily determines to apply the A-A method for all U.S. sales to calculate the weighted-average dumping margin for TII.

B. 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, to be foreign like products. Commerce compared U.S. sales to sales made in the home market, where appropriate. In making product comparisons, Commerce matched foreign like products to products sold in the United States 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.

³⁰ The Court of Appeals for the Federal Circuit (CAFC) has affirmed much of Commerce’s differential pricing methodology. *See, e.g., Dillinger France S.A. v. United States*, 981 F.3d 1318 (Fed. Cir. 2020); *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.

³¹ *See* Memorandum, “Preliminary Results Margin Calculation Memorandum for Tube Products of India, Ltd., a unit of Tube Investments of India Limited,” dated concurrently with this memorandum (Preliminary Calculation Memorandum).

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.

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, 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.³² 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.³³

For TII's home market sales, the reported invoice date and the reported shipment date were the same. Thus, we used the invoice date as the date of sale. For TII's U.S. sales, the reported invoice date always preceded the reported shipment date, therefore for U.S. sales, we used the invoice date as the date of sale.

D. 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, the imposition of a global tariff of 25 percent on imports of steel articles in order to reduce imports to a level that the Secretary assessed would enable domestic steel producers to use approximately 80 percent of existing domestic production capacity and thereby achieve long-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."

³² 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)).

³³ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying IDM at Comment 10; see also *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.

³⁴ See 19 U.S.C. § 1862.

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 section 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 article.”⁴¹ The particular national security risk spelled out 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

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

³⁶ *Id.* at 1361.

³⁷ *Id.* at 1362.

³⁸ *Id.* at 1362-63.

³⁹ *Id.* at 1365.

⁴⁰ See *Proclamation 9705 of March 8, 2018*, 83 FR at 11625, 11627 (March 15, 2018) (*Proclamation 9705*) (emphasis added); *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); *Proclamation 9777 of August 29, 2018*, 83 FR 45025 (September 4, 2018) (*Proclamation 9777*) (similar).

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”).

fundamentally inconsistent with the safety and security of the American people.”⁴² In other words, section 232 duties are focused on addressing national security prerogatives, separate and apart from any function performed by antidumping and 201 safeguard duties to remedy injury to a domestic industry.

Even more critical to this point is that 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 AD duties would be reduced by the amount of section 232 duties imposed, the Presidential Proclamation would have expressed that intent. 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.

TII reported paying section 232 duties on certain U.S. sales.⁴⁴ As indicated above, the second part of the analysis is whether the section 232 duties are “included in such price.” TII reported that TII is the importer of record for certain sales, and the evidence provided by TII (including, *inter alia*, CBP Form 7501 Entry Summaries) indicates that TII paid the section 232 duties when it was the importer of record.⁴⁵ Therefore, there is record evidence to demonstrate that the section 232 duties are “included in such price” and thus should be deducted from the U.S. price as a “U.S. Customs duty.” Accordingly, for purposes of these preliminary results, we reduced TII’s U.S. prices to account for section 232 duties, as U.S. Customs import duties.

E. 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.

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

⁴³ See *Proclamation 9705*, 83 FR at 11627; *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; *Proclamation 97777*, 83 FR at 45025. The proclamations do not expressly provide that 232 duties receive different treatment.

⁴⁴ See TII CQR at 55.

⁴⁵ *Id.* at 55 and Exhibit C-17.

We calculated EP based on packed prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for billing adjustments and movement expenses, *i.e.*, foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. duties (*i.e.*, section 232 duties), and other U.S. transportation expenses, in accordance with section 772(c)(2)(A) of the Act. Pursuant to section 772(c)(1)(C) of the Act, Commerce increases the U.S. price by the amount of any countervailing duty (CVD) imposed to offset an export subsidy. Therefore, we adjusted TII's U.S. net price by increasing it by an amount based on the export subsidy rate calculated for the respondent in the most recently completed companion CVD administrative review.⁴⁶

TII claimed an adjustment for duty drawback, but then withdrew its claim for this adjustment.⁴⁷ Therefore, Commerce has not granted a duty drawback adjustment to TII.

F. 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), 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 TII's home market sales of the foreign like product was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise.⁴⁸ Therefore, Commerce used TII's 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 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).⁴⁹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁵⁰ In order to determine whether the comparison market sales were at different stages in the marketing process

⁴⁶ See Preliminary Calculation Memorandum.

⁴⁷ See TII CQR at 57; *see also* TII DSQR at 23.

⁴⁸ See TII ASQR at Exhibit A-28.

⁴⁹ See 19 CFR 351.412(c)(2).

⁵⁰ *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.

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),⁵¹ 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.⁵²

When Commerce is unable to compare the NV based on the prices of the foreign like product in the comparison market with EP or CEP at the same LOT, Commerce may compare the U.S. sale prices to sale prices at a different LOT in the comparison market. In comparing EP or 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.⁵³

In this review, we obtained information from TII regarding the marketing stages involved in making its 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.⁵⁴ 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.⁵⁵ TII ranked its selling functions by level of intensity on a scale of zero to ten.⁵⁶ These selling activities 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.⁵⁷ Based on TII's selling functions chart, we find that TII's descriptions of selling functions indicated little variation between channels.⁵⁸

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. Commerce's methodology requires a quantitative analysis showing how the expenses in each sales channel impact price comparability, and then requests

⁵¹ 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).

⁵² See *Micron Tech., Inc. v. United States*, 243 F. 3d 1301, 1314-16 (Fed. Cir. 2001).

⁵³ See *OJ from Brazil* IDM at Comment 7.

⁵⁴ See TII AQR at 27-34 and Exhibit A-8 (TII's Selling Functions Chart); see also TII ASQR at 7-12 and Exhibit A-27.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ See Commerce's Letters, dated October 18, 2019 (Initial AD Questionnaire) at A-15.

⁵⁸ See TII AQR at 27-34 and Exhibit A-8; see also TII ASQR at 7-12 and Exhibit A-27.

that the respondent assign a level of intensity based on this quantitative analysis in a selling functions chart.⁵⁹ We find that, taken together, the claimed differences in TII's reported selling function categories across channels are not significant and are not supported by TII's reported home market sales.⁶⁰ Accordingly, we preliminarily find that there is one LOT in the home market.⁶¹

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.⁶² 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.⁶³ Accordingly, based on TII's entire marketing process, including its reported channels of distribution and selling function categories 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 selling functions TII performed for its U.S. and home market customers are similar. Therefore, we find that any minor differences across markets are not substantial enough to warrant a finding that the sales are made at different marketing stages. Accordingly, 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.

G. Cost of Production Analysis

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.⁶⁴ 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.

⁵⁹ See *4th Tier Cigarettes from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Negative Determination of Critical Circumstances*, 85 FR 79994 (December 11, 2020), and accompanying IDM at 30.

⁶⁰ We intend to request clarification from TII regarding discrepancies between the home market selling functions it reported in Exhibit A-8 of the TII ASQR and the selling expenses it reported in its home market sales database for consideration in the final results.

⁶¹ 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."), *aff'd* *Dillinger France S.A. v. United States*, 981 F.3d 1318 (Fed. Cir. 2020); and *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.").

⁶² See TII AQR at 27-34 and Exhibit A-8; see also TII ASQR at 7-12 and Exhibit A-27.

⁶³ *Id.*

⁶⁴ See Initial AD Questionnaire.

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 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.”⁶⁵ 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.⁶⁶

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.

⁶⁵ See section 773(b)(2)(C)(ii) of the Act.

⁶⁶ See section 773(b)(2)(D) of the Act.

H. 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). 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 the distribution warehouse to the customer, and warehousing expenses, pursuant to section 773(a)(6)(B) of the Act.

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 commissions, and added U.S. direct selling expenses, *i.e.*, imputed credit expenses and commissions.

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.⁶⁷

VI. 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>.

⁶⁷ See 19 CFR 351.411(b).

VII. 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 margin in the *Federal Register*.

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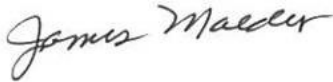
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Agree

Disagree

6/22/2021

X



Signed by: JAMES MAEDER

James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations