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Administrative Review
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May 4, 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: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018-2019

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on certain small diameter carbon and alloy seamless standard, line and pressure pipe (small diameter seamless pipe) from Romania. The review covers two producers/exporters of the subject merchandise, ArcelorMittal Tubular Products Roman S.A. (ArcelorMittal) and S.C. Silcotub S.A. (Silcotub). The period of review (POR) is August 1, 2018 through July 31, 2019. We preliminarily find that Silcotub did not make sales of the subject merchandise at prices below normal value (NV) and ArcelorMittal did not make shipments during the POR.

II. BACKGROUND

On August 10, 2000, Commerce published the *Order* in the *Federal Register*.[1] On August 2, 2019, Commerce published in the *Federal Register* 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)(2), Commerce received a request from a domestic producer, United States Steel Corporation (the petitioner) to conduct an administrative

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[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania*, 65 FR 48963 (August 10, 2000) (*Order*).
[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 37834 (August 2, 2019).

review of ArcelorMittal, SC TMK-Artrom S.A. (TMK-Artrom), SC Tubinox S.A. (Tubinox), and Silcotub.[3] In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review for these four companies.[4]

On October 15, 2019, the petitioner withdrew its request for an administrative review of TMK-Artrom and Tubinox,[5] and on November 1, 2019, Commerce rescinded the administrative review with respect to these two companies.[6] We issued the AD questionnaire to the two remaining companies under review, ArcelorMittal and Silcotub.[7]

In November 2019, we received a no shipment certification from ArcelorMittal.[8] *See*, Section IV. "Preliminary Determination of No Shipment," below. In November and December 2019, Silcotub submitted its responses to our initial questionnaire.[9] In January and February 2020, we issued supplemental questionnaires to Silcotub to which it timely responded.[10]

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until June 22, 2020.[11]

III. SCOPE OF THE *ORDER*

The products covered by this order are seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and the API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of this order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification.

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[3] *See* Petitioner's Letter, "Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Under 4 ½ Inches) from Romania: Request for Administrative Review," dated August 30, 2019.
[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 53415 (October 7, 2019).
[5] *See* Petitioner's Letter, "Carbon and Alloy Seamless Standard Line, and Pressure Pipe (Under 4 ½ Inches) from Romania: Partial Withdrawal of Request for Administrative Review of Antidumping Duty Order," dated October 15, 2019.
[6] *See Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Under 4.5 Inches) from Romania: Partial Rescission of Antidumping Duty Administrative Review*; *2018-2019*, 84 FR 58684 (November 1, 2019).
[7] *See* Commerce's Letters, "Antidumping Duty Questionnaire," both dated October 23, 2019 (Initial Questionnaire).
[8] *See* ArcelorMittal's Letter, "Antidumping Duty Administrative Review of Carbon and Alloy Seamless Standard Line, and pressure Pipe (Under 4 ½ inches) from Romania – ArcelorMittal Tubular Products Roman S.A. Notice of No Shipment," dated November 8, 2019 (ArcelorMittal No Shipment Letter).
[9] *See* Silcotub's November 20, 2019, Section A Questionnaire Response (Silcotub's AQR); *see also* Silcotub's December 13, 2019, Section B Questionnaire Response(Silcotub's BQR); Silcotub's December 17, 2019, Section C Questionnaire Response (Silcotub's CQR); and Silcotub's December 23, 2019, Section D Questionnaire Response.
[10] *See* Silcotub's January 17, 2020, Sections ABC Supplemental Questionnaire Response; Silcotub's February 6, 2020, Section D Supplemental Questionnaire Response; and Silcotub's February 24, 2020 Sections A and C Second Supplemental Questionnaire Response (Silcotub's ACSQR2).
[11] *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.

Specifically included within the scope of this order are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this order are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.19.10.20, 7304.19.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the HTSUS.

Specifications, Characteristics, and Uses: Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A-106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various ASME code stress levels. Alloy pipes made to ASTM A-335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A-106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A-106 standard.

Seamless standard pipes are most commonly produced to the ASTM A-53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses.

Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A-333 or ASTM A-334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipelines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A-589) and seamless galvanized pipe for fire protection uses (ASTM A-795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A-106, ASTM A-53, API 5L-B, and API 5L-X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A-106 pressure pipes and triple or quadruple certified pipes is in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and offshore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A-106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipe or "hollow profiles" of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications.

The scope of this order includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the specific exclusions discussed below, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of this order. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A-106 applications. These specifications generally include ASTM A-161, ASTM A-192, ASTM A-210, ASTM A-252, ASTM A-501, ASTM A-523, ASTM A-524, and ASTM A-618. When such pipes are used in a standard, line, or pressure pipe application, with the exception of the specific exclusions discussed below, such products are covered by the scope of this order.

Specifically excluded from the scope of this order is boiler tubing and mechanical tubing, if such products are not produced to ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished OCTG are excluded from the scope of this order, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

With regard to the excluded products listed above, Commerce will not instruct Customs to require end-use certification until such time as petitioner or other interested parties provide to Commerce a reasonable basis to believe or suspect that the products are being used in a covered application. If such information is provided, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in covered applications as described above. For example, if, based on evidence provided by petitioner, Commerce finds a reasonable basis to believe or suspect that seamless pipe produced to the A-161 specification is being used in a standard, line or pressure application, we will

require end-use certifications for imports of that specification. Normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.

IV. PRELIMINARY DETERMINATION OF NO SHIPMENTS

Among the companies under review, ArcelorMittal properly filed a certification reporting that it made no shipments of subject merchandise to the United States during the POR.[12] On January 16, 2020, we placed on the record of this review entry documents from U.S. Customs and Border Protection (CBP) related to ArcelorMittal's no shipment claim and offered parties an opportunity to comment on the documents.[13] We did not receive comments from any interested party. Based on the entry documents received from CBP, as well as the certification submitted by ArcelorMittal, we preliminarily determine that ArcelorMittal had no shipments of subject merchandise during the POR.[14] Also, consistent with our practice, we will not rescind the review with respect to ArcelorMittal but, rather, will complete the review and issue instructions to CBP upon completion of this review.

V. DISCUSSION OF THE METHODOLOGY

We are conducting this administrative review of the order in accordance with section 751(a) of the Act, and 19 CFR 351.213.

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 Silcotub's sales of small diameter seamless pipe from Romania to the United States were made at less than NV, Commerce compared the constructed export price (CEP) to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this memorandum.

1. Determination of the Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average export prices (EPs) or CEPs (*i.e.*, the average-to-average method) unless Commerce determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales (*i.e.*, the average-to-

[12] *See* ArcelorMittal No Shipment Letter.
[13] *See* Memorandum, "Entry Documents Requested," dated January 16, 2020.
[14] *See* Memorandum, "No Shipments Determination – ArcelorMittal Tubular Products Roman S.A.," dated concurrently with this memorandum.

transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, 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 less-than-fair-value investigations.[15]

Commerce has applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.[16] Commerce finds that the differential pricing analysis used in certain investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results was affirmed by the Court of Appeals for the Federal Circuit (CAFC) as in accordance with law in *Apex*.[17] That analysis examines whether there exists a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region, and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the 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 period of review 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 EPs or CEPs and NV for the individual dumping margins.

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

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

[17] *See Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1322 (CIT 2014), *aff'd*, 862 F. 3d 1322 (Fed. Cir. 2017) (*Apex*).

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 net prices to the particular purchaser, region, or time period differ significantly from the net 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 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.[18]

2. Results of the Differential Pricing Analysis

Based on the results of the differential pricing analysis, Commerce preliminarily finds that 0.00 percent of the value of Silcotub's U.S. sales pass the Cohen's *d* test[19] and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, for these preliminary results, Commerce is applying the average-to-average method to all U.S. sales to calculate the weighted-average dumping margin for Silcotub, in accordance with 19 CFR 351.414(c)(1) and (d).

B. Date of Sale

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the producer or exporter's records kept in the ordinary course of business. Additionally, Commerce may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.[20] Finally, Commerce has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.[21] Silcotub reported, and we used for purposes of these preliminary results, the date of shipment as the date of sale in both markets because shipment occurs before the invoice is issued by Silcotub for home market sales and by Silcotub's affiliate, Tenaris Global Services (U.S.A.) Corporation, for U.S. sales.[22]

C. Product Comparisons

For the purposes of determining an appropriate product comparison to the U.S. sales, in accordance with section 771(16) of the Act, we considered all products sold in the home

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[18] As noted above, the CAFC has affirmed much of Commerce's differential pricing methodology. *See Apex*, 862 F. 3d 1322. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

[19] *See* Memorandum, "Preliminary Results Margin Calculation for S.C. Silcotub S.A.," dated concurrently with this memorandum.

[20] *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)).

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

[22] *See* Silcotub's AQR at A-15.

market as described in the "Scope of the Order" section, above, that were in the ordinary course of trade. In making the product comparisons, we matched foreign like products to the products sold in the United States based on the physical characteristics. In order of importance, these physical characteristics are specification/grade, manufacturing process, outside diameter, wall thickness, surface finish, and end finish.

Pursuant to 19 CFR 351.414(f), we compared Silcotub's U.S. sales to its home market sales 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 small diameter seamless pipe to the most similar foreign like product made in the ordinary course of trade. Where there were no sales of identical or similar merchandise, we made product comparisons using constructed value (CV), as discussed in the "Calculation of Normal Value Based on Constructed Value" section below.

D. Constructed Export Price

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the subject merchandise was first sold or agreed to be sold in the United States before or after the date of importation by or for the account of the producer or exporter or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. We calculated CEP based on the delivered price to unaffiliated purchasers in the United States. In accordance with 19 CFR 351.401(c), we adjusted the starting prices for billing adjustments, where appropriate. We made deductions for movement expenses (*e.g.*, foreign inland freight, international freight, marine insurance, U.S. and foreign brokerage and handling expenses, and U.S. customs duties), where appropriate, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we also deducted selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (imputed credit expenses and other direct selling expenses) and indirect selling expenses (including inventory carrying costs). We also made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Silcotub and its U.S. affiliate on its sales of the subject merchandise in the United States and the profit associated with those sales.

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

In March 2018, the President exercised his authority under Section 232 of the Trade Expansion Act of 1962, as amended, 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."

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 Tube*,[23] the CAFC sustained Commerce's determination not to adjust U.S. price in antidumping proceedings for section 201 safeguard duties under that statutory provision. 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 Tube* agreed that "Congress did not intend all duties to be considered 'United States import duties.'"

The CAFC then found reasonable Commerce's analysis that section 201 duties were more akin to antidumping duties than "ordinary customs duties." 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." In sustaining Commerce's decision regarding section 201 duties in *Wheatland Tube*, 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."

Section 232 duties are not akin to antidumping or 201 duties. Proclamation 9705 states that it "is necessary and appropriate to adjust imports of steel articles so that such imports will not threaten to impair the national security . . ." 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." 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 fundamentally inconsistent with the safety and security of the American people." 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. The Annex to Proclamation 9740 refers to section 232 duties as "ordinary" customs duties, and it

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

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.

Silcotub reported paying 232 duties on certain U.S. sales.[24] Moreover, we note that, given the terms of delivery for such sales, the price charged to unaffiliated U.S. customers during the POR reflects such duties.[25] The inclusion of those 232 duties in the price of the sales at issue was supported by information reported in the U.S. sales database. Accordingly, we deducted from CEP, as appropriate, the amount of section 232 duties that Silcotub reported, consistent with section 772(c)(2)(A) of the Act.

F. Normal Value

1. Home Market Viability as Comparison Market

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of Silcotub's home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404. Based on this comparison, we determine that, pursuant to 19 CFR 351.404(b), Silcotub had a viable home market during the POR because the volume of Silcotub's home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of subject merchandise. Consequently, pursuant to section 773(a)(1)(B)(i) of the Act and 19 CFR 351.404(c)(1)(i), we based NV on home market sales.

2. Level of Trade (LOT)/CEP Offset

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales of the foreign like product at the same LOT as U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).[26] Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.[27] To determine whether the comparison-market

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[24] *See* CQR at Appendix V.
[25] *Id*. at C-21.
[26] *See* 19 CFR 351.412(c)(2).
[27] *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, 51001 (August 18, 2010) (*OJ from Brazil*), and accompanying IDM at Comment 7.

sales were at different stages in the marketing process than the U.S. sales, we review 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.*, where NV is based on either home market or third country prices),[28] 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.[29]

When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP sale, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make 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 was possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act and 19 CFR 351.412(f).[30]

In this administrative review, we obtained information from Silcotub regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed by the respondent and its affiliates for each channel of distribution.[31]

With respect to the U.S. market, Silcotub reported that it made sales through one channel of distribution during the POR, CEP sales to distributors.[32] We examined the selling activities performed for these sales and found that Silcotub performed the following selling functions: packing, inventory maintenance, freight and delivery, and order input/processing.[33]

Selling activities can be generally grouped into five selling function categories for analysis: 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.[34] Based on these selling function categories, we find that Silcotub performed logistical services and sales-related administrative activities for its U.S. sales to distributors

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[28] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (SG&A) expenses, and profit for CV, where possible.
[29] *See Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).
[30] *See, e.g., OJ from Brazil* IDM at Comment 7.
[31] *See* Initial Questionnaire at A-8; and Silcotub's ACSQR2 at 2-5 and Exhibits Supp2. A1 – A3.
[32] *See* Silcotub's AQR at A-13.
[33] *See* Silcotub's ACSQR2 at Exhibit Supp2. A2.
[34] *See Polyester Textured Yarn from India: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures*, 84 FR 31301 (July 1, 2019), and accompanying Preliminary Decision Memorandum at 15, unchanged in *Polyester Textured Yarn from India: Final Determination of Sales at Less Than Fair Value*, 84 FR 63843 (November 19, 2019).

during the POR. Because Silcotub only made U.S. sales to distributors through an affiliated importer, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Silcotub reported that during the POR it made sales through two channels of distribution: 1) sales to unaffiliated end users; and 2) sales to unaffiliated distributors.[35] Silcotub stated that it performed the following selling functions for its home market sales to both end users and distributors during the POR: sales forecasting, business coordination, strategic/economic planning, advertising, direct sales personnel, sales/marketing support, market research and intelligence, personnel training/exchange, packing, freight and delivery, and order input/processing.[36] For sales to end users, Silcotub also provided technical support (*i.e.*, engineering services, technical assistance, and after-sales services), additional logistical services (*i.e.*, inventory maintenance and post-sale warehousing), and procurement/sourcing services.[37] Based on the above-referenced selling function categories, we find that Silcotub performed sales support, training services, logistical services and sales-related administrative activities in both home market channels during the POR at generally the same level with minor differences in intensity. This finding coupled with the fact that Silcotub provides an additional selling function, *i.e.*, technical support, for one of its two home market sales channels, is not sufficient to determine that there is more than one LOT in the home market. Accordingly, we preliminarily determine that all home market sales were made at the same LOT.

Finally, we compared the U.S. LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers differ significantly. Three categories of selling functions (*i.e.*, sales support, training services, and technical support) were performed for home market sales that were not performed at all for U.S. sales. Based on that analysis, we preliminary find that there are significantly more selling activities performed for home market sales than for U.S. sales. Accordingly, we preliminarily determine that home market sales during the POR were made at a more advanced LOT than U.S. sales. We did not make a LOT adjustment under 19 CFR 351.412(e) because there is only one LOT in the home market and thus we were unable to identify a pattern of consistent price differences attributable to differences in LOTs.[38] Accordingly, pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f), we are preliminarily granting a CEP offset to Silcotub. We calculated the CEP offset as the lesser of the indirect selling expenses incurred on the home market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

G. Cost of Production (COP) Analysis

1. Calculation of COP

In accordance with section 773(b)(2)(A)(ii) of the Act, Commerce requested CV and COP information from Silcotub. We examined Silcotub's cost data and determined that our quarterly

[35] *See* Silcotub's AQR at A-13; *see also* Silcotub's BQR at B-21.
[36] *See* Silcotub's ACSQR2 at Exhibit Supp2. A2.
[37] *Id.*
[38] *See* 19 CFR 351.412(d).

cost methodology is not warranted, and therefore, we are applying our standard methodology of using annual costs based on Silcotub's reported data.

In accordance with section 773(b)(3) of the Act, we calculated Silcotub's COP based on the sum of its cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and interest expenses (*see* "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses). We relied on the COP data submitted by Silcotub in its February 6, 2020, cost database for the COP calculation. We made no changes to Silcotub's reported costs.

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 COP to the home market sales prices of the foreign like product in order to determine whether the sales prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices were exclusive of any applicable movement charges, direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

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

In this case, we found that less than 20 percent of Silcotub's sales were at prices less than the COP. Therefore, we used all of Silcotub's home market sales as the basis for determining NV.

4. Calculation of NV Based on Comparison Market Prices

We based NV for Silcotub on packed prices to unaffiliated customers in the home market. We made deductions from the starting price for inland freight expenses pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, we made deductions pursuant to section 773(a)(6)(C) of the Act for home market credit expenses and other direct selling expenses. We added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act. When comparing U.S. sales with home market sales of

similar, but not identical, merchandise, we also made adjustments for differences in cost attributable to 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 subject merchandise.[39] Finally, as discussed in the "Level of Trade" section above, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses incurred on the home market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

5. Calculation of Normal Value Based on Constructed Value

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of Silcotub's material and fabrication costs, SG&A expenses, profit and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by Silcotub in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the comparison market. We made adjustments to CV for differences in circumstances of sale, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We also made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on home market sales or the indirect selling expense deducted from the starting price in calculating CEP.

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.

VII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒	☐
Agree	Disagree

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[39] *See* 19 CFR 351.411(b).