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

FROM: Abdelali Elouaradia
Director, Office IV
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Affirmative
Determination in the Less-Than-Fair-Value Investigation of
Seamless Carbon and Alloy Steel Standard, Line, and Pressure
Pipe from Ukraine

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that seamless carbon and alloy steel standard, line, and pressure pipe (seamless pipe) from Ukraine is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On July 8, 2020, Commerce received an antidumping duty (AD) petition concerning imports of seamless pipe from Ukraine, filed in proper form by Vallourec Star, LP (the petitioner), a domestic producer of seamless pipe.¹ On July 28, 2020, Commerce initiated the LTFV investigation on seamless pipe from Ukraine.²

¹ See Petitioner’s Letter, “Petitions for the Imposition of Antidumping and Countervailing Duties: Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, the Republic of Korea, Russia, and Ukraine,” dated July 8, 2020 (Petition).

² See *Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, the Republic of Korea, the Russian Federation, and Ukraine: Initiation of Less-Than-Fair Value Investigations*, 85 FR 47176 (August 4, 2020) (*Initiation Notice*).



The petitioner identified one company in Ukraine as the producer and/or exporter of seamless pipe, *i.e.*, Interpipe.³ Accordingly, we issued the standard AD questionnaire to Interpipe on August 19, 2020.⁴

On August 24, 2020, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of seamless pipe from Ukraine.⁵

In the *Initiation Notice*, Commerce notified parties of an opportunity to comment on the scope of the investigation, as well as on the appropriate physical characteristics of seamless pipe to be reported in response to Commerce's AD questionnaire.⁶ On August 17, 2020, we received timely-filed comments concerning the scope of the investigation from TMK Group.⁷ On August 27, 2020, we received timely-filed rebuttal scope comments from the petitioner.⁸ On January 13, 2021, we issued a preliminary scope decision memorandum.⁹

On August 17, 2020, we received timely-filed product characteristics comments from the petitioner.¹⁰ On August 27, 2020, we received timely-filed rebuttal product characteristics comments from interested parties.¹¹ On September 17, 2020, Commerce determined the product characteristics applicable to this investigation.¹²

On September 16, 2020, Interpipe submitted a timely response to Section A of the questionnaire, *i.e.*, the section relating to general information.¹³ On October 9, 2020, Interpipe submitted timely

³ *Id.*, 85 FR at 47179. Interpipe was identified as Interpipe NTRP in the Petition.

⁴ See Commerce's Letter to Interpipe NTRP, "Antidumping Duty Questionnaire," dated August 19, 2020 (AD Questionnaire).

⁵ See *Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From Czechia, Korea, Russia, and Ukraine*, 85 FR 53398 (August 28, 2020).

⁶ See *Initiation Notice*, 85 FR at 47176-7.

⁷ See TMK Group's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, the Republic of Korea, Russia, and Ukraine: TMK Group's Scope Comments," dated August 17, 2020.

⁸ See Petitioner's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the Czech Republic, the Republic of Korea, the Russian Federation, and Ukraine: Response to Scope Comments," dated August 27, 2020.

⁹ See Memorandum, "Antidumping and Countervailing Duty Investigations of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, the Republic of Korea, the Russian Federation, and Ukraine: Preliminary Scope Decision Memorandum," dated January 13, 2021 (Preliminary Scope Decision Memorandum).

¹⁰ See Petitioner's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the Czech Republic, the Republic of Korea, the Russian Federation, and Ukraine: Comments on Product Characteristics," dated August 17, 2020.

¹¹ See Liberty Ostrava A.S.'s Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the Czech Republic, the Republic of Korea, the Russian Federation, and Ukraine: Liberty Ostrava A. S.' Rebuttal Comments on Product Characteristics," dated August 27, 2020; and ILJIN Steel Corporation's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, the Republic of Korea, the Russian Federation, and Ukraine: Rebuttal Model Match Comments," dated August 27, 2020.

¹² See Memorandum, "Product Characteristics – Less Than Fair Value Investigations of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, the Republic of Korea, the Russian Federation, and Ukraine," dated September 17, 2020 (Product Characteristics Memorandum).

¹³ See Interpipe's September 16, 2020 Section A Questionnaire Response (AQR).

responses to sections B, C, and D of the questionnaire, *i.e.*, the sections relating to home market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively.¹⁴

From October 15, 2020 through January 15, 2021, we issued supplemental questionnaires to Interpipe.¹⁵ We received timely-filed responses to these supplemental questionnaires from December 15, 2020, through January 22, 2021.¹⁶ The petitioner submitted comments on the questionnaire and Interpipe's questionnaire and supplemental questionnaire responses from September 2020, through January 2021.¹⁷

On November 19, 2020, Commerce postponed the preliminary determination in this investigation by 50 days, to February 3, 2021, pursuant to section 733(c)(1) of the Act and 19 CFR 351.205(b) and (e).¹⁸

On January 4, 2021, Interpipe submitted new factual information.¹⁹ On January 12, 2021, the petitioner submitted rebuttal comments with respect to Interpipe's new factual information.²⁰

On January 7, 2021, the petitioner requested that, contingent upon a negative preliminary determination, Commerce postpone its final determination.²¹ On January 11, 2021, Interpipe requested that, in the event of an affirmative preliminary determination in this investigation, Commerce postpone its final determination in accordance with 19 CFR 351.210(b)(2)(ii) and extend the provisional measures period in the LTFV investigation from four to not more than six

¹⁴ See Interpipe's October 9, 2020 Sections B, C, and D Questionnaire Response (BCDQR).

¹⁵ See Commerce's October 15, 2020 Section A Supplemental Questionnaire; Commerce's November 23, 2020 Section A-C Supplemental Questionnaire; Commerce's November 24, 2020 Section D Supplemental Questionnaire; and Commerce's January 15, 2021, Section B Second Supplemental Questionnaire.

¹⁶ See Interpipe's October 22, 2020 Section A Supplemental Questionnaire Response (SAQR); Interpipe's December 15, 2020 Sections A, B, and C Supplemental Questionnaire Response; Interpipe's December 16, 2020 Section D Supplemental Questionnaire Response; and Interpipe's January 22, 2021 Section B Second Supplemental Questionnaire Response.

¹⁷ See Petitioner's Letters, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Comments on Additional Data Fields," dated September 30, 2020; "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Comments on Interpipe Sections A, B, C, and D Responses," dated October 23, 2020; "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Request to Add Supplemental Question," dated December 28, 2020; and "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Comments on Interpipe Supplemental A-C Response," dated January 4, 2021.

¹⁸ See *Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the Republic of Korea, the Russian Federation, and Ukraine: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 85 FR 73687 (November 19, 2020).

¹⁹ See Interpipe's Letter, "Antidumping Duty Investigation on Seamless Standard, Line, and Pressure Pipe from Ukraine: New Factual Information," dated January 4, 2021.

²⁰ See Petitioner's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Comments on Interpipe's New Factual Information Submission," dated January 12, 2021.

²¹ See Petitioner's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Republic of Korea, Russia, and Ukraine: Request to Extend Final Determinations," dated January 7, 2021.

months in accordance with 19 CFR 351.210(e)(2).²² On January 14 and 19, 2021, Interpipe and the petitioner submitted pre-preliminary comments, respectively.²³

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is July 1, 2019, through June 30, 2020. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, which was July 2020.²⁴

IV. SCOPE OF INVESTIGATION

The products covered by this investigation are seamless pipe from Ukraine. Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*.²⁵ For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.²⁶ Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice*. For a full description of the revised scope of the investigation, *see* the accompanying preliminary determination *Federal Register* notice at Appendix I.

V. AFFILIATION/SINGLE ENTITY

Commerce will treat affiliated companies as a single entity if they have production facilities for similar or identical products that would not require substantial retooling of either company's facility in order to restructure manufacturing priorities, and Commerce concludes that there is a significant potential for the manipulation of price or production.²⁷

Section 771(33) of the Act, in pertinent part, identifies persons that shall be considered "affiliated" or "affiliated persons," as two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.²⁸ Section 771(33) of the Act further stipulates that "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person." In determining whether control over another person exists within the meaning of section 771(33) of

²² See Interpipe's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Request for Postponement of the Final Determination and to Extend the Provisional Measures Period," dated January 11, this 2021.

²³ See Interpipe's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Pre-Preliminary Determination Comments," dated January 14, 2021 (Interpipe's Pre-Preliminary Comments); and Petitioner's Letter, "Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Pre-Preliminary Comments" dated January 19, 2021 (Petitioner's Pre-Preliminary Comments).

²⁴ See 19 CFR 351.204(b)(1).

²⁵ See *Initiation Notice*.

²⁶ See Memorandum, "Antidumping and Countervailing Duty Investigations of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, the Republic of Korea, the Russian Federation, and Ukraine: Preliminary Scope Decision Memorandum," dated January 13, 2021 (Preliminary Scope Decision Memorandum).

²⁷ See 19 CFR 351.401(f).

²⁸ See sections 771(33)(A), (E), and (F) of the Act.

the Act, Commerce will not find that control exists unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.²⁹

In identifying a significant potential for manipulation, Commerce may consider factors including “{t}he level of common ownership;”³⁰ “{t}he extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm;”³¹ and “{w}hether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.”³² Commerce considers these criteria in light of the totality of the circumstances; no one factor is dispositive in determining whether to collapse the producers.³³

Additionally, although Commerce’s regulations do not address the treatment of non-producing entities (*e.g.*, exporters), where non-producing entities are affiliated, and there exists a significant potential for manipulation of prices and/or export decisions, Commerce has considered such entities, as well as other affiliated entities (where appropriate), as a single entity.³⁴

In accordance with 19 CFR 351.401(f), we have preliminarily treated Interpipe Ukraine LLC (Interpipe Ukraine), PJSC Interpipe Nizhnedneprovskiy Tube Rolling Plant (Interpipe NTRP), and LLC Interpipe Niko Tube (Niko Tube)(collectively Interpipe) as a single entity because they are: 1) affiliated pursuant to section 771(33)(F) of the Act (under the common control of Interpipe Holdings PLC);³⁵ 2) two of these companies have similar production facilities,³⁶ and therefore, no substantial retooling is required to restructure manufacturing priorities, and 3) there is a significant potential for the manipulation of price or production based on the level of direct and indirect ownership by Interpipe Holdings PLC, an overlap in managerial employees, and intertwined operations.³⁷

²⁹ See 19 CFR 351.102(b)(3).

³⁰ See 19 CFR 351.401(f)(2)(i).

³¹ See 19 CFR 351.401(f)(2)(ii).

³² See 19 CFR 351.401(f)(2)(iii).

³³ See *Koyo Seiko Co., Ltd. v. United States*, 516 F. Supp. 2d 1323, 1346 (CIT 2007) (citing *Light Walled Rectangular Pipe and Tube from Turkey*; *Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53675 (September 2, 2004), and accompanying Issues and Decision Memorandum (IDM) at Comment 10.

³⁴ See, *e.g.*, *Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*; *Notice of Final Determination at Sales at Less Than Fair Value*, 65 FR 5554 (February 4, 2000); *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 63 FR 55578 (October 16, 1998) and accompanying Issues and Decision Memorandum at Comment 2; *Automotive Replacement Glass Windshields from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 69 FR 61790 (October 21, 2004); *Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1343 (CIT 2003).

³⁵ See AQR at A-12 and Exhibit A-3.

³⁶ *Id.* at A-6-7.

³⁷ See Letter, “Antidumping Duty Investigation of Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Preliminary Affiliation and Collapsing Memorandum for Interpipe,” dated concurrently with this memorandum; AQR at Exhibit A-8; BCDQR at D-9-10, D-36, and Exhibits D-5 and D-6; SAQR at SA-5-7 and Exhibit SA-6.

VI. DISCUSSION OF THE METHODOLOGY

A. Comparisons to Normal Value

To determine whether sales of seamless pipe from Ukraine to the United States during the POI were made at LFTV, we compared constructed export prices (CEPs) to normal values (NVs), as described in the “Constructed Export Price” and “Normal Value” sections of this memorandum, below.

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 export prices (EPs) or CEPs, *i.e.*, the average-to-average method, unless it determines that another method is appropriate in a particular situation. In a LTFV investigation, Commerce examines whether to compare weighted-average NVs with the EPs or CEPs of individual sales, *i.e.*, the average-to-transaction method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In numerous investigations, Commerce has applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.³⁸ Commerce finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

In the differential pricing analysis used in this preliminary determination, we examined whether there exists a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. In our analysis, we evaluated all U.S. sales by purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. If such a pattern was found, then as part of the differential pricing analysis, we evaluated 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 POI 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

³⁸ 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).

and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce used in making comparisons between CEP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” was applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean, *i.e.*, the weighted-average price, of a test group, and the mean, *i.e.*, the weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient was calculated when the test and comparison groups of data for a particular purchaser, region, or time period each had 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 was 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 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 examined whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tested whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yielded 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 relating to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions that Commerce used.³⁹

2. Results of the Differential Pricing Analysis

We preliminarily find that 84.82 percent of the value of U.S. sales pass the Cohen's *d* test which confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods.⁴⁰ Further, we preliminarily determine there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for this preliminary determination, we are applying the average-to-average method to all U.S. sales to calculate the weighted-average dumping margin for Interpipe.

B. Product Comparisons

As stated above, Commerce gave parties an opportunity to comment on the appropriate hierarchy of physical characteristics to be used to define each product and for model matching purposes.⁴¹ After considering interested parties' comments, we established the following product characteristics for use in defining product control numbers for the seamless pipe subject to this LTFV investigation: (1) specifications/grade, (2) manufacturing process, (3) outside diameter, (4) wall thickness, (5) surface finish, and (6) end finish.⁴² We instructed Interpipe to use these product characteristics in its response to the questionnaire.⁴³

In accordance with section 771(16) of the Act, we considered all products produced and sold by Interpipe in Ukraine during the POI that fit the description of the merchandise under consideration in the "Scope of Investigation" section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. POI sales to POI sales made in the home market, where appropriate. Where there were no POI sales of identical or similar merchandise sold in the home market in the ordinary course of trade to compare to U.S. POI sales, we made comparisons based on CV.

³⁹ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F.3d 1337 (Fed. Cir. 2017) affirmed much of Commerce's differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

⁴⁰ See Memorandum, "Interpipe Preliminary Determination Analysis," dated concurrently with this memorandum (Interpipe Analysis Memorandum).

⁴¹ See *Initiation Notice*, 85 FR at 47177.

⁴² See Product Characteristics Memorandum.

⁴³ *Id.*

C. Date of Sale

Section 351.401(i) of Commerce's regulations states that Commerce normally will use invoice date, as recorded in the exporter or producer's records kept in the ordinary course of business, as the date of sale of the subject merchandise and foreign like product. However, Commerce may use a date other than the date of invoice as the date of sale if it is satisfied that a different date better reflects the date on which the exporter or producer established the material terms of sale.⁴⁴ Additionally, 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 were established.⁴⁵

Interpipe reported the invoice date as the date of sale for its home market and U.S. sales.⁴⁶ Because there is nothing on the record indicating that a different date better reflects the date on which the respondent established the material terms of sale, and consistent with Commerce's practice and 19 CFR 351.401(i), we based the date of sale for sales in both the home and U.S. markets on the earlier of shipment date or invoice date.⁴⁷

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 (the Trade Expansion Act),⁴⁸ and issued Proclamation 9705 that mandated, to address national security concerns, imposition of a global tariff of 25 percent on imports of steel articles in order to reduce imports to a level that Commerce assessed would enable domestic steel producers to use approximately 80 percent of existing domestic production capacity and thereby achieve long-term economic viability through increased production. In considering whether U.S. price should be adjusted for section 232 duties, we look to section 772 of the Act. In particular, section 772(c)(2)(A) of the Act directs Commerce to adjust EP and CEP for "the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties...." Therefore, we find that the analysis here depends on whether section 232 duties constitute "United States import duties," and whether the duties are "included in such price."

The CAFC has previously considered whether certain types of duties constitute "United States import duties" for purposes of section 772(c)(2)(A) of the Act. In *Wheatland*, the CAFC sustained Commerce's determination not to adjust U.S. price in antidumping proceedings for section 201 safeguard duties under that statutory provision.⁴⁹ Having acknowledged

⁴⁴ See 19 CFR 351.401(i); and *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

⁴⁵ See, e.g., *Certain Polyester Staple Fiber from the Republic of Korea: Preliminary Results of the 2007/2008 Antidumping Duty Administrative Review*, 74 FR 27281, 27283 (June 9, 2009), unchanged in *Certain Polyester Staple Fiber from the Republic of Korea: Final Results of the 2007-2008 Antidumping Duty Administrative Review*, 74 FR 65517 (December 10, 2009).

⁴⁶ See Interpipe's BCDQR at B-19 and C-19.

⁴⁷ See Interpipe Analysis Memorandum.

⁴⁸ See section 232 of the Trade Expansion Act, dated December 9, 2020.

⁴⁹ See *Wheatland Tube Co. v. United States*, 495 F. 3d 1355, 1363 (Fed. Cir. 2007) (*Wheatland*).

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.’”⁵⁰

The CAFC then found reasonable Commerce’s analysis that section 201 duties were more akin to antidumping duties than “ordinary customs duties.”⁵¹ 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.”⁵² 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.”⁵³

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*....”⁵⁴ The text of section 232 of the Trade Expansion Act also clearly concerns itself with “the effects on the *national security* of imports of the article.”⁵⁵ The particular national security risk identified in Proclamation 9705 is that the “industry will continue to decline, leaving the United States at risk of becoming reliant on foreign producers of steel to meet our national security needs – a situation that is fundamentally inconsistent with the safety and security of the American people.”⁵⁶ In other words, section 232 duties are focused on addressing imports that threaten to impair national security, whereas antidumping and 201 safeguard duties remedy injury to domestic industries.

Furthermore, the Presidential Proclamation states that section 232 duties are to be imposed in

⁵⁰ *Id.* at 1361.

⁵¹ *Id.* at 1362.

⁵² *Id.* at 1362-62.

⁵³ *Id.* at 1365.

⁵⁴ See Proclamation 9705, 83 FR 11625, 11627 (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”); see also Proclamation 9740 of April 30, 2018, 83 FR 20683 (May 7, 2018) (Proclamation 9740) (similar); Proclamation 9759 of May 31, 2018, 83 FR 25857 (June 5, 2018) (Proclamation 9759) (similar); Proclamation 9772 of August 10, 2018, 83 FR 40429 (August 15, 2018) (Proclamation 9772) (similar); and Proclamation 9777 of August 29, 2018, 83 FR 45025 (September 4, 2018) (Proclamation 9777) (similar).

⁵⁵ See section 232(b)(1)(A) of the Trade Expansion Act (emphasis added); see also section 232(a) of the Trade Expansion Act (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”).

⁵⁶ See Proclamation 9705, 83 FR at 11627.

addition to other duties unless expressly provided for in the proclamations.⁵⁷ 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 Harmonized Tariff Schedule of the United States 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.

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

E. Constructed Export Price

Section 772(b) of the Act defines CEP as “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)” of the Act. Interpipe reported that it made all its U.S. sales through its U.S. affiliate, North American Interpipe.⁵⁸ As a result, and in accordance with section 772(a) of the Act, we calculated CEPs for Interpipe’s U.S. sales.

We calculated CEPs by adjusting Interpipe’s starting price (the reported U.S. sales price) for billing adjustments, deducting from the starting price movement expenses⁵⁹ in accordance with section 772(c)(2)(A) of the Act, and deducting from the starting price selling expenses associated with economic activities occurring in the United States, along with the profit allocated to these expenses in accordance with section 772(d)(1) and (3) of the Act and 19 CFR 351.402(b).

Although Interpipe argued that section 232 duties are special duties that should not be deducted from the starting U.S. price,⁶⁰ we disagree. As discussed above, section 232 duties are not special remedial duties akin to antidumping or section 201 duties. Section 232 duties focus on threats to national security,⁶¹ specifically the threat that an “industry will continue to decline,

⁵⁷ See Proclamations 9705, 83 FR at 11627; *see also* Proclamation 9711, 83 FR at 13363; Proclamation 9740, 83 FR at 20685-87 (“All anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein.”); Proclamation 9759, 83 FR at 25857; Proclamation 9772, 83 FR at 40430-31; and Proclamation 9777, 83 FR at 45025. The proclamations do not expressly provide that 232 duties receive different treatment.

⁵⁸ See Interpipe’s BCDQR at C-16.

⁵⁹ Domestic inland freight, domestic brokerage and handling, international freight, stevedoring, marine insurance, U.S. inland freight from warehouse to customer, and U.S. customs duties.

⁶⁰ See Interpipe’s Pre-Preliminary Comments.

⁶¹ See Proclamations 9705 of March 8, 2018, 83 FR at 11627; Proclamation 9711 of March 22, 2018, 83 FR at 13363; Proclamation 9740 of April 30, 2018, 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 of May 31, 2018, 83 FR at 25857; Proclamation 9772 of August 10, 2018, 83 FR at

leaving the United States at risk of becoming reliant on foreign producers of steel to meet {its} national security needs”⁶² Subtracting section 232 duties from U.S. prices is consistent with section 772(c)(2)(A) of the Act, which 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.”⁶³ Therefore, we have preliminarily determined that section 232 duties constitute normal U.S. import duties that should be deducted from Interpipe’s starting U.S. prices in calculating CEPs, pursuant to section 772(c)(2)(A) of the Act.

F. Normal Value

1. Comparison Market Viability

We normally compare the volume of a respondent’s POI comparison market sales of foreign like product to the volume of its POI U.S. sales of subject merchandise and find the comparison market sales sufficient to serve as a viable basis for calculating NV if the aggregate volume of those sales is equal to or greater than five percent of the aggregate volume of the U.S. sales. We preliminarily determine that the aggregate volume of Interpipe’s home market sales of the foreign like product is more than five percent of the aggregate volume of its U.S. sales of subject merchandise. Therefore, we are preliminarily using the prices of Interpipe’s POI sales of foreign like product in Ukraine as the basis for NV in accordance with section 773(a)(1)(A) and (B) of the Act.

2. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁶⁴ Substantial differences in selling activities are a necessary, but not a sufficient, condition for determining that there is a difference between marketing stages.⁶⁵ In order to determine whether comparison market sales are at marketing stages that differ from those in the U.S. market, we examine the distribution system in each market, *i.e.*, the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale. 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.⁶⁶

When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the U.S. sale, Commerce may compare the U.S. sale to sales at a different LOT in the comparison market and, where possible, make a LOT adjustment under section

40430-31; *Proclamation 9777 of August 29, 2018*, 83 FR at 45025. The proclamations do not expressly provide that Section 232 duties receive different treatment.

⁶² See *Proclamation 9705*, 83 FR at 11627.

⁶³ See section 772(c)(2)(A) of the Act.

⁶⁴ See 19 CFR 351.412(c)(2).

⁶⁵ *Id.*; and *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*OJ from Brazil*), and accompanying Issues and Decision Memorandum (IDM) at Comment 7.

⁶⁶ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

773(a)(7)(A) of the Act. For CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability, *i.e.*, no LOT adjustment is possible, Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁶⁷

Interpipe reported making sales in the home market through two channels of distribution, back to back sales to end users and stock sales to unaffiliated customers that Interpipe claims are at the same LOT.⁶⁸ However, Interpipe never separately reported the selling functions, and the levels at which it performed those functions, for each home market channel of distribution. Therefore, Commerce does not have the information it requires to determine whether there is one, or more than one, LOT in the home market.

Interpipe reported making sales to the United States through two channels of distribution, back-to-back sales to unaffiliated U.S. customers and stock sales to unaffiliated U.S. customers. Record evidence indicates that Interpipe performed the same selling activities and it performed corresponding selling activities at relatively the same levels of intensity, in both U.S. channels of distribution. Therefore, we preliminarily determine that all U.S. sales are at the same LOT.

Although Interpipe requests a CEP offset, record information does not support granting a CEP offset. First, as noted above, Interpipe did not separately report the selling functions, and the levels at which it performed those functions, for each home market channel of distribution. While it reported selling activities for the home market as a whole, which it claims shows that home market sales are at a more advanced level than U.S. sales, that condition is not clear given Interpipe never specified that the selling activities reported for the home market applied to both channels of distribution. Moreover, in its AD Questionnaire, Commerce requested quantitative information related to any LOTs that the respondent claims are at different marketing stages, including a request that Interpipe demonstrate how indirect selling expenses varied by the claimed LOTs.⁶⁹ Commerce also requested that the respondent explain how the quantitative analysis supports the claimed levels of intensity for the selling activities reported in the selling functions table. Interpipe did not provide the requested quantitative analysis. While Interpipe reported that its home market sales were at a different, more advanced LOT, than its U.S. sales, in order for Commerce to determine whether the home market and U.S. market LOTs are different LOTs, the respondent must first demonstrate that substantial differences exist between the LOTs of sales in each market, in accordance with 19 CFR 351.412(c)(2). Because Interpipe did not provide the requested quantitative analysis, we find that the record lacks the quantitative information required to make such a determination. Given the absence of certain required record information, we have determined that a LOT adjustment is not supported by the record.

G. Cost of Production Analysis

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

⁶⁷ See, e.g., *OJ from Brazil* IDM at Comment 7.

⁶⁸ See Interpipe's BCDQR at B-18.

⁶⁹ See AD Questionnaire at A-7-8.

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

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and financial expenses. We relied on the COP data submitted by Interpipe, except as follows:

- We adjusted the reported costs to account for the additional depreciation expenses associated with the revaluation of fixed assets; and
- We adjusted the company-specific G&A expense ratios reported by Interpipe to exclude the profit earned on sales of raw materials and production scrap.

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 home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. We adjusted the home market sales prices used in the comparison for billing adjustments, discounts and rebates, movement charges, actual direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

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

We found that, for certain products, more than 20 percent of the home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

H. Calculation of NV Based on Comparison Market Prices

We calculated NV based on the prices of foreign like product sold to unaffiliated customers in the comparison market. We made the following adjustments to the starting price in calculating NV: 1) we deducted movement expenses in accordance with section 773(a)(6)(B)(ii) of the Act, which include, where appropriate, foreign inland freight and warehousing expense; 2) we made circumstance of sale adjustments pursuant to section 773(a)(6)(C)(iii) of the Act by deducting home market direct selling expenses; 3) when comparing prices of similar merchandise, we adjusted for differences in costs attributable to differences in the physical characteristics of the merchandise (based on differences in the variable cost of manufacturing) in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411;⁷⁰ and 4) 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.

I. Calculation of NV Based on CV

In accordance with section 773(e) of the Act, where applicable, we calculated CV based on the sum of Interpipe's material and fabrication costs, G&A expenses, financial expenses, selling expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, selling expenses and profit are based on the amounts incurred and realized in connection with the production and sale of the foreign like product at the same LOT as the U.S. sale, in the ordinary course of trade, for consumption in the comparison market. CV is also adjusted for differences in circumstances of sale and, where applicable, commission offsets.

VII. CURRENCY CONVERSION

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

⁷⁰ See *Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review*, 70 FR 46482 (August 10, 2005), and accompanying IDM at Comment 8.

VIII. RECOMMENDATION

We recommend applying the above methodologies in this preliminary determination.



Agree

Disagree

2/3/2021

X

James Maeder

Signed by: JAMES MAEDER

James Maeder

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations