



A-475-834
Administrative Review
POR: 5/1/2018 – 4/30/2019
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March 18, 2021

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

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2018-2019 Administrative Review of the Antidumping Duty Order
on Certain Carbon and Alloy Steel Cut-To-Length Plate from Italy

I. SUMMARY

We analyzed the comments of interested parties in the 2018-2019 administrative review of the antidumping duty order covering certain carbon and alloy steel cut-to-length plate (CTL plate) from Italy. As a result of our analysis, we did not make any changes to the margin calculations from the *Preliminary Results*.¹ We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of issues in this administrative review for which we received comments from the interested parties. All of these issues are specific to NLMK Verona SpA (NVR).

Comment 1: NVR’s Sales of Non-Prime and Overrun Merchandise
Comment 2: NVR’s Cost Differences Unrelated to Defined Physical Characteristics
Comment 3: NVR’s Costs for Merchandise Produced Prior to the Period of Review (POR)
Comment 4: Whether Section 232 Duties Should be Deducted from U.S. Price

II. BACKGROUND

On July 22, 2020, the Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review. This review covers seven producers and exporters. The POR is May 1, 2018, through April 30, 2019.

¹ See *Certain Carbon and Alloy Steel Cut-To-Length Plate from Italy: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2018-2019*, 85 FR 44283 (July 22, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).



We invited parties to comment on the *Preliminary Results*.² On August 21, 2020, we received case briefs from the petitioner³ and NVR.⁴ On August 31, 2020, we received rebuttal briefs from the same parties.⁵

On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.⁶ On December 30, 2021, Commerce extended the due date for issuing the final results of this review by 60 days.⁷ The deadline for the final results of this review is now March 18, 2021.

III. SCOPE OF THE ORDER

The products covered by this order are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other nonmetallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief), and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or nonrectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above, the following rules apply:

(1) except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

² See *Preliminary Results*, 85 FR at 44284.

³ The petitioner is Nucor Corporation.

⁴ See NVR’s Case Brief, “Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy: Case Brief of NLMK Verona S.p.A,” dated August 21, 2020 (NVR’s Case Brief); and Petitioner’s Case Brief, “Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy: Petitioner’s Case Brief,” dated August 21, 2020 (Petitioner’s Case Brief).

⁵ See NVR’s Rebuttal Case Brief, “Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy: Rebuttal Brief of NLMK Verona S.p.A,” dated August 31, 2020 (NVR’s Rebuttal Brief); and Petitioner’s Rebuttal Case Brief, “Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy: Petitioner’s Rebuttal Brief,” dated August 31, 2020 (Petitioner’s Rebuttal Brief).

⁶ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

⁷ See Memorandum, “Certain Carbon and Alloy Steel Cut-To-Length Plate from Italy; 2018-2019 Administrative Review: Extension of Deadline for Final Results,” dated December 30, 2020.

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.

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

Subject merchandise includes cut-to-length plate that has been further processed in the subject country or a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, beveling, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the cut-to-length plate. All products that meet the written physical description, are within the scope of this order unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of this order:

(1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;

(2) military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:

- MIL-A-12560,
- MIL-DTL-12560H,
- MIL-DTL-12560J,
- MIL-DTL-12560K,
- MIL-DTL-32332,
- MIL-A-46100D,
- MIL-DTL-46100-E,
- MIL-46177C,
- MIL-S-16216K Grade HY80,
- MIL-S-16216K Grade HY100,
- MIL-S-24645A HSLA-80;
- MIL-S-24645A HSLA-100,
- T9074-BD-GIB-010/0300 Grade HY80,
- T9074-BD-GIB-010/0300 Grade HY100,
- T9074-BD-GIB-010/0300 Grade HSLA80,
- T9074-BD-GIB-010/0300 Grade HSLA100, and
- T9074-BD-GIB-010/0300 Mod. Grade HSLA115,

except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual- or multiple-certified to any other non-armor specification that otherwise would fall within the scope of this order;

(3) stainless steel plate, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(4) CTL plate meeting the requirements of ASTM A-829, Grade E 4340 that are over 305 mm in actual thickness;

(5) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:

(a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):

- Carbon 0.23-0.28,
- Silicon 0.05-0.20,
- Manganese 1.20-1.60,
- Nickel not greater than 1.0,
- Sulfur not greater than 0.007,
- Phosphorus not greater than 0.020,
- Chromium 1.0-2.5,
- Molybdenum 0.35-0.80,
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:

- (i) 270-300 HBW,
- (ii) 290-320 HBW, or
- (iii) 320-350HBW;

(c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and (d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;

(6) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.23-0.28,
- Silicon 0.05-0.15,
- Manganese 1.20-1.50,

- Nickel not greater than 0.4,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.20-1.50,
- Molybdenum 0.35-0.55,
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;

(c) Having the following mechanical properties: (i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75ksi min and UTS 95ksi or more, Elongation of 18% or more and Reduction of area 35% or more; having charpy V at -75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs (single value) and equal or greater than 20 ft. lbs (average of 3 specimens) and conforming to the requirements of NACE MR01-75; or (ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at -40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301;

(7) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.25-0.30,
- Silicon not greater than 0.25,
- Manganese not greater than 0.50,
- Nickel 3.0-3.5,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.0-1.5,
- Molybdenum 0.6-0.9,
- Vanadium 0.08 to 0.12
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,

- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm.

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);

(c) Having the following mechanical properties: A Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145ksi or more and UTS 160ksi or more, Elongation of 15% or more and Reduction of area 35% or more; having charpy V at -40 degrees F in the transverse direction equal or greater than 20 ft. lbs (single value) and equal or greater than 25 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the order may also enter under the following HTSUS item numbers: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.0000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7226.11.1000, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

IV. DISCUSSION OF THE ISSUES

Comment 1: NVR's Sales of Non-Prime and Overrun Merchandise

In the calculations for NVR for the *Preliminary Results*, Commerce included as prime merchandise NVR's home market (HM) and U.S. sales of subject merchandise that it classified as: (1) "choice 1;" (2) "acceptable" or "choice 2;" and (3) product overruns."⁸

⁸ See NVR's September 30, 2019 Sections B, C, and D Questionnaire Response (NVR September 30, 2019 BCDQR) at B-8 – B-10 and C-7 – C-8.

Petitioner's Case Brief

- Commerce should remove NVR's reported "choice 2" sales from the HM sales listing and remove overrun sales from both the U.S. and HM sales listings.⁹
- Apart from stating that Commerce should consider "choice 2" sales of CTL plate as prime, NVR failed to provide any explanation justifying its position. Instead, NVR's sales of "acceptable" CTL plate should be considered non-prime, under Commerce's treatment of prime merchandise.¹⁰
- Because these sales should be considered non-prime and because NVR did not report non-prime sales in the United States, Commerce should remove these sales from NVR's HM sales listing.¹¹
- In *Steel Flat Products from Korea*, because the respondent did not sell non-prime merchandise in the United States, Commerce "deleted home market sales of non-prime merchandise from the home market database."¹² Consistent with this case, as well as past practice, Commerce should similarly remove these non-prime sales from the HM for NVR's margin calculations.¹³
- Further, Commerce should delete NVR's sales of overrun CTL plate because they are outside the ordinary course of trade.¹⁴
- If Commerce considers NVR's overrun sales as part of NVR's margin calculations, these sales will unfairly match to the non-overrun products sold in the HM.¹⁵

NVR's Rebuttal Brief

- Commerce correctly included NVR's reported "choice 2" CTL plate sales in its margin calculation and should continue to do so for these final results.¹⁶ Therefore, Commerce should reject the petitioner's argument to reclassify NVR's sales of "choice 2" CTL plate sales as non-prime and delete these sales from NVR's HM sales listing.¹⁷

⁹ See Petitioner's Case Brief at 3.

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² *Id.* (citing *Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Korea*, 58 FR 37176 (July 9, 1993) (*Steel Flat Products from Korea*) at Comment 10.

¹³ *Id.* at 2-3 (citing *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From the Czech Republic*, 65 FR 5599, 5603 (February 4, 2000) (*Small Diameter Pipe from the Czech Republic Preliminary Results*), where Commerce "deleted seamless pipe products that were sold as an overrun or non-prime product since overrun and non-prime seamless pipe were not sold in the U.S. market," unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from the Czech Republic*, 65 FR 39363 (June 26, 2000)).

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ See NVR's Rebuttal Brief at 5.

¹⁷ *Id.* at 7.

- NVR reported all sales correctly; thus, these sales are appropriately included in NVR’s margin calculation. The petitioner’s basis for deleting sales will resort in a margin calculation that is “extremely distortive.”¹⁸
- The Tariff Act of 1930, as amended (the Act) and the Courts affirm Commerce’s practice to include all sales in the calculation of a respondent’s margin. The consideration of a sale as non-prime or outside the ordinary course of trade does not meet the threshold to exclude the corresponding transaction or the entire group of related sales from the price comparison.¹⁹
- According to the Act, Commerce must determine the U.S. price of “each entry of the subject merchandise, and the dumping margin for such entry.”²⁰ However, while Commerce has the discretion to eliminate unusual sales from its investigations, this authority does not extend to administrative reviews which require that each entry be included.²¹
- Commerce’s practice is to include all U.S. sales. In fact, “{w}here a respondent sells secondary or non-prime merchandise in the United States, it is Commerce’s standard practice to include those transactions in its margin calculation by attempting to match these sales to non-prime sales in the home market.”²² Otherwise, “Commerce can only exclude sales from {U.S. price} in an administrative review in exceptional circumstances when those sales are unrepresentative and extremely distortive.”²³
- Regarding its non-prime sales, NVR consistently distinguished and reported its prime sales from its non-prime sales during the current and past administrative reviews. In fact, NVR’s first and second choice plate: (1) fully satisfy customer’s criteria; (2) were sold on an arm’s-length basis; and (3) the transaction otherwise presented no reason for drawing a distinction on the basis of the plate being designated first or second choice.²⁴
- If Commerce were to accept the petitioner’s definition that non-prime sales include “choice 2” plate, then the petitioner’s claim that “NLMK does not sell non-prime merchandise in the United States” is incorrect. Contrary to the petitioner’s position, NVR reported sales of “choice 2” plate in both the U.S. and HM sales listings.²⁵
- The petitioner’s reliance on *Steel Flat Products from Korea* and *Small Diameter Pipe from the Czech Republic Preliminary Results* does not support its position that Commerce should delete NVR’s non-prime sales. In those determinations, Commerce disregarded sales due to the lack of a matching counterpart in the comparison market.²⁶ In contrast, here, NVR reported sales of “choice 2” plate in both markets. Eliminating these correctly reported sales

¹⁸ *Id.*

¹⁹ *Id.* at 5.

²⁰ *Id.* at 4 (citing section 751(a)(2)(A) of the Act).

²¹ *Id.* (citing *FAG U.K. Ltd. v. United States*, 945 F. Supp. 260, 265 (CIT 1996); section 751(a)(2)(A) of the Act; and 19 CFR 353.42(b) (1994)).

²² *Id.* at 4-5 (citing *Corus Staal BV v. U.S. Dep’t of Commerce*, 259 F.Supp.2d 1253, 1269 (CIT 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Italy*, 64 FR 30750, 30753 (June 8, 1999); and *Steel Flat Products from Korea*).

²³ *Id.*

²⁴ *Id.* at 5-6.

²⁵ *Id.* at 6 (citing NVR’s December 13, 2019, Supplemental Section C Questionnaire Response at Exhibit SC-24; NVR’s December 23, 2019 Supplemental Sections A and B Questionnaire Response at Exhibit SB-18; and NVR’s January 23, 2020, Supplemental Section D Questionnaire Response at Exhibit SD-9).

²⁶ *Id.* at 6 (citing *Steel Flat Products from Korea* at Comment 10; and *Small Diameter Pipe from the Czech Republic Preliminary Results*, 65 FR at 5599, 5603).

from the HM sales listing would have a distortive effect on NV regarding the sales of “choice 2” plate in the United States.²⁷

- While NVR did not report sales of “choice 4” plate (*i.e.*, non-prime plate) in the United States, there is no lawful basis to delete the reported sales of “choice 4” plate from the HM sales listing.²⁸
- The petitioner neglected to raise concerns regarding the appropriateness and adequacy of NVR’s reported non-prime sales earlier in this proceeding. Further, Commerce did not issue a supplemental questionnaire asking for additional information or clarification.²⁹ As a result, the appropriate opportunity for NVR to address any potential issues has passed.
- In the prior administrative review, where there was a similar fact pattern, Commerce found NVR’s same approach to be reasonable and did not exclude NVR’s “choice 2” or non-prime plate sales from NVR’s margin calculation.³⁰
- Regarding the production of overruns, NVR does not produce overruns in the ordinary course of business. Rather, an overrun is a legitimate sale of subject merchandise that may have been an extra plate produced on a “one-off basis” or was no longer needed by the customer placing the order.³¹
- In fact, NVR consistently and transparently reported that it: (1) only produces to order; and (2) categorizes overruns as sales of plate made to another customer other than the customer placing the order.³²
- Even if Commerce were to regard NVR’s overrun sales as outside the ordinary course of trade, the Court of International Trade (CIT) determined that such sales must not necessarily be excluded from the U.S. sales listing.³³ Instead, “{f}airness, distortion, representativeness are the issues to be examined.”³⁴ The petitioner’s rationale does not question these issues, and, thus, the petitioner has not offered sufficient, reasonable justification.
- Overall, NVR’s reporting of sales in fields PRIME1H, PRIME2H and OVERRUN, was fully in accordance with Commerce’s instructions and accompanied by ample explanation of quality control and selling practices. As affirmed by the CIT, Commerce’s practice is to include all sales in calculation of a respondent’s margin; the mere classification of a product as non-prime or an allegation of a sale being outside the ordinary course of trade does not meet the threshold for exclusion.³⁵

²⁷ *Id.* at 6.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 6 (citing *Certain Carbon and Alloy Steel Cut-to-Length Plate From Italy: Preliminary Results of Antidumping Duty Administrative Review; 2016-2018*, 84 FR 34151 (July 17, 2019) (*CTL Plate Italy Preliminary Results ARI*), unchanged in *Certain Carbon and Alloy Steel Cut-To-Length Plate From Italy: Final Results of Antidumping Duty Administrative Review; 2016-2018*, 85 FR 3026 (January 17, 2020) (*CTL Plate Italy Final Results ARI*)).

³¹ *Id.* at 8.

³² *Id.* (citing NVR September 30, 2019 BCDQR at B-9).

³³ *Id.* (citing *Am. Permac, Inc. v. United States*, 783 F. Supp. 1421, 1424 (CIT 1992)).

³⁴ *Id.*

³⁵ *Id.* at 5.

Commerce's Position:

Commerce finds that the petitioner has failed to substantiate its claims that: (1) NVR's "choice 2" sales should be regarded as non-prime sales; and (2) NVR's overrun sales are outside the ordinary course of trade. We have reviewed the administrative record of this administrative review and find that the information on the record regarding the nature of NVR's reported overrun and nonprime sales is limited. Although there are some differences between NVR "choice 2" and "choice 1" plates, on the current record,³⁶ these differences do not conclusively demonstrate that NVR "choice 2" sales should be classified as non-prime merchandise. Nor does the current record demonstrate that NVR's overrun sales are outside the ordinary course of trade. In addition, we have included such sales as prime merchandise as part of NVR's calculations for the previously completed segment of this proceeding.³⁷ Accordingly, for these final results, we continue to include these sales in our calculation of NVR's dumping margin.

NVR stated that it internally treats sales of CTL plate under three categories: (1) "choice 1" (*i.e.*, "good"); (2) "choice 2" (*i.e.*, "acceptable"); and (3) "choice 4" (*i.e.*, "scrap" (deep cracks)).³⁸ According to NVR, its Quality Department employs several quality control checks throughout the production process and designates all CTL plate based on the codes described above. Specifically, NVR stated that its "choice 1" and "choice 2" sales are considered prime products for the purposes of this immediate review, noting that its "choice 2" sales "largely consist of superficial imperfections."³⁹ Regarding its "choice 4" sales, NVR stated that these products were severely damaged during production (*e.g.*, resulting in deep cracks), as designated by the Quality Department, and either scrapped or sold at a discounted price.⁴⁰ For these reasons, NVR reported its "choice 1" and "choice 2" sales as prime merchandise and its "choice 4" sales as non-prime, which Commerce accepted and continues to accept.⁴¹

With regard to NVR's reporting of "choice 2" sales, we acknowledge NVR's statements on the record that its "choice 2" sales made in the United States are "considered prime material," while those sold in the home market are "acceptable" and "largely consist of superficial imperfections."⁴² NVR also defined its sales of non-prime merchandise as CTL plate "severely damaged" during production (*i.e.*, contains deep cracks) that it either scrapped or sold at a discounted price.⁴³ While we recognize that no source documentation exists on the record to enable a comprehensive analysis to corroborate these statements, we also recognize that Commerce did not request further information regarding the nature of these sales and has previously treated "choice 2" sales as sales of prime merchandise.

In its arguments, the petitioner relies on *Steel Flat Products from Korea* and *Small Diameter Pipe from the Czech Republic Preliminary Results* to persuade Commerce to regard NVR's "choice 2" sales as non-prime merchandise. However, we find Commerce's approach there to be

³⁶ See NVR September 30, 2019 BCDQR at B-10 and C-8.

³⁷ See *CTL Plate Italy Preliminary Results ARI*, unchanged in *CTL Plate Italy Final Results ARI*.

³⁸ See NVR September 30, 2019 BCDQR at B-10.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at C-8.

⁴² See NVR September 30, 2019 BCDQR at B-10 and C-8.

⁴³ *Id.*

incompatible with the record here. There, Commerce removed non-prime sales from the respondents' home market databases because they did not report non-prime sales in the United States, effectively resolving any matching issues. Assuming for the sake of argument that adequate information existed on the record for Commerce to determine that NVR's "choice 2" sales are, in fact, non-prime merchandise, doing so would not have resulted in the exclusion of non-prime sales from the calculations. Specifically, here, NVR reported "choice 2" sales in both its HM and US databases. Thus, in this scenario, eliminating such sales from the HM database while maintaining and reclassifying the reported "choice 2" sales in the US database as non-prime (*i.e.*, "choice 4") would result in the different treatment of "choice 2" sales across markets, thus distorting the comparison of HM and US sales. Therefore, we find the petitioner's reliance on the above cases to be unpersuasive.

In the previously completed segment of this proceeding, Commerce accepted NVR's reporting of these sales as prime merchandise.⁴⁴ During the previous two segments of this proceeding, no party challenged this methodology in comments at the time.⁴⁵ Given our consistent treatment of the "choice 2" products as prime merchandise in prior segments of this administrative proceeding and the absence of party comments on NVR's questionnaire responses requesting the agency to probe this issue in this administrative review, Commerce has not requested further information or clarification from NVR with respect to these sales. Furthermore, we note that, in its arguments, the petitioner did not adequately provide specific instances or point to specific source documentation on the record demonstrating why "choice 2" sales should be considered non-prime merchandise. Therefore, for these reasons, and because there is nothing on the record undermining NVR's reported classification of these sales, we continue to treat these sales in the same manner as we have in the preliminary results.

Similarly, with regard to NVR's reporting of overrun sales, the record is also limited. The record does not substantiate the petitioner's claims or refute NVR's statements as to whether or not these sales were made outside the ordinary course of trade. NVR reported that overruns are: (1) a result of extra plates made in excess of a customer's purchase order; (2) offered to the original customer for purchase or sold to another customer; and (3) generally first choice material,⁴⁶ and no source documentation exists on the record to contradict these statements. Moreover, the petitioner failed to reference specific record documentation to invalidate NVR's statements. When a party makes an assertion before Commerce, it has a burden of substantiating the assertion by referencing specific record evidence that supports its position, which the petitioner has failed to do here.

In the previously completed segment of this proceeding, Commerce accepted NVR's reporting of overruns as part of its calculations.⁴⁷ Therefore, because: (1) there is nothing on the record undermining NVR's reported description of these sales; and (2) we did not request further

⁴⁴ See *CTL Plate Italy Preliminary Results ARI*, unchanged in *CTL Plate Italy Final Results ARI*.

⁴⁵ See *Certain Carbon and Alloy Steel Cut-to-Length Plate From Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 16345 (April 4, 2017) (*CTL Plate Italy LTFV Final Determination*), and accompanying Issues and Decision Memorandum (IDM) at 1 and Comment 4 (we note that while NVR failed verification with respect to certain issues, the verification failure was unrelated to its reporting of prime and non-prime merchandise); and *CTL Plate Italy Final Results 2016-2018 IDM* at 1.

⁴⁶ See NVR September 20, 2019 BCDQR at B-9 and C-7 – C-8.

⁴⁷ See *CTL Plate Italy Preliminary Results ARI*, unchanged in *CTL Plate Italy Final Results ARI*.

clarification from NVR; we continue to make no changes to these sales and treat them in the same manner as we have in the preliminary results.

In light of these issues, which petitioners raised for the first time at the late stages of this administrative review, Commerce appreciates the need for a more comprehensive record going forward. Thus, for ongoing and future segments of this proceeding, we intend to explore the nature of both NVR's prime/non-prime and overrun sales further.

Comment 2: NVR's Cost Differences Unrelated to Defined Physical Characteristics

In the *Preliminary Results*, Commerce relied on surrogate costs to establish the costs for products identified by product matching control numbers (CONNUMs) sold but not produced during the POR. Specifically, for these items, Commerce relied on costs identified on a product-characteristic level.⁴⁸

Petitioner's Case Brief

- Commerce should revise NVR's reported direct material costs (DIRMAT) to base them only on the product characteristics that affect the steel input's price (*i.e.*, quality, carbon, chromium, nickel, tungsten, cobalt, molybdenum, vanadium, and strength).⁴⁹
- The other remaining product characteristics (*i.e.*, thickness, heat treatment, width, form, paint, patterns in relief, and descaling) have no bearing on the price of the steel input and instead relate to further processing.⁵⁰
- A comparison of NVR's DIRMAT costs reported for products with identical product characteristics that affect the steel input's price reveals varying cost differences, indicating that the cost differences do not relate to their product characteristics.⁵¹
- Commerce has previously addressed this issue in its past practice.⁵² In *HWR from Korea 2016-2017 Final*, Commerce "adjusted the reported CONNUMs that are identical in all of Commerce's physical characteristics except for painting ... to reflect the same HRC {hot rolled coil} cost."⁵³ Similarly, in *Welded Pipe from Turkey 2015-2016 Prelim*, Commerce

⁴⁸ See Memorandum, "Calculations for NLMK Verona SpA (NVR) for the Preliminary Results," dated July 16, 2020 (NVR Prelim Calc Memo), at Attachments I and II.

⁴⁹ See Petitioner's Case Brief at 3.

⁵⁰ *Id.* at 4.

⁵¹ *Id.* at 3-4.

⁵² *Id.* at 4 (citing *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2015-2016*, 82 FR 26053 (June 6, 2017) (*Welded Pipe from Turkey 2015-2016 Prelim*), and accompanying PDM at 13, unchanged in *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 82 FR 49179 (October 24, 2017); *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 24471 (May 28, 2019) (*HWR from Korea 2016-2017 Final*), and accompanying IDM at Comment 6; and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 37284 (July 1, 2014), and accompanying IDM at Comment 1).

⁵³ *Id.* at 4 (citing *HWR from Korea 2016-2017 Final* IDM at Comment 6).

“reallocated material costs among products with common grade characteristics to mitigate differences in hot-rolled coil costs unrelated to physical characteristics of the products.”⁵⁴

- The Courts have upheld this practice as well. In *Dong-A Steel Co.*, the CIT found that “{i}t was appropriate for Commerce to make the adjustment in order to have costs that differ only because of physical characteristics.”⁵⁵ Similarly, in *Thai Plastic Bags*, the Court of Appeals for the Federal Circuit (CAFC) found that, “{w}hen other factors influence cost allocation, it is customary for Commerce to “adjust a company’s reported allocation methodology to reflect costs based solely on physical characteristics.”⁵⁶
- Moreover, NVR’s response to Commerce’s supplemental questionnaire regarding its reported direct material costs indicates that cost differences were attributable to product characteristics.⁵⁷ In fact, Commerce’s actions in *OCTG from Korea 2014-2015 Final* and *SS Bar from the U.K.* further demonstrate that Commerce should recalculate NVR’s reported direct material costs.⁵⁸

NVR’s Rebuttal Brief

- In the *Preliminary Results*, Commerce found that NVR reasonably reported its costs of production and, thus, applied no adjustments.⁵⁹ For these final results, Commerce should continue to arrive at this conclusion.
- Specifically, NVR reported costs accurately in accordance with generally accepted accounting principles, and each cost component reasonably reflects the costs associated with the production and sale of subject merchandise.⁶⁰ Under these circumstances, the Act directs Commerce to rely on a respondent’s reported costs.⁶¹
- The statute allows Commerce to disregard reported costs only in exceptional circumstances and rely on a different, more accurate methodology that better represents the company’s costs. Further, the SAA provides that if Commerce determines that a respondent’s reported costs are “shifted away from the production of the subject merchandise, or the foreign like

⁵⁴ *Id.* at 4 (citing *Welded Pipe from Turkey 2015-2016 Prelim PDM* at 13, where “Borusan’s reported material cost varies significantly among CONNUMs with the same grade and similar other characteristics. The record shows that these differences are due to reasons not related to product characteristics, such as timing of production. Therefore, we reallocated material costs among products with common grade characteristics to mitigate differences in hot-rolled coil costs unrelated to physical characteristics of the products.”).

⁵⁵ *Id.* at 5 (citing *Dong-A Steel Co. v. United States*, 337 F. Supp. 3d 1356, 1371 (CIT 2018) (*Dong-A Steel Co.*)).

⁵⁶ *Id.* at 5 (citing *Thai Plastic Bags Indus. Co. v. United States*, 746 F.3d 1358, 1368 (CAFC 2014) (*Thai Plastic Bags*)). We note that, here, the cost differences were also partly the result of the merchandise being produced at different factories with different corresponding efficiencies. See *Thai Plastic Bags* at 1366.

⁵⁷ *Id.* at 5-6 (citing NVR’s January 23, 2020 Supplemental Section D Questionnaire Response at D-1-12).

⁵⁸ *Id.* at 6 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2014-2015, 82 FR 18105 (April 17, 2017), and accompanying IDM at Comment 23; and *Stainless Steel Bar from the United Kingdom: Final Results of Antidumping Duty Administrative Review*, 72 FR 43598 (August 6, 2007) (*SS Bar from the U.K.*), and accompanying IDM at Comment 1)). According to the petitioner, in both cases, Commerce found that the normal books and records did not reasonably reflect the actual production costs because of differences in the steel input costs that were unrelated to the product’s physical characteristics.

⁵⁹ See NVR’s Rebuttal Brief at 10 (citing *Preliminary Results PDM* at 18; and NVR Prelim Calc Memo at 3 (Point 10)).

⁶⁰ See NVR’s Rebuttal Brief at 12 (citing NVR September 30, 2019 BCDQR at D-10).

⁶¹ See NVR’s Rebuttal Brief at 9.

product,” Commerce may “adjust costs appropriately to ensure that {the costs} are not artificially reduced.”⁶² Here, none of these conditions are present.⁶³

- The petitioner’s reliance on *Thai Plastic Bags* and *Dong-A Steel Co.* is misleading because, in both instances, Commerce had already determined that certain of the respondent’s reported costs were distortive, represented a departure from normal accounting principles, and did not reasonably reflect the production costs.⁶⁴ The factual record here does not equate to a similar Commerce finding and, thus, the Act instructs use of reasonably reported costs.⁶⁵
- Commerce, in the first administrative review, previously considered and rejected the petitioner’s same argument that Commerce should collapse NVR’s reported direct material costs.⁶⁶ In its decision, Commerce analyzed the cost differences and concluded that the overall cost differences between similar CONNUMs are minor and relate to low production volumes. Nonetheless, there have been no material changes to NVR’s cost reporting in this review that would warrant a different conclusion.
- Here, the variance in NVR’s costs is due to actual differences in the production process and volumes, which result from the use of different raw materials; these differences were correctly captured in NVR’s reported costs.⁶⁷
- NVR produces CTL plate that can not only start with different material inputs but can also start its production from different production stages.⁶⁸ For these reasons, the resulting material costs vary depending on the material inputs and those that are integrated at different stages of production, respectively. These production particulars can lead to a difference in certain related processing costs because some are not incurred at other stages of the production process.⁶⁹ As a result, for certain similar CONNUMs, CTL plate produced from certain material inputs will have less material costs and more processing costs compared to others.⁷⁰ NVR illustrated this cost allocation methodology in detail, accompanied by complete cost buildups for similar CONNUMs.⁷¹

Commerce’s Position:

We disagree with the petitioner that NVR’s reported DIRMAT costs should be revised through averaging across CONNUMs based on the product characteristics that affect the steel input’s production cost. The petitioner alleges that a comparison of NVR’s DIRMAT costs reported for products with identical product characteristics that affect the product’s steel making cost reveals

⁶² *Id.* at 9 (citing Statement of Administrative Action accompanying the Uruguay Round Agreements Act, No. 103–316, (1994) (SAA) at 834–3, reprinted in 1994 U.S.C.A.N. 4040, 4172).

⁶³ *Id.* at 9 (citing section 773(f)(1)(A) of the Act, which defines the exceptional circumstances when (i) a company’s records are not kept in accordance with GAAP, and (ii) the reported costs do not reasonably reflect the associated costs of production and sale of subject merchandise).

⁶⁴ *Id.* at 9–10 (citing *Thai Plastic Bags*, 746 F.3d. at 1366; and *Dong-A Steel Co.*, 337 F. Supp. 3d at 1369–1371 (CIT 2018)).

⁶⁵ *Id.* at 10 (citing section 773(f)(1)(A) of the Act; and *Welded Pipe from Turkey 2015–2016 Prelim PDM* at 13).

⁶⁶ *Id.* at 11 (citing *CTL Plate Italy Final Results ARI* IDM at Comment 3).

⁶⁷ *Id.* at 11 (citing NVR Prelim Calc Memo at 3).

⁶⁸ *Id.* at 11–12 (citing NVR September 30, 2019 BCDQR at D-6 and Exhibit D-4).

⁶⁹ *Id.* at 12 (citing NVR September 30, 2019 BCDQR at D-16 – D-17 and Exhibit D-10).

⁷⁰ *Id.* at 12 (citing NVR September 30, 2019 BCDQR at D-16 – D-17 and Exhibit D-10).

⁷¹ *Id.* at 12 (citing NVR September 30, 2019 BCDQR at Exhibit SD-14A, and Exhibit SD-14B).

varying cost differences, indicating that the cost differences do not relate to their product characteristics.⁷²

Section 773(f)(1)(A) of the Act states that “costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise.” In cases where the costs reported according to a company’s normal books do not reasonably reflect the costs associated with the production and sale of merchandise, Commerce may revise them or use different costs. Commerce relies on such costs for purposes of the sales-below-cost test and for constructed value when NV prices are not available. Additionally, Commerce relies on the reported CONNUM costs to calculate the difference-in-merchandise (DIFMER) adjustment when comparing prices of similar merchandise.

NVR reported a cost field related to direct material inputs that reflects the base metal cost.⁷³ For purposes of our analysis, we calculated the weighted-average total direct material cost of all CONNUMs with the same characteristics (*i.e.*, quality, carbon, chromium, nickel, tungsten, cobalt, molybdenum, vanadium, and strength), then compared that figure to the reported total direct material cost for each individual CONNUM.⁷⁴ While we observed some differences in direct material costs, overall the differences between similar CONNUMs were relatively minor and related to the production process and volumes.⁷⁵ NVR has explained that the variance in its costs is due to actual differences in the production process and volumes, which result from the use of different raw materials; these differences were correctly captured in NVR’s reported costs.⁷⁶ On this record, we see no basis to conclude that NVR’s costs are inconsistent with GAAP or do not reasonably reflect the costs associated with the production and sale of the merchandise.

In cases where the cost differences among similar products are significant and prevalent, Commerce has adjusted a respondent’s reported costs to mitigate distortions when cost fluctuations are attributable to factors beyond the physical characteristics.⁷⁷ Where Commerce considers adjusting a respondent’s reported costs for unusual cost differences between products with similar physical characteristics, Commerce considers “the magnitude of the cost differences and the number of CONNUMs affected.”⁷⁸ Here, we performed an analysis of the per-unit material cost differences to determine the extent of the cost fluctuations alleged by the petitioners. However, because the differences are, for the most part, neither significant nor frequent, we determine that NVR’s reported direct material costs, which are derived from the

⁷² *Id.* at 3-4.

⁷³ See NVR September 30, 2019 BCDQR at Exhibit D-1 (NVR’s cost data file, “NVRAR2COP01”).

⁷⁴ See Memorandum, “Cost of Production and Constructed Value Calculations for the Final Determination – NLMK,” dated March 18, 2021 (NVR Final Cost Calc Memo), at Attachment I.

⁷⁵ *Id.*

⁷⁶ See NVR’s Case Brief at 11 (citing NVR Prelim Calc Memo at 3).

⁷⁷ See, *e.g.*, *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 10784 (March 22, 2019), and accompanying IDM at 43- 44.

⁷⁸ See *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015), and accompanying IDM at Comment 5.

company's normal books and records that are prepared in accordance with its home country GAAP, "reasonably reflect" the cost of producing the merchandise.⁷⁹

Comment 3: NVR's Costs for Merchandise Produced Prior to the POR

In the instant review, NVR reported sales of merchandise produced prior to POR. Commerce preliminarily calculated NVR's total cost of manufacture (COM) for these products by relying on NVR's reported product characteristics instead of NVR's reported CONNUMs in its cost of production (COP) database.⁸⁰

NVR's Case Brief

- For these final results, Commerce should rely on the CONNUMs reported in NVR's COP database to calculate the total COM for products sold but not produced during the POR. This minor adjustment would ensure that Commerce's administration of the antidumping laws calculated dumping margins as accurately as possible.⁸¹
- Commerce's programming language used in the *Preliminary Results* relied on the product characteristics reported in NVR's COP database to assign the cost for the closest matching CONNUM. However, in order to report the estimated costs for these products, NVR reported product characteristics of a surrogate CONNUM based on the closest estimated costs.⁸²
- Commerce should rely on these reported costs because, otherwise, Commerce's programming language is finding a cost replacement for the surrogate CONNUM, not for the reported CONNUM for which it is trying to find the best match.⁸³ As a result, Commerce's current methodology fails to yield the most accurate costs for these products.
- NVR provides a table comparing the total COM for products sold but not produced during the POR with the costs of the surrogate CONNUM. This table demonstrates that the total COM for the reported CONNUM and the surrogate CONNUM is actually the same.⁸⁴
- To remedy this, Commerce should rely on the CONNUM reported in NVR's COP database to find the closest product match for products sold but not produced during the POR. Commerce can accomplish this by revising its programming language to bypass the product characteristics and rely on the reported CONNUM to reflect NVR's reported costs.⁸⁵

The petitioner did not comment on this issue.

⁷⁹ See NVR Final Cost Calc Memo at Attachment I

⁸⁰ See NVR Prelim Calc Memo at Attachment I.

⁸¹ See NVR's Case Brief at 3 (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (CAFC 1990) (*Rhone Poulenc*)).

⁸² *Id.* at 2 and Attachment I (citing NVR September 30, 2019 BCDQR at Exhibit D-1).

⁸³ *Id.* at 3.

⁸⁴ *Id.* at 3 and Attachment 1 at Tab 2.

⁸⁵ *Id.* at 3.

Commerce's Position:

We disagree with NVR. NVR alleges that Commerce should rely on the CONNUMs reported in NVR's COP database to calculate the total COM for products sold but not produced during the POR.⁸⁶ NVR states that, in order to report the estimated costs for these products, it reported product characteristics of a surrogate CONNUM based on the closest estimated costs.⁸⁷

In the *Preliminary Results*, Commerce relied upon the product characteristics reported in NVR's COP database to assign the cost for the closest matching CONNUM.⁸⁸ NVR alleges that Commerce's current methodology fails to yield the most accurate costs for these products.⁸⁹ It is Commerce's practice to rely on the reported costs of a similar product in instances where a respondent did not manufacture a product during the reporting period.⁹⁰ Further, in the event Commerce resorts to using surrogate costs, we analyze whether the cost of the surrogate product reasonably reflects the cost of the product it is representing.⁹¹ Therefore, for these final results, we will continue to rely upon the product characteristics reported in NVR's COP database to assign the cost for the closest matching CONNUM.⁹²

Comment 4: Whether Section 232 Duties Should be Deducted from U.S. Price

For the *Preliminary Results*, Commerce determined that Section 232 duties should be treated as "United States import duties" for purposes of section 772(c)(2)(A) of the Act, *i.e.*, as "U.S. Customs duties," which are deducted from U.S. price.⁹³

NVR's Case Brief

- For these final results, Commerce should revise its treatment of Section 232 duties and classify them as "special dumping duties," not as "United States import duties."⁹⁴ Because special dumping duties should be distinguished from ordinary customs duties, Section 232

⁸⁶ See NVR's Case Brief at 3 (citing *Rhone Poulenc*, 899 F.2d 1185, 1191).

⁸⁷ *Id.* at 2 and Attachment I (citing NVR September 30, 2019 BCDQR at Exhibit D-1).

⁸⁸ See NVR Prelim Calc Memo at Adjustment 1 (excluding "those products which NVR produced but did not sell during the POR and for which it was unable to report {...} (CONNUMs)").

⁸⁹ See NVR's Case Brief at 2.

⁹⁰ See, e.g., *Certain Stilbenic Optical Brightening Agents from Taiwan: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61368 (October 13, 2015) (*OBAs from Taiwan*), and accompanying IDM at Comment 2; and *Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of the Seventeenth Antidumping Duty Administrative Review*, 76 FR 55004, 55008 (September 6, 2011), unchanged in *Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Final Results of the 2009-2010 Administrative Review and Revocation, in Part*, 77 FR 14501 (March 12, 2012).

⁹¹ See, e.g., *OBAs from Taiwan* IDM at Comment 2.

⁹² See NVR Prelim Calc Memo at Adjustment 1 (excluding "those products which NVR produced but did not sell during the POR and for which it was unable to report {...} (CONNUMs)").

⁹³ See *Preliminary Results* PDM at 12-13.

⁹⁴ See NVR's Case Brief at 4.

duties should not be deducted from U.S. price because they are outside the contemplated duties for which Commerce may reduce export price (EP).⁹⁵

- Both Commerce and the Courts have consistently determined that “normal customs duties” are not subject to the requirement in the statute to deduct United States import duties from U.S. price.⁹⁶ For example, in its treatment of Section 201 duties, Commerce determined that these duties are more akin to “special dumping duties,” and thus not considered as an adjustment.⁹⁷
- Similar to Commerce’s finding on Section 201 duties, Section 232 duties are not akin to “United States import duties” because they are remedial and temporary in nature. Further, these duties are considered “special duties” that provide relief from the potentially harmful effects of imports, protecting national security.⁹⁸ Indeed, the President’s authorization of Section 232 was enacted in order to remedy alleged harm to the domestic steel industry from imports.⁹⁹ Moreover, given that the statutory authority for these duties took form after decades after the Antidumping Statute, Congress could not have contemplated Section 232 duties as normal customs duties in the Antidumping Statute.¹⁰⁰
- Commerce’s claims that Section 232 duties are “ordinary” because they address national security interests “separate and apart” from any function performed by duties imposed to remedy injury to a domestic industry are misguided. Rather, similar to Section 201 duties, Commerce’s use of Section 232 duties is imposed pursuant to a statute intended to remedy a “harm” to the domestic industry, which differs from ordinary import duties.¹⁰¹
- Commerce’s statements that Section 232 duties are: (1) not focused on remedying injury to a domestic industry; and (2) akin to Section 201 duties run contrary to the purpose of the Section 232 duties. Section 232 duties allow the U.S. domestic industry to increase its production capacity in the name of remedying unfair trade.¹⁰² Again, these duties, like Section 201 duties, remedy alleged harm to the domestic steel industry from imports and provide relief from these adverse effects.¹⁰³

⁹⁵ *Id.* at 5 (citing *Wheatland Tube Co. v. United States*, 495 F.3d 1355, 1361 (CAFC 2007) (*Wheatland Tube*); and *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 19153, 19159 (April 12, 2004) (*SWR from Korea*)).

⁹⁶ *Id.* at 5 (citing *SWR from Korea*, 69 FR at 19159, n.22-23; *Certain Cold-Rolled Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review*, 63 FR 781, 786 (January 7, 1998); *Hoogovens Staal v. United States*, 4 F. Supp. 2d 1213, 1220 (CIT 1998) (*Hoogovens Staal*); and *U.S. Steel Group v. United States*, 15 F. Supp. 2d 892, 898-900 (CIT 1998)).

⁹⁷ *Id.* at 5 (citing *SWR from Korea*, 69 FR at 19159; and *Wheatland Tube*, 495 F.3d at 1362).

⁹⁸ *Id.* at 8 (citing *Presidential Proclamation No. 9705 of March 8, 2018, Adjusting Imports of Steel Into the United States*, 83 FR 11625, 11626 (Mar. 15, 2018) (*Proclamation 9705*)).

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 6.

¹⁰¹ *Id.* at 10-11 (citing 19 USC 1862(c)(1)(A)(ii); and 19 USC 2251(a)). NVR further states that section 232 authorizes the President to “take action to adjust imports of an article and its derivatives” after determining that action must be taken. *Id.* (citing 19 USC 1862(c)(1)(B)).

¹⁰² *Id.* at 10 (citing *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 34345 (July 18, 2019), and accompanying PDM at 11-13, unchanged in *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 3616 (January 22, 2020) (*CWP from Turkey 2017-2018 Final*), and accompanying IDM at Comment 3).

¹⁰³ *Id.* at 9 (citing *Proclamation 9705*, 83 FR at 11626).

- In *Wheatland Tube*, the CAFC stated that, if Section 201 duties were deducted from U.S. price, Commerce would improperly collect duties twice.¹⁰⁴ Similarly, reducing export price for Section 232 duties also constitutes a double penalty because the “overarching injury” remedied by Section 232 duties is “similar to the overarching injury remedied by antidumping duties{,}” and assessing duties on both “would be to remedy substantially overlapping injuries twice.”¹⁰⁵ Such an action would be against congressional intent and law.¹⁰⁶
- There is no reason for Commerce to treat Section 232 duties separately from Section 201 duties because they are both distinguishable from ordinary customs duties.¹⁰⁷ It is unreasonable to describe Section 232 duties as ordinary duties when they are duties imposed infrequently and in extraordinary circumstances. Unlike normal customs duties, Section 232 duties are only imposed after a finding of a threat of impairment to the national security.¹⁰⁸
- Moreover, legislative history shows that Commerce “determined that Congress did not intend all duties to be considered ‘United States import duties.’”¹⁰⁹ As such, Section 232 duties appear appropriately in Chapter 99 of the HTSUS, a section reserved for “special or temporary duties.”¹¹⁰ These duties, like Section 201 safeguard duties are in addition to any other duties that apply to imports.
- In *CWP from Turkey 2017-2018 Final*, Commerce found that “section 232 duties are not akin to antidumping or section 201 duties. In particular, {Commerce found} that section 232 duties are not focused on remedying injury to a domestic injury.”¹¹¹ Therefore, the function of Section 232 duties is not separate and distinct from the function of antidumping duties and, when taken to a logical conclusion, any reduction of the CEP for Section 232 duties would result in an overlap. This result is contrary to Section 232’s mission to stop unfair trade from impairing national security.¹¹²
- Section 232 duties may reduce the injury to the U.S. domestic steel industry (*i.e.*, allow the U.S. domestic steel industry to increase production capacity) and, like safeguard, antidumping, and countervailing duties, are imposed pursuant to a statute intended to remedy a harm to the domestic industry.¹¹³ Further, deducting section 232 duties from U.S. price “may create an artificial dumping margin {and} Commerce would be punitively collecting

¹⁰⁴ *Id.* at 9 (citing *Wheatland Tube*, 495 F.3d at 1362-63).

¹⁰⁵ *Id.* at 11 (citing *Wheatland Tube*, 495 F.3d at 1365). According to NVR, because Section 232 duties may reduce the injury to the U.S. domestic steel industry (*e.g.*, by allowing the U.S. domestic steel industry to increase production capacity), deducting section 232 duties from U.S. price “may create an artificial dumping margin {and} Commerce would be punitively collecting additional antidumping duties.” *Id.* If pursued by Commerce, this action would be inconsistent with Commerce’s longstanding practice to not deduct antidumping or countervailing duties, or any other “special duty” distinguishable from an ordinary custom duty (*i.e.*, “United States import duty”), from EP.

¹⁰⁶ *Id.* at 9 (citing *Wheatland Tube*, 495 F.3d at 1362-63).

¹⁰⁷ *Id.* at 10 (citing *Proclamation 9705*, 83 FR at 11627).

¹⁰⁸ *Id.* at 9.

¹⁰⁹ *Id.* at 5 (citing *Wheatland Tube*, 495 F.3d at 1361; and *SWR from Korea*, 69 FR at 19159).

¹¹⁰ *Id.* at 10 (citing *SWR from Korea*, 69 FR at 19160; U.S. Customs and Border Protection, Section 232 Tariffs on Aluminum and Steel, available at <https://www.cbp.gov/trade/remedies/232-tariffs-aluminum-and-steel>; and *Conversion of the Tariff Schedules of the United States Into the Nomenclature Structure of the Harmonized System*, Inv. No. 332-131, USITC Pub. 1400, Annex I (June 1983) at 842 (Chapter 99), available at <https://www.usitc.gov/publications/hts/pub1400.pdf>).

¹¹¹ *Id.* at 10 (citing *CWP from Turkey 2017-2018 Final* IDM at Comment 3).

¹¹² *Id.* at 10.

¹¹³ *Id.* at 11 (citing 19 U.S.C. § 1862(c)(1)(A)(ii); and 19 U.S.C. § 2251(a)).

additional antidumping duties,”¹¹⁴ a measure not unlike tariffs that “remedy injurious effect on the U.S. industry of {a} significant surge in imports.”¹¹⁵

- Because the “overarching injury” remedied by section 232 duties is “similar to the overarching injury remedied by antidumping duties {,}” assessing duties on both “would be to remedy substantially overlapping injuries twice.”¹¹⁶
- Commerce’s practice is to not deduct antidumping or countervailing duties, or any other “special duty” distinguishable from an ordinary custom duty (*i.e.*, United States import duty) from EP.¹¹⁷ Therefore, because Section 232 duties are such special duties and are certainly distinguishable from ordinary customs duties, it is unreasonable to regard them as ordinary duties, especially when they are imposed infrequently and in extraordinary circumstances.

Petitioner’s Rebuttal Brief

- Commerce has consistently rejected the crux of NVR’s argument that Section 232 duties should not be considered as import duties.¹¹⁸ To the contrary, Commerce correctly regarded these duties as import duties to be deducted from U.S. price, in accordance with the President’s Section 232 Proclamation.¹¹⁹
- Following the legal framework established by the CAFC’s ruling in *Wheatland Tube*, Commerce correctly determined that these duties were intended to be ordinary import duties rather than antidumping duties.¹²⁰
- NVR’s claim that Section 232 duties are remedial is unfounded. Rather, these duties are designed to remove the threat to national security posed by a weakened domestic industry that may no longer be able to support critical infrastructure and national defense. Under Section 232, the Secretary is not directed to determine whether imports are injuring a domestic industry, as is the case under Section 201; rather the Secretary is directed to determine whether imports are entering “in such quantities or under such circumstances as to threaten to impair the national security.”¹²¹ The President must determine whether he concurs with the Secretary’s findings regarding the threat to national security, not whether

¹¹⁴ *Id.* at 11 (citing *Wheatland Tube*, 495 F.3d at 1365).

¹¹⁵ *Id.* at 10-11 (citing *CWP Turkey 17-18 IDM* at Comment 3; and *Preliminary Results PDM* at 13).

¹¹⁶ *Id.* at 11 (citing *Wheatland Tube*, 495 F.3d at 1365).

¹¹⁷ *Id.* at 11.

¹¹⁸ See Petitioner’s Rebuttal Brief at 1-3 (citing *Preliminary Results PDM* at 12-13; *Light-Walled Rectangular Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 21829 (April 20, 2020) (*LWR Pipe From Mexico 2017-2018 Final*), and accompanying IDM at Comment 2; *Certain Cold-Rolled Steel Flat Products From the United Kingdom: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 34868 (July 19, 2019), and accompanying PDM at 10-11, unchanged in *Certain Cold-Rolled Steel Flat Products From the United Kingdom: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 59771 (November 6, 2019); *Certain Corrosion-Resistant Steel Products from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 48120 (September 12, 2019), and accompanying PDM at 10-11, unchanged in *Certain Corrosion-Resistant Steel Products From Taiwan: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 16613 (March 24, 2020) (*CORE from Taiwan 2017-2018 Final*); and *CWP from Turkey 2017-2018 Final IDM* at Comment 3).

¹¹⁹ *Id.* (citing *Proclamation 9705*; and *Preliminary Results PDM* at 12-13).

¹²⁰ *Id.* at 3 (citing *Wheatland Tube*, 495 F.3d at 1362).

¹²¹ *Id.* at 5 (citing 19 USC 1862(b)(3)(A)).

such imports have surged into the United States and injured a domestic industry.¹²² Thus, NVR's attempts to equate the two are misplaced.

- NVR's claim that Section 232 duties are special duties because they are "temporary" does not fully account for the differences between special duties and official import duties. In fact, the duration of Section 232 duties is of an indefinite nature because the effective period of time is at the President's discretion.¹²³ Further, Section 232 imposes no limits on the rates of duties that may be applied. On the other hand, Section 201 duties have fixed limitations and are under additional limits with regards to the rates that may be applied, including the requirement that such duties be phased down at regular intervals if they last longer than one year.¹²⁴ For these reasons, it is clear that Section 232 duties are like regular customs or import duties and distinguishable from Section 201 duties and other "special duties" that are of a specific duration.¹²⁵
- *Proclamation 9705* contains language that: (1) refers to these duties as tariffs, duties, and duty rates (*i.e.*, terms consistent with import duties); (2) is included in the HTSUS under the "ordinary customs duty" treatment section; and (3) makes explicitly clear that these duties are import duties and that antidumping duties shall continue to be imposed.¹²⁶ One such example states the following:

The Annex to the Proclamation modifies the HTSUS to implement the Section 232 duties. Paragraph 16(a) of the Annex states that heading 9903.80.01, which sets out the Section 232 duties, "sets forth the ordinary customs duty treatment applicable to all entries of iron or steel"¹²⁷
- The CAFC, in its analysis of special duties, did not consider the location of duties in the HTSUS as a factor.¹²⁸ While Commerce, in its analysis of Section 201 duties, did recognize similar circumstances in *SWR from Korea*, it was only one of many factors considered.¹²⁹ While Section 201 duties were also implemented under Chapter 99 of the HTSUS, it is notable to point out that the *Proclamation 7529* did not state that such duties were ordinary customs duties.¹³⁰ In fact, *Proclamation 7529* explicitly limited the application of any such duties to a period of three years plus one day.¹³¹ There is no such limitation in *Proclamation 9705*'s imposition of Section 232 duties.¹³²
- Further, the infrequent nature of the use of Section 232 duties should have no bearing on whether or not they are considered "special;" rather, duties are considered ordinary or special based on their remedial nature and definite expiration.¹³³

¹²² *Id.* at 5 (citing 19 USC 1862(c)(1)(A)(i)).

¹²³ *Id.* at 6 (citing 19 USC 1862(c)(1)(A)(ii)).

¹²⁴ *Id.* at 6 (citing 19 USC 2253(e)(3) and (5)).

¹²⁵ *Id.* at 6.

¹²⁶ *Id.* at 6-7 (citing *Proclamation 9705*, 83 FR at 11626-11627, and 11629).

¹²⁷ *Id.* at 7 (citing *Proclamation 9705*, 83 FR at 11629).

¹²⁸ *Id.* at 8.

¹²⁹ *Id.* at 8 (citing *SWR from Korea*, 69 FR at 19157-19161 (Appendix I)).

¹³⁰ *Id.* at 9 (citing *Proclamation 7529 of March 5, 2002, To Facilitate Positive Adjustment to Competition from Imports of Certain Steel Products*, 67 FR 10553 (March 7, 2002) (*Proclamation 7529*)).

¹³¹ *Id.* at 9 (citing *Proclamation 7529*).

¹³² *Id.* at 9 (generally citing *Proclamation 9705*).

¹³³ *Id.* at 9.

- According to the CIT, antidumping duties “serve to provide an incentive to ensure fair export prices, rather than to burden importers with additional costs,”¹³⁴ while, similarly, “an antidumping order is designed to raise the price of dumped goods to a fair level in the import market. It is not a normal import duty or an extra ‘cost’ or ‘expense’ to the importer—it is an element of a fair and reasonable price.”¹³⁵ This is in contrast to Section 232 duties, because, like other U.S. import duties, Section 232 duties are an additional expense on imports and should be treated as such in Commerce’s margin calculation.
- NVR’s contention that any reduction of the EP for Section 232 duties would result in an overlap and lead to double counting is unsupported by the evidence. Commerce is required to adjust the 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.”¹³⁶ In other words, Section 232 duties are ordinary customs duties that should be deducted from EP and CEP, in the same manner as any other sales adjustment under section 772(c) of the Act.¹³⁷ Commerce, in prior proceedings has maintained that no double counting is taking place.¹³⁸
- Reason stands that, during the POR, NVR chose to pay the applicable Section 232 duties itself, rather than charge the customer separately or seek reimbursement.¹³⁹ As such, deducting the duties would not constitute double counting.

Commerce’s Position:

We disagree with NVR’s argument that Section 232 duties are special duties similar to Section 201 safeguard or antidumping duties. We continue to find in these final results that Section 232 duties are analogous to U.S. import duties, and, thus, such duties are properly deducted from CEP pursuant to section 772(c)(2)(A) of the Act. Consistent with prior findings, Section 232 duties “are not akin to antidumping or 201 duties,”¹⁴⁰ because the purpose of Section 232 duties is to protect the national security rather than to provide remedy to domestic industry from injury from unfair competition. Section 232 duties should be treated as “United States import duties” for purposes of section 772(c)(2)(A) of the Act and thereby “U.S. Customs duties,” which are deducted from U.S. price.¹⁴¹ Further, Section 232 duties covering the steel products at issue in this case were implemented to address national security concerns.¹⁴² According to *Proclamation 9705*, the particular national security risk 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

¹³⁴ *Id.* at 10 (citing *Ad Hoc Shrimp Trade Action Comm. v. United States*, 925 F. Supp. 2d 1367, 1373 (CIT 2013)).

¹³⁵ *Id.* at 10 (citing *Hoogovens Staal*, 4 F. Supp. 2d at 1220).

¹³⁶ *Id.* at 10 (citing section 772(c)(2)(A) of the Act).

¹³⁷ *Id.* at 10.

¹³⁸ *Id.* at 10 (citing *LWR Pipe from Mexico 2017-2018 Final IDM* at Comment 2).

¹³⁹ *Id.* at 11.

¹⁴⁰ See *Preliminary Results PDM* at 12-13 (citing *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 34345 (July 18, 2019), and accompanying PDM at 11-13, unchanged in *Circular Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 3616 (January 22, 2020) (*CWP Turkey 17-18*), and accompanying IDM at Comment 3); see also *CORE from Taiwan 2017-2018 Final IDM* at Comment 1; and *LWR Pipe From Mexico 2017-2018 Final IDM* at Comment 2.

¹⁴¹ *Id.* at 13.

¹⁴² See, e.g., *CWP from Turkey 2017-2018 Final IDM* at Comment 3.

security needs—a situation that is fundamentally inconsistent with the safety and security of the American people.”¹⁴³

In *SWR from Korea*, Commerce determined not to deduct Section 201 duties from U.S. prices in calculating dumping margins,¹⁴⁴ and this decision was sustained by the CAFC in *Wheatland Tube*. While NVR cites these decisions to support its arguments that 232 duties should not be deducted, the issues are different as the purpose and effect of Section 201 duties differ from the purpose and effect of Section 232 duties. *Wheatland Tube* assesses Commerce’s interpretation of “United States import duties” and “special dumping duties” in consideration of the function and treatment of Section 201 safeguard duties, not those of Section 232 duties.

Specifically, as explained in the *Preliminary Results*, 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.”¹⁴⁵ However, normal customs duties “have no determination provision and are permanent unless modified by Congress.”¹⁴⁶ 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.”¹⁴⁷

We acknowledge that *Wheatland Tube* dealt with Section 201 duties, but we nonetheless find the CAFC’s analysis instructive. With respect to the first two factors, NVR argues that Section 232 duties are not “normal customs duties.” NVR contends that Commerce previously acknowledged in *OCTG from Ukraine* the “extraordinary nature” of 232 duties.¹⁴⁸ In *OCTG from Ukraine*, we explained that Section 201 duties were more akin to antidumping duties than “ordinary customs duties” and that the CAFC found that conclusion reasonable.¹⁴⁹ However, we further explained in *OCTG from Ukraine* and *CWP from Turkey 2017-2018 Final* that Section 232 duties are not akin to antidumping or 201 duties and that the “Annex to *Proclamation 9740* refers to Section 232 duties as “ordinary” customs duties.”¹⁵⁰ Therefore, NVR’s argument that section 232 duties are not “normal customs duties” has already been addressed in our prior cases,

¹⁴³ See *Proclamation 9705*, 83 FR at 11627, 11627.

¹⁴⁴ See *SWR from Korea*, 69 FR at 19154-19156.

¹⁴⁵ See *Preliminary Results* PDM at 12 (citing *Wheatland Tube*, 495 F. 3d 1355 at 1362-63).

¹⁴⁶ See *Preliminary Results* PDM at 12 (citing *Wheatland Tube*, 495 F. 3d 1355 at 1362-63).

¹⁴⁷ *Id.* (citing *Wheatland Tube*, 495 F. 3d 1355 at 1365).

¹⁴⁸ See Memorandum, “Issues and Decision Memorandum for the Final Normal Value Calculations to be Effective from the Release of the Final Normal Values through June 30, 2019, under the Agreement Suspending the Antidumping Duty Investigation on Certain Oil Country Tubular Goods from Ukraine,” dated February 15, 2019 (*OCTG from Ukraine*), at Comment 1.

¹⁴⁹ See *OCTG from Ukraine* at 8.

¹⁵⁰ See *OCTG from Ukraine* at 10; and *CWP from Turkey 2017-2018 Final* IDM at Comment 3 (citing *Proclamation 9740 of April 30, 2018*, 83 FR at 20683 (May 7, 2018) (*Proclamation 9740*)).

based on the language in the Annex to Proclamation 9740, which expressly classified them as “ordinary” customs duties.

In contrast to NVR’s contention that Section 232 duties are remedial in nature, we find that Section 232 duties are not focused on remedying injury to a domestic injury. The objective of antidumping duties is to “remedy sales by a foreign exporter in the U.S. market at less than fair value,” and Section 201 duties aim to “remedy the injurious effect on the U.S. industry of significant surge in imports.”¹⁵¹ Moreover, “{c}ountervailing duties remedy unfair competitive advantage that foreign exporters have over domestic producers as a result of foreign countervailable subsidies.”¹⁵² As such, these types of duties “are all directed at the same overarching purposes—protecting the bottom line of domestic producers.”¹⁵³ By contrast, we find that Section 232 duties are not focused on remedying injury to a domestic industry. As noted in the *Preliminary Results*, the text of the President’s proclamations highlights the intent of establishing such duties clearly.¹⁵⁴ *Proclamation 9705*, for example, 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....”¹⁵⁵ In contrast to antidumping and section 201 duties, which are concerned with remedying an injury to the domestic industry, Commerce previously found that the text of Section 232 duties of the Trade Expansion Act of 1962 also clearly concerns itself with “the effects on the national security of imports of the article.”¹⁵⁶

NVR contends that, similar to Section 201 duties, Section 232 duties serve to remedy the alleged harm to the domestic steel industry and national security from imports.¹⁵⁷ This, however, is not our understanding of the law or purpose behind the Section 232 duties. We find that the President’s powers regarding Section 232 duties arise from a statute, and that the statute authorizes preventative and national security powers.¹⁵⁸ The statute, for example, allows the President to impose Section 232 duties if the President concurs with the Secretary that an article is being imported under circumstances “as to threaten to impair the national security.”¹⁵⁹ Unlike antidumping and countervailing duty measures, the Section 232 duties were implemented pursuant to a concern of safety and security for the entire United States, and not to protect a single enterprise or industry. In contrast to the antidumping duties, Section 232 does not require

¹⁵¹ See *Wheatland Tube*, 495 F. 3d at 1362; see also section 201 of the Trade Act of 1974; and section 731(1) of the Act.

¹⁵² See *Wheatland Tube*, 495 F. 3d at 1363.

¹⁵³ *Id.* at 1364.

¹⁵⁴ See *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*, 83 FR at 20683 (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).

¹⁵⁵ See *Proclamation 9705*, 83 FR 11627 (emphasis added).

¹⁵⁶ See section 232(b)(1)(A) of the Trade Expansion Act of 1962; see also section 232(a) of the Trade Expansion Act of 1962 (explaining that “{n}o action shall be taken... to decrease or eliminate duty or other import restrictions on any article if the President determines that such reduction or elimination would threaten to impair the national security.”).

¹⁵⁷ See NVR’s Case Brief at 9.

¹⁵⁸ See section 232 of the Trade Expansion Act of 1962.

¹⁵⁹ *Id.*

a finding that a domestic industry is being injured or threatened with injury due to the imported merchandise. If the national security is threatened, Section 232 allows for the imposition of duties, regardless of whether there is an injury to a domestic industry. The purpose of Section 232 duties is to protect the national security rather than to provide a temporary remedy for the injury to the domestic industry. We thus find that the national security purpose of Section 232 duties is vastly different than the purpose of antidumping duties or Section 201 safeguard measures.¹⁶⁰

Moreover, we note that the Presidential proclamations state that Section 232 duties are to be imposed in addition to other duties unless expressly provided for in the proclamations.¹⁶¹ The Annex to *Proclamation 9740* refers to 232 duties as “ordinary” customs duties, and it also states that “{a}ll anti-dumping and countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein.”¹⁶² Notably, there is no express exception in the HTSUS revision in the Annex. In other words, we find that Section 232 duties are treated as any other duties. No express reduction to antidumping duties by the amount of the Section 232 duties is contained in the Presidential Proclamation. Had the President intended that antidumping duties be reduced by the amount of Section 232 duties imposed, *Proclamation 9740* would have expressed that intent.

More recently, the CIT addressed this specific issue and upheld Commerce’s interpretation that 232 duties are “United States import duties” subject to deduction from the U.S. price for purposes of determining the margin of dumping.¹⁶³

Although NVR points out that Chapter 99 of the HTSUS is reserved for “special or temporary duties,”¹⁶⁴ we do not agree that Section 232 duties are analogous to Section 201 or antidumping duties, for the reasons discussed above. Nevertheless, although we made this point in *SWR from Korea* regarding Section 201 duties being included in Chapter 99 of HTSUS, this was not the sole basis upon which Commerce declined to adjust U.S. price for Section 201 duties.¹⁶⁵ For example, Commerce explained that “{t}o some extent, section 201 duties are interchangeable with special {antidumping} duties,” such that section “201 duties are more appropriately regarded as a type of special remedial duty, rather than ordinary customs duties.”¹⁶⁶ We do not

¹⁶⁰ See, e.g., *CORE from Taiwan 2017-2018 Final IDM* at Comment 1.

¹⁶¹ See *Proclamation 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 40403-31; and *Proclamation 9777*, 83 FR at 45025. The proclamations do not expressly provide that 232 duties receive differential treatment.

¹⁶² See *Proclamation 9740*, 83 FR at 20685-87.

¹⁶³ See *Borusan Mannesmann Boru Sanayi Ve Ticaret A.Ş. v. United States*, 2021 Ct. Intl. Trade LEXIS 18 (CIT 2021) (“The AD statute does not expressly differentiate among import duties. While Section 232 duties are “special” in some sense, in that they are temporary, they are still import duties. Given that the statutory term at issue is “import duties” and it appears broad enough to include all import duties except antidumping duties, the court likely would have had little pause in saying that Commerce did not err in treating Section 232 duties...the court sustains Commerce’s decision that the CEP and EP may be reduced by Section 232 duties paid”).

¹⁶⁴ See NVR’s Case Brief at 9-10.

¹⁶⁵ See *SWR from Korea*, 69 FR at 19160.

¹⁶⁶ *Id.*

consider that Chapter 99 of the HTSUS overrides the express language of the Presidential Proclamation that relates to Section 232 duties, the duties at issue here.

Lastly, NVR argues that deducting Section 232 duties from the U.S. price “would result in an overlap.”¹⁶⁷ However, we find that reducing U.S. CEP by the amount of reported Section 232 duties in the context of this administrative review is consistent with section 772(c)(2)(A) of the Act because the Act instructs Commerce to adjust CEP for “the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties.”¹⁶⁸ Further, in accord with *OCTG Ukraine*, we find that the Presidential proclamations for the Section 232 duties confirm the treatment of these duties as ordinary customs duties and we continue to reject the argument that treating Section 232 as U.S. import duties led to double-counting.¹⁶⁹ Accordingly, consistent with our practice, we find it appropriate to deduct NVR’s 232 expenses from our calculation of U.S. price.¹⁷⁰

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this administrative review in the *Federal Register*.

☒

Agree

☐

Disagree

3/18/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh

Acting Assistant Secretary

for Enforcement and Compliance

¹⁶⁷ See NVR’s Case Brief at 10.

¹⁶⁸ See section 772(c)(2)(A) of the Act.

¹⁶⁹ See *OCTG from Ukraine* IDM at 9.

¹⁷⁰ See, e.g., *Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 71053 (November 6, 2020), and accompanying IDM at Comment 5; *CORE from Taiwan 2017-2018 Final* at Comment 1; and *LWR Pipe From Mexico 2017-2018 Final* IDM at Comment 2.