



A-489-815
Administrative Review
05/01/2016 - 04/30/2017
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DATE: February 5, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping Duty and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of the 2016-2017
Antidumping Duty Administrative Review of Light-Walled
Rectangular Pipe and Tube from Turkey

I. SUMMARY

In response to requests from interested parties, the Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on light-walled rectangular pipe and tube (LWRPT) from Turkey, covering the period of review (POR) May 1, 2016, through April 30, 2017. The administrative review covers nine exporters of the subject merchandise, including one mandatory respondent, Agir Haddecilik A.S. (Agir). Commerce preliminarily determines that Agir did not make sales of subject merchandise at prices below normal value (NV).

II. BACKGROUND

Commerce published the antidumping duty order on LWRPT from Turkey on May 30, 2008.¹ On May 1, 2017, Commerce notified interested parties of the opportunity to request an administrative review of orders, findings, or suspended investigations with anniversaries in May 2016, including the AD order on LWRPT from Turkey.² On May 31, 2017, Atlas Tube and Searing Industries (collectively, petitioners), domestic producers and interested parties under section 771(9)(C) of the Tariff Act of 1930, as amended (the Act), requested that Commerce

¹ See *Notice of Antidumping Duty Order: Light-Walled Rectangular Pipe and Tube from Turkey*, 73 FR 31065 (May 30, 2008).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 82 FR 20315 (May 1, 2017).



conduct an administrative review of certain exporters (*i.e.*, Agir, Toscelik Profil ve Sac Endustrisi A.S., Toscelik Metal Ticaret A.S., Tosiya Dis Ticaret A.S., Noksel Celik Boru Sanayi A.S. (Noksel), Yucel Boru ve Profil Endustrisi A.S., Yucelboru Ihracat Ithalat ve Pazarlama A.S., Cayirova Boru Sanayi ve Ticaret A.S., and Cinar Boru Profil Sanayi ve Ticaret A.S.) and Noksel requested a review of itself covering the POR.³ On July 6, 2017, Commerce published a notice initiating an AD administrative review of LWRPT from Turkey covering the nine companies listed above for the POR.⁴

On August 2, 2017, petitioners timely withdrew their request for review for all companies for which they requested review with the exception of Agir.⁵ On August 10, 2017, Commerce sent the AD questionnaire to the two remaining companies for which a review requests had not been withdrawn (Agir and Noksel). Subsequently, on September 7, 2017, Noksel timely withdrew its self request for review.⁶

From August 2017 through December 6, 2017, Commerce issued questionnaires to, and received timely responses from, Agir.⁷ Agir submitted comments for consideration in these preliminary results of review on December 29, 2017.⁸

Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the preliminary result is now February 5, 2018.⁹

³ See Letter from petitioners to the Secretary of Commerce "Light-Walled Rectangular Pipe and Tube from Turkey: Request for Administrative Review," dated May 31, 2017; *see also* letter from Noksel to the Secretary of Commerce "Light-Walled Rectangular Pipe and Tube from Turkey (A-489-815): Request for Antidumping Duty Administrative Review (05/01/2016 – 04/30/2017)" dated May 31, 2017.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 31292 (July 6, 2017) (*Initiation Notice*).

⁵ See Letter from petitioners to the Secretary of Commerce "Light-Walled Rectangular Pipe and Tube from Turkey: Withdrawal of Request for Administrative Review," dated August 2, 2017.

⁶ See Letter from Noksel to the Secretary of Commerce "Light-Walled Rectangular Pipe and Tube from Turkey: Withdrawal of Request for Administrative Review," dated September 7, 2017.

⁷ See Letter from Howard Smith, Program Manager, AD/CVD Operations, Office IV, Enforcement and Compliance to Agir dated August 10, 2017 (Initial Questionnaire); *see also* letters from Agir to the Secretary of Commerce "Light-Walled Rectangular Pipe And Tube from Turkey: Agir Haddecilik Section A Questionnaire Response," dated September 11, 2017 (AQR), "Light-Walled Rectangular Pipe And Tube from Turkey: Agir Haddecilik Section B and C Questionnaire Response," dated October 2, 2017 (BQR and CQR, respectively), "Light-Walled Rectangular Pipe And Tube from Turkey: Submission of Section D Questionnaire Response," dated October 9, 2017, "Light-Walled Rectangular Pipe And Tube from Turkey: Agir Haddecilik Section A, B and C Supplemental Questionnaire Response," dated December 4, 2017 (SABCR), and "Light-Walled Rectangular Pipe And Tube from Turkey: Agir Haddecilik Section D Supplemental Questionnaire Response," dated December 6, 2017.

⁸ See Letter to All Interested Parties, "2016 – 2017 Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from Turkey: Notice of Opportunity to Submit Pre-Preliminary Results Comments," dated December 22, 2017; *see also* letter from Agir to the Secretary of Commerce "Light-Walled Rectangular Pipe And Tube from Turkey: Agir Haddecilik pre-preliminary results comments," dated December 29, 2017.

⁹ See Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

III. SCOPE OF THE ORDER

The merchandise subject to this order is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm. The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to this order is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and CBP's customs purposes, our written description of the scope of the order is dispositive.

IV. PARTIAL RESCISSION OF REVIEW

Because the review requests were timely withdrawn, we are rescinding our review of these companies: Toscelik Profil ve Sac Endustrisi A.S., Toscelik Metal Ticaret A.S., Tosalı Dis Ticaret A.S., Noksel, Yucel Boru ve Profil Endustrisi A.S., Yucelboru Ihracat Ithalat ve Pazarlama A.S., Cayirova Boru Sanayi ve Ticaret A.S., and Cinar Boru Profil Sanayi ve Ticaret A.S.

V. DISCUSSION OF THE METHODOLOGY

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

Comparisons to Normal Value

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

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NVs with the export prices (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under

19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.¹⁰

In recent investigations, Commerce 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.¹¹ 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 administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce’s additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent’s weighted-average dumping margin.

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

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8,

¹⁰ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012) and the accompanying Issues and Decision Memorandum at comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

¹¹ See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair*, 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); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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

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

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

B. Results of the Differential Pricing Analysis

Based on the results of the differential pricing analysis, Commerce preliminarily finds that 12.02 percent of the value of Agir's U.S. sales pass the Cohen's *d* test,¹² which does not confirm the

¹² See Memorandum, "2016-2017 Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from Turkey: Preliminary Results Analysis Memorandum for Agir Haddecilik A.S.," dated concurrently with this memorandum (Agir Preliminary Analysis Memorandum).

existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, Commerce preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Agir.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by Agir in Turkey during the POR that fit the description in the "Scope of the Order" section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining NV for the subject merchandise sold in the United States. Pursuant to 19 CFR 351.414(f) (3), we compared Agir's U.S. sales to foreign like product sales made in the home market, where appropriate.

Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(A) of the Act, we compared U.S. sales to sales of the most similar foreign-like product made in the ordinary course of trade. In making the product comparisons, we matched foreign-like products based on the physical characteristics reported by the respondent to the product sold in the United States. In the order of importance, these physical characteristics are as follows: steel input type, metallic coating, painted, nominal perimeter, nominal wall thickness, and shape.¹³

Date of Sale

Section 351.401(i) of Commerce's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business. However, the regulations permit Commerce to use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.¹⁴ Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.¹⁵

Agir reported invoice date as the date of sale for its home market.¹⁶ Agir indicated that the material terms of the sale are finalized at the issuance of the invoice.¹⁷ Therefore, for the home market sales, we have determined that the earlier of the invoice date or shipment date is the most appropriate selection for the date of sale and have used the earlier date where appropriate in our

¹³ See e.g. Initial Questionnaire; see also BQR and CQR.

¹⁴ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

¹⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁶ See Agir BQR at B-22.

¹⁷ *Id.*

calculations. Regarding its U.S. sales, Agir stated, with supporting record evidence, that the material terms of sale are determined at the contract date, and were not subject to change between contract date and invoice date.¹⁸ Thus, based on this information, we preliminarily determine that contract date better reflects the date on which the exporter or producer establishes the material terms of sale, and therefore will use Agir's reported contract date as the date of sale for its U.S. sales.¹⁹

Export Price

For all sales to the United States reported by Agir, we calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was first sold by the producer/exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and because CEP methodology was not otherwise warranted.

We calculated EP for Agir based on packed prices to unaffiliated purchasers in the United States. We made deductions from the starting price, where appropriate, for movement expenses, *i.e.*, foreign inland freight and brokerage and handling expenses incurred in the country of manufacture, and for exporter association fees, *i.e.*, loading and surveyor, in accordance with section 772(c)(2)(A) of the Act.²⁰

Duty Drawback

Section 772(c)(1)(B) of the Act states that the price used to establish EP shall be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." In determining whether an adjustment for duty drawback should be made, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our "two-pronged" test in order for this adjustment to be made to U.S. price.²¹ The first prong of the test is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another (or the exemption from import duties is linked to exportation); the second prong is that the company must demonstrate that there were sufficient imports of the imported raw materials to account for the duty drawback or exemption granted for the export of the manufactured product.²²

¹⁸ See Agir CQR at response to Field 10.0.

¹⁹ See, *i.e.*, *Narrow Woven Ribbons with Woven Selvedge from Taiwan; Preliminary Results of Antidumping Duty Administrative Review*; 2013-2014, 80 FR 60627 (October 7, 2015) and accompanying Preliminary Decision Memorandum at 9, unchanged in *Narrow Woven Ribbons with Woven Selvedge from Taiwan; Final Results of Antidumping Duty Administrative Review*; 2013-2014, 81 FR 22578 (April 18, 2016).

²⁰ See Agir Preliminary Analysis Memorandum.

²¹ See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61723 (October 19, 2006); see also, *Saha Thai Steel Pipe (Public) Co. v. United States*, 635 F.3d 1335, 1340-41 (Fed. Cir. 2011) (*Saha Thai*).

²² *Id.*; *Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 2.

Commerce's current practice with regard to the Turkish inward processing regime (IPR) (which is the official mechanism for applying for exemption from import duties) is to use only closed inward processing certificates (IPCs) (*i.e.*, import certificates to which the company was no longer permitted by the Government of Turkey to add import or export information) for purposes of calculating a duty drawback adjustment.²³ While Agir claimed a duty drawback adjustment for shipments that it made to the U.S during the POR under a certain IPC, Agir stated that the IPC used in its calculation is not closed.²⁴ Thus, Agir did not base its duty drawback adjustment on a closed IPC. Furthermore, although Agir claimed that certain IPCs were related to exports of subject merchandise to the United States during the POR, Agir did not support this claim with record evidence.²⁵ Accordingly, because Commerce only uses closed IPCs for purposes of calculating a duty drawback adjustment, and Agir has not based its claim for a duty drawback adjustment on a closed IPC, for these preliminary results, we are not making a duty drawback adjustment for Agir.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign-like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home market sales of the foreign-like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign-like product to a third country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

We have determined that Agir's aggregate volume of home market sales of the foreign-like product was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise during the POR.²⁶ Therefore, for Agir's margin analysis, we used home market sales as the basis for NV, in accordance with section 773(a)(1)(B) of the Act.

B. Calculation of NV Based on Comparison-Market Prices

We calculated NV based on packed, delivered or ex-works prices to unaffiliated customers in Turkey. We made deductions, where appropriate, from the starting price for billing adjustments and discounts in accordance with 19 CFR 351.401(c). We also made a deduction from the starting price for movement expenses, including inland freight under section 773(a)(6)(B)(ii) of the Act. We adjusted for differences in packing, in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act, and for circumstances of sale (imputed credit expenses and other

²³ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 47355 (July 21, 2016) and accompanying Issues and Decision Memorandum at Comment 4.

²⁴ See Agir CQR at Field 39.0 and Exhibits C-6 through 11; see also Agir SABCR at S1-25.

²⁵ *Id.*

²⁶ See AQR at Exhibit A-1.

direct selling expenses), in accordance with section 773(a)(6)(c)(iii) of the Act and 19 CFR 351.410. When comparing U.S. sales with home market sales of merchandise similar to that sold in the U.S. market, we adjusted for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.²⁷

C. 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 levels of trade if they are made at different marketing stages (or their equivalent).²⁸ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.²⁹ In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market, *i.e.*, the chain of distribution, including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales,³⁰ we consider the starting prices before any adjustments.

When Commerce is unable to match sales of the foreign like product in the comparison market at the same level of trade as the EP sale, Commerce may compare the U.S. sale to sales at a different level of trade in the comparison market. In comparing EP sales at a different level of trade in the comparison market, where available data make it possible, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act.

Agir reported a single channel of distribution in the home market.³¹ The channel consists of direct sales of self-produced products made from the factory to home market customers.³² For this reason, Agir reported a single LOT for the home market. Because all of the same selling activities were performed for the customer(s) in this channel, we determined that the single home market channel of distribution constitutes a single LOT.

Agir reported that it made EP sales through a single channel of distribution³³ in which it sold subject merchandise through an affiliated trading company in the United Kingdom to an unaffiliated U.S. customer.³⁴ Because all of the same selling activities were performed for the

²⁷ See 19 CFR 351.411(b).

²⁸ See 19 CFR 351.412(c)(2).

²⁹ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

³⁰ Where NV is based on constructed value (CV), we determine the NV level of trade based on the level of trade of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. See 19 CFR 351.412(c)(1).

³¹ See AQR at A-12.

³² *Id.* at A-13.

³³ *Id.* at A-12.

³⁴ *Id.* at A-13.

customer(s) in this channel, we determined that the single U.S. market channel of distribution constitutes a single LOT.

Further, we determined that the selling activities performed in the one U.S. LOT were essentially the same as those performed in the one home market LOT. Specifically, most of the selling activities performed by Agir in the U.S. and home markets were the same and were performed at approximately the same level of intensity.³⁵ As a result, we find that there are no significant differences between the selling activities performed in the U.S. and home market LOTs. Therefore, we preliminarily find that, during the POR, Agir sold the subject merchandise and the foreign like product at the same LOT, and we made no LOT adjustment under section 773(a)(7)(A) of the Act.

Cost of Production Analysis

The TPEA, which made numerous amendments to the AD and countervailing duty (CVD) law, including amendments to section 773(b)(2) of the Act, regarding Commerce's requests for information on sales at less than the cost of production (COP).³⁶ The 2015 law does not specify dates of application for those amendments. On August 6, 2015, Commerce published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission (ITC).³⁷ Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires Commerce to request CV and COP information from respondent companies in all AD proceedings. Accordingly, Commerce requested this information from Agir.³⁸

A. Cost Averaging Methodology

Commerce's normal practice is to calculate an annual weighted-average cost for the POR. However, we recognize that possible distortions may result if we use our normal annual-average cost method during a time of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, we evaluate the case-specific record evidence by examining two primary criteria: (1) the change in the cost of manufacturing (COM) recognized by the respondent during the POR must be deemed significant; (2) the record evidence must indicate that sales during the shorter cost-averaging periods could be reasonably linked with the COP or CV during the same shorter cost-averaging periods.³⁹

³⁵ *Id.* at Exhibit A-4.

³⁶ See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

³⁷ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) ("Applicability Notice").

³⁸ See Section D of the Initial Questionnaire.

³⁹ See *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010) (*SSSSC from Mexico*) and accompanying Issues and Decision Memorandum at Comment 6 and *Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008) (*SSPC from Belgium*) and accompanying Issues and Decision Memorandum at Comment 4.

1. Significance of Cost Changes

In prior cases, we established 25 percent as the threshold (between the high- and low-quarter COM) for determining that the changes in COM are significant enough to warrant a departure from our standard annual-average cost approach.⁴⁰ In the instant case, record evidence shows that Agir experienced significant cost changes (*i.e.*, changes that exceeded 25 percent) between the high and low quarterly COM during the POR.⁴¹ This change in COM is attributable primarily to the price volatility for the primary input used in the production of LWRPT.⁴²

2. Linkage Between Sales and Cost Information

Consistent with past precedent, because we found the changes in costs to be significant, we evaluated whether there is evidence of a linkage between the cost changes and the sales prices during the POR.⁴³ Absent a surcharge or other pricing mechanism, Commerce may alternatively look for evidence of a pattern showing that changes in selling prices reasonably correlate to changes in unit costs.⁴⁴ To determine whether a reasonable correlation existed between the sales prices and underlying costs during the POR, we compared weighted-average quarterly prices to the corresponding quarterly COM for the control numbers with the highest volume of sales in the comparison market.⁴⁵ Our comparison revealed that sales and costs for Agir showed reasonable correlation.⁴⁶ After reviewing this information and determining that changes in selling prices correlate reasonably to changes in unit costs, we preliminarily determine that there is linkage between Agir's changing sales prices and costs during the POR.⁴⁷ Thus, we preliminarily determine that a shorter cost period approach, based on a quarterly-average COP, is appropriate for Agir because we found significant cost changes in COM as well as reasonable linkage between costs and sales prices.

B. 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 expenses and interest expenses.⁴⁸ As explained above, we examined the cost data and preliminarily determined that our quarterly cost methodology is warranted.⁴⁹ Therefore, the COP is based on a quarterly average COP rather than an annual average COP. *See* the "Cost Averaging Methodology" section, above, for further discussion. We relied on the quarterly COP data submitted by Agir.

⁴⁰ *See SSPC from Belgium* and accompanying Issues and Decision Memorandum at Comment 4.

⁴¹ *See* SDQR at SD-4.

⁴² *Id.*

⁴³ *See SSSSC from Mexico* and accompanying Issues and Decision Memorandum at Comment 6 and *SSPC from Belgium* and accompanying Issues and Decision Memorandum at Comment 4.

⁴⁴ *See SSPC from Belgium* and accompanying Issues and Decision Memorandum at Comment 4.

⁴⁵ Because Agir had a single sale to the U.S. during the POR, we relied on home market sales for our analysis.

⁴⁶ *See* Agir Preliminary Analysis Memorandum.

⁴⁷ *Id.*; *see also SSSSC from Mexico* and accompanying Issues and Decision Memorandum at Comment 6 and *SSPC from Belgium* and accompanying Issues and Decision Memorandum at Comment 4.

⁴⁸ *See* "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses.

⁴⁹ *See* Agir Preliminary Analysis Memorandum.

C. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted 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 and used sales prices that were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

D. 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 accordance with section 773(b)(2)(B) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Agir's home market sales during the POR were at prices less than the COP, they were made within an extended period of time, and 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, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

Currency Conversion

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

VI. CONCLUSION

We recommend applying the above methodology for these preliminary results of review.

☒

Agree

☐

Disagree

2/5/2018

X 

Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance