



A-588-850  
Administrative Review  
POR: 6/1/2011 – 5/31/2012  
**Public Document**  
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July 2, 2013

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Import Administration

FROM: Christian Marsh   
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping  
Duty Administrative Review: Certain Large Diameter Carbon and  
Alloy Seamless Standard, Line, and Pressure Pipe (Over 4 ½  
Inches) from Japan

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## SUMMARY

In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain large diameter carbon and alloy seamless standard, line, and pressure pipe (over 4 ½ inches) (large diameter seamless pipe) from Japan, covering the period June 1, 2011, through May 31, 2012. The review covers five producers/exporters of the subject merchandise: JFE Steel Corporation (JFE); Nippon Steel Corporation (Nippon); NKK Tubes (NKK); Sumitomo Metal Industries, Ltd. (SMI); and Canadian Natural Resources Limited (CNRL). The Department has preliminarily determined that during the period of review (POR), no shipments were made by JFE, Nippon, NKK, or SMI. Additionally, the Department has preliminarily determined that it is appropriate to liquidate CNRL's entries without regard to antidumping duties.<sup>1</sup>

## BACKGROUND

On June 26, 2000, the Department published the antidumping duty order on large diameter seamless pipe from Japan.<sup>2</sup> On July 2, 2012, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (Act) and 19 CFR 351.213(b), a domestic interested party, United States Steel Corporation, timely requested an administrative review of JFE, Nippon, NKK, and SMI. On July 17, 2012, CNRL, an exporter of subject merchandise, timely requested a review of itself.

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<sup>1</sup> See "Entries by CNRL" below.

<sup>2</sup> *Notice of Antidumping Duty Orders: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and the Republic of South Africa*, 65 FR 39360 (June 26, 2000).



On July 31, 2012, in accordance with 19 CFR 351.221(c)(1)(i), we initiated the administrative review of the order with respect to JFE, Nippon, NKK, SMI, and CNRL.<sup>3</sup>

On August 16, 2012, the Department made available to parties under administrative protective order (APO) the U.S. Customs and Border Protection (CBP) data on POR imports from the five companies under review.<sup>4</sup> On August 22, 2012, NKK submitted comments on this data stating that “as a matter of commercial policy, NKK does not export for consumption to countries where the product at issue is covered by an antidumping duty order ... {and} NKK does not sell to third parties if it knows or has reason to know that the final destination is a country where the product is subject to an antidumping duty order.”<sup>5</sup> Also on August 22, 2012, SMI submitted comments stating that “SMI did not make any U.S. sales or shipments during the period covered by this review of merchandise covered by the above captioned antidumping order.”<sup>6</sup>

On August 31, 2012, SMI submitted a no-shipments statement, affirming its previous comments, stating that “SMI did not make any U.S. sales or shipments during the POR of {merchandise} subject to the antidumping order being reviewed ... SMI does not export subject merchandise to the United States ... SMI has no knowledge of any U.S. sales or shipments by any trading company during the POR of subject merchandise made by SMI.”<sup>7</sup> On September 7, 2012, NKK submitted a no-shipments letter affirming its previous comments, and including a company certification that NKK “did not export subject merchandise to the United States for entry for consumption into the United States during the period June 1, 2011 through May 31, 2012.”<sup>8</sup>

On October 4, 2012, the Department issued its antidumping duty questionnaire to JFE, Nippon, and CNRL. On October 15, 2012, Nippon submitted a letter to the Department certifying that Nippon had no sales of the subject merchandise to or in the United States during this POR.<sup>9</sup> On November 15, 2012, CNRL submitted its response to Section A of the Department’s initial questionnaire of October 4, 2012,<sup>10</sup> and on November 27, 2012, CNRL submitted its response to

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<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 45338 (July 31, 2012).

<sup>4</sup> See Memorandum to the File, “Release of Customs and Border Protection (CBP) Data” (August 16, 2012) (CBP Data Release).

<sup>5</sup> See Letter from NKK to the Department, “Re: Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4 ½ inches) from Japan” (August 22, 2012).

<sup>6</sup> See Letter from SMI to the Department, “Re: 2011-2012 Administrative Review of the Antidumping Order on Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (LD Pipe) from Japan: Comment of Sumitomo Metal Industries, Ltd., on the Department’s August 16, 2012, Release of CBP Data” (August 22, 2012).

<sup>7</sup> See Letter from SMI to the Department, “Re: Carbon and Alloy Seamless, Standard, Line and Pressure Pipe (over 4.5 inches) (LD Pipe) from Japan: No Shipment Statement by Sumitomo Metal Industries, Ltd.,” (August 31, 2012).

<sup>8</sup> See Letter from NKK to the Department, “Re: Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4 ½ inches) from Japan” (September 7, 2012).

<sup>9</sup> See Letter from Nippon to the Department, “Re: Certain Large Diameter Carbon and Alloy Seamless, Standard, Line, and Pressure Pipe from Japan: Certification of No U.S. Sales During Administrative Review Period” (October 15, 2012).

<sup>10</sup> See Letter from CNRL to the Department, “Re: Antidumping Duty Order: Carbon Alloy Seamless Standard, Line and Pressure Pipe (Over 4½ Inches) from Japan; Responses to Questionnaire Section A” (November 15, 2012) (AQR).

Sections B through E.<sup>11</sup> The Department issued supplemental Section A questionnaires to CNRL, to which it timely submitted its responses from January through June 2013.<sup>12</sup>

On October 24, 2012, JFE filed a letter with the Department certifying that JFE had no sales of subject merchandise to or in the United States during the POR.<sup>13</sup> On October 31, 2012, the Department issued a letter to JFE in which we stated that we had attempted to confirm JFE's statement with CBP, but data indicated that subject merchandise from JFE may have entered United States customs territory during the POR.<sup>14</sup> We further stated that because the data obtained from CBP is considered business proprietary information (BPI) in its entirety, it could only be released under an APO and that, as a result, we were unable to provide JFE with additional details regarding the merchandise in question. We requested JFE to explain the apparent discrepancy between the CBP information and JFE's claim that it did not ship to the United States.

After applying for access to BPI, and having the CBP Data Release made available to JFE's legal counsel under APO, on November 20, 2012, JFE's legal counsel requested to make certain information from the CBP Data Release available for dissemination to its client, JFE, as well as for copy(ies) of mill certificate(s) from CBP regarding the shipment(s) in question.<sup>15</sup>

On January 25, 2013, the Department issued a letter to JFE's legal counsel in which we stated that we were unable to make the CBP data, or any derivation therefrom, available for public summary, and reiterated that information obtained from CBP is considered BPI in its entirety and can only be released under an APO. Furthermore, we informed JFE's legal counsel that we were unable to grant the request for specific mill certificates for merchandise meeting the description of the scope of the subject merchandise originally produced by JFE.

Consequent to this, we requested JFE to provide a complete response to the Department's letter of October 31, 2012, or certify that: 1) JFE did not export, sell, or enter any merchandise meeting the description of the scope of the subject merchandise to the United States during the POR; and, 2) JFE also did not know or have reason to know that any of its customers of merchandise

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<sup>11</sup> See Letter from CNRL to the Department, "Re: Antidumping Duty Order: Carbon Alloy Seamless Standard, Line and Pressure Pipe (Over 4½ Inches) from Japan; Responses to Questionnaire Sections B, C, D and E" (November 27, 2012).

<sup>12</sup> See Letters from CNRL to the Department, "Re: Certain Large Diameter Carbon Alloy Seamless Standard, Line and Pressure Pipe (Over 4½ Inches) from Japan; Responses to the Department's First Supplemental Questionnaire" (January 8, 2013) (A1SQR); "Administrative Review of the Antidumping Duty Order on Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Over 4½ Inches) from Japan: Supplemental Questionnaire Responses of Canadian Natural Resources Limited" (May 3, 2013) (A2SQR); and "Administrative Review of the Antidumping Duty Order on Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Over 4½ Inches) from Japan: Supplemental Questionnaire Responses of Canadian Natural Resources Limited" (June 12, 2013) (A3SQR).

<sup>13</sup> See Letter from JFE to the Department, "Re: Large Diameter Carbon and Alloy Seamless, Standard, Line, and Pressure Pipe from Japan (A-588-850): Administrative Review for Period of 6/1/11-5/31/12" (October 24, 2012).

<sup>14</sup> See Letter to JFE from the Department, "Re: Antidumping Duty Administrative Review: Certain Large Diameter Carbon Alloy Seamless Standard, Line and Pressure Pipe (over 4 ½ inches) from Japan" (October 31, 2012).

<sup>15</sup> See Letter from JFE to the Department, "Re: Large Diameter Carbon and Alloy Seamless, Standard, Line, and Pressure Pipe from Japan (A-588-850): Administrative Review for Period of 6/1/11-5/31/12" (November 20, 2012); see also Memorandum to the File, "Antidumping Duty Administrative Review: Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4 ½ Inches) from Japan" (November 20, 2012).

meeting the description of the scope of the subject merchandise would subsequently export or sell its merchandise to the United States during the POR. On January 29, 2013, JFE submitted a certified statement from its client that affirmed these two points.<sup>16</sup>

In response to the Department's query to CBP which showed that subject merchandise from JFE and SMI may have entered U.S. customs territory during the POR, on January 30, 2013, the Department sought further clarification of five of these entries, and placed on the record of this review the entry documents in question.<sup>17</sup>

## **SCOPE OF THE ORDER**

The products covered by the order are large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials (ASTM) A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and the American Petroleum Institute (API) 5L specifications and meeting the physical parameters described below, regardless of application. The scope of the order also includes all other products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification, with the exception of the exclusions discussed below. Specifically included within the scope of the order are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to the order are currently classifiable under the subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.19.10.30, 7304.19.10.45, 7304.19.10.60, 7304.19.50.50, 7304.31.60.10, 7304.31.60.50, 7304.39.00.04, 7304.39.00.06, 7304.39.00.08, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.15, 7304.51.50.45, 7304.51.50.60, 7304.59.20.30, 7304.59.20.55, 7304.59.20.60, 7304.59.20.70, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States (HTSUS).

**Specifications, Characteristics, and Uses:** Large diameter seamless pipe is used primarily for line applications such as oil, gas, or water pipeline, or utility distribution systems. Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A-106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM A-335 standard

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<sup>16</sup> See Letter from JFE to the Department, "Re: Large Diameter Carbon and Alloy Seamless, Standard, Line, and Pressure Pipe from Japan (A-588-850): Administrative Review for Period of 6/1/11 - 5/31/12" (January 29, 2013).

<sup>17</sup> See Memorandum to File, "Release of Customs and Border Protection (CBP) Entry Documents" (February 14, 2013) at Attachment 1 (CBP Entry Document Release).

must be used if temperatures and stress levels exceed those allowed for ASTM A-106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A-106 standard.

Seamless standard pipes are most commonly produced to the ASTM A-53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A-333 or ASTM A-334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification. Seamless water well pipe (ASTM A-589) and seamless galvanized pipe for fire protection uses (ASTM A-795) are used for the conveyance of water.

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

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

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

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A-106 applications. These specifications generally include ASTM A-161, ASTM A-192, ASTM A-210, ASTM A-252, ASTM A-501, ASTM A-523, ASTM A-524, and ASTM A-618. When such pipes are used in a standard, line,

or pressure pipe application, such products are covered by the scope of the order.

Specifically excluded from the scope of the order are: A. Boiler tubing and mechanical tubing, if such products are not produced to ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. B. Finished and unfinished oil country tubular goods (OCTG), if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in the scope when used in standard, line or pressure applications. C. Products produced to the A-335 specification unless they are used in an application that would normally utilize ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-589, ASTM A-795, and API 5L specifications. D. Line and riser pipe for deepwater application, *i.e.*, line and riser pipe that is: (1) used in a deepwater application, which means for use in water depths of 1,500 feet or more; (2) intended for use in and is actually used for a specific deepwater project; (3) rated for a specified minimum yield strength of not less than 60,000 psi; and (4) not identified or certified through the use of a monogram, stencil, or otherwise marked with an API specification (*e.g.*, “API 5L).

With regard to the excluded products listed above, the Department will not instruct CBP to require end-use certification until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being utilized in a covered application. If such information is provided, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in a covered application as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A-335 specification is being used in an A-106 application, we will require end-use certifications for imports of that specification. Normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

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

## **PRELIMINARY DETERMINATION OF NO SHIPMENTS**

As noted above, four of the five potential respondents submitted letters to the Department indicating that they did not make any shipments or entries of subject merchandise to the United States during the POR. The Department subsequently confirmed with CBP the no shipment claim made by Nippon. However, in response to the Department’s query to CBP of January 30, 2013, CBP data showed subject merchandise manufactured by three of the respondent companies, JFE, NKK, and SMI, may have entered for consumption into the United States during the POR. On February 14, 2013, the Department placed on the record of this review, copies of the entry documents in question. For a further discussion of the entries included in the

CBP Entry Document Release, *see* the No Shipments Memo.<sup>18</sup>

### *JFE and SMI*

On February 19, 2013, the Department issued letters to JFE and SMI, requesting that they further substantiate their claims of no shipments. On February 26, 2013, JFE submitted that “after reviewing the CBP data, we believe the information you have provided us shows there is nothing inconsistent with JFE’s January 29, 2013, certification that it neither exported, sold, or entered subject merchandise to the U.S. during the POR nor knew or had reason to know that any of its customers would subsequently export or sell their merchandise to the U.S. during the POR.”<sup>19</sup>

On March 4, 2013, SMI submitted that it “did not export subject merchandise to the United States during the POR ... {but} did sell, through trading companies ... subject merchandise, to distributors and end users for delivery in Japan and third countries.”<sup>20</sup> Furthermore, SMI affirmed its previous statement in its August 31, 2012, submission, that “SMI did not make any U.S. sales of subject merchandise during the POR...SMI did not sell any subject merchandise to any end users or distributors with the knowledge that such end users or distributors would export the subject merchandise to the customs territory United States during the POR ... SMI did not initiate, and was not aware of, any exports from Japan or any third countries to the customs territory of the United States of subject merchandise produced by SMI during the POR.”<sup>21</sup>

Based on JFE’s and SMI’s submissions and our review of CBP documentation, the Department finds that the record evidence supports JFE’s and SMI’s claims that, at the time of the sale, neither JFE nor SMI had knowledge of these entries of subject merchandise into the United States during the POR. On this basis, we preliminarily find that subject merchandise produced by JFE and SMI, and entering the United States under their antidumping case numbers during the POR, did so by way of intermediaries without the knowledge of either company.<sup>22</sup>

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<sup>18</sup> See Memorandum to Susan H. Kuhbach, “Preliminary Results of Antidumping Duty Administrative Review: Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4 ½ Inches) from Japan RE: No Shipments Memorandum” dated concurrently with this memorandum (No Shipments Memo) at 2-4. We note that on October 15, 2012, we were first made aware that “Nippon merged with SMI on October 1, 2012 ... {and} the company name was changed to ‘Nippon Steel & Sumitomo Metal Corporation.’” See Letter from Nippon to the Department, “Certain Large Diameter Carbon and Alloy Seamless, Standard, Line, and Pressure Pipe from Japan: Certification of No US Sales During Administrative Review Period” (October 15, 2012) at 1. However, SMI’s counsel did not withdraw its entry of appearance as counsel to SMI until March 11, 2013. See Letter from SMI to the Department, “2011-2012 Administrative Review of the Antidumping Order on Carbon and Alloy Seamless Standard, Line and Pressure Pipe (over 4 ½ inches) (LD Pipe) from Japan: Withdrawal of Entry of Appearance” (March 11, 2013) at 1. Accordingly, we have taken into account the submissions SMI’s previous counsel submitted on SMI’s behalf prior to it withdrawing as counsel to SMI.

<sup>19</sup> See Letter from JFE to the Department, “Re: Large Diameter Carbon and Alloy Seamless, Standard, Line, and Pressure Pipe from Japan (A-588-850): Administrative Review for Period of 6/1/11-5/31/12” (February 26, 2013).

<sup>20</sup> See Letter from SMI to the Department, “Re: 2011-2012 Administrative Review of the Antidumping Order on Carbon and Alloy Seamless Standard, Line and Pressure Pipe (over 4 ½ inches) (LD Pipe) from Japan: Response of to the Department’s February 19, 2013 Letter” (March 4, 2013).

<sup>21</sup> *Id.*

<sup>22</sup> See No Shipments Memo at 4.

## NKK

Regarding NKK's potential entries, based on our review of documentation on the record, we preliminarily determine that the merchandise produced by NKK which entered the United States during the POR under NKK's antidumping case number is not subject to antidumping duties.<sup>23</sup>

In summary, the Department finds that these respondents' claims of no shipments or entries for consumption are substantiated. Based upon the certifications and the evidence on the record, we are satisfied that none of these respondents had shipments of subject merchandise to the United States during the POR and, as such, we preliminarily determine that JFE, SMI, Nippon, and NKK had no reviewable transactions during the POR.

Following implementation of the 1997 regulations, our practice concerning no-shipment respondents had been to rescind the administrative review if the respondent certified that it had no shipments and we have confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR.<sup>24</sup> In such circumstances, we formerly instructed CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry (*i.e.*, "as entered" liquidation).

However, in our May 6, 2003, *Assessment Policy Notice*, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding.<sup>25</sup>

Because "as entered" liquidation instructions do not alleviate the concerns the *Assessment Policy Notice* was intended to address, unless we otherwise determine that such entries should not be subject to antidumping duties, we find it appropriate in this case to instruct CBP to liquidate entries of merchandise produced by Nippon, JFE, SMI, and NKK, and exported by other parties at the all-others rate, should we continue to find that Nippon, JFE, SMI, and NKK had no shipments of subject merchandise in the POR in our final results.<sup>26</sup> In addition, the Department finds that it is more consistent with the *Assessment Policy Notice* not to rescind the review in part in these circumstances. Rather, we will complete the review with respect to Nippon, JFE, SMI, and NKK, and issue appropriate instructions to CBP based on the final results of the review.<sup>27</sup>

## ENTRIES BY CNRL

### *Summary*

During the POR, CNRL reported that it imported subject merchandise into the United States

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<sup>23</sup> *Id.*

<sup>24</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27393 (May 19, 1997).

<sup>25</sup> See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

<sup>26</sup> See, e.g., *Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 75 FR 56989, 56990 (September 17, 2010).

<sup>27</sup> See the "Assessment Rates" section of the corresponding *Federal Register* notice.

from Canada.<sup>28</sup> Prior to this, CNRL contracted with an unaffiliated third-country engineering and procurement firm to design and procure all components needed to fabricate oilfield “pipe racks and pipe spools” (aka “modules”) for use in a facility in Canada.<sup>29</sup> CNRL reported that the price of the merchandise supplied by the third-country firm was not distinguishable or divisible from the overall procurement contract with the company.<sup>30</sup> After the unaffiliated third-country firm purchased the subject merchandise, it shipped the subject merchandise and other purchased components to CNRL’s yard in Edmonton, Alberta, Canada.<sup>31</sup>

Unable to find a module fabricator in Canada that had the capacity to do the work within the required timeline, CNRL expanded its search and located a company in the United States.<sup>32</sup> CNRL contracted with Bay Ltd., a Texas-based company, for the fabrication and construction of certain modules<sup>33</sup> in the United States for exportation to Canada.<sup>34</sup> The subject merchandise, along with the other components, was shipped on consignment by CNRL to Bay Ltd. for assembly of the modules.<sup>35</sup> CNRL submits that only then did the country of origin issue come to light, as CNRL was required to identify the origin of the subject merchandise as a requirement for entry into the United States under 19 CFR 141.89.<sup>36</sup> Subsequently, the modules, which included subject merchandise, were then re-exported from the United States back to Canada.<sup>37</sup> CNRL claims that it consistently maintained title to the subject merchandise shipped to Bay Ltd.<sup>38</sup>

As part of this process, CNRL entered the merchandise as “type 3” entries for consumption and deposited antidumping duty cash deposits.<sup>39</sup> CNRL requested this review to seek the liquidation of its entries without regard to antidumping duties.

### *CNRL’s Comments*

CNRL asserts that it never sold, intended to sell, or offered to sell, any of the subject merchandise to or in the United States and that there was never any intention that the pipes, or goods produced therefrom, remain in the United States. CNRL states that “{t}he goods were never the subject of any sale for exportation to the United States ... {instead}, {t}hey were shipped on consignment by CNRL to Bay Ltd. ... under a service contract entered into with CNRL prior to entry, and assembled the pipe with other components to produce modules and

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<sup>28</sup> See AQR at 5 and A1SQR at 3.

<sup>29</sup> See A2SQR at 2.

<sup>30</sup> *Id.* at 4.

<sup>31</sup> See A1SQR at 3.

<sup>32</sup> See A2SQR at 2 and 7-8.

<sup>33</sup> The nature of the modules is BPI. See A2SQR at 2 for a description of these modules.

<sup>34</sup> See AQR at 5.

<sup>35</sup> *Id.*

<sup>36</sup> See A2SQR at 3, we note that CNRL has listed 19 CFR 141.89 incorrectly as 19 U.S.C. 141.89.

<sup>37</sup> *Id.* at 9 and 11; see also A3SQR at 2.

<sup>38</sup> See A3SQR at 3 and AQR at Exhibit H.

<sup>39</sup> See Letter from CNRL to the Department, “Carbon and Alloy Seamless Standard Line and Pressure Pipe from Japan, Case No. A-588-850: Request of Canadian Natural Resources Ltd. For Initiation of Administrative Review” (June 29, 2012) (CNRL Review Request) at 2 wherein it stated that “subject pipes are believed to have been manufactured in Japan initially by JFE Corporation and NKK Tubes.” As such, this information is publicly available.

rack systems for oilfield exploration. After assembly, the modules and rack systems were exported from the United States to Canada.”<sup>40</sup>

CNRL contends that “{a}t no time did CNRL ever sell, intend to sell or offer to sell, any of the pipes to or in the United States. Nor was there ever any intention that the pipes, or goods produced therefrom, remain in the United States. All of the pipes were consigned for assembly and subsequent re-exportation to Canada pursuant to prior contractual agreement between CNRL and Bay Ltd.” CNRL further claims that it “acted as importer of record for the subject merchandise.”<sup>41</sup>

CNRL argues that “{h}ad the pipes been imported from any country other than Canada, CNRL would have entered them into the United States under cover of Temporary Importation Bond ... in order to avoid the assessment of antidumping duties.”<sup>42</sup> CNRL continued, that “in light of the provisions of 19 USC 3333(a) ... CNRL elected to file consumption entries and tender estimated duties at the time the goods arrived in the United States,” and that as such, “CNRL believes the disposition of the entries which are the subject of the requested review may be governed by the principles announced in *Tapered Roller Bearings and Parts Thereof, from the People’s Republic of China*, 66 Fed. Reg. 1953 (January 10, 2001).”<sup>43</sup>

Subsequent to this explanation, in response to the Department’s initial and supplemental questionnaires, CNRL submitted that: 1) it does not distribute or sell subject merchandise;<sup>44</sup> 2) it has made no sales, and it has no plans to sell, or offer for sale, any of the subject merchandise or the finished merchandise which incorporates subject merchandise;<sup>45</sup> 3) there was no explicit or implicit understanding granting permission to, or responsibility for, exporting the subject merchandise to the United States from its foreign supplier;<sup>46</sup> and 4) none of the subject merchandise has been sold in any form in any country.<sup>47</sup>

As noted above, CNRL asserts that it purchased the subject merchandise under review from an unaffiliated firm that was not made aware of the ultimate destination of any of the merchandise it sold to CNRL.<sup>48</sup> CNRL requested that this company ship all merchandise to CNRL’s yard in Edmonton, Alberta, Canada, where CNRL intended to use the merchandise locally.<sup>49</sup> CNRL asserts that there was no requirement to advise CNRL as to the where the materials were sourced from,<sup>50</sup> as its contract with its supplier was an “engineering and procurement contract,”<sup>51</sup> and that CNRL did not get involved in the breakdown of the sourcing of materials to be provided under

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<sup>40</sup> See CNRL Review Request.

<sup>41</sup> *Id.*

<sup>42</sup> CNRL cites *Customs Headquarters Ruling 230327* of May 10, 2004 and *Customs Headquarters Ruling 221488* of May 15, 1991.

<sup>43</sup> See CNRL Review Request.

<sup>44</sup> See AQR at 15.

<sup>45</sup> See A1SQR at 4.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 5.

<sup>48</sup> See AQR at 21.

<sup>49</sup> See A1SQR at 3.

<sup>50</sup> See A2SQR at 3.

<sup>51</sup> *Id.* at 4.

the contract.<sup>52</sup> As such, CNRL maintains that it was unaware at the time of contracting of the source of its materials, asserting that its supplier was not required to identify delivery routes, intervening shipping or storage yards, or distributors that may have been used in the procurement of these goods.<sup>53</sup> In short, CNRL avers that the supplier sold materials to CNRL in Canada, for consumption in Canada, and had no knowledge of where or when the goods were to be used.<sup>54</sup>

With respect to the status of the materials and fabricated goods in question, CNRL explained that all fabricated modules containing subject merchandise are now in Canada.<sup>55</sup> CNRL provided documentation showing that Bay Ltd. had performed on its contract to deliver the modules back to CNRL in Canada.<sup>56</sup> CNRL also provided evidence that the surplus material (including scrap material) that was not required by the fabricator was shipped back to Canada, with a miniscule amount of scrap remaining to be returned.<sup>57</sup> In sum, CNRL asserts that none of the subject merchandise, including scrap, will remain in the United States.<sup>58</sup>

To substantiate this claim, the Department requested CNRL to submit a reconciliation of its entries of subject merchandise to the modules, surplus materials, and scrap materials, in an attempt to ensure that no subject merchandise was sold (either in the form as entered or as further manufactured) in or for export to the United States.<sup>59</sup> In response, CNRL submitted that “{a}ll *subject* surplus materials have been exported from the United States and delivered back to Canada,”<sup>60</sup> while subsequently stating that “{a}ll CNRL merchandise has either been returned or is sitting in one of the three dumpsters {in the United States}.”<sup>61</sup> CNRL states that with regard to the modules, “{i}t is ... abundantly clear that all of the subject merchandise entered into the United States has either been incorporated into finished articles that have been exported from the United States, or were exported as surplus” from fabrication of the modules.<sup>62</sup> CNRL concludes that “since CNRL retains title to all items, and since CNRL has never sold, or offered for sale, any merchandise (scrap or otherwise) in the United States, there is absolutely no basis to refuse to refund deposits of antidumping duties to CNRL on the basis of a negligible amount of scrap materials remaining in the United States (of which, the subject status is unknown).”<sup>63</sup> CNRL also assisted the Department in reconciling all the provided documentation including engineering contracts, customs documents for imports of subject merchandise into the United States and exports back to Canada.<sup>64</sup>

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 11.

<sup>54</sup> *Id.* at 6.

<sup>55</sup> *Id.* at 11; *see also* A3SQR at 2.

<sup>56</sup> *See* A3SQR.

<sup>57</sup> *See* A2SQR at 11 and Exhibit H; *see also* A3SQR at Exhibit I.

<sup>58</sup> *Id.*

<sup>59</sup> *See* Letter from the Department to CNRL, “Antidumping Duty Administrative Review: Certain Large Diameter Carbon Alloy Seamless Standard, Line and Pressure Pipe (over 4 ½ inches) from Japan” (May 29, 2013).

<sup>60</sup> *See* A3SQR at 2 (emphasis added).

<sup>61</sup> *Id.* at 3.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 3-4.

<sup>64</sup> On June 24, 2013, the Department conducted a conference call with CNRL representatives to provide further clarification of the documents already on the record illustrating: (1) the subject merchandise that was entered during the POR; (2) the subject merchandise that went into the modules that were exported to Canada; (3) the surplus material returned to CNRL, as well as the scrap material currently with Bay Ltd. in the United States to be returned

### *Department's Position*

Dumping is defined as the sale of merchandise in the United States at less than its normal value (NV). In order to calculate a respondent's margin of dumping, the Department compares NV with export price (EP) or constructed export price (CEP). Section 731 of the Act directs the Department to impose upon imports of the subject merchandise an antidumping duty in the amount by which the NV exceeds the EP or CEP. Section 772 of the Act defines EP and CEP as a price to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for export to the United States. Each definition refers to the price at which the subject merchandise "is first sold ...." In *NSK*,<sup>65</sup> the U.S. Court of Appeals for the Federal Circuit (CAFC) held that the usage of the term "sale" in section 772(a) and (b) of the Act indicates a reference to a transaction involving a material consideration. Specifically, the CAFC clarified that, in order to be considered a sale within the meaning of the antidumping law, a transaction must involve "both a transfer of ownership to an unrelated party and consideration."<sup>66</sup>

Once an antidumping order is in place, section 751(a) of the Act directs the Department to conduct an administrative review, upon request, to determine the NV, EP and/or CEP, and dumping margin for each entry of the subject merchandise under review. Thus, the Department's ability to conduct an administrative review of an antidumping duty order depends on the existence of entries and sales to unaffiliated U.S. purchasers or unaffiliated purchasers for export to the United States.

Subject merchandise that is entered for consumption but is not sold in any form (either in the form as entered or as further manufactured) to an unaffiliated customer in the United States is not subject to antidumping duties because there is no U.S. sale and, therefore, no margin can be calculated.<sup>67</sup> Therefore, when the exporter enters subject merchandise for consumption, but re-exports the merchandise (in the form as entered or as further manufactured), *i.e.*, the merchandise is never sold in any form to an unaffiliated U.S. customer, the Department does not include those entries in its dumping analysis.<sup>68</sup> The Department's practice in this context was affirmed by the CAFC.<sup>69</sup>

With respect to CNRL, we preliminarily find there were no sales to unaffiliated customers in the United States, nor any sales to unaffiliated customers for exportation to the United States. Considering the totality of the evidence, including substantial performance of the contract by Bay Ltd. and the customs documentation on the record, we have determined that all subject

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to Canada. See Memorandum to the File, "Ex Parte Conference Call with Canadian Natural Resources Limited (CNRL)" (June 26, 2013).

<sup>65</sup> See *NSK Ltd. v. United States*, 115 F.3d 965 (CAFC 1997) (*NSK*).

<sup>66</sup> See *NSK*, 115 F.3d at 975.

<sup>67</sup> See *Torrington Co. v. United States*, 82 F.3d 1039, 1046-47 (CAFC 1996) (*Torrington*).

<sup>68</sup> See *Oil Country Tubular Goods From Japan: Preliminary Results and Recission {sic} in Part of Antidumping Duty Administrative Review*, 64 FR 48589 (September 7, 1999) (*OCTG from Japan*); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic*; *Final Results of 1998-1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 1953, 1954 (January 10, 2001); and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.*; *Final Results of Antidumping Duty Administrative Reviews*, 62 FR 54043, 54049 (October 17, 1997).

<sup>69</sup> See *Torrington*, 82 F.3d at 1046-47.

merchandise, except a relatively minor amount of scrap, has been exported back to CNRL in Canada per its agreement with Bay Ltd. Since there is no U.S. sale, antidumping duties would not be applied under current law and practice.<sup>70</sup> Accordingly, upon issuance of the final results of this administrative review, we intend to instruct CBP to liquidate the entries made by CNRL without regard to antidumping duties.<sup>71</sup>

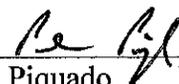
As stated in *OCTG from Japan*,<sup>72</sup> liquidating CNRL's entries without regard to antidumping duties does not violate any obligations under the North American Free Trade Agreement (NAFTA).<sup>73</sup> Article 303 of NAFTA provides that if antidumping duties are applied, they cannot be waived, refunded or reduced.<sup>74</sup> Nevertheless, NAFTA rules do not compel the assessment of antidumping or countervailing duties that would not otherwise be applied under a party's domestic law. Since there are no sales to unaffiliated customers in the United States, antidumping duties would not be applied under current law and practice. Accordingly, liquidating these entries without regard to antidumping duties does not constitute a waiver, refund or reduction of duties in violation of NAFTA provisions. Our preliminary finding is based on the unique facts presented in this case, and on the totality of the record evidence, which supports our finding of no sales.

## RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

✓  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Import Administration

2 July 2013  
\_\_\_\_\_  
(Date)

<sup>70</sup> See *OCTG from Japan*, 64 FR at 48590-91.

<sup>71</sup> We are deviating from *OCTG from Japan* in one respect. In that case, we rescinded the administrative review. Here, we are not rescinding this review with respect to CNRL because we do not intend to liquidate CNRL's entries as entered.

<sup>72</sup> In *OCTG from Japan*, the subject merchandise entered the United States under a temporary import bond. Upon re-exportation, pursuant to NAFTA, the entries were treated as if they had entered the United States for consumption. The Department determined that the subject merchandise was not sold in any form, and liquidated without regard to duties. See *OCTG from Japan*, 64 FR at 48590-91.

<sup>73</sup> See CNRL Review Request at 2.

<sup>74</sup> NAFTA art. 303(3), 32 I.L.M. at 683, implemented by the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 stat. 2057 (1993).