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April 8, 2015

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of
Antidumping Duty Administrative Review: Circular Welded Non-
Alloy Steel Pipe from Mexico; 2012-2013

SUMMARY

For the final results of the 2012-2013 administrative review of the antidumping duty order on circular welded non-alloy steel pipe from Mexico, we analyzed the case brief filed by Productos Laminados de Monterrey S.A. de C.V. (Productos Laminados) and Prolamsa, Inc.¹ (collectively, Prolamsa), the only case brief filed in this segment of the proceeding. As a result of this analysis, we did not make any changes to the margin calculations for Prolamsa. We recommend that you approve the Department position provided in the section of this memorandum below entitled, "Discussion of the Issue."

BACKGROUND

On December 9, 2014, the Department of Commerce (the Department) published the preliminary results of this administrative review of the order.² The Department subsequently issued post-preliminary results of this administrative review on January 30, 2015.³ We invited interested parties to comment on the preliminary and post-preliminary results of review. On February 9,

¹ Prolamsa, Inc. is a wholly-owned U.S. subsidiary of Productos Laminados. For the preliminary results, we determined that Productos Laminados and Aceros Cuatro Caminos (A4C) should be collapsed, which we are adopting for these final results of review. References to Prolamsa hereinafter include A4C, where relevant.

² See *Certain Welded Non-Alloy Steel Pipe from Mexico; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 73034 (December 9, 2014) (*Preliminary Results*).

³ See "Antidumping Duty Administrative Review of Circular Welded Non-Alloy Steel Pipe from Mexico: Post-Preliminary Results Decision Memorandum," dated January 30, 2015 (Post-Preliminary Results).



2015, Prolamsa submitted a case brief.⁴ No other interested parties submitted case or rebuttal briefs.

SCOPE OF THE ORDER

The products covered by the order are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A-53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of the order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in the order.

The merchandise covered by the order and subject to this review are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

DISCUSSION OF THE ISSUE

Comment: The Department Should Grant a Constructed Export Price (CEP) Offset Adjustment to Normal Value

Prolamsa

Prolamsa argues that the Department erred in its preliminary analysis in which the Department determined not to grant a CEP offset. Specifically, Prolamsa points out that, for purposes of ascertaining differences in levels of trade (LOTs), the Department should have based its determination on a comparison between sales made in the home market by Productos Laminados and sales made to its U.S. affiliate, Prolamsa, Inc., rather than sales made by Prolamsa, Inc. to unaffiliated customers in the United States. Prolamsa posits that, had the Department focused its LOT analysis on sales to the U.S. affiliate, the Department would have found that the CEP LOT was less advanced than the normal value (NV) LOT, citing 19 CFR 351.412(c)(2) and *Mittal*

⁴ See Circular Welded Non-Alloy Steel Pipe from Mexico: Case Brief, dated February 9, 2015 (Prolamsa's Case Brief).

Steel.⁵ According to Prolamsa, the statute, as explicated in cases such as *Micron Tech*, directs the Department to grant a CEP offset to NV where NV is established at a more advanced LOT than the CEP LOT and where an adjustment under section 773(a)(7)(A) of the Tariff Act of 1930, as amended (the Act), cannot be determined.⁶

Prolamsa points to its questionnaire responses in which various selling functions were identified. In particular, Prolamsa enumerated the various activities performed in connection with sales in the home market, including promotion and marketing activities, communications with customers by direct sales personnel, order processing and sales invoicing, and freight and delivery support. Prolamsa stated that the only selling activities performed on sales to Prolamsa, Inc. in the United States were packing and arranging for shipment of the merchandise from Mexico to the United States. Prolamsa argues that those selling activities performed by Prolamsa, Inc. are not relevant to the issue of quantifying a CEP offset, and should have been disregarded in the Department's decision to deny a CEP offset to NV.

Finally, Prolamsa argues that the fact pattern in the instant administrative review mirrors that in the antidumping duty investigation of light-walled rectangular pipe and tube from Mexico (LWPT), which also involved Prolamsa. Prolamsa avers that in the LWPT investigation, the Department found that Prolamsa performed numerous selling functions in the home market compared with very few, if any, selling functions performed for sales made to its U.S. affiliate, Prolamsa, Inc. For this reason, Prolamsa contends, the Department should find a similar fact pattern exists in the current administrative review whereby the selling functions on sales made in the home market were performed at a more advanced degree than those made on sales to its U.S. affiliate; accordingly, Prolamsa concludes, the Department should grant a CEP offset to NV for these final results of review.

Department's Position:

We disagree with Prolamsa that the Department should grant a CEP offset adjustment to NV for the final results of this administrative review. As an initial matter, whether the Department has granted a CEP offset to Prolamsa in a different proceeding with a different factual record, such as in the LWPT investigation, does not necessarily bind the Department in determining whether to grant or deny such an offset adjustment to NV in the instant administrative review.⁷ Rather, because each segment of a proceeding stands on its own, the Department must weigh the facts presented on the record at issue in determining whether, in this case, substantial evidence exists to permit a CEP offset adjustment to NV.⁸

⁵ See *Mittal Steel USA, Inc. v. United States*, Slip Op. 07-117 at 25 (CIT Aug. 1, 2007) (*Mittal Steel*) (“Finding sales to be at a more advanced stage of distribution can be shown by evidence that the foreign producer or exporter performs more selling activities, and thus incurs more selling expenses in its {foreign comparison} market than it does in the United States.”).

⁶ See *Micron Tech, Inc. v. United States*, 243 F.3d 1301, 1315 (Fed. Cir. 2001) (*Micron Tech.*) (“[W]hen making a level of trade comparison for CEP sales, Commerce is to use the ‘constructed’ price, i.e., the price which reflects the deductions pursuant to § 1677a(d).”)

⁷ See *Shandong Huarong Machinery Co. v. United States*, 29 CIT 484, 491 (2005) (“{E}ach administrative review is a separate segment of proceedings with its own unique facts. Indeed, if the facts remained the same from period to period, there would be no need for administrative reviews”) (internal quotation omitted).

⁸ See *Ad Hoc Shrimp Trade Action Comm. v. United States*, 616 F. Supp. 2d 1354, 1373-74 (CIT 2009).

Further, we disagree with Prolamsa's contention that the LOT for sales made in the home market compared with the LOT for sales made to the United States were significantly different from each other as to warrant a CEP offset adjustment to NV. In order for the Department to grant a CEP offset to NV, the respondent must first demonstrate that substantial differences exist between the LOT in each market, in accordance with 19 CFR 351.412(c)(2).⁹ As explained in the *Preliminary Results*, during the course of this review we made repeated requests for clarification of the selling functions performed by Prolamsa in each market and for each channel of distribution; however, Prolamsa's questionnaire responses added little to clarify or delineate between the selling activities in question, including the intensity at which they were performed. Additionally, Prolamsa's questionnaire responses did not clearly identify those selling functions performed by Productos Laminados¹⁰ vis-à-vis those provided by its U.S. affiliate, Prolamsa, Inc., for sales made to its unaffiliated U.S. customers.¹¹ For example, while Productos Laminados reported selling functions associated with two U.S. channels of distribution, neither the selling-functions chart nor the related narrative description identified which company performed the selling activities and which one bore the underlying expense for such activities.¹² While Prolamsa cites to *Micron Tech.* to argue that the Department should look to the CEP starting price, as adjusted under section 772(d) of the Act, for determining the CEP LOT, our inability to delineate between the selling activities associated with sales to Prolamsa, Inc. and those associated with sales to the unaffiliated customer renders Prolamsa's reliance upon *Micron Tech.* unavailing.¹³ The record at issue in *Micron Tech.* contained information sufficient to make this delineation, while here it does not.

Prolamsa's own selling functions chart, unchanged between the original and supplemental questionnaire responses, demonstrates that for the two U.S. channels of distribution, the selling functions and the requisite level of intensity at which they were performed were the same.¹⁴ This chart also indicated that the selling functions and levels of intensity at which they were performed were similar for both the U.S. and home market channels of distribution.¹⁵

Moreover, while Prolamsa argues in its case brief that the NV LOT was at a more advanced LOT than its sales to the United States, record information submitted by Prolamsa seems to contradict its contention. Prolamsa itself attested to the fact that the selling functions performed for sales

⁹ See also *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 (Dec. 23, 2004) and accompanying "Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from Thailand," at Comment 5, dated December 23, 2004.

¹⁰ All merchandise sold to and in the United States during this review period was produced solely by Productos Laminados.

¹¹ See Prolamsa's questionnaire response, at p. 15 and Exhibit 7, dated March 20, 2014, and Prolamsa's supplemental questionnaire response, at 7 and Exhibit 10, dated June 6, 2014 (SQR 1). See also the Preliminary Decision Memorandum accompanying the *Preliminary Results* at 9, dated December 1, 2014.

¹² In relation to the two U.S. channels of distribution, Prolamsa referred to "US Channel 1" as "Back-to-Back, Invoicing, Shipped from Prolamsa, Inc.'s Inventory" and "US Channel 2" as "Back-to-Back Invoicing, Direct Shipped to Customer from Mexico" at Exhibit 10 in SQR 1.

¹³ See *Micron Tech.*, 243 F.3d at 1315-16.

¹⁴ See the selling functions chart provided in Prolamsa's original questionnaire response, at Exhibit 7, dated March 20, 2014, and in Prolamsa's supplemental questionnaire response, at Exhibit SQ-10, dated June 6, 2014.

¹⁵ *Id.*

made in the home market and to the U.S. market were similar to one another. Specifically, with respect to the U.S. market, Prolamsa claimed:

The selling functions that Prolamsa and Prolamsa, Inc. perform on sales of mechanical tube to the United States are generally similar to those performed for home-market sales, with the exception that, for sales to the United States, the arrangement of freight is slightly more complicated because one or more additional transportation legs are involved (emphasis added).¹⁶

Notwithstanding the fact that Prolamsa itself asserts on the record of this administrative review that the selling functions performed in the home market versus those performed for U.S. sales were similar, save for freight, we found that record information developed during the course of this segment of the proceeding was ambiguous and contradictory with respect to distribution channels and selling functions, as indicated above. Nonetheless, we conducted a detailed analysis of the information that was provided on the record in response to multiple questionnaires issued to Prolamsa.

As stated in the *Preliminary Results*, after considering the selling functions associated with U.S. sales, inventory maintenance served as the only selling function that would lead to any material difference between the NV LOT and the U.S. LOT. We also explained in the *Preliminary Results* that inventory maintenance has little bearing on the differences between the NV and U.S. LOTs, given the type of merchandise sold to the United States, *i.e.*, grade A513, or mechanical tube, merchandise that was also predominantly sold in the home market. Because mechanical tube is a made-to-order product, this type of merchandise is not typically stored in inventory. Prolamsa explained in its questionnaire responses that a certain amount of this product is held in inventory for “spot sales” for those customers that purchase this product at regular intervals, which enabled Prolamsa to forecast inventory levels for those customers. Since inventory maintenance served as the only potential difference in the selling functions between sales in the home market and to the U.S., we continue to find that the LOT in both markets is the same.

In order to grant a CEP offset adjustment to NV, the Department must first determine that the NV LOT is more remote from the factory than the CEP LOT by examining whether sales are made at different marketing stages, as set forth in section 773(a)(7)(B) of the Act and 19 CFR 351.412(f).¹⁷ Once this determination is made, the Department examines whether there is available data to permit a LOT adjustment, in accordance with section 773(a)(7)(B) of the Act. As explained above, upon examination of Prolamsa’s information we determined that the type of product sold and the selling activities conducted in both markets were generally the same. Consequently, we do not find the NV LOT to constitute a more advanced stage of distribution than the CEP LOT. Therefore, for these final results of review, we continue to find that a CEP offset adjustment to NV is not warranted.

¹⁶ *Id.*

¹⁷ See also *Ad Hoc Shrimp Trade Action Comm. v. United States*, 596 F.3d 1365 (Fed. Cir. 2010) (“{A} respondent must first demonstrate that substantial differences in selling functions exist between the third country [NV] and CEP [LOTs].”)

RECOMMENDATION

Based on our analysis of the comment received, we recommend adopting the Department position discussed above. If this recommendation is accepted, we will publish the final results of the review and the final weighted-average dumping margin in the *Federal Register*.

✓

Agree

Disagree

Ronald K. Lorentzen
Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

April 8, 2015
Date