



A-485-805
AR: 08/01/11 – 07/31/12
Public Document
AD/CVD 1: DV

July 2, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Certain Small Diameter Carbon and
Alloy Seamless Standard, Line and Pressure Pipe from Romania

SUMMARY

In response to requests from interested parties, the Department of Commerce (the Department) is conducting this administrative review of the antidumping duty order on certain small diameter carbon and alloy seamless standard, line and pressure pipe (small diameter seamless pipe) from Romania, covering the period August 1, 2011, through July 31, 2012. The review covers two producers/exporters of the subject merchandise, ArcelorMittal Tubular Products Roman S.A. (AMTP) and Canadian Natural Resources Limited (CNRL). The Department has preliminarily determined that during the period of review (POR) AMTP has not made sales of subject merchandise at less than normal value (NV). Additionally, the Department has preliminarily determined that it is appropriate to liquidate CNRL's entries without regard to antidumping duties.¹

BACKGROUND

On August 10, 2000, the Department published the antidumping duty order on small diameter seamless pipe from Romania.² On August 31, 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 AMTP, a Romanian producer and exporter of the subject merchandise; on the same day, CNRL, an exporter of

¹ See "Entries by Canadian Natural Resources Limited" below.

² See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania*, 65 FR 48963 (August 10, 2000).



subject merchandise, requested an administrative review of itself. On September 26, 2012, in accordance with 19 CFR 351.221(c)(1)(i), we initiated the administrative review of the order with respect to AMTP and CNRL.³

On December 20, 2012, United States Steel Corporation alleged that AMTP made sales of small diameter seamless pipe from Romania at prices below the cost of production (COP) in its home market during the POR.⁴ The Department determined that this allegation was timely filed in accordance with 19 CFR 351.301(d)(2)(ii). On February 1, 2013, we initiated a sales-below-cost investigation with respect to AMTP.⁵

We extended the time limit for the preliminary results of review to July 2, 2013, pursuant to section 751(a)(3)(A) of the Act.⁶

SCOPE OF THE ORDER

For purposes of this review, the products covered include small diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows 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-335, 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 this review also include all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of this review are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 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 merchandise subject to this review is typically classified in the HTSUS at subheadings: 7304.10.10.20, 7304.10.50.20, 7304.19.10.20, 7304.19.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Specifications, Characteristics, and Uses: 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

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 59168 (September 26, 2012).

⁴ See letter from the United States Steel Corporation (December 20, 2012).

⁵ See Memorandum to Susan Kuhbach (February 1, 2013).

⁶ See Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, entitled "Tolling of Administrative Deadlines as a Result of the Government Closure During Hurricane Sandy" (October 31, 2012); Memorandum entitled "Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review" (April 3, 2013).

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 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 is in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. 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.

Redraw hollows are any unfinished pipe or "hollow profiles" of carbon or alloy steel transformed by hot rolling or cold drawing/hydrostatic testing or other methods to enable the material to be sold under ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications.

The scope of this review includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, and 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 these

reviews. 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-335, ASTM A-589, ASTM A-795, and API 5L specifications shall be covered if used in a standard, line, or pressure application.

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 this review.

Specifically excluded from the scope of this review are 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-335, ASTM A-589, ASTM A-795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished oil country tubular goods (OCTG) are excluded from the scope of this review, 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 this scope when used in standard, line, or pressure applications.

With regard to the excluded products listed above, the Department will not instruct CBP to require end-use certification until such time as the petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being used 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 covered applications 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-161 specification is being used in a standard, line or pressure 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.

Entries by Canadian Natural Resources Limited

Summary

During the POR, CNRL reported that it imported subject merchandise into the United States from Canada.⁷ 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. 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. After the unaffiliated third-country

⁷ See CNRL’s request for review (August 31, 2012), at 2.

company purchased the subject merchandise, it shipped the subject merchandise and other purchased components to CNRL's yard in Edmonton, Alberta in Canada.⁸

Following receipt of the design and components from the engineering and procurement firm, CNRL sought a module fabricator and contracted with Bay Ltd., a Texas-based company, for the fabrication and construction of certain modules⁹ in the United States for exportation to Canada.¹⁰ The subject merchandise, along with the other components, was shipped on consignment by CNRL to Bay Ltd. for assembly of the modules.¹¹ Subsequently, the modules, which included subject merchandise, were delivered back to CNRL in the United States before being exported from the United States to Canada by CNRL.¹² CNRL claims that it consistently maintained title to the subject merchandise shipped to Bay Ltd.¹³

As part of this process, CNRL entered the merchandise as "type 3" entries for consumption and deposited AD cash deposits. CNRL requested this review to seek the liquidation of its entries without regard to ADs.

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.¹⁴ 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 executed with CNRL, assembled the pipe with other components to produce modules and rack systems for oilfield exploration. After assembly, the modules and rack systems were delivered back to CNRL in the United States before being exported from the United States to Canada by CNRL."¹⁵

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."¹⁶ CNRL further claims that it "acted as importer of record for the subject merchandise."¹⁷

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

⁸ See CNRL's Section A response (November 23, 2012), at 18.

⁹ The nature of the modules is business proprietary in nature. See CNRL's supplemental response (May 7, 2013), at 2 for a description of these modules.

¹⁰ See CNRL's supplemental response (January 11, 2013), at 2.

¹¹ See CNRL's request for review, at 2.

¹² *Id.*

¹³ See CNRL's Section A response, at Exhibit H.

¹⁴ *Id.*

¹⁵ See CNRL's Request for Review.

¹⁶ *Id.*

¹⁷ *Id.*

Bond{“TIB”}...in order to avoid the assessment of antidumping duties.”¹⁸ 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).”¹⁹

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;²⁰ 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;²¹ 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;²² and 4) none of the subject merchandise has been sold in any form in any country.²³

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.²⁴ CNRL requested that this company ship all merchandise to CNRL’s yard in Edmonton, Alberta, Canada, where CNRL intended to use the merchandise locally.²⁵ CNRL asserts that there was no requirement to advise CNRL as to the where the materials were sourced from,²⁶ as its contract with its supplier was an “engineering and procurement contract,”²⁷ and that CNRL did not get involved in the breakdown of the sourcing of materials to be provided under the contract.²⁸ 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 or intervening distributors that may have been used in the procurement of these goods.²⁹ 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.³⁰

With respect to the status of the materials and fabricated goods in question, CNRL explained that all modules containing subject merchandise are now in Canada.³¹ CNRL provided documentation showing that Bay Ltd. had performed on its contract to deliver the modules back to CNRL in Canada.³² CNRL also provided evidence that the surplus material (including scrap

¹⁸ *Id.* In support, CNRL cites *Customs Headquarters Ruling 230327* of May 10, 2004, and *Customs Headquarters Ruling 221488* of May 15, 1991.

¹⁹ *Id.*

²⁰ See CNRL’s Section A response, at 10.

²¹ See CNRL’s supplemental response (January 11, 2013), at 3.

²² *Id.*

²³ *Id.* at 5.

²⁴ See CNRL’s Section A response, at 21.

²⁵ See CNRL’s supplemental response (May 6, 2013), at 4.

²⁶ *Id.* at 6.

²⁷ *Id.* at 9.

²⁸ *Id.* at 6.

²⁹ *Id.*

³⁰ *Id.* at 9.

³¹ See CNRL’s supplemental response (May 6, 2013), at 2.

³² See CNRL’s supplemental response (June 12, 2013), at 2 and Exhibit F.

material) that was not required by the fabricator was shipped back to Canada, with a miniscule amount of scrap remaining to be returned.³³ In sum, CNRL asserts that none of the subject merchandise, including scraps, will remain in the United States.

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.³⁴ In response, CNRL submitted that “{a}ll *subject* surplus materials have been exported from the United States and delivered back to Canada,”³⁵ 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}.”³⁶ CNRL states that with regards 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.³⁷ 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).”³⁸ 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.³⁹

Department’s Position

Dumping is defined as the sale of merchandise in the United States at less than its 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*,⁴⁰ the U.S. Court of Appeals for the Federal Circuit held that the usage of the term “sale” in section 772(a) and (b) indicates a reference to a transaction involving a material consideration. Specifically, the Court clarified that, in order to be considered a sale within the meaning of the

³³ See CNRL’s supplemental response (May 6, 2013), at Exhibit A.

³⁴ See the supplemental questionnaire to CNRL (May 29, 2013).

³⁵ See CNRL’s supplemental response (June 12, 2013) at 2 (emphasis added).

³⁶ *Id.* at 3.

³⁷ *Id.*

³⁸ *Id.* at 3-4.

³⁹ 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 to Canada. See Memorandum to the File, “Ex Parte Conference Call with Canadian Natural Resources Limited (“CNRL”)” (June 26, 2013).

⁴⁰ See *NSK Ltd. v. United States*, 115 F.3d 965 (Fed. Cir. 1997) (*NSK*).

antidumping law, a transaction must involve “both a transfer of ownership to an unrelated party and consideration.”⁴¹

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.⁴² 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.⁴³ The Department's practice in this context was affirmed by the Federal Circuit.⁴⁴

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 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.⁴⁵ 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.⁴⁶

As stated in *OCTG from Japan*,⁴⁷ liquidating CNRL's entries without regard to antidumping duties does not violate any obligations under North American Free Trade Agreement

⁴¹ See *NSK*, 115 F.3d at 975.

⁴² See *Torrington Co. v. United States*, 82 F.3d 1039, 1046-47 (Fed. Cir. 1996) (*Torrington*).

⁴³ See *Oil Country Tubular Goods From Japan: Preliminary Results and Rescission {sic} in Part of Antidumping Duty Administrative Review*, 64 FR 48589, 48590-91 (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); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany*; *Final Results of Antidumping Duty Administrative Review*, 56 FR 31692, 31743 (July 11, 1991).

⁴⁴ See *Torrington*, 82 F.3d at 1046-47.

⁴⁵ See *OCTG from Japan*, 64 FR at 48590-91.

⁴⁶ 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.

⁴⁷ 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

(NAFTA).⁴⁸ Article 303 of NAFTA provides that if antidumping duties are applied, they cannot be waived, refunded or reduced.⁴⁹ 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 customer 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.

DISCUSSION OF THE METHODOLOGY FOR AMTP's WEIGHTED-AVERAGE DUMPING MARGIN CALCULATION

Comparisons to Normal Value

Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.313(c)(1) and (d) (2012), to determine whether AMTP's sales of small diameter seamless pipe from Romania were made in the United States at less than NV, we compared the CEP to the NV as described in the "Constructed Export Price" and "Normal Value" sections of this memorandum.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1) (2012), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (the average-to-average (A-A) method) unless the Secretary determines that another method is appropriate in a particular situation. In antidumping investigations, the Department examines whether to use the average-to-transaction (A-T) 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 the Department's examination of this question in the context of administrative reviews, the Department finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in antidumping investigations.⁵⁰ In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of A-T comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.⁵¹ The Department

without regard to duties. See *OCTG from Japan*, 64 FR at 48590-91.

⁴⁸ See CNRL's Request for Review (Aug. 31, 2012), at 3.

⁴⁹ 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).

⁵⁰ 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).

⁵¹ See Memoranda to Paul Piquado, Assistant Secretary for Import Administration, from Abdelali Elouaradia, Director of AD/CVD Operations Office 4, entitled "Less Than Fair Value Investigation of Xanthan Gum from Austria: Post-Preliminary Analysis and Calculation Memorandum", "Less Than Fair Value Investigation of Xanthan Gum from the People's Republic of China: Post-Preliminary Analysis and Calculation Memorandum for Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., T Jd.) and Shandong Fufeng Fermentation Co., Ltd.", and "Less Than Fair Value Investigation of Xanthan Gum from the People's Republic of China: Post-Preliminary Analysis and Calculation Memorandum for Deosen Biochemical Ltd," all dated March 4, 2013.

finds the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the A-A method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods.⁵² If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the A-A method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer names. Regions are defined using the reported destination code (*i.e.*, zip codes) 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 being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department 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* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen's *d* test is applied when the test and comparison groups of data 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 calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net 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. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

⁵² As noted above, differential pricing was used in recent investigations. It was also used in the recent antidumping duty administrative review of polyester staple fiber from Taiwan. *See Polyester Staple Fiber from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 17637 (March 22, 2013) and accompanying Decision Memorandum, and in *1-Hydroxyethylidene-1, 1-Diphosphonic Acid From India: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012; and Intent to Revoke Order (in Part)*, 78 FR 25699 (May 2, 2013).

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 export prices that differ significantly supports the consideration of the application of the A-T method to all sales as an alternative to the A-A 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 A-T method to those sales identified as passing the Cohen’s *d* test as an alternative to the A-A method, and application of the A-A 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 A-A 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 EPs that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the A-A method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative 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 A-A method only. If the difference between the two calculations is meaningful, this demonstrates that the A-A method cannot account for differences such as those observed in this analysis, and, therefore, an alternative 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 margin between the A-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

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

B. *Results of the Differential Pricing Analysis*

For AMTP, based on the results of the differential pricing analysis, the Department finds that zero percent of AMTP’s U.S. sales indicate the existence of a pattern of CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. *See* Preliminary Analysis Memorandum⁵³ for further discussion. Accordingly, the Department has determined to use the A-A method in making comparisons of CEP and NV for AMTP.⁵⁴

⁵³ *See* Memorandum to the File entitled, “Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania - Preliminary Results Analysis Memorandum for ArcelorMittal Tubular Products Roman S.A.,” dated concurrently with this memorandum (Preliminary Analysis Memorandum).

⁵⁴ In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012). In particular, the Department compared monthly weighted-average CEPs with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

Product Comparisons

In accordance with section 771(16) of the Act, we compared products produced by AMTP and sold in the U.S. and home markets on the basis of the comparison product which was closest in terms of the physical characteristics to the product sold in the United States. In the order of importance, these characteristics are specification/grade, manufacturing process, outside diameter, wall thickness, surface finish, and end finish.

When making this comparison in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the “Scope of the Order” section of this notice, above, that were in the ordinary course of trade for purposes of determining an appropriate product comparison to the U.S. sale. If an identical home-market model with identical physical characteristics was reported, we made comparisons to weighted-average home-market prices that were based on all sales of the identical product during a contemporaneous month. If there were no contemporaneous sales of an identical model, we identified sales of the most similar merchandise that were most contemporaneous with the U.S. sale in accordance with 19 CFR 351.414(f).

Date of Sale

Although the Department normally uses the date of invoice, as recorded in the producer’s or exporter’s records kept in the ordinary course of business, as the date of sale, the Department’s regulations provide that the Department may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale (*e.g.*, price and quantity). *See* 19 CFR 351.401(i); *see also Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001); and *Yieh Phui Enterprise Co. v. United States*, 791 F. Supp. 2d 1319 (CIT 2011) (affirming that the Department may use invoice date unless a party demonstrates that the material terms of its sale were established on another date).

For all U.S. sales, AMTP asserted that the price and quantity are subject to change until the merchandise is shipped from the mill in Romania. Thus, AMTP reported the date of shipment from the mill in Romania as the date of sale. (The date of shipment also preceded the invoice date.)

AMTP reported the earlier of shipment date or invoice date for its home market sales. For these sales, AMTP asserted that the price and quantity are subject to change until invoicing, except where invoicing occurs after shipment, in which case the material terms are set when the product is shipped.

We examined the information on the record and preliminarily find that the material terms of the U.S. sales were firmly established at the time of purchase-order confirmation and were not subject to change up to and including the date of the shipment from the mill.⁵⁵

⁵⁵ *See* AMTP’s November 19, 2012 response at Exhibit A-11, January 30, 2013 response at 19-20 and Exhibit SQ-1, SQ-3 and SQ-4, and March 15, 2013 response at 10-11 and Exhibit S2-7.

Further, we examined the information on the record and preliminarily find that the material terms of the home-market sales were firmly established at the time of the contract addendum and were not subject to change up to and including the date of the shipment from the mill or the date of the commercial invoice.⁵⁶

Specifically, for both home-market and U.S. sales, we found that the product specifications, terms of sale, and prices, as stated in the contract addendum (for home-market sales) and in the purchase-order confirmation (for U.S. sales), were the same at the time of invoicing. Moreover, the quantities at the time of shipment from the mill in Romania were within the tolerances allowable in the contract addendum (for home-market sales) and in the purchase-order confirmation (for U.S. sales). Where there are no changes to the material terms of sale between the date of the contract and the date of the invoice (or the date of shipment if it precedes the date of invoice) or there are changes but they fall within the parameters allowable by the contract, it is our practice to use the date of the contract as the date of sale.⁵⁷

As the information on the record indicates that the material terms of sale (*e.g.*, price and quantity) did not change after the date of the purchase order confirmation for U.S. sales and the date of the contract addendum for home market sales, we preliminarily determine that these dates better reflect the dates on which the material terms of sale were established. Therefore, for purposes of the preliminary results of review, we have used the date of the purchase order confirmation as the date of sale for AMTP's reported U.S. sales and the date of the contract addendum for AMTP's reported home market sales. *See* Memorandum from Dmitry Vladimirov to the File, "Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania - Preliminary Results Analysis Memorandum for ArcelorMittal Tubular Products Roman S.A.," dated concurrently with this notice for additional information.

Constructed Export Price

In accordance with section 772(b) of the Act, we used CEP for AMTP because the subject merchandise was sold in the United States by a U.S. seller affiliated with the producer. We calculated CEP based on the delivered price to unaffiliated purchasers in the United States. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses and indirect selling expenses.

⁵⁶ *See* AMTP's January 30, 2013, response at 8-9 and Exhibit SQ-9 and its March 15, 2013, response at 5 and Exhibit S2-2.

⁵⁷ *See, e.g., Certain Cut-to-Length Carbon-Quality Steel Plate Products From Italy: Final Results of Antidumping Duty Administrative Review*, 75 FR 47777 (August 9, 2010), and accompanying Issues and Decision Memorandum (IDM) at Comment 1, *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review and Rescission in Part of Administrative Review*, 71 FR 30656 (May 30, 2006), and accompanying IDM at Comment 7, *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review*, 72 FR 18204 (April 11, 2007), and accompanying IDM at Comment 1, *Notice of Final Results of Antidumping Duty Administrative Review and Final Partial Rescission: Certain Cut-to-Length Carbon Steel Plate from Romania*, 72 FR 6522 (February 12, 2007), and accompanying IDM at Comment 1, and *Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 49622 (September 28, 2001), and accompanying IDM at Comment 9.

Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.⁵⁸

Normal Value

1. 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 five percent or more of the aggregate volume of U.S. sales), we compared the volume of AMTP's home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise in accordance with section 773(a)(1)(B)(i) of the Act. Based on this comparison, we determined that, pursuant to 19 CFR 351.404(b), AMTP had a viable home market during the POR. Consequently, pursuant to section 773(a)(1)(B)(i) of the Act and 19 CFR 351.404(c)(1)(i), we based NV on home market sales to unaffiliated purchasers made in the usual commercial quantities in the ordinary course of trade, as described in detail below.

2. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales of foreign like products at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁵⁹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁶⁰ To determine whether the comparison-market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale. To determine whether home market sales are at a different LOT than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.

For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁶¹ When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. When this occurs and available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT

⁵⁸ See Preliminary Analysis Memorandum.

⁵⁹ See 19 CFR 351.412(c)(2).

⁶⁰ See *id.*; see also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*).

⁶¹ See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

adjustment was practicable), the Department grants a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁶²

During the POR, AMTP reported that it sold the foreign like product in the home market through a single channel of distribution and that the selling activities associated with all sales through this channel of distribution did not differ. We found no evidence to contradict AMTP's representations. Accordingly, we preliminarily find that the home market channel of distribution constituted a single LOT.

All of AMTP's U.S. sales were CEP sales. We identified the LOTe based on the price after the deduction of expenses and profit under section 772(d) of the Act. Most of the selling activities were performed by the U.S. affiliate and, after eliminating expenses and profit associated with those selling activities, we found that AMTP performed few selling activities and that the intensity levels for these activities were very small in comparison to the intensity levels for activities performed for the home market LOT. Therefore, we have preliminarily concluded that CEP sales constituted a different LOT from the LOT in the home market and that the home market LOT was at a more advanced stage of distribution than the CEP LOT.

We were unable to match CEP sales at the same LOT in the home market or to make an LOT adjustment because there was no LOT in the home market equivalent to the CEP LOT. Furthermore, we have no other information that provides an appropriate basis for determining an LOT adjustment. Because the data available do not provide an appropriate basis to determine an LOT adjustment and the home market LOT is at a more advanced stage of distribution than the CEP, we find it is appropriate to make a CEP offset to NV, in accordance with section 773(a)(7)(B) of the Act, for all such sales. The CEP offset was the sum of indirect selling expenses incurred on home market sales up to the amount of indirect selling expenses incurred on the U.S. sales.

3. Calculation of Normal Value Based on Home Market Prices

We based NV on the starting prices to home market customers. We made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, and for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made circumstance-of-sale adjustments by deducting home market direct selling expenses from NV.

Allegation of Sales-Below Cost of Production

Based on our analysis of the allegation made by United States Steel Corporation, we found that there were reasonable grounds to believe or suspect that sales of the foreign like product in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of

⁶² See *Plate from South Africa*, 62 FR at 61732-33.

the Act, we initiated a sales-below-cost investigation to determine whether sales were made at prices below their respective COP.⁶³

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product plus an amount for general and administrative expenses, and financial expenses. We relied on the COP data submitted by AMTP with certain exceptions. Specifically, we adjusted AMTP's reported total general and administrative expenses to include a tax appeal provision, a net provision for employee expenses, and the correction of an arithmetical error.⁶⁴ We also adjusted the calculation of general and administrative expenses to exclude the reversal of provisions related to prior years.⁶⁵ We examined the cost data and determined that our quarterly cost methodology is not warranted and, therefore, we have applied our standard methodology of using annual costs based on the reported data, adjusted as described above.

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, to determine whether the sales were made at prices below the COP. We compared model-specific COPs to the reported home market prices less any applicable movement charges, discounts and rebates, selling, and packing expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of the respondent's 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 the below cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product during the POR were at prices less than COP, we determine that such sales have been made in "substantial quantities" and, thus, we disregard below cost sales.⁶⁶ Further, we determine that the sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because we examine below cost sales occurring during the entire POR. Because we are applying our standard annual-average cost test in these preliminary results, we have also applied our standard cost-recovery test with no adjustments. In such cases, because we compare prices to POR-average costs, we also determine that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

⁶³ See Memorandum to Susan Kuhbach (February 1, 2013).

⁶⁴ See Memorandum to Neal Halper from Robert Greger entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – ArcelorMittal Tubular Products Roman S.A. ("AMTP")" (July 2, 2013).

⁶⁵ *Id.*

⁶⁶ See section 773(b)(2)(C) of the Act.

In this case, we found that, for certain specific products, more than 20 percent of AMTP's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. Therefore, we disregarded these sales and used the remaining sales as the basis for determining NV in accordance with section 773(b)(1) of the Act.

Currency Conversion

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

RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

✓

Agree

Disagree

Paul Piquado

Paul Piquado
Assistant Secretary
for Import Administration

2 July 2013

Date