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Investigation
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DATE: December 5, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Antidumping Duty Investigation of Prestressed Concrete Steel
Tie Wire from Thailand

Summary

The Department of Commerce (the Department) is conducting an antidumping duty (AD) investigation of prestressed concrete steel rail tie wire (PC tie wire) from Thailand. This investigation covers one producer/exporter of the merchandise under consideration, The Siam Industrial Wire Co., Ltd. (SIW). The period of investigation (POI) is April 1, 2012, through March 31, 2013. We have preliminarily found that sales of the merchandise under consideration have not been made at less than fair value (LTFV).

Background

Since the initiation of this investigation on May 13, 2013, the following events have occurred.¹

In the Initiation Notice, the Department stated that it intended to select SIW for examination as the sole known exporter/producer of the subject merchandise because the petition identifies this one company as accounting for virtually all of the imports of PC tie wire from Thailand and, furthermore, the Department knew of no other exporters or producers of the merchandise under consideration.² The Department invited interested parties to comment on respondent selection; however, the Department received no comments on respondent selection.

¹ See Prestressed Concrete Steel Rail Tie Wire From Mexico, the People's Republic of China, and Thailand: Initiation of Antidumping Duty Investigations, 78 FR 29325 (May 20, 2013) (Initiation Notice).

² See Initiation Notice, 78 FR at 29330.



Also in the Initiation Notice, the Department notified parties of an opportunity to comment on the scope of the investigation, as well as the appropriate physical characteristics of PC tie wire to be reported in response to the Department's AD questionnaire.³ In June 2013, the petitioners and SIW, as well as Silvery Dragon Group Technology and Trading Co., Ltd. (Tianjin), a respondent in the companion investigation of PC tie wire from the People's Republic of China (PRC), submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes. In June and September 2013, the petitioners and SIW submitted comments on the scope of these investigations.⁴

On June 14, 2013, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of PC tie wire from Thailand.⁵

On June 20, 2013, the Department issued the AD questionnaire to SIW. From July through September 2013, SIW submitted timely responses to the Department's AD questionnaire and corresponding supplemental questionnaires. During the same time frame, the petitioners submitted comments regarding those responses. In several submissions, the petitioners argued that wire produced by SIW to the Thai specification TIS 95-2540 does not satisfy the minimum requirements of ASTM A881/A881M and is not suitable for use as PC tie wire, as required by the scope of the investigation. Based on our review of all of the record evidence, we preliminarily found that the wire product that SIW sold in Thailand during the POI does not meet the ASTM A881/A881M specification and, therefore, cannot be used for comparison to SIW's sales of subject merchandise in the United States.⁶ Pursuant to the Department's request, on October 31, 2013, SIW provided information on its largest third country markets. Subsequently, on November 4, 2013, we informed SIW that we would require that it report third-country sales made to South Africa during the POI, as well as CV data in the event that we determined that its third-country sales are not appropriate for comparison purposes. SIW submitted this information on November 12 and 19, 2013, respectively. See "Product Comparisons" section, below.

On September 4, 2013, the petitioners requested that the date for the issuance of the preliminary determination in this investigation be fully extended pursuant to section 733(c)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.205(e). On September 19, 2013, pursuant to sections 733(c)(1)(A) and (c)(2) of the Act and 19 CFR 351.205(f), the Department published a postponement of the preliminary determination until no later than November 19, 2013.⁷

³ Id., 78 FR at 29325.

⁴ See memorandum entitled "Scope Modification Requests," dated concurrently with this determination.

⁵ See Prestressed Concrete Steel Rail Tie Wire From China, Mexico, and Thailand, 78 FR 37236 (June 20, 2013).

⁶ See memorandum entitled "Home Market Sales Reporting of The Siam Wire Co., Ltd (SIW)," dated October 28, 2013 (Sales Reporting Memo).

⁷ See Prestressed Concrete Steel Rail Tie Wire From Mexico, Thailand, and the People's Republic of China: Postponement of Preliminary Determinations of Antidumping Duty Investigations, 78 FR 57619 (September 19, 2013).

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.⁸ Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day. The revised deadline for the preliminary determination in this investigation is now December 5, 2013.

On October 18, 2013, the petitioners requested that the Department initiate a cost investigation with respect to SIW's sales of PC tie wire in Thailand. However, because we are not using SIW's home market sales as the basis for normal value (NV), as discussed above, this request is moot. See also "Home Market Viability" section, below.

On November 15, 2013, the petitioners filed a sales below cost allegation with respect to SIW's sales of PC tie wire in South Africa.

On November 20, 2013, the petitioners filed comments for the Department to consider in its preliminary determination. Among other things, the petitioners alleged that a "particular market situation" exists which renders SIW's sales to South Africa an inappropriate basis for NV. SIW submitted rebuttal comments on November 22, 2013.

On November 22, 2013, the petitioners filed comments on the CV data submitted by SIW, as well as a revised sales-below-cost allegation with respect to SIW's third-country sales to South Africa. After reviewing the sales-below-cost allegation, we find that the petitioners have provided a reasonable basis to believe or suspect that SIW is selling PC tie wire at prices below SIW's cost of production. Accordingly, we have initiated a sales-below-cost investigation with respect to SIW's third-country sales for consideration in the final determination. See memorandum to James Maeder, entitled "The Petitioners' Allegation of Sales Below the Cost of Production for The Siam Industiral Wire Co., Ltd.," dated concurrently with this determination.

On November 26 and 27, 2013, the petitioners submitted additional comments with respect to the preliminary determination and SIW's November 22, 2013, submission, respectively. On November 29, 2013, SIW submitted comments rebutting the petitioners' November 22, 2013, comments concerning SIW's CV data. These comments were received too late to be considered for the purposes of the preliminary determination.

We intend to issue additional supplemental questionnaires with respect to sections B-D of the questionnaire subsequent to the preliminary determination. We will consider the responses to these questionnaires in our final determination.

We are conducting this investigation in accordance with section 733(b) of the Act.

⁸ See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (October 18, 2013).

Period of Investigation

The POI is April 1, 2012, through March 31, 2013. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was April 2013.⁹

Scope of the Investigation

The product covered by this investigation is high carbon steel wire; stress relieved or low relaxation; indented or otherwise deformed; meeting at a minimum the physical, mechanical, and chemical requirements of the American Society of Testing Materials (“ASTM”) A881/A881M specification; regardless of shape, size or alloy element levels; suitable for use as prestressed tendons in concrete railroad ties (“PC tie wire”). High carbon steel is defined as steel that contains 0.6 percent or more of carbon by weight.

PC tie wire is classified under the Harmonized Tariff Schedule of the United States (“HTSUS”) subheading 7217.10.8045, but may also be classified under subheadings 7217.10.7000, 7217.10.8025, 7217.10.8030, 7217.10.8090, 7217.10.9000, 7229.90.1000, 7229.90.5016, 7229.90.5031, 7229.90.5051, 7229.90.9000, and 7312.10.3012. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.¹⁰

Postponement of Final Determination

Pursuant to section 735(a)(2) of the Act, on November 7 and 8, 2013, respectively, the petitioners and SIW requested that the Department postpone the final determination, and SIW requested that provisional measures be extended. In accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b) and (e), because our preliminary determination is negative and no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the Federal Register.

Determination of the Comparison Method

A. Differential Pricing Analysis

Pursuant to 19 CFR 351.414(c) (2013), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average export prices (EPs) (or constructed export prices (CEPs)) (the average-to-average method) unless the Secretary determines another method is appropriate in a particular situation. The Department’s regulations also provide that dumping margins may be calculated by comparing NVs, based on individual transactions, to the

⁹ See 19 CFR 351.204(b)(1).

¹⁰ Since the initiation of this investigation, based on interested party comments, we modified the scope to add language to and clarify the meaning of the phrase “meeting at a minimum the American Society for Testing Materials (“ASTM”) A881/A881M specification,” and to include two additional HTSUS numbers. For further discussion, see the memorandum entitled “Scope Modification Requests,” dated concurrently with this determination.

EPs (or CEPs) of individual transactions (transaction-to-transaction method) or, when certain conditions are satisfied, by comparing weighted-average NVs to the EPs (or CEPs) of individual transactions (average-to-transaction method).¹¹ In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of the average-to-average method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1).¹² The Department may determine that in particular circumstances, consistent with section 777A(d)(1)(B) of the Act, it is appropriate to use the average-to-transaction method. The Department will continue to develop its approach in this area based on comments received in this investigation and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in this preliminary determination requires a finding of a pattern of EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used in this preliminary determination evaluates all purchasers, regions, and time periods to determine whether a pattern of significant price differences exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the customer codes reported by SIW. Regions are defined using the reported destination code (i.e., zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI being examined based upon the reported date of sale. For purposes of analyzing sales transactions by customer, 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

¹¹ See 19 CFR 351.414(b)(1) and (2).

¹² See, e.g., Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33350 (June 4, 2013), and accompanying Issues and Decision Memorandum at Comment 3.

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.

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 EPs that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (i.e., the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of 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 average-to-average 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 average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average 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 average-to-average method and the appropriate alternative method where both rates are above the de minimis threshold, or 2) the resulting weighted-average dumping margin moves across the de minimis threshold.

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

B. Results of the Differential Pricing Analysis

Based on the results of the differential pricing analysis, the Department finds that over 66 percent of SIW's export sales confirm the existence of a pattern of constructed EPs for comparable merchandise that differ significantly among time periods. Further, the Department determines that the average-to-average method can appropriately account for such differences because there is not a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and the average-to-transaction method. Accordingly, the

Department has preliminarily determined to use the average-to-average method for all U.S. sales in making comparisons of CEP and NV for SIW.

Discussion of the Methodology

A. Fair Value Comparisons

To determine whether sales of PC tie wire from Thailand to the United States were made at less than fair value, we compared the CEP to the NV, as described in the “Constructed Export Price” and “Normal Value” sections of this notice below. In accordance with section 777A(d)(1)(B) of the Act, we compared POI weighted-average CEPs to POI weighted-average NVs.

B. Product Comparisons

We made product comparisons using CV, as discussed in the “Calculation of Normal Value Based on Constructed Value” section of this notice, below.

In its initial response to section A of the questionnaire, submitted on July 16, 2013, SIW claimed that the merchandise it sold in the home market during the POI, which it produced to a Thai steel standard (TIS 95-2540), met or exceeded the minimum requirements of ASTM A881/A881M, as required by the scope of investigation and, thus, those sales could be used as a basis for NV. On July 26, 2013, the petitioners submitted argument that the merchandise SIW sold in the home market did not meet the scope requirements and, thus, could not be used as a basis for NV. Both parties provided support for their respective claims. In the meantime, SIW reported in its response to section B of the questionnaire its home market sales it claimed were comparable to its U.S. sales. After considering all of the information placed on the record, including reports from industry experts, and information we obtained from an experienced materials research engineer at the National Institute of Science and Technology, we determined on October 28, 2013, that the wire product that SIW sold in Thailand did not meet at least one of the requirements specified in the ASTM standard. We therefore found that SIW’s wire product sold in Thailand was not a “foreign like product” within the meaning of section 771(16) of the Act and could not be used as a basis for NV.¹³

Based on SIW’s representations with respect to its largest third-country markets, we requested that SIW respond to section B of the questionnaire with respect to its sales to South Africa, as that market appeared to be viable and to reflect merchandise produced specifically to ASTM A881 standards. We also requested that SIW respond to the CV portion of the questionnaire in case our eventual analysis of the third-country data indicated that it could not be used for product comparisons.¹⁴

Based upon SIW’s third-country sales response, the petitioners alleged that a “particular market situation” exists which renders sales to South Africa inappropriate as a basis for NV. Specifically, the petitioners claimed that this situation exists because: (1) the price of the merchandise SIW sold to South Africa was neither normal nor representative of SIW’s prices for

¹³ See Sales Reporting Memo.

¹⁴ See letter to SIW dated November 4, 2013.

PC tie wire generally; (2) SIW made only one sale during the POI to South Africa through a channel which they claim is not consistent with the U.S. sales channel, *i.e.*, the sale was made to an unaffiliated trading company in a third country which resold the merchandise to a customer in South Africa; and (3) the merchandise may ultimately have been shipped to the South African customer's facility located in another country.¹⁵ Furthermore, the petitioners argued that, not only should SIW have known that its home market sales were an inappropriate basis for NV (as preliminarily determined by the Department on October 28, 2013), but they also should have known that their sales to South Africa could not be used as a basis for NV based on the "particular market situation." Accordingly, the petitioners asserted that the Department should base SIW's preliminary dumping margin on adverse facts available (AFA).

In response, SIW asserted that the petitioners' "particular market situation" allegation is based on factual inaccuracies.¹⁶ Consequently, SIW maintains that there is no evidence that: (1) the prices to the South African customer are not representative, or that the sales to South Africa are otherwise suspect, and (2) there is no established market for PC tie wire in South Africa.

A particular market situation finding means that even though the respondent's sales in the comparison market may have met the viability threshold, those sales do not form a proper basis for determining NV. The Department has found a particular market situation to exist in certain past cases where, for example, the merchandise sold in the home market was substandard, the home market sales were incidental to the export-oriented business operations of the respondent, or the comparison-market sales transaction(s) involved other unusual circumstances.¹⁷

We have reviewed the petitioners' allegation, and SIW's rebuttal, and at this time find that we have insufficient information to determine whether a particular market situation exists with respect to SIW's sales to South Africa. With respect to the petitioners' claim above, it is not clear from SIW's questionnaire response that the transactions at issue were somehow abnormal or unrepresentative of SIW's normal transactions. Given the timing of the petitioners' allegation, we are unable to properly analyze the allegation prior to the preliminary determination. However, we intend to request in a supplemental questionnaire additional information from SIW with respect to this issue, as well as address in this supplemental questionnaire any additional questions we have with respect to SIW's third-country sales data. We will verify this information and consider it for purposes of the final determination.

Notwithstanding SIW's rebuttal to the petitioners' allegation, because the petitioners' allegation raises questions as to whether SIW's sales to South Africa are suitable as a basis for NV, and we have not had sufficient time to analyze the matter, we have preliminarily based NV on SIW's CV data, consistent with section 773(a)(4) of the Act. We do not find it appropriate to apply AFA, as the petitioners have requested, because SIW has been cooperative in this investigation. It has

¹⁵ See letter from the petitioners dated November 20, 2013, at pages 2-10.

¹⁶ See letter from SIW dated November 22, 2013, at pages 1-3.

¹⁷ See *e.g.*, Notice of Final Results of New Shipper Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from Ecuador, 71 FR 54977 (September 20, 2006), and accompanying Issues and Decision Memorandum at Comment 1; Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy, 72 FR 7011 (February 14, 2007), and accompanying Issues and Decision Memorandum at Comment 1; and Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile, 63 FR 31418 (June 9, 1998), at Comment 4.

responded to our requests for information in a timely manner and, as noted above, we will continue to analyze and address the petitioners' allegation concerning the existence of a particular market situation with respect to SIW's sales to South Africa.

C. Date of Sale

SIW reported the date of invoice to the first unaffiliated customer as the date of sale.¹⁸ Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Secretary 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.¹⁹ In this case, SIW reported U.S. sales that were shipped prior to invoicing. The Department has a long-standing practice of finding that, where the shipment date precedes the invoice date, the shipment date better reflects the date on which the material terms of sale are established.²⁰ Therefore, we preliminarily used the earlier of the invoice date or the shipment date as the date of sale, in accordance with our practice.²¹

D. Constructed Export Price

In accordance with section 772(b) of the Act, we used CEP for SIW because the merchandise under consideration was sold in the United States by a U.S. seller affiliated with SIW, and EP, as defined by section 772(a) of the Act, was not otherwise warranted. We calculated the CEP based on a packed price, either delivered to the customer's location (DCP) or picked up at the port (CIF), to unaffiliated purchasers in, or for exportation to, the United States. We made adjustments, where appropriate, from the starting price for billing adjustments. We also made deductions for any movement expenses (e.g., foreign inland freight, port charges, export processing fees, testing expenses (courier fees to deliver test samples), U.S. brokerage and handling, international freight, marine insurance, U.S. inland freight, and U.S. duty), in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, 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. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. See memorandum entitled, "The Siam Industrial Wire Co., Ltd. Preliminary Determination Margin Calculation" (Sales Calculation Memorandum), dated concurrently with this determination.

¹⁸ See SIW's August 12, 2013, Section C Questionnaire Response at page C-15.

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

²⁰ See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 11.

²¹ See id.

Normal Value

A. Comparison Market Viability

As described above in the "Product Comparisons" section, SIW's sales of wire product in Thailand were not sales of a "foreign like product." When there are no sales in the home market of the foreign like product or when home market sales are not suitable to serve as the basis for NV, section 773(a)(1)(B)(ii) of the Act provides that sales to a third-country market may be utilized if the prices in such market are representative; the aggregate quantity or, if the quantity is not appropriate, the value of the foreign like product sold by the producer or exporter in the third-country market is five percent or more of the aggregate quantity of the subject merchandise sold in or to the United States; and the Department does not determine that a particular market situation in the third-country market prevents a proper comparison with the U.S. price. Section 773(a)(4) of the Act states that, notwithstanding section 773(a)(1)(B)(ii) of the Act, CV can be used when there are no home market sales suitable for NV.

Based on the representations made by SIW with respect to its sales to third country markets,²² we required that it report sales made to South Africa during the POI.²³ Although the volume of SIW's third-country sales of the foreign like product is greater than five percent of the volume of U.S. sales, for the reasons stated in the "Product Comparisons" section, above, we have preliminarily determined it is appropriate to use CV as the basis for NV.

B. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA),²⁴ to the extent practicable, the Department determines NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP. Pursuant to 19 CFR 351.412(c)(1), the NV LOT is based on the starting price of the sales in the comparison market or, when NV is based on CV, the starting price of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices), we consider the starting prices before any adjustments. 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.²⁵

To determine whether comparison market sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.²⁶ If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price

²² See letter from SIW dated November 1, 2013.

²³ See letter to SIW dated November 4, 2013.

²⁴ See H.R. Doc. No. 316, 103d Cong., 2d Sess. 829-831 (1994).

²⁵ See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

²⁶ See 19 CFR 351.412(c)(2).

differences between the sales on which NV is based and the comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

As discussed above, we based NV on CV. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit.²⁷ In accordance with 19 CFR 351.412(d), the Department will make its LOT determination under paragraph (d)(1) of this section on the basis of sales of the foreign like product by the producer or exporter. Because it is not possible in this case to make an LOT determination on the basis of sales of the foreign like product in the home or third country market, the Department may use sales of different or broader product lines, sales by other companies, or any other reasonable basis.²⁸ Because we based selling expenses and profit on the expenses incurred and profits earned by SIW on its sales in Thailand of prestressed concrete wire and crimped wire, and there is no information on the record pertaining to SIW's selling activities with respect to all of these sales, we could not determine the LOT of the sales from which we derived selling expenses and profit for CV.²⁹ As a result, we could not determine whether there is a difference in LOT between any U.S. sales and CV. Therefore, we did not make a LOT adjustment or CEP offset to NV in this case. See "Calculation of Normal Value Based on Constructed Value" section of this notice below.

C. Calculation of Normal Value Based on Constructed Value

In accordance with section 773(a)(4) of the Act, we based SIW's NV on CV.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of SIW's cost of materials and fabrication employed in producing the subject merchandise, plus amounts for G&A and U.S. packing costs. We calculated the cost of materials and fabrication, G&A and interest based on information submitted by SIW in its original section D questionnaire response, except in instances where we determined that the information was not valued correctly. Specifically, SIW deviated from its normal books and records in determining the cost of the wire rod, the material input to PC tie wire. Because the record evidence at this stage of the proceeding does not permit the Department to determine whether or not the methodology used by SIW to calculate the reported wire rod costs is reasonable, and that the deviation from the normal books and records is appropriate, we have adjusted SIW's reported wire rod costs to reflect the POI average wire rod costs reflected in SIW's normal books and records for the preliminary determination.³⁰ Additionally, we adjusted SIW's fixed overhead, G&A, and financial expense calculations. For a detailed explanation of these adjustments, see the memorandum to Neal M. Halper from LaVonne Clark re: Constructed Value Calculation

²⁷ See e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp from Brazil, 69 FR 47081 (August 4, 2004), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil, 69 FR 76910 (December 23, 2004).

²⁸ See 19 CFR 351.412 (d)(2).

²⁹ We intend to request additional information concerning SIW's selling activities for its domestic wire sales. Based on this information, we will reconsider whether to grant a LOT adjustment or CEP offset to NV in the final determination.

³⁰ We intend to request additional information regarding SIW's reporting methodology for wire rod costs. We will reconsider whether or not SIW's departure from its normal books and records is warranted based on this information for purposes of the final determination.

Adjustments for the Preliminary Determination – The Siam Industrial Wire Co., Ltd. (Cost Calculation Memorandum), dated concurrently with this determination.

Because we have not used comparison-market sales for purposes of the preliminary determination, we cannot determine selling expenses and profit under section 773(e)(2)(A) of the Act, which requires sales by the respondent in question in the ordinary course of trade in a comparison market. Therefore, we have relied on section 773(e)(2)(B) of the Act to determine SIW's selling expenses and profit.

In situations where selling expenses and profit cannot be calculated under the preferred method, section 773(e)(2)(B) of the Act sets forth three alternatives. The statute does not establish a hierarchy for selecting among these alternative methodologies.³¹ Nonetheless, we examined each alternative in searching for an appropriate method. Alternative (i) of section 773(e)(2)(B) of the Act specifies that selling expenses and profit may be calculated based on “actual amounts incurred by the specific exporter or producer ... on merchandise in the same general category” as subject merchandise. Because SIW provided sales and cost information specific to its sales to Thailand of products generally classified as prestressed concrete wire and crimped wire, we relied on alternative (i) for the preliminary determination to calculate SIW's selling expense and profit rates.³²

For comparisons to CEP, we deducted from CV an amount for selling expenses, which we calculated by applying the selling expense ratio discussed above to the total cost of production.

Currency Conversion

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

Verification

As provided in section 782(i) of the Act, we will verify information relied upon in making our final determination.

³¹ See SAA at 840.

³² See the Sales Calculation Memorandum and the Cost Calculation Memorandum, respectively.

Conclusion

We recommend applying the above methodology for this preliminary determination.

✓
Agree

Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

5 DECEMBER 2013
Date