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December 5, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Seamless Refined Copper Pipe and Tube from Mexico: Decision
Memorandum for Preliminary Results of Antidumping Duty
Administrative Review; 2014-2015

SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty (AD) order on seamless refined copper pipe and tube from Mexico (the *Order*). The review covers three producers/exporters of the subject merchandise, Golden Dragon¹, Nacional de Cobre, S.A. de C.V. (Nacobre), and IUSA, S.A. de C.V. (IUSA). The period of review (POR) is November 1, 2014, through October 31, 2015. We have preliminarily found that sales of the subject merchandise have been made at prices below normal value (NV).

BACKGROUND

On November 22, 2010, the Department published the *Order* in the *Federal Register*.² Subsequently, on November 3, 2015, the Department published in the *Federal Register* a notice

¹ The Department previously treated GD Affiliates S. de R.L. de C.V. as part of a single entity including: GD Copper Cooperatief U.A./Hong Kong GD Trading Co. Ltd./Golden Dragon Holding (Hong Kong) International, Ltd./GD Copper U.S.A. Inc./GD Affiliates Servicios S. de R.L. de C.V./GD Affiliates S. de R.L. de C.V. (MXGD), which is collectively referred to as Golden Dragon. See, e.g., *Seamless Refined Copper Pipe and Tube from Mexico: Final Results of Antidumping Duty New Shipper Review*, 77 FR 59178 (September 26, 2012), and accompanying Issues and Decision Memorandum (IDM).

² See *Seamless Refined Copper Pipe and Tube from Mexico and the People's Republic of China: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value from Mexico*, 75 FR 71070 (November 22, 2010) (the *Order*).



of opportunity to request an administrative review of the *Order* for the period November 1, 2014, through October 31, 2015.³

Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(1), in November 2015, the Department received requests to conduct an administrative review of the *Order* from Cerro Flow Products, LLC, Wieland Copper Products, LLC, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc. (collectively, the petitioners) for the following companies: Golden Dragon; IUSA; and Nacobre. In accordance with 19 CFR 351.213(b)(2), the Department also received timely requests from Golden Dragon and Nacobre to conduct an administrative review.

In January 2016, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review for IUSA, Golden Dragon, and Nacobre,⁴ and in February 2016, we issued the AD questionnaire to these companies.⁵ In February 2016, we received a request from Golden Dragon to report its cost of production (COP) data on a fiscal year basis; because Golden Dragon provided information demonstrating that reporting cost data for this revised period was not distortive, we granted its request.⁶ In February 2016, we received a statement from IUSA indicating that it had no shipments of subject merchandise to the United States during the POR.⁷

In February and March 2016, respectively, we received responses from Golden Dragon and Nacobre to section A (*i.e.*, the section related to general information) of the questionnaire. In March and April 2015, we received responses from Golden Dragon and Nacobre to sections B, C and D (*i.e.*, the sections related to home market sales, U.S. sales, and COP, respectively) of the questionnaire.

In July 2016, we fully extended the deadline for the preliminary results by 120 days, to December 5, 2014.⁸ From August 2016 through October 2016, we issued supplemental questionnaires to Golden Dragon and Nacobre. We received responses to these supplemental questionnaires from September 2016 through November 2016. We are conducting the administrative review of the *Order* in accordance with section 751(a) of the Act.

³ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 80 FR 67706 (November 3, 2015).

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 736 (January 7, 2016).

⁵ See the Department's Section A-D Questionnaire issued to Nacobre and Golden Dragon on February 3, 2016.

⁶ See letter from the Department to Golden Dragon entitled, "2014-2015 Administrative Review of the Antidumping Duty Order on Seamless Refined Copper Pipe and Tube from Mexico," dated March 1, 2016.

⁷ See letter from IUSA to the Department entitled, "Statement on Request of Information Antidumping Duty Administrative Review," dated February 24, 2016.

⁸ See Memorandum from Dennis McClure, Senior Analyst, Antidumping and Countervailing Duty Operations, Office II, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, "Seamless Refined Copper Pipe and Tube from Mexico: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2014-2015," dated July 7, 2016.

SCOPE OF THE ORDER

The products covered by the order are all seamless refined copper pipes and tubes, including redraw hollows, greater than or equal to 6 inches (152.4 millimeters (mm)) in length and measuring less than 12.130 inches (308.102 mm) (actual) in outside diameter (OD), regardless of wall thickness, bore (*e.g.*, smooth, enhanced with inner grooves or ridges), manufacturing process (*e.g.*, hot finished, cold-drawn, annealed), outer surface (*e.g.*, plain or enhanced with grooves, ridges, fins, or gills), end finish (*e.g.*, plain end, swaged end, flared end, expanded end, crimped end, threaded), coating (*e.g.*, plastic, paint), insulation, attachments (*e.g.*, plain, capped, plugged, with compression or other fitting), or physical configuration (*e.g.*, straight, coiled, bent, wound on spools).

The scope of the order covers, but is not limited to, seamless refined copper pipe and tube produced or comparable to the American Society for Testing and Materials (ASTM) ASTM-B42, ASTM-B68, ASTM-B75, ASTM-B88, ASTM-B88M, ASTM-B188, ASTM-B251, ASTM-B251M, ASTM-B280, ASTM-B302, ASTM-B306, ASTM-359, ASTM-B743, ASTM-B819, and ASTM-B903 specifications and meeting the physical parameters described therein. Also included within the scope of the order are all sets of covered products, including “line sets” of seamless refined copper tubes (with or without fittings or insulation) suitable for connecting an outdoor air conditioner or heat pump to an indoor evaporator unit. The phrase “all sets of covered products” denotes any combination of items put up for sale that is comprised of merchandise subject to the scope.

“Refined copper” is defined as: (1) Metal containing at least 99.85 percent by weight of copper; or (2) metal containing at least 97.5 percent by weight of copper, provided that the content by weight of any other element does not exceed the following limits:

<u>ELEMENT</u>	<u>LIMITING CONTENT PERCENT BY WEIGHT</u>
Ag - Silver	0.25
As - Arsenic	0.5
Cd - Cadmium	1.3
Cr - Chromium	1.4
Mg - Magnesium	0.8
Pb - Lead	1.5
S - Sulfur	0.7
Sn - Tin	0.8
Te - Tellurium	0.8
Zn - Zinc	1.0
Zr - Zirconium	0.3
Other elements (each)	0.3

Excluded from the scope of the order are all seamless circular hollows of refined copper less than 12 inches in length whose OD (actual) exceeds its length. The products subject to the order are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to the order may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

PRELIMINARY DETERMINATION OF NO SHIPMENTS

Among the companies under review, IUSA reported that it made no shipments of subject merchandise to the United States during the POR. To confirm these no shipment claims, the Department performed a CBP data query to determine whether there were any entries of subject merchandise during the POR from the companies listed above and issued a no-shipment inquiry to CBP requesting that it provide any information that contradicted the no shipment claims of these companies.⁹ The Department's CBP data query did not identify any entries of subject merchandise during the POR from the companies listed above. Moreover, CBP did not identify any entries of subject merchandise from IUSA during the POR in response to our no shipment inquiry asking CBP for such information.¹⁰

Given that the IUSA certified that they made no shipments of subject merchandise to the United States during the POR and there is no information calling these claims into question, we preliminarily determine that IUSA did not have any reviewable transactions during the POR. Consistent with the Department's practice regarding no shipment claims, we are completing the review with respect to this company and will issue appropriate instructions to CBP based on the final results of the review.

DISCUSSION OF THE METHODOLOGY

Normal Value Comparisons

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Golden Dragon's and Nacobre's sales of pipe and tube from Mexico to the United States were made at less than NV, the Department compared the constructed export price (CEP) to the NV as described in the "Constructed Export Price" and "Normal Value" sections of this memorandum.

For purposes of determining an appropriate product comparison to the U.S. sale, 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. If contemporaneous sales of identical comparison market merchandise were reported, as described below, we made comparisons to the monthly weighted-average comparison market prices that were based on all such sales. If there were no contemporaneous sales of identical merchandise in the comparison market, then we identified sales of the most similar merchandise that were contemporaneous with the U.S. sales, in accordance with 19 CFR 351.414(e).

⁹ See CBP Message 6288310 from Director AD/CVD & Revenue Policy & Programs to Directors of Field Operations, Port Directors, entitled "No shipments inquiry for seamless refined copper pipe and tube from Mexico produced and/or exported by Industrias Unidas, S.A. de C.V. for the period 11/01/2014-10/31/2015 (A-201-838)," dated October 14, 2016, instructing CBP to report any entries contrary to IUSA's no-shipment claim to the Department within ten days of the date of this message.

¹⁰ *Id.*

Golden Dragon argues that, in determining what constitutes a contemporaneous match for its sales, the Department should take into account the date that the copper price for the sale is fixed (*i.e.*, the “metal date”). Golden Dragon argues that for some original equipment manufacturer (OEM) customers, Golden Dragon’s U.S. affiliate has agreements indicating the metal price and the fabrication charge. Golden Dragon explains that the price of copper is treated as a pass through and the customer indicates the basis on which the metal should be priced. Moreover, Golden Dragon argues that the price of copper fluctuates daily, and because the metal date establishes the key component of the transaction, the metal date must be considered in the Department’s sales matching.¹¹ However, consistent with our treatment of this issue in all previous segments of this proceeding, we do not find cause to take the metal date into account. Golden Dragon has not established that a date other than the invoice date better reflects the date on which the material terms of sale are set with respect to agreements with U.S. customers that indicate the metal price.¹² Therefore, there is no reason to take into consideration the metal date in our comparisons.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average export prices (EPs) (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.¹³

¹¹ Golden Dragon explained that for these agreements the buyer and seller agree to fix the price of the copper component of the tube based on published prices on a global commodity exchange such as the London Metal Exchange. *See* Golden Dragon’s February 24, 2016, submission at A-16-17.

¹² *See, e.g., Seamless Refined Copper Pipe and Tube from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77651 (December 24, 2013), and the accompanying Preliminary Issues and Decision Memorandum (PDM) (*Second AR Mexican Copper Pipe Preliminary Results*) at 4-5, unchanged in *Seamless Refined Copper Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 36719 (June 30, 2014) (*Second AR Mexican Copper Pipe Final Results*); *Seamless Refined Copper Pipe and Tube from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 73028 (December 9, 2014), and the accompanying PDM at 5, unchanged in *Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 33482 (June 12, 2015) (*Third AR Mexican Copper Pipe Final Results*); and *Seamless Refined Copper Pipe and Tube from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 47908 (August 10, 2015), and the accompanying PDM (*Fourth AR Mexican Copper Pipe Preliminary Results*) at 4, unchanged in *Seamless Refined Copper Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 69944 (November 12, 2015) (*Fourth AR Mexican Copper Pipe Final Results*).

¹³ *See Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012) and the accompanying Issues and Decision Memorandum at comment 1; *see also Apex Frozen Foods Private Ltd. v. United States*, 37F. Supp. 3d 1286 (Ct. Int’l Trade 2014); and *JBF RAK LLC v. United States*, 790 F.3d 1358, 1363-65 (Fed. Cir. 2015) (“*t*he fact that

In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.¹⁴ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. 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 average-to-average method in calculating a respondent’s weighted-average dumping margin.

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

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

the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties” (citations omitted).

¹⁴ See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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

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

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

B. Results of the Differential Pricing Analysis

For Golden Dragon, based on the results of the differential pricing analysis, the Department preliminarily finds that 77.47 percent of the value of U.S. sales pass the Cohen's *d* test,¹⁵ and

¹⁵ See the Memorandum to the File from Dennis McClure, "Calculations Performed for GD Affiliates S. de R.L. de C.V. for the Preliminary Results of the 2014-2015 Administrative Review of Seamless Refined Copper Pipe and

confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, the Department is applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Golden Dragon.

For Nacobre, based on the results of the differential pricing analysis, the Department preliminarily finds that 50.67 percent of the value of U.S. sales pass the Cohen's *d* test,¹⁶ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Nacobre.

Product Comparisons

Pursuant to 19 CFR 351.414(e), we compared U.S. sales of pipe and tube to home market sales of pipe and tube within the contemporaneous window period, which extends from three months prior to the month of the first U.S. sale until two months after the month of the last U.S. sale. In making the product comparisons, we matched foreign like products based on the physical characteristics to the product sold in the United States. In the order of importance, these physical characteristics are type and ASTM specification, copper alloy unified number system, outer diameter, wall thickness, physical form, temper designation, bore, outer surface, and attachments.

Date of Sale

Section 351.401(i) of the Department's regulations states that, normally, the Department will use the date of invoice, as recorded in the producer or exporter's records kept in the ordinary course of business, as the date of sale. However, the regulations permit the Department to use a different date if it better reflects the date on which the exporter or producer establishes the material terms of sale.

Tube from Mexico," dated concurrently with this memorandum (Golden Dragon's Preliminary Calculation Memorandum) at 1.

¹⁶ See the Memorandum to the File from Dennis McClure and George Ayache, "Calculations Performed for Nacional de Cobre, S.A. de C.V. (Nacobre) for the Preliminary Results of the 2014-2015 Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube from Mexico" dated concurrently with this memorandum (Nacobre's Preliminary Calculation Memorandum) at 1.

Golden Dragon reported, and we used for purposes of these preliminary results, the earlier of the invoice date or the shipment date as the date of sale in both markets because the quantity of each transaction is not fixed until the shipment is made or, in the case of consignment sales, the product is withdrawn from the warehouse by the customer.^{17, 18} Accordingly, we preliminarily find invoice date to be the appropriate date of sale with respect to Golden Dragon's sales to the U.S. and comparison markets, unless shipment occurred prior to invoice date. In such cases, consistent with the Department's practice, we used the shipment date as the date of sale where the shipment date occurred before the invoice date because the quantity is fixed at the time of shipment.¹⁹

Regarding the date of sale for Nacobre's comparison market and U.S. sales, Nacobre reported that it made two types of sales in both markets during the POR: 1) sales made pursuant to "fixed price" quotes where Nacobre stated that the price was fixed at the time of the customer's order; and 2) sales made under "price in effect" agreements, where Nacobre stated that the price is dependent on the market price of copper on the date the invoice is issued. Nacobre stated that it reported the invoice date as the date of sale for "price in effect" sales. However, for "fixed price" sales, Nacobre reported the date it entered the order into its computer system as the date of sale. As noted above, 19 CFR 351.401(i) provides that the Department may use a date other than the date of invoice if the different date better reflects the date on which the material terms of sale are established. In this instance, with respect to "fixed price" sales, we find that not all the material terms of sale (*i.e.*, quantity) are set as of the date of order entry.²⁰ Accordingly, we find it appropriate to use invoice date as the date of sale for Nacobre's comparison market and U.S. sales, except in those instances where shipment occurred prior to the invoice date.²¹ Consistent with the Department's practice, we used the shipment date as the date of sale where the shipment date occurs before the invoice date because the quantity is fixed at the time of shipment.²²

¹⁷ See Golden Dragon's April 1, 2016, Section B Questionnaire Response at 18, and Golden Dragon's February 24, 2016, Section A Questionnaire Response at 16.

¹⁸ See *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 18074, 18079-80 (April 10, 2006), unchanged in *Stainless Steel Sheet and Strip in Coils from the Republic of Korea; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 72 FR 4486 (January 31, 2007) (*SSSSC from Korea*), and the accompanying IDM at Comments 4 and 5. See also *Third AR Mexican Copper Pipe Final Results* IDM at Comment 1.

¹⁹ See *SSSSC from Korea*, and the accompanying IDM at Comments 4 and 5; see also *Second AR Mexican Copper Pipe Preliminary Results* at 8, unchanged in *Second AR Mexican Copper Pipe Final Results*.

²⁰ See Nacobre's March 2, 2016 Section A Questionnaire Response at 28-29.

²¹ Moreover, the Department has based Nacobre's date of sale for both "fixed price" and "price in effect" sales consistently on the earlier of invoice or shipment date since the time of the first administrative review of the *Order*. See *First AR Mexican Copper Pipe Preliminary Results* at 8, unchanged in *First AR Mexican Copper Pipe Final Results*; see also *Second AR Mexican Copper Pipe Preliminary Results* at 9, unchanged in *Second AR Mexican Copper Pipe Final Results*; see also *Third AR Mexican Copper Pipe Preliminary Results* at 9, unchanged in *Third AR Mexican Copper Pipe Final Results*.

²² See, *e.g.*, *SSSSC from Korea* IDM at Comments 4 and 5.

Constructed Export Price

In accordance with section 772(b) of the Act, we based U.S. price on CEP for Golden Dragon and Nacobre because the subject merchandise was sold in the United States by a U.S. seller affiliated with the producer and EP was not otherwise indicated.

A. Golden Dragon

We calculated CEP based on the delivered price to unaffiliated purchasers in the United States. Where appropriate, we made deductions for international freight expenses (including U.S. inland freight, foreign inland freight, and foreign brokerage), inland insurance expenses, and U.S. brokerage and handling expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we calculated CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (imputed credit expenses) and indirect selling expenses (inventory carrying costs and other indirect selling expenses). We also made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Golden Dragon and its U.S. affiliate on their sales of the foreign like product in the comparison market and their sales of the subject merchandise in the United States and the profit associated with those sales.

B. Nacobre

We calculated CEP based on the delivered price to unaffiliated purchasers in the United States. Where appropriate, we made deductions for early payment discounts. We also made deductions, where appropriate, for foreign inland freight expenses, foreign warehousing expenses, foreign inland insurance expenses, foreign brokerage and handling expenses, U.S. brokerage and handling expenses, U.S. warehousing expenses, and U.S. inland freight expenses, in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act, we calculated CEP by deducting selling expenses associated with economic activities occurring in the United States, which include direct selling expenses (imputed credit expenses) and indirect selling expenses (inventory carrying costs and other indirect selling expenses). We also made an adjustment for profit allocated to these expenses, in accordance with section 772(d)(3) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Nacobre and its U.S. affiliate on their sales of the foreign like product in the comparison market and their sales of the subject merchandise in the United States and the profit associated with those sales.

Normal Value

A. Home Market Viability as Comparison Market

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 Golden Dragon's and Nacobre's respective home market sales of the foreign like product to the volume of their respective U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that both respondents had viable home markets during the POR.²³

B. *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 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).²⁴ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.²⁵ In order 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.

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),²⁶ 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.²⁷

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. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a 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 adjustment was possible), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.²⁸

In this administrative review, we obtained information from the respondents regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT findings are summarized below.

²³ See Golden Dragon's February 24, 2016, Section A Questionnaire Response at Exhibit A-1; and Nacobre's March 2, 2016, Section A Questionnaire Response at Appendix A-1.

²⁴ See 19 CFR 351.412(c)(2).

²⁵ *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999, 51001 (August 18, 2010), and accompanying IDM at Comment 7 (*OJ from Brazil*).

²⁶ Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (G&A) expenses, and profit for CV, where possible.

²⁷ See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

²⁸ See, *e.g.*, *OJ from Brazil* IDM at Comment 7.

1. Golden Dragon

Golden Dragon reported that it made CEP sales during the POR to OEMs through two channels of distribution in the United States (*i.e.*, direct to the customer (Channel 1), and consignment sales (Channel 3)).²⁹ We examined the selling activities performed for these sales and found that Golden Dragon performed the following selling functions: packing, order input/processing, and freight and delivery.³⁰

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support.³¹ Based on these selling function categories, we find that Golden Dragon performed freight and delivery for U.S. sales. Because Golden Dragon's selling functions were the same for each channel of distribution, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Golden Dragon reported that it³² made sales to home market OEM and distributor customers through five channels of distribution (*i.e.*, sales shipped directly to the customer (Channel 1), sales picked up by the customer from Golden Dragon in Mexico (Channel 2), consignment sales (Channel 3), sales picked up from a warehouse (Channel 4), and sales shipped from the warehouse to the customer (Channel 5)). In addition, Golden Dragon reported that its U.S. affiliate made sales to home market customers, through two channels of distribution (*i.e.*, sales shipped directly to the customer (Channel 1), and customer pick up from its U.S. affiliate (Channel 2)). According to Golden Dragon, the selling functions it performed did not vary by the channel of distribution.

²⁹ Unlike in prior administrative reviews, Golden Dragon did not report CEP sales during the POR to OEMs through an additional channel of distribution in the United States (*i.e.*, customer pick up from its U.S. affiliate (Channel 2)).

³⁰ See Golden Dragon's September 9, 2016, Supplemental Questionnaire Response at Exhibit SA-2.

³¹ See *OJ from Brazil* at Comment 7; and *Certain Frozen Warmwater Shrimp from India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 9991, 9996 (March 9, 2009), unchanged in *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 33409 (July 13, 2009) (*Shrimp from India*).

³² Beginning October 2014, Golden Dragon established a new entity in Mexico, GD Copper S. de R.L. de C.V. (GD Copper), to meet the requirements of the new Mexican regulations governing the IMMEX (maquila) program; at this time, the producer MXGD ceased selling operations in the home market. The scope of GD Copper's operations under the maquila program include sales, warehousing, and distribution only (*i.e.*, unlike MXGD, it has no production operations). Golden Dragon reported that GD Copper sold pipe and tube in the home market through the same channels of distribution noted above.

Golden Dragon reported that its Mexico office performed the following selling functions for all home market sales during the POR: sales forecasting, strategic/economic planning, engineering services, sales promotion, packing, inventory maintenance, order input/processing, employment of direct sales personnel, technical assistance, provision of after-sales services, sales negotiations, and collection of payment. Golden Dragon also reported that its Mexico office provided freight and delivery to its home market customers in Channels 1, 3, 4, and 5.³³

For home market sales made through its U.S. affiliate, Golden Dragon reported that its U.S. affiliate performed almost all of the same selling functions as noted above for home market sales through Golden Dragon's Mexico office.³⁴ For these sales, Golden Dragon's Mexico office performed packing, inventory maintenance, and freight and delivery services. Based on the four selling functions described above, the selling functions performed by Golden Dragon's Mexico office and its U.S. affiliate, when considered together, are equivalent to the selling functions performed by Golden Dragon's Mexico office for its home market sales. Accordingly, we find that the sales made in the home market through Golden Dragon's U.S. affiliate are made at the same stage in the marketing process as sales made by Golden Dragon's Mexico office. Therefore, we preliminarily determine that there is one LOT in the home market.

Finally, we compared the U.S. LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers differ significantly. We preliminarily determine that home market sales during the POR were made at a more advanced LOT than U.S. sales. We did not make a LOT adjustment under 19 CFR 351.412(e) because Golden Dragon did not sell subject merchandise at a common LOT in the home and U.S. markets and thus we were unable to identify a pattern of consistent price differences attributable to differences in LOTs.³⁵ Accordingly, pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f), we are preliminarily granting a CEP offset to Golden Dragon.

2. Nacobre

Nacobre reported that it made CEP sales through two channels of distribution in the United States (*i.e.*, sales made from inventory in the United States (Channel 1) and sales directly shipped from Mexico to U.S. customers (Channel 2)). According to Nacobre, the selling activities it performed did not vary by the channel of distribution. We examined the selling activities performed for Nacobre's U.S. sales and found that Nacobre performed the following selling functions: strategic/economic planning, as well as order input/processing, packing, and inventory maintenance (performed only for Channel 2 sales).

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support.³⁶ Based on these selling function categories, we find that Nacobre performed sales and marketing and freight and delivery for both U.S. channels of distribution, and inventory maintenance and warehousing only for its Channel 2 U.S. sales.

³³ See Golden Dragon's September 9, 2016, Supplemental Questionnaire Response at Exhibit SA-2.

³⁴ *Id.*

³⁵ See 19 CFR 351.412(d).

³⁶ See *OJ from Brazil* IDM at Comment 7; see also *Shrimp from India*, 74 FR at 9996.

Because the selling activities performed for Nacobre's two channels of distribution did not differ significantly, we preliminarily determine that there is one LOT in the U.S. market.

With respect to the home market, Nacobre reported that it made sales through three channels of distribution (*i.e.*, sales from branch office inventory (Channel 1), direct shipments (Channel 2), and consignment sales (Channel 3)). According to Nacobre, the selling functions it performed did not vary by channel of distribution. We examined the selling activities performed for home market sales and found that Nacobre performed the following selling functions: order input/processing, employment of direct sales personnel, sales/marketing support, market research, technical assistance, provision of rebates (performed only for Channel 1 sales), provision of guarantees, provision of after-sales services, provision of freight and delivery to customers, sales forecasting, strategic/economic planning, personnel training/exchange, engineering services, advertising, sales promotion, distributor/dealer training, procurement/sourcing services, packing, and inventory maintenance.

Accordingly, based on the four selling function categories listed above, we find that Nacobre performed sales and marketing, freight and delivery, inventory maintenance and warehousing, and warranty and technical support for home market sales. Because the selling functions performed for Nacobre's three channels of distribution did not differ significantly, we preliminarily determine that there is one LOT in the home market for Nacobre.

Finally, we compared the U.S. LOT to the home market LOT and found that the selling functions performed for U.S. and home market customers differ significantly. We preliminarily determine that home market sales during the POR were made at a more advanced LOT than U.S. sales. We did not make a LOT adjustment under 19 CFR 351.412(e) because Nacobre did not sell subject merchandise at a common LOT in the home and U.S. markets and thus we were unable to identify a pattern of consistent price differences attributable to differences in LOTs.³⁷ Accordingly, pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f), we are preliminarily granting a CEP offset to Nacobre.

C. *Cost of Production Analysis*

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), Public Law No. 114-27, which made numerous amendments to the AD and countervailing duty law, including amendments to section 773(b)(2)(A) of the Act, regarding the Department's requests for information on sales at less than COP.³⁸ The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment of the Act, except for amendments to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission.³⁹ Section 773 (b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire

³⁷ See 19 CFR 351.412(d).

³⁸ See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA). The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

³⁹ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

has not been issued as of August 6, 2015. It requires the Department to request CV and COP information from respondent companies in all AD proceedings.⁴⁰ Accordingly, the Department requested such information from Golden Dragon and Nacobre.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated each respondent's COPs based on the sum of materials and conversion costs for the foreign like product, plus amounts for G&A expenses and interest expenses (*see* "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses). We examined the reported cost data and determined that our quarterly cost methodology is not warranted. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

a. Golden Dragon

We relied on the COP data submitted by Golden Dragon in its September 9, 2016, cost database for the COP calculation. We made no changes to Golden Dragon's reported costs.

b. Nacobre

We relied on the COP data submitted by Nacobre in its September 14, 2016, cost database for the COP calculation⁴¹, except in the following instances:

- we revised Nacobre's reported total cost of manufacturing by calculating and applying a single per-unit adjustment amount for physical inventory adjustments, hedging gains and losses, and ingot casting income; and
- we used the net financial expense ratio calculated based on the amounts reported in the 2015 fiscal year consolidated financial statements of Grupo Kaluz, which is the highest level of consolidation for Nacobre.

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(a)(1)(B)(i) of the Act, we compared the adjusted weighted-average COP to the home market sales prices of the foreign like product in order to determine whether the sale prices were below the COP. For this comparison, we used COP exclusive of selling and packing expenses. The prices were exclusive of any applicable movement charges, discounts and rebates, billing adjustments, direct and indirect selling expenses, and packing expenses.

⁴⁰ *Id.*, 80 FR at 46794-95.

⁴¹ Details regarding the calculation of COP can be found in the Memorandum from Sheikh Hannan, Senior Accountant, to Neal Halper, Director, Office of Accounting, titled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results-Nacional de Cobre, S.A. de C.V.," dated concurrently with this memorandum.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's home market sales of a given product are at prices less than the COP, we disregard none of the below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) the sales were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and 2) based on our comparison of prices to the weighted-average COPs for the POR, the sales were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Golden Dragon's and Nacobre'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. We therefore disregarded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. *Calculation of Normal Value Based on Comparison Market Prices*

1. Golden Dragon

We calculated NV for Golden Dragon based on the reported packed, FOB plant/distribution warehouse or delivered prices, as appropriate, to home market customers. We made adjustments to the starting price, where appropriate, for billing adjustments, early payment discounts and freight revenue adjustments, in accordance with 19 CFR 351.401(c). We also made deductions for, inland freight expenses, warehousing expenses and inland insurance expenses pursuant to section 773(a)(6)(B)(ii) of the Act.

In addition, we made deductions pursuant to section 773(a)(6)(C) of the Act for home market credit expenses. We added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act. When comparing U.S. sales with home market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.⁴²

Finally, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses incurred

⁴² See 19 CFR 351.411(b).

on the home market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

2. Nacobre

We calculated NV for Nacobre based on the reported packed, delivered prices to home market customers. We made adjustments to the starting price, where appropriate, for billing adjustments and discounts, in accordance with 19 CFR 351.401(c). We also made deductions for inland freight from the plant to the warehouse, warehousing expenses, maquiladora brokerage fees, inland freight to the customer expenses, and inland insurance expenses pursuant to section 773(a)(6)(B)(ii) of the Act.

In addition, we made deductions pursuant to section 773(a)(6)(C) of the Act for home market credit expenses. We added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act. When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.⁴³

Finally, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses incurred on the home market sales or the indirect selling expenses deducted from the starting price in calculating CEP. We reclassified certain distribution department expenses, which were reported by Nacobre as movement expenses, as indirect selling expenses because they are neither movement expenses, nor directly related to the sales of subject merchandise.⁴⁴

Currency Conversion

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

⁴³ See 19 CFR 351.411(b).

⁴⁴ See Nacobre's Preliminary Calculation Memorandum at 2.

Recommendation

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

12/5/2016

X 

Signed by: PAUL PIQUADO
Paul Piquado
Assistant Secretary
for Enforcement and Compliance