



A-821-811
POR: 4/1/2012 - 3/31/2013
Public Document
E&C/Office II: DC

DATE: May 16, 2014

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

FROM: Gary Taverman 
Senior Advisor
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results of the 2012-2013 Administrative Review of the Antidumping Duty Order on Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation

SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping (AD) duty order on solid fertilizer grade ammonium nitrate (ammonium nitrate) from the Russian Federation (Russia). The review covers two groups of producers/exporters of the subject merchandise, JSC Acron and its affiliate JSC Dorogobuzh (collectively, Acron) and MCC EuroChem and its affiliates OJSC NAK Azot and OJSC Nevinnomyssky Azot (collectively, EuroChem). The period of review (POR) is April 1, 2012, through March 31, 2013. We preliminarily determine that sales of the subject merchandise have not been made at prices below normal value (NV).

BACKGROUND

In April 2011, the Department published in the Federal Register an AD order on ammonium nitrate from Russia.¹ Subsequently, on June 13, 2013, the Department published in the Federal Register a notice of opportunity to request an administrative review of this order for the period March 1, 2012, through April 31, 2013.² Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(2), in April 2013, the Department received requests to conduct an administrative review from JSC Acron and MCC EuroChem.

¹ See Termination of the Suspension Agreement on Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation, 76 FR 23569 (Apr. 27, 2011) (Order).

² See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 78 FR 19645 (Apr. 2, 2013).



In June 2013, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review for JSC Acron and MCC EuroChem³ and we issued the AD questionnaire to these companies in the same month.

In June and July 2013, we received responses to section A (i.e., the section related to general information) of the questionnaire from Acron and EuroChem, respectively. In July 2013, we received responses from JSC Acron and MCC EuroChem to sections B and C (i.e., the sections covering home market and U.S. sales, respectively) of the questionnaire.

In August 2013, we issued supplemental questionnaires to JSC Acron and MCC EuroChem and we received responses to these supplemental questionnaires in the same month. In September 2013, we determined that it was appropriate to collapse JSC Acron and its affiliated producer, JSC Dorogobuzh,⁴ and MCC EuroChem and its affiliated producers, OJSC NAK Azot and OJSC Nevinnomyssky Azot.⁵ As a result, we are treating each group of affiliated companies as a single entity, referred to as Acron and EuroChem, respectively.

Also in September 2013, we received sales-below-cost allegations from the petitioners (i.e., CF Industries, Inc. and El Dorado Chemical Company) for Acron and EuroChem. After analyzing these allegations, we found that they did not provide reasonable bases to initiate a cost investigation for either respondent.⁶

From September 2013 through April 2014, we issued additional supplemental questionnaires to Acron and EuroChem. We received responses to these supplemental questionnaires from October 2013 through April 2014.

In March 2014, we conducted an on-site verification of the sales data reported by Acron's and EuroChem's U.S. affiliates in Florida.⁷ We intend to verify Acron's and EuroChem's sales responses in Russia in May 2014.

³ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 78 FR 33052 (June 3, 2013) (Initiation Notice).

⁴ See Memorandum to James Maeder, Director, Office II, AD/CVD Operations, from the Team entitled, "Whether to Collapse JSC Acron and JSC Dorogobuzh in the 2012-2013 Antidumping Duty Administrative Review of Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation," dated September 9, 2013.

⁵ See Memorandum to James Maeder, Director, Office II, AD/CVD Operations, from the Team entitled, "Whether to Collapse MCC EuroChem and its Affiliated Producers in the 2012-2013 Antidumping Duty Administrative Review of Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation," dated September 11, 2013.

⁶ See Memorandum to James Maeder, Director, Office II, AD/CVD Operations, from Neal Halper, Director, Office of Accounting, entitled, "2012-2013 Antidumping Duty Administrative Review of Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation: the Petitioners' Allegation of Sales Below the Cost of Production for JSC Acron," dated January 23, 2014. See also Memorandum to James Maeder, Director, Office II, AD/CVD Operations, from Neal Halper, Director, Office of Accounting, entitled, "2012-2013 Antidumping Duty Administrative Review of Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation: the Petitioners' Allegation of Sales Below the Cost of Production for MCC EuroChem," dated January 23, 2014.

⁷ See Memorandum to the file, from Elizabeth Eastwood, Senior Analyst, and David Crespo, Analyst, Office II, AD/CVD Operations, entitled, "Verification of Agronova International, Inc. in the 2012-2013 Antidumping Duty Administrative Review of Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation," dated April 4,

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.⁹ Additionally, on December 18, 2013, we extended the preliminary results of the current review by 120 days. As a result, the revised deadline for the preliminary results of this review is now no later than May 16, 2014.¹⁰

We are conducting the administrative review of the order in accordance with section 751(a) of the Act.

SCOPE OF THE ORDER

The scope of this order includes solid, fertilizer grade ammonium nitrate products, whether prilled, granular, or in other solid form, with or without additives or coating, and with a bulk density equal to or greater than 53 pounds per cubic foot. Specifically excluded from this scope is solid ammonium nitrate with a bulk density less than 53 pounds per cubic foot (commonly referred to as industrial or explosive grade ammonium nitrate). The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3102.30.00.00 and 3102.290000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise within the scope is dispositive.

DISCUSSION OF THE METHODOLOGY

Normal Value Comparisons

Pursuant to section 773(a)(1)(B)(ii) of the Act and 19 CFR 351.414(c)(1), to determine whether Acron's and EuroChem's sales of ammonium nitrate from Russia were made in the United States at less than NV, we compared the constructed export price (CEP) to the NV as described in the "Constructed Export Price" and "Normal Value" sections of this memorandum.

When making these comparisons for purposes of determining an appropriate product comparison to a U.S. sale, in accordance with section 771(16) of the Act, we considered all products sold in

2014 (Acron CEP Verification Report). See also Memorandum to the file, from Elizabeth Eastwood, Senior Analyst, and David Crespo, Analyst, Office II, AD/CVD Operations, entitled, "Verification of EuroChem Trading USA Corp. in the 2012-2013 Antidumping Duty Administrative Review of Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation," dated April 3, 2014 (EuroChem CEP Verification Report).

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

⁹ 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.

¹⁰ See Memorandum to Gary Taverman, Senior Advisor, AD/CVD Operations, from David Crespo, International Trade Compliance Analyst, Office II, AD/CVD Operations entitled, "Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated December 18, 2013.

the home market as described in the “Scope of the Order” section of this memorandum, above, that were in the ordinary course of trade.

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average export prices (EPs) (or CEPs) (the average-to-average method), unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value (LTFV) investigations, the Department examines whether to compare weighted-average NVs with the EPs (or CEPs) for individual transactions (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 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 analogous to the issue in LTFV investigations.¹¹ In recent investigations, pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act, the Department has applied a “differential pricing” analysis to determine whether application of average-to-transaction comparisons is appropriate in a particular situation.¹² The Department finds that the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, as well as 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 these preliminary results requires a finding of a pattern of prices 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 using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer code. Regions are defined using the reported destination 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 POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is

¹¹ 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 accompanying Issues and Decision Memorandum at Comment 1.

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; and Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013), and accompanying Issues and Decision Memorandum at Comment 3.

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. For comparable merchandise, the Cohen’s *d* coefficient is calculated 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 used 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 (i.e., 0.8) provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales were 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 accounts 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 A-to-T method to all sales as an alternative to the A-to-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an A-to-T method to those sales identified as passing the Cohen’s *d* test as an alternative to the A-to-A method, and application of the A-to-A method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the A-to-A method.

If both tests in the first stage (i.e., the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the A-to-A method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-to-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-to-A method cannot account for differences such as those observed in this analysis and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: 1) there is a 25 percent relative change in the weighted-average dumping margin between the A-to-A method and the appropriate alternative

method where both rates are above the de minimis threshold, or 2) the resulting weighted-average dumping margin moves across the de minimis threshold.

Interested parties may present arguments 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.

Results of the Differential Pricing Analysis

For both Acron and EuroChem, there is no pattern or prices that differ significantly because no sales pass the Cohen's *d* test for either respondent. Therefore, the Department has used the average-to-average method to calculate the weighted-average dumping margin each for Acron and EuroChem.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Acron and EuroChem covered by the description in the "Scope of the Order" section, above, and sold in the home market during the POR to be foreign like products for purposes of determining NV for the merchandise sold in the United States. Pursuant to 19 CFR 351.414(f), we compared Acron's and EuroChem's U.S. sales of ammonium nitrate to their sales of ammonium nitrate made in the home market in the same month.

In order to identify identical or similar foreign like products to the subject merchandise sold in the United States, we used these physical characteristics in the following order: 1) grade; 2) form; 3) additive; 4) additive usage; 5) external coating agent; and 6) coating agent usage. In this administrative review, we based NV for Acron's and EuroChem's U.S. sales on the prices of contemporaneous home market sales that were identical according to these product matching criteria within the meaning of section 771(16)(A) of the Act.

Date of Sale

Section 351.401(i) of the Department's regulations states that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. The Department has a longstanding practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.¹³

¹³ See Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 76918 (Dec. 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

In Acron's response to the Department's questionnaire, Acron reported invoice date as the date of sale in the U.S. market. At verification, we examined shipping documentation that shows that certain shipments of subject merchandise left the factory at an earlier date.¹⁴ Moreover, there were no changes to the terms of sale after this date. Accordingly, we preliminarily find that shipment date to be the appropriate date of sale for Acron's sale to the United States.

With respect to EuroChem's U.S. sale, EuroChem reported contract date as the date of sale, and it explained at verification that there were no changes to the terms of sale after this date.¹⁵ Moreover, EuroChem explained that it normally reports the contract date as the date of sale for U.S. sales in its responses in administrative reviews of the antidumping duty order on solid urea from Russia.¹⁶ At verification, we examined both the contract and the commercial invoice and noted no changes to the material terms of sale between the documents. Therefore, we preliminarily find contract date to be the appropriate date of sale for EuroChem's sale to the United States.

With respect to home market sales, both Acron and EuroChem reported invoice date as the date of sale, explaining that price and quantity are subject to change until the invoice is issued.¹⁷ Because this date precedes shipment date, we preliminarily find invoice date to be the appropriate date of sale with respect to both Acron's and EuroChem's home market sales.

Constructed Export Price

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

A. *Acron*

We calculated CEP based on the delivered price to the unaffiliated purchaser in the United States. We made deductions from the starting price for foreign inland freight expenses from the factory to the port, foreign brokerage and handling expenses, international freight expenses, U.S. brokerage and handling expenses, and U.S. duty 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 includes direct selling expenses (*i.e.*, imputed credit expenses and other direct selling expenses) and indirect selling expenses. Finally, we deducted from CEP an amount for profit, in accordance with section 772(d)(3) of the Act. In accordance with sections 772(f)(1) and (f)(2)(C)(iii) of the

¹⁴ See Acron CEP Verification Report at page 8.

¹⁵ See EuroChem CEP Verification Report at page 6.

¹⁶ *Id.*

¹⁷ See Acron's June 25, 2013, submission at page 22; and EuroChem's July 10, 2013, submission at pages 55 and 59

Act, we calculated the CEP profit percentage using information from Acron's consolidated financial statements.¹⁸

B. *EuroChem*

We calculated CEP based on the free on board, U.S. port price to the unaffiliated purchaser in the United States. We made deductions from the starting price for foreign inland freight expenses from the plant to the railway station, foreign inland freight expenses from the railway station to the port, foreign brokerage and handling expenses, international freight expenses, marine insurance expenses, U.S. brokerage and handling expenses, and U.S. duty 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 includes direct selling expenses (*i.e.*, imputed credit expenses) and indirect selling expenses. Finally, we deducted from CEP an amount for profit, in accordance with section 772(d)(3) of the Act. In accordance with sections 772(f)(1) and (f)(2)(C)(iii) of the Act, we calculated the CEP profit percentage using information from EuroChem's consolidated financial statements.¹⁹

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 Acron's and EuroChem's respective home market sales of the foreign like product to the volume of their 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.²⁰

B. *Affiliated Party Transactions and Arm's-Length Test*

During the POR, Acron and EuroChem made sales of foreign like product in the home market to affiliated parties, as defined in section 771(33) of the Act. Consequently, we tested these sales to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). To test whether the sales to affiliates were made at arm's-length prices, where appropriate, we compared the unit prices of sales to affiliated and unaffiliated customers net of all movement

¹⁸ See Memorandum to the file, from David Crespo, International Trade Compliance Analyst, Office II, AD/CVD Operations entitled, "Calculations for JSC Acron for the Preliminary Results," dated concurrently with this memorandum.

¹⁹ See Memorandum to the file, from Elizabeth Eastwood, Senior International Trade Compliance Analyst, Office II, AD/CVD Operations entitled, "Calculations for MCC EuroChem for the Preliminary Results," dated concurrently with this memorandum.

²⁰ See Acron's June 25, 2013, submission at Exhibit A-1; and EuroChem's July 10, 2013, submission at page 1.

charges, direct selling expenses, and packing expenses. Pursuant to 19 CFR 351.403(c) and in accordance with the Department's practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade (LOT), we determined that the sales made to the affiliated party were at arm's length.²¹ Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.²²

Because sales of foreign like product to certain of Acron's affiliated distributors failed the arm's-length test, Acron reported its home market sales by these distributors. Therefore, we used Acron's reported downstream home market sales data for all affiliates failing the arm's-length test in our calculations for the preliminary results. Where sales to one or more affiliates passed the arm's-length test, we included these sales in our analysis, rather than the affiliate's downstream sales.

With respect to EuroChem, this respondent reported downstream sales by its affiliated distributors, rather than both sales to the affiliate and the affiliate's downstream sales. Therefore, we used the downstream sales in our analysis for purposes of the preliminary results.

C. *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 LOT as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).²³ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.²⁴ 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),²⁵ 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.²⁶

²¹ See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade, 67 FR 69186 (Nov. 15, 2002) (establishing that the overall ratio calculated for an affiliate must be between 98 and 102 percent in order for sales to be considered in the ordinary course of trade and used in the NV calculation).

²² See section 771(15) of the Act and 19 CFR 351.102(b)(35).

²³ See 19 CFR 351.412(c)(2).

²⁴ *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 (Aug. 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (OJ from Brazil).

²⁵ 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 expenses, and profit for CV, where possible.

²⁶ See Micron Tech., Inc. v. United States, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

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.²⁷

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.

I. Acron

Acron reported one CEP sale which was directly shipped from Russia to a U.S. retailer. We examined the selling activities performed for Acron's U.S. sale and found that Acron performed the following selling functions: sales forecasting, strategic/economic planning, sales force development, market research, provision of technical advice, purchase order processing, invoicing, provision of freight and delivery, accounts receivable management, and packing.²⁸

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.²⁹ Based on these selling function categories, we find that Acron performed sales and marketing and freight and delivery for its U.S. sale. Because there is only one U.S. sale, there is one LOT in the U.S. market.

With respect to the home market, Acron reported that it made sales through four channels of distribution (*i.e.*, sales to affiliated distributors (Channel 1), sales to unaffiliated wholesalers (Channel 2), sales to unaffiliated end-users (Channel 3), and sales by affiliated distributors (Channel 4)).³⁰ According to Acron, it performed the following selling functions to sell to all home market customers: sales forecasting, strategic/economic planning, sales force development, market research, solicitation of orders, provision of technical advice, negotiation of prices, serving as customer liaison, purchase order processing, invoicing, provision of freight and

²⁷ See *e.g.*, OJ from Brazil at Comment 7.

²⁸ See Acron's April 16, 2014, response at Attachment I.

²⁹ See OJ from Brazil at Comment 7; see also Certain Frozen Warmwater Shrimp From India: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review, 74 FR 9991, 9996 (Mar. 9, 2009), unchanged in Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 74 FR 33409 (Jul. 13, 2009) (Shrimp from India).

³⁰ See Acron's April 16, 2014, response at Attachment I.

delivery, accounts receivable management, packing, and inventory management.³¹ Based on the four selling function categories listed above, we find that Acron performed sales and marketing, freight and delivery, inventory maintenance and warehousing, and warranty and technical support for its home market sales in Channels 1 through 4.

With respect to home market sales made in Channel 4, Acron reported that its affiliated distributors performed the following additional selling activities: sales forecasting, strategic/economic planning, sales force development, market research, solicitation of orders, provision of technical advice, negotiation of prices, serving as customer liaison, purchase order processing, invoicing, provision of freight and delivery, accounts receivable management, packing, and inventory management. Based on the four selling function categories listed above, we find that Acron and its affiliates performed sales and marketing, freight and delivery, inventory maintenance and warehousing, and warranty and technical support for their Channel 4 sales.

Because we find that there were significant selling activities performed by both Acron to sell to its affiliated distributors in Channel 4 and those affiliated distributors to sell to end-users, we determine that Acron's sales through its affiliated distributors (*i.e.*, Channel 4) represent a different, and more advanced, LOT than Acron's own home market sales (*i.e.*, Channels 1, 2, and 3). As a result, we preliminarily determine that there are two LOTs in the home market for Acron: 1) Acron sales in Channels 1, 2, and 3; and 2) Acron sales in Channels 4.

Finally, we compared the U.S. LOT to the home market LOTs and found that Acron performed similar selling functions for its U.S. and home market customers in Channels 1, 2, and 3. Although there are differences in the level of intensity at which some of the selling functions were performed in the two markets, we find that these differences are not significant such that they constitute separate marketing stages. Moreover, while Acron reported warehousing for its home market sales, we note that it performed this activity for only a few sales.³² Consequently, we compared Acron's U.S. sale to sales in Channels 1 through 3 in the home market. Because this comparison is at the same LOT, a CEP offset is not warranted for Acron.

2. *EuroChem*

EuroChem reported one CEP sale which was shipped directly from Russia to a U.S. trading company. We examined the selling activities performed for EuroChem's U.S. sale and found that EuroChem performed the following selling functions: sales forecasting, strategic/economic planning, personnel training/exchange, procurement/sourcing service, order input/processing, provision of freight and delivery, and packing. Based on the selling function categories noted above, we find that EuroChem performed sales and marketing and freight and delivery for its U.S. sale.³³ Because there is only one U.S. sale, there is one LOT in the U.S. market.

³¹ *Id.* We note that Acron only reported warehousing expenses for a small number of its home market sales.

³² *See* the home market sales listing submitted with Acron's February 18, 2014, response.

³³ *See* the October 23, 2013, response at Exhibit 4.

With respect to the home market, EuroChem reported that it made sales through three channels³⁴ of distribution (*i.e.*, direct sales to unaffiliated customers (Channel 1), sales via affiliated resellers to non-retail buyers (Channel 2), and sales through the retail outlet of an affiliated reseller (Channel 3)). We examined the selling activities performed for Channel 1 home market sales and found that EuroChem performed the following selling functions: sales forecasting, strategic/economic planning, personnel training/exchange, distributor/dealer training, procurement/sourcing service, order input/processing, employment of direct sales personnel, sales/marketing support, market research, provision of freight and delivery to customers, and packing.³⁵ Based on the four selling function categories listed above, we find that EuroChem performed sales and marketing and freight and delivery for its Channel 1 home market sales.

With respect to home market sales made in Channels 2 and 3, EuroChem reported that it performed the same selling activities to sell to its affiliated distributors as it did for Channel 1, above. In addition, it reported that its affiliated distributors/affiliated retailer performed the following additional selling activities: sales forecasting, strategic/economic planning, order input/processing, employment of direct sales personnel, and inventory maintenance and warehousing (only provided by certain affiliated distributors), and it reported that its affiliated distributors also performed procurement/sourcing services, sales/marketing support, market research, and the provision of freight and delivery to customers.³⁶ Based on the four selling function categories listed above, we find that EuroChem and its affiliates performed sales and marketing, freight and delivery, and inventory maintenance and warehousing for their Channel 2 and 3 home market sales.

Because we find that there were significant selling activities performed by both EuroChem to sell to its affiliated distributors and the affiliated distributors to sell to end-users, we determine that EuroChem's sales through its affiliated resellers (*i.e.*, Channels 2 and 3) represent a different, and more advanced, LOT than EuroChem's own home market sales (*i.e.*, Channel 1).³⁷ As a result, we preliminarily determine that there are two LOTs in the home market for EuroChem: 1) EuroChem sales in Channel 1; and 2) EuroChem sales in Channels 2 and 3.

Finally, we compared the U.S. LOT to the home market LOTs and found that EuroChem performed similar selling functions for its U.S. and home market customers in Channel 1. Although there are some differences in the level of intensity at which some of the selling functions were performed in the two markets, we find that these differences are not significant such that they constitute separate marketing stages. Consequently, we compared EuroChem's U.S. sale to sales in Channel 1 in the home market. Because this comparison is at the same LOT, a CEP offset is not warranted for EuroChem.

³⁴ EuroChem also reported the selling functions for its sales to affiliated distributors. However, because EuroChem did not report these sales in the home market sales listing, we have not included them in the analysis below.

³⁵ *Id.*

³⁶ *Id.*

³⁷ We note that Channel 2 sales are not included in our analysis because EuroChem reported its affiliated distributors' downstream sales, rather than EuroChem's sales to its affiliated distributors, in the home market sales listing.

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

1. *Acron*

We calculated NV for Acron on the reported packed, and either delivered or ex-works prices to home market customers. We made deductions to the starting price, where appropriate, for inland freight expenses from the plant to the warehouse, warehousing expenses, inland freight expenses from the plant to the railway station, and inland freight expenses to the customer, pursuant to section 773(a)(6)(B)(ii) of the Act.

In addition, we made deductions for home market credit expenses, pursuant to section 773(a)(6)(C) of the Act. 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.

2. *EuroChem*

We calculated NV for EuroChem on the reported packed, and either delivered or ex-works prices to home market customers. We made deductions, where appropriate, for inland freight expenses from the plant to the warehouse, warehousing expenses, inland freight expenses from the plant to the railway station, and inland freight expenses to the customer, pursuant to section 773(a)(6)(B)(ii) of the Act.

In addition, we made deductions for home market credit expenses, pursuant to section 773(a)(6)(C) of the Act. 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.

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. The exchange rates are available on the Enforcement & Compliance website at <http://enforcement.trade.gov/exchange/index.html>.

RECOMMENDATION

Based on our analysis, we recommend adopting the above positions in these preliminary results. If this recommendation is accepted, we will publish the preliminary results of the review and the preliminary dumping margins for Acron and EuroChem in the Federal Register.

✓

Agree

Disagree*Ronald K. Lorentzen*

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

May 16, 2014

(Date)