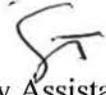




A-821-811
POR: 4/1/2012 - 3/31/2013
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E&C/Office II: DC

DATE: November 17, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman 
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

SUMMARY

We analyzed the case and rebuttal briefs of interested parties in the 2012-2013 administrative review of the antidumping duty order on solid fertilizer grade ammonium nitrate (ammonium nitrate) from the Russian Federation (Russia). As a result of our analysis, we have not made changes to the Preliminary Results.¹ We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of issues in this administrative review for which we received comments from the interested parties:

General Comments

1. Adjusting Respondents’ Costs to Account for Alleged Distortions in the Price of Natural Gas
2. Level of Trade (LOT)

BACKGROUND

On May 22, 2014, the Department of Commerce (the Department) published the preliminary results of the 2012-2013 administrative review of the antidumping duty order on ammonium nitrate from Russia.² This review covers two groups of producers/exporters of the subject merchandise, JSC Acron and its affiliate JSC Dorogobuzh (collectively, Acron) and MCC

¹ See Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation; Preliminary Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 29417 (May 22, 2014) (Preliminary Results).

² Id.



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 invited parties to comment on the Preliminary Results. We received a case brief from the petitioners (i.e., CF Industries, Inc. and El Dorado Chemical Company) and rebuttal briefs from Acron and EuroChem, respectively. After analyzing the comments received, we have not changed the weighted-average margins from those presented in the preliminary results.

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 3102.30.0000 and 3102.29.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise within the scope is dispositive.

MARGIN CALCULATIONS

We calculated constructed export price (CEP) and normal value (NV) using the same methodology stated in the Preliminary Results.³

DISCUSSION OF THE ISSUES

Comment 1: *Adjusting Respondents' Costs to Account for Alleged Distortions in the Price of Natural Gas*

Prior to the Preliminary Results, the petitioners submitted timely allegations that both Acron and EuroChem sold ammonium nitrate at prices below their cost of production (COP) in the home market.⁴ In these allegations, the petitioners requested that the Department disregard the Russian market for natural gas (a major input into ammonium nitrate) in determining the respondents' costs, claiming that this market was distorted because the price of natural gas in Russia was lower than the Russian export price for natural gas to Europe. Instead, the petitioners contended that, when calculating the respondents' COP, the Department should use alternative "market-based" prices for natural gas, computed using the costs on the respondents' financial statements adjusted for the gas price difference between Russia and Europe. We declined to make the petitioners' proposed adjustment, finding that the evidence was insufficient to deviate from our

³ See Preliminary Results, 79 FR at 29417, and accompanying Preliminary Decision Memorandum at pages 3-9.

⁴ See the September 18, 2013, letters from the petitioners re: Allegation of Sales Below Cost Concerning JSC Acron (Acron Cost Allegation) and Allegation of Sales Below Cost Concerning MCC EuroChem (EuroChem Cost Allegation).

normal practice of relying on the respondents' recorded costs to calculate COP. As a result, we found that the petitioners' allegation did not provide reasonable grounds to believe or suspect that the respondents' home market sales of ammonium nitrate were below cost; therefore, we did not initiate a cost investigation for either Acron or EuroChem.⁵

The petitioners claim that the Department erred in its decision not to accept their proposed cost adjustment when determining whether to initiate cost investigations in this administrative review. According to the petitioners, the Act directs the Department to base its analysis of a respondent's COP normally on the producer's recorded costs, if its records are kept in accordance with generally accepted accounting principles (GAAP) and reasonably reflect the costs associated with the production and sale of the merchandise.⁶ The petitioners assert that, if these conditions are not met, the Department may calculate costs on another basis. The petitioners point out that the Department has itself recognized that the use of the term "normally" in the Act indicates that it is not required to calculate costs based on the producer's records.⁷ Furthermore, the petitioners note that the Department has adjusted a respondent's reported costs in a number of different contexts, including situations where such costs were recognized in a respondent's books and records in accordance with GAAP,⁸ as well as to reflect "implied" costs that a respondent did not incur.⁹ In addition, the petitioners assert that the Statement of Administrative Action (SAA) makes clear that the Department will adjust costs to ensure that they are not artificially reduced.¹⁰ Therefore, the petitioners maintain that the Act, the SAA, and the Department's own

⁵ See the January 23, 2014, memoranda from Neal Halper to James Maeder 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" and "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" (Cost Allegation Memos).

⁶ See Section 773(f)(1)(A) of the Act.

⁷ See Magnesium Metal from the Russian Federation: Final Determination of Sales at Less Than Fair Value, 70 FR 9041, 9043 (February 24, 2005) (Magnesium Metal from Russia).

⁸ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From India, 66 FR 50406 (October 3, 2001) (Hot-Rolled Steel from India), and accompanying Issues and Decision Memorandum at Comment 12 (where the Department rejected a respondent's use of estimated production volumes in its calculation of the COP, even though estimates were allowed under Indian GAAP); Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8922 (February 23, 1998) (SRAMs from Taiwan) (where the Department found that the respondents' treatment of certain distributions did not reasonably reflect COP because stock transferred to employees in exchange for their labor is a cost to the company); Magnesium Metal from Russia, and accompanying Issues and Decision Memorandum at Comment 9 (where the Department rejected a respondent's depreciation expense prepared in accordance with Russian GAAP because the assets on which the expense was based did not reflect their real value in current currency terms); and Certain Fresh Cut Flowers From Colombia: Final Results of Antidumping Duty Administrative Reviews, 61 FR 42833, 42847 (August 19, 1996) (Flowers from Colombia) (where the Department required the computation of depreciation expenses for assets expensed in a prior period in accordance with Colombian GAAP because this treatment did not match the company's expenditures with the estimated useful life of the assets).

⁹ See Saha Thai Steel Pipe v. U.S., 63 F.3d 1335, 1341-1342 (Fed. Cir. 2011) (Saha Pipe) (where the court upheld the Department's inclusion of exempted import duties as a cost).

¹⁰ See SAA accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316 (1994).

practice demonstrate the Department's authority to adjust respondents' recorded costs in certain conditions.

Moreover, the petitioners point out that in its 2002 decision to graduate Russia to market economy status pursuant to section 771(18)(C) of the Act, the Department explicitly recognized that it might need to disregard recorded prices and costs because of distortions caused by Russian state interference with market mechanisms.¹¹ According to the petitioners, the Department in that memorandum also noted that: 1) "regulated energy prices in Russia remain a significant concern in the economy;"¹² and 2) the Department promised to examine prices and costs in Russia and adjust them as necessary. The petitioners note that, consistent with the Russia Graduation Memo, the Department has confirmed its willingness to adjust respondents' reported energy costs in several Russian antidumping proceedings, such as the CTL Plate Suspension Agreement¹³ and Magnesium Metal from Russia.¹⁴ The petitioners particularly note that the Department found evidence of continuing distortions in the Russian electricity sector in Magnesium Metal from Russia;¹⁵ while the Department concluded that the record evidence in that case did not allow it to measure the effect of such distortions on the respondents' reported costs, the petitioners point out that it reserved the discretion to adjust or disregard such costs in future proceedings.¹⁶

The petitioners also note that in Russian Urea NSR,¹⁷ the Department initiated a cost investigation for EuroChem based on a cost allegation in which it replaced EuroChem's costs for natural gas with market-based values. The petitioners state that, in the Urea Cost Initiation Memo,¹⁸ the Department not only confirmed that there may be circumstances where it would be inappropriate to use a respondent's recorded costs, but it also indicated that it was evaluating the

¹¹ See the June 6, 2002, memorandum from Albert Hsu, Senior Economist, to Faryar Shirzad, Assistant Secretary for Import Administration, regarding Inquiry into the Status of the Russian Federation as a Non-Market Economy Country Under the U.S. Antidumping Law (Russia Graduation Memo).

¹² See the Russia Graduation Memo at page 1.

¹³ See Suspension of Antidumping Duty Investigation of Certain Cut-to-Length Carbon Steel Plate from the Russian Federation, 68 FR 3859, 3861 (January 27, 2003) (CTL Plate Suspension Agreement) (where the Department stated that it may be necessary to adjust a respondent's reported energy costs if they do not reasonably reflect the costs associated with the production and sale of subject merchandise).

¹⁴ See Magnesium Metal from Russia, 70 FR at 9043 (stating that the Department has the discretion pursuant to section 773(f) of the Act to calculate COP by some other reasonable means where it determines that the use of a respondent's reported costs is inappropriate).

¹⁵ Id.

¹⁶ Id., 70 FR at 9044. According to the petitioners, the Department stated that it reserved the discretion to adjust or disregard a respondent's costs "...when evidence of continuing significant distortions at the macroeconomic level is accompanied by sufficient evidence or analysis with respect to the impact of such distortions on energy prices paid by respondent firms."

¹⁷ See Solid Urea from the Russian Federation: Final Results of Antidumping Duty New-Shipper Review and Rescission of Antidumping Duty Administrative Review, 73 FR 29736 (May 22, 2008) (Russian Urea NSR).

¹⁸ See the August 27, 2007, memorandum from Thomas Schauer and Michael Harrison to Laurie Parkhill entitled, "The Petitioner's Allegation of Sales Below the Cost of Production for EuroChem" (Urea Cost Initiation Memo) at page 7.

level of distortion in the Russian marketplace.¹⁹ Thus, the petitioners point out that the Department has already used its statutory authority to adjust a respondent's costs for the purposes of initiating a cost investigation involving a Russian fertilizer producer using natural gas as its principal feedstock, identical to the situation in this administrative review.²⁰ Furthermore, the petitioners assert that other WTO members, including the European Union (EU), Australia, and India, have relied on paragraph 2.2.1.1 of the WTO Antidumping Agreement to adjust producers' recorded non-market costs in numerous antidumping proceedings.²¹

According to the petitioners, the Department ignored hundreds of pages of evidence of government regulation in the Russian natural gas market submitted in the Acron and EuroChem Cost Allegations, including information showing that:

- Gazprom supplies approximately 75 percent of the natural gas in Russia, has an exclusive monopoly on the export of natural gas, and is owned principally by the Russian government;²²
- The Russian government, through the Federal Tariff Service (FTS), regulates the wholesale prices of natural gas supplied by Gazprom to industrial consumers in Russia, and these prices during the POR were a fraction of the market price set by the Russian government for exports of natural gas to the EU;²³
- Institutions such as the Organization for Economic Cooperation and Development (OECD) and the U.S. International Trade Commission have recognized the distortions in Russian energy pricing for years, and the OECD has urged Russia to eliminate the distortions cause by its non-market pricing of natural gas;²⁴ and
- The Russian government began a program to liberalize natural gas prices in 2007, with the goal of bringing them up to market prices by 2011 (using Gazprom's natural gas price to the EU as its market price benchmark), although it has extended the target completion

¹⁹ Id.

²⁰ The petitioners point out that the cost investigation in the Russian Urea NSR was later terminated at the petitioners' request.

²¹ See the Acron and EuroChem Cost Allegations at pages 11-16 and Appendix V which show: 1) the EU's adjustment of natural gas or electricity costs in approximately 20 cases involving Russia, Ukraine, and Algeria; 2) Australia's adjustment of the price for primary aluminum, after concluding that the Chinese market for aluminum ingot was subject to significant government intervention; and 3) India's adjustment of a Saudi Arabian respondent's cost for propane, after finding that the Saudi Arabian domestic price for propane was not competitively set. See also WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (WTO Antidumping Agreement) at Para. 2.2.1.1.

²² Id., at page 19 and Appendices VI and VII.

²³ Id., at page 19 and Appendices I, VI, and VIII and Attachment A.11.

²⁴ Id., at pages 20-21 and Appendix IX.

date for this program several times. Thus, the petitioners contend that full liberalization of Russian domestic natural gas prices will not occur until 2020 at the earliest.²⁵

The petitioners claim that the Department simply concluded in the Cost Allegation Memos that this evidence was insufficient without explanation, despite the fact that no party has disputed the above facts. Further, the petitioners claim that this evidence demonstrates ongoing distortions in the pricing of Russian natural gas at the macroeconomic level (which, according to the petitioners, was the standard the Department set forth in Magnesium Metal from Russia). The petitioners provided a formula to quantify these distortions on a respondent-specific basis,²⁶ and they contend that the Department's decision not to accept their proposed adjustments for purposes of initiating cost investigations is neither supported by substantial evidence nor legally viable for the reasons stated above.

The petitioners claim that in Magnesium Metal from Russia, unlike here, the Department extensively reviewed Russian energy pricing, permitting interested parties to submit detailed factual information on which the Department commented in its final determination.²⁷ According to the petitioners, the Department's decision in that case set the standard for the consideration of cost adjustments, and the Department violated this standard when it made no effort either to investigate Russian energy prices or to address the specific evidence the petitioners provided.

According to the petitioners, section 777(i)(3) of the Act requires the Department to address all relevant arguments raised by interested parties in its final results, while the SAA requires that the Department discuss all material issues so that the "path of the agency may reasonably be discerned" by a reviewing court²⁸ and so that its treatment of arguments are "render{ed} evident."²⁹ The petitioners disagree that the Department has met this standard to date, given that it has provided no explanation which "renders evident" its decision to deny the cost adjustment in question.

The petitioners contend that the Department's unwillingness to adjust the respondents' energy prices, despite repeated confirmations that it has the authority to do so, suggests that the Department is not serious about carrying out its statutory obligations. The petitioners contend that, if the Department continues to find that section 773(f)(1)(A) of the Act provides the authority to correct for non-market distortions in respondents' prices or costs following a country's graduation to market economy status, it must use this tool when presented with overwhelming evidence of ongoing distortions; otherwise, Russia and other future non-market

²⁵ Id., at pages 21-24 and Appendices III, IV, VI, VII, and X.

²⁶ See the Acron Cost Allegation at pages 29-30 and Attachment A.18 and the EuroChem Cost Allegation at pages 29-30, Appendix IV, and Attachment A.15.

²⁷ See Magnesium Metal from Russia, 70 FR at 9041-9044, and accompanying Issues and Decision Memorandum at Comment 2.

²⁸ See SAA at 892, citing Ceramica Regiomontana, S.A. v. United States, 810 F.2d 1137, 1139 (Fed. Cir 1987) (quoting Bowman Transportation v. Arkansas-Best Freight Sys., 419 U.S. 281, 286 (1974)) and National Association of Mirror Manufacturers v. United States, 696 F. Supp. 642, 649 (CIT 1988).

²⁹ See SAA at 892.

economy country graduates may continue to manipulate pricing in key sectors, making the graduation process a mockery at the expense of U.S. industries.

Finally, the petitioners claim that the Department failed to apply the correct statutory test to determine whether a respondent's reported costs are reasonable, because the Department's test disregards GAAP-consistent costs only where they do not reasonably reflect the cost of the producer itself. The petitioners contend that this test is circular because the producer's books will always reflect its booked costs unless such costs are fraudulent. The petitioners argue that the Department instead should look to see if the producer's costs reasonably reflect the "real value" of the cost elements (even where some or all of the value is not recorded in the respondent's books and records).³⁰

The petitioners claim that the Act's use of the broad term "the costs" makes clear that the Act does not limit costs to only those recorded in the producer's or exporter's books and records. As support for this contention, the petitioners cite section 773(e)(2) of the Act, which directs the Department to limit constructed value to "actual amounts incurred and realized by the specific exporter or producer being examined by the investigation or review..." Therefore, the petitioners argue that, in the absence of an explicit restriction, the Department retains the authority to find that Acron's and EuroChem's costs do not reasonably reflect the costs associated with the production of ammonium nitrate based on the significantly distorted price Gazprom charges domestic industrial users. According to the petitioners, the Department's authority to adjust Russian energy prices, as stated in Magnesium Metal from Russia and subsequent cases, would be meaningless if the Department were prepared to accept distorted costs so long as those costs were paid and properly booked by the producer. The petitioners claim that, when the Department applies the correct legal standard to determine whether Acron's and EuroChem's books and records reasonably reflect "the costs" to produce ammonium nitrate, it will: 1) conclude that they do not; and 2) initiate cost investigations in this administrative review.

The respondents disagree, maintaining that the Department correctly declined in the Cost Allegation Memos to make the petitioners' natural gas adjustment. EuroChem contends that, despite the fact that the Department has investigated many Russian industries since Russia's graduation, it has never disregarded the price of a production input in Russia and replaced it with an artificial value,³¹ nor has it done so in cases involving other countries. Indeed, the respondents maintain that the question raised by the petitioners cannot be answered by the dumping law; rather, it may only be addressed in the context of a countervailing duty (CVD) proceeding.

The respondents point out that in the Acron and EuroChem Cost Allegations, the petitioners provided information showing that Russian natural gas prices have increased consistently over the last decade.³² Additionally, Acron notes that Russian natural gas prices are similar to natural gas prices in the United States, a fact which it says demonstrates that Russian natural gas prices

³⁰ See Saha Pipe, 635 F.3d at 1341-1342.

³¹ See, e.g., Magnesium Metal from Russia and CTL Plate Suspension Agreement.

³² See the Acron and EuroChem Cost Allegations at page 18.

are not unreasonably low. Acron argues that the European price of Russian natural gas is not a valid benchmark for the price of natural gas in Russia because: 1) natural gas prices in Europe are not entirely controlled by supply and demand; 2) Europe, unlike Russia, does not have a sufficient local supply of natural gas; and 3) Europe's level of economic development is not comparable to Russia's. In line with this argument, EuroChem points out that the petitioners failed to examine if there are other countries with natural gas markets more comparable to that of Russia that would serve as an appropriate benchmark.

Acron maintains that there is no statutory basis under section 773(b)(1)(B) of the Act to adjust the respondents' natural gas costs. Acron notes that, even if this section of the Act required the prices of all inputs to be above their COP, there is no information on the record to support the conclusion that there were below-cost sales of natural gas in Russia during the POR. Therefore, Acron contends that there is no basis to disregard the prices of Russian natural gas in this proceeding.

Finally, Acron notes that Russia has committed to the WTO, as a condition of its accession, that it would ensure that its producers and distributors of natural gas operate on the basis of "normal commercial considerations, based on recovery of costs and profit." Acron argues that the petitioners fail to recognize the impact of this commitment; according to Acron, if Russia were to violate its WTO obligations, it could be subject to complaints by WTO Members. Acron maintains that acceptance of the petitioners' argument would be tantamount to the Department's concluding independently (i.e., in the context of an antidumping duty proceeding) that Russia has not abided by its WTO commitments with respect to the natural gas industry. According to Acron, the Department must assume that Russia has in fact abided by its WTO commitments in the absence of evidence to the contrary; to do otherwise would inappropriately place the Department as the arbiter of Russia's compliance with its WTO commitments. Consequently, the respondents maintain that the Department appropriately declined to initiate cost investigations in this administrative review.

Department's Position:

After carefully analyzing all of the evidence and arguments on the record of this proceeding, we have determined that the record does not support making the petitioners' proposed natural gas adjustment. While we agree with the petitioners that Department does indeed have the authority under section 773(f)(1)(A) of the Act to depart from a respondent's normal books and records when calculating COP, we will do so only where the evidence demonstrates that such a departure is necessary to determine whether the sales at issue were made at prices below COP.

Section 773(f)(1)(A) of the Act directs the Department to calculate COP as follows:

Costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise.³³

³³ See Section 773(f)(1)(A) of the Act (in relevant part, emphasis added).

As noted above, the Act specifies that the Department “normally” will use the costs recorded in a respondent’s books and records in calculating COP if two criteria are met: 1) those records are kept in accordance with the GAAP of the respondent’s home country; and 2) those recorded costs reasonably reflect the costs associated with the production and sale of the subject merchandise. The Act’s explicit use of the word “normally” indicates that there may be circumstances where the Department could reasonably determine that the use of a respondent’s recorded costs would fail to reflect the real cost of producing the merchandise. In such cases, the Department has the authority to calculate COP by some other reasonable means. This finding is consistent with the Department’s determination in Magnesium Metal from Russia,³⁴ as well as numerous other cases.³⁵

In its Russia Graduation Memorandum, the Department specifically stated that it retained its statutory authority to evaluate the underlying usefulness of particular costs involved in NV calculations:

Accordingly, the Department will examine prices and costs within Russia, utilizing them for the determination of normal value when appropriate or disregarding them when they are not. In this regard, the Department retains its authority to disregard particular prices when the prices are not in the ordinary course of trade, the costs are not in accordance with generally accepted accounting principles, the costs do not reasonably reflect the costs associated with the production or sale of the merchandise, or in other situations provided for in the Act or in the Department's regulations.³⁶

In the current administrative review, the petitioners provided evidence, summarized above, of government regulation in the Russian natural gas market. Specifically, record evidence shows that the largest natural gas supplier, Gazprom, is owned by the Russian government and its prices to industrial customers in Russia are set by that authority. Moreover, record evidence also shows that the Russian government has a plan in place to increase natural gas prices within Russia using the prices that Gazprom charges for natural gas to Europe as its benchmark. However, despite the petitioners’ claim to the contrary, this evidence is insufficient to show that either respondent’s actual natural gas costs during the POR do not reasonably reflect “the costs associated with the production and sale of the merchandise” such that we should deviate from our normal practice of relying on the respondents’ books and records for the calculation of COP in this case.

Further, we disagree with the petitioners’ speculation concerning the Department’s statutory obligations. The Department takes very seriously every aspect of its statutory obligations. The relevant provision of the statute is clear; to initiate a cost investigation, there must be reasonable grounds to believe or suspect sales below cost. To that end, the Department does not depart from

³⁴ See Magnesium Metal from Russia, 70 FR at 9043.

³⁵ See, e.g., Hot-Rolled Steel from India at Comment 12; SRAMs from Taiwan, 63 FR at 8922; and Flowers from Colombia, 61 FR at 42847.

³⁶ See the Russia Graduation Memorandum.

the books and records of a given respondent unless the data recorded in those books and records do not “reasonably reflect” the costs associated with the production and sale of the merchandise.³⁷

We also disagree with the petitioners that the Department violated its standard practice set forth in Magnesium Metal from Russia of investigating Russian energy prices on request. In that case, the Department initiated cost investigations without adjusting the respondent’s reported energy costs and ultimately declined to disregard or adjust these costs.³⁸ Moreover, the facts in this proceeding differ from the facts before the Department in Magnesium Metal from Russia.

Finally, we disagree with the petitioners that we have misapplied section 773(f)(1)(A) of the Act by reading it too narrowly. Contrary to the petitioners’ contention, our decision to reject the petitioners’ cost allegation, and thus the cost adjustment for natural gas, was not based on the fact that the adjustment was macroeconomic in nature (*i.e.*, not limited to the producer itself). As we noted in the Russia Graduation Memorandum, the Department will examine prices and costs within Russia, utilizing them for the determination of NV when appropriate or disregarding them when they are not.

For the foregoing reasons, we continue to find that there is an insufficient basis to accept the petitioners’ proposed natural gas adjustment in this segment of the proceeding.

Comment 2: LOT

In the Preliminary Results, we analyzed the selling functions performed by Acron and EuroChem to make sales to their home market customers. Based on this analysis, we determined that both Acron and EuroChem made sales in the home market at two LOTs during the POR.³⁹

The petitioners claim that neither the evidence on the record in this administrative review nor established Department practice is consistent with finding two home market LOTs for either Acron or EuroChem. As a result, the petitioners argue that the Department should find one home market LOT for each respondent in the final results.

The respondents disagree, asserting that the Department should continue to find that they made home market sales at two LOTs. However, Acron claims that, should the Department conclude that Acron has only one home market LOT, it must then grant Acron a CEP offset.

³⁷ See section 773(f)(1)(A) of the Act.

³⁸ See Magnesium Metal from Russia, 70 FR at 9044.

³⁹ See Preliminary Results, 79 FR at 29417, and accompanying Preliminary Decision Memorandum at pages 10-12.

Department's Position:

This issue is moot and therefore need not be addressed as the outcome of this issue, either granting or denying an LOT adjustment, has no impact on the final dumping margin calculated for either respondent.⁴⁰

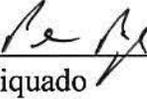
RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this administrative review in the Federal Register.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

17 NOVEMBER 2014
(Date)

⁴⁰ See the memorandum from David Crespo to the file entitled, "Calculations for JSC Acron for the Final Results," and the memorandum from Elizabeth Eastwood to the file entitled, "Calculations for MCC EuroChem for the Final Results," dated concurrently with this notice.