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December 18, 2013

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

FROM: Christian Marsh
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; 2011-2012

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 (pipe and tube) from Mexico. The review covers two producers/exporters of the subject merchandise, Golden Dragon¹ and Nacional de Cobre, S.A. de C.V. (Nacobre). The period of review (POR) is November 1, 2011, through October 31, 2012. We have preliminarily found that sales of the subject merchandise have been made at prices below normal value (NV).

BACKGROUND

In November 2010, the Department published in the Federal Register an AD order on pipe and tube from Mexico.² Subsequently, on November 5, 2012, the Department published in the

¹ The Department uses the name Golden Dragon when we refer to the collective group of Golden Dragon companies, which includes: 1) GD Copper Cooperatief U.A.; 2) Hong Kong GD Trading Co. Ltd.; 3) Golden Dragon Holding (Hong Kong) International, Ltd.; 4) GD Copper U.S.A. Inc.; 5) GD Affiliates Servicios S. de R.L. de C.V.; and 6) GD Affiliates S. de R.L. de C.V. See, e.g., Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty New Shipper Review, 77 FR 59178 (Sept. 26, 2012), and accompanying Issues and Decision Memorandum. In addition, Counsel for GD Affiliates S. de R.L. de C.V. submitted a letter to the Department, on behalf of the Golden Dragon affiliates listed above, and entered an appearance and requested an administrative review of GD Affiliates S. de R.L. de C.V., on November 30, 2012.

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 (Nov. 22, 2010) (Order).



Federal Register a notice of opportunity to request an administrative review of the AD order on pipe and tube from Mexico for the period November 1, 2011, through October 31, 2012.³

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 2012, the Department received requests to conduct an administrative review of the AD order on pipe and tube from Mexico from the petitioners (Cerro Flow Products, LLC, Wieland Copper Products, LLC, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc.) for the following companies: Golden Dragon; IUSA, S.A. de C.V. (IUSA); Luvata Juarez S. de R.L. de C.V. and Luvata Monterrey S. de R.L. de C.V. (collectively Luvata); and Nacobre. In accordance with 19 CFR 351.213(b)(2), the Department also received requests to conduct an administrative review from Golden Dragon, Luvata, and Nacobre.

In December 2012, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of administrative review for IUSA, Golden Dragon, Luvata, and Nacobre.⁴ In January 2013, the petitioners withdrew their review requests for IUSA and Luvata; they also requested that the Department initiate a duty absorption inquiry for Golden Dragon and Nacobre.

In January and February 2013, we issued AD questionnaires to Golden Dragon, Luvata, and Nacobre, as well as duty absorption questionnaires to Golden Dragon and Nacobre. In February and March 2013, we received responses to the Department's AD questionnaire from Golden Dragon and Nacobre. We also received a response to the duty absorption questionnaire from Golden Dragon. We did not receive a response from Nacobre to the duty absorption questionnaire.

Also in March 2013, Luvata withdrew its request for a review. In April 2013, we rescinded the administrative review of IUSA and Luvata, pursuant to 19 CFR 351.213(d)(1).⁵

From April 2013 through November 2013 we issued supplemental questionnaires to Golden Dragon and Nacobre. We received responses to these supplemental questionnaires from May 2013 through December 2013.

In July 2013, we extended the deadline for the preliminary results by 120 days, to December 2, 2013.⁶

³ See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 77 FR 66437 (Nov. 5, 2012).

⁴ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 77 FR 77017 (Dec. 31, 2012).

⁵ See Seamless Refined Copper Pipe and Tube From Mexico: Rescission, in Part, of Antidumping Duty Administrative Review, 78 FR 22515 (Apr. 6, 2013).

⁶ See Memorandum for James Maeder, Director, Office 2 to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled, "Seamless Refined Copper Pipe and Tube from Mexico: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review," dated July 10, 2013.

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.⁷ Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department’s practice, the deadline will become the next business day. The revised deadline for the preliminary results of this review is now December 18, 2013.

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

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 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

⁷ See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Shutdown of the Federal Government” (Oct. 18, 2013).

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.

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) and (d), to determine whether Golden Dragon’s and Nacobre’s sales of pipe and tube from Mexico 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 notice.

When making these comparisons 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).

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.⁸ 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

⁸ 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 (LME). *See* Golden Dragon’s February 21, 2013, submission at A-18.

Department's sales matching. However, consistent with our practice in the two most recent segments of this proceeding, we do not find that this case warrants special treatment.⁹ Therefore, there is no reason to take into consideration the metal date in our comparison of U.S. sales to comparison market sales with the same metal exchange date.

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 AD investigations, the Department examines whether to use 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 antidumping duty investigations.¹⁰ 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.¹¹ 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 EPs (or CEPs) for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis

⁹ See Seamless Refined Copper Pipe and Tube From Mexico: Preliminary Results of Antidumping Duty New Shipper Review, 77 FR 25136, 25139 (Apr. 27, 2012), unchanged in Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty New Shipper Review, 77 FR 59178 (Sept. 26, 2012). (New Shipper Review); see also Seamless Refined Copper Pipe and Tube From Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2010-2011, 77 FR 73422 (Dec. 10, 2012), and the accompanying Preliminary Issues and Decision Memorandum (Mexican Copper Pipe Preliminary Results) at 5, unchanged in Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 35244 (June 12, 2013) (Mexican Copper Pipe Final Results).

¹⁰ See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011, 77 FR 73415 (Dec. 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1.

¹¹ 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 the 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 (Sept. 23, 2013), and the accompanying Issues and Decision Memorandum at Comment 3.

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 consolidated customer codes. 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 considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* 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 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 passed the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large threshold (i.e., 0.8).

Next, the “ratio test” assesses the extent of the significance of the 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 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 but less than 66 percent of the value of total sales, then the results support 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 the application 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 method, based on the results of the Cohen’s *d* and ratio tests described above, yields a

meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margin between the average-to-average method and the appropriate alternative method where both rates are above the de minimis threshold, or 2) the resulting weighted-average dumping margin moves across the de minimis threshold.

Interested parties may present arguments 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.

For Golden Dragon, based on the results of the differential pricing analysis, the Department finds that at least 66 percent of Golden Dragon's U.S. sales pass the Cohen's *d* test, which confirms the existence of a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions or time periods. Further, the Department determines that the average-to-average method cannot appropriately account for such differences because the resulting weighted-average dumping margins move across the de minimis threshold when calculated using the average-to-average method and an alternative method based on the average-to-transaction method as applied to all U.S. sales. Accordingly, the Department has determined to use the average-to-transaction method for 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 finds that between 33 percent and 66 percent of Nacobre's export sales pass the Cohen's *d* test, which confirms the existence of a pattern of EPs (or CEPs) for comparable merchandise that differ significantly among purchasers, regions or time periods. Further, the Department determines that the average-to-average method cannot appropriately account for such differences because the resulting weighted-average dumping margins move across the de minimis threshold when calculated using the average-to-average method and an alternative method based on the average-to-transaction method applied to those U.S. sales which passed the Cohen's *d* test. Accordingly, the Department has determined to use the average-to-transaction method for those U.S. sales which passed the Cohen's *d* test and the average-to-average method for those U.S. sales which do not pass the Cohen's *d* test to calculate the weighted-average dumping margin for Nacobre.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Golden Dragon and Nacobre covered by the description in the "Scope of the Order" and sold in the home market during the POR to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(f), we compared Golden Dragon's and Nacobre's U.S. sales of pipe and tube made during a particular month to its sales of pipe and tube made in the home market in the same month. Where there were no contemporaneous sales within the same month, pursuant to 19 CFR 351.414(f)(2), we compared

Golden Dragon's and Nacobre's U.S. sales of pipe and tube to its sales of pipe and tube made in the home market in the most recent of the three months prior to the month of the U.S. sales. Finally, if Golden Dragon and Nacobre did not make home market sales of pipe and tube during any of these months, pursuant to 19 CFR 351.414(f)(3), we compared Golden Dragon's and Nacobre's U.S. sales of pipe and tube to Golden Dragon's and Nacobre's home market sales of pipe and tube in the earlier of the two months following the month of the U.S. sales in which Golden Dragon and Nacobre made a home market sale of pipe and tube. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by Golden Dragon and Nacobre in the following order: type and ASTM specification, copper alloy unified number system, outer diameter, wall thickness, physical form, temper designation, bore, outer surface, and attachments.

Based on our analysis, we were able to match some of Golden Dragon's and Nacobre's U.S. sales during the POR to contemporaneous sales in the home market that were identical according to these product matching criteria within the meaning of section 771(16)(A) of the Act. For the sales for which we could not find an identical match, we made product comparisons to account for cost differences associated with differences in the physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act.

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.

In Golden Dragon's response to the Department's questionnaire, Golden Dragon explained that it reported the invoice 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.¹² Accordingly, we preliminarily find invoice date to be the appropriate date of sale with respect to Golden Dragon's sales to the United States and comparison markets, unless shipment occurred prior to invoice date. 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.¹³

Regarding the date of sale for Nacobre's comparison and U.S. market 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

¹² See Golden Dragon's February 21, 2013, submission at A-18.

¹³ 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 (Apr. 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 (Jan. 31, 2007) (SSSSC from Korea), and the accompanying Issues and Decision Memorandum at Comments 4 and 5. See Mexican Copper Pipe Preliminary Results at 7, unchanged in Mexican Copper Pipe Final Results.

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, we find that the essential terms of sale are not set as of the date of order entry because Nacobre stated that the actual shipment quantity changed by more than a ten percent tolerance from the original order quantity for certain comparison and U.S. market sales.¹⁴ Accordingly, we find it appropriate to use invoice date as the date of sale for Nacobre’s comparison and U.S. market sales, except in those instances where shipment occurred prior to the invoice date. 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 price and quantity are fixed at the time of shipment.¹⁵

Constructed Export Price

In accordance with section 772(b) of the Act, we based U.S. price on the 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 foreign inland freight expenses, foreign brokerage and handling expenses, inland insurance expenses, and U.S. inland freight 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 includes 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 billing adjustments and early payment discounts. We also made deductions, where appropriate, for foreign inland freight expenses, foreign

¹⁴ See Nacobre’s June 19, 2013, submission at 15.

¹⁵ See, e.g., SSSSC from Korea and the accompanying Issues and Decision Memorandum at Comments 4 and 5.

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.

During certain months of the POR, Nacobre stored subject merchandise in certain warehouses operated by an affiliated party named Logtec, S.A. de C.V. (Logtec), and it used Logtec to arrange customs clearance with unaffiliated brokers. Because Nacobre was unable to substantiate the arm's-length nature of the associated expenses, we based these expenses on Logtec's costs.¹⁶

In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which 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 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.¹⁷

B. *Level of Trade*

To the extent practicable, we determined NV for sales at the same level of trade (LOT) as the U.S. sales. When there were no sales at the same LOT, we compared U.S. sales to home market sales at a different LOT. The NV LOT is that of the starting price sales in the home market. For CEP, the LOT is that of the constructed sale from the exporter to the affiliated importer. To determine whether home market sales are at a different LOT than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the home market sales are at a different LOT and the

¹⁶ See Memorandum from Elizabeth Eastwood, Senior Analyst, to the File entitled, "Calculations Performed for Nacional de Cobre, S.A. de C.V. (Nacobre) for the Preliminary Results of the 2011-2012 Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube from Mexico" dated concurrently with this notice (Nacobre Calculation Memo).

¹⁷ See Golden Dragon's February 21, 2013, submission at Exhibit A-1; Nacobre's March 8, 2013, submission at Exhibit A-1.

differences affect price comparability, as manifested in a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined, we will make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV LOT is at a more advanced stage of distribution than the CEP LOT, and the data available do not provide an appropriate basis to determine an LOT adjustment, we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.¹⁸ Company-specific LOT findings are summarized below.

1. Golden Dragon

Golden Dragon reported that it made CEP sales during the POR through one channel of distribution in the United States (*i.e.*, consignment sales (Channel 3)). Golden Dragon also reported one customer type (*i.e.*, original equipment manufacturer (OEM)). In our analysis, we examined the selling activity outside of the United States and found that Golden Dragon performed the following selling functions: packing, order input/processing, freight and delivery, and inventory maintenance.¹⁹

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.²⁰ Based on these selling function categories, we find that Golden Dragon performed packing, order input/processing, and freight and delivery services for U.S. sales. Because Golden Dragon only sold through one 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 it made sales to home market customers by Golden Dragon in Mexico 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 warehouse (Channel 4), and sales shipped directly to the customer after storage (Channel 5)). In addition, Golden Dragon reported that it made sales to home market customers by its U.S. affiliate, in the United States through two channels of distribution (*i.e.*, sales shipped directly to the customer (Channel 1) and sales picked up by the customer from Golden Dragon in Mexico (Channel 2)). Golden Dragon also reported two customer types (*i.e.*, OEMs and distributors). According to Golden Dragon, the selling functions it performed did not vary by the channel of distribution.

We found that Golden Dragon performed the following selling functions for all sales by Golden Dragon in Mexico in the POR: sales forecasting, strategic/economic planning, engineering services, sales promotion, packing, inventory maintenance, order input/processing, employment

¹⁸ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61732-33 (Nov. 19, 1997).

¹⁹ See Golden Dragon's May 1, 2013, submission at Exhibit SA-2.

²⁰ See 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 (Aug. 18, 2010), and accompanying Issues and Decision Memorandum at Comment 7 (OJ from Brazil); and 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 (July 13, 2009) (Shrimp from India).

of direct sales personnel, sales/marketing support, technical assistance, provision of after-sales services, sales negotiations, and collection of payment; we also found that Golden Dragon in Mexico also provided freight and delivery to its home market customers in Channels 1, 3, and 4.²¹ In addition, Golden Dragon performed the same selling functions for the activity performed by Golden Dragon in Mexico for sales through its U.S. affiliate, plus its U.S. affiliate also performed sales forecasting, strategic/economic planning, engineering services, order/input processing, sales/marketing support, technical assistance, provision of cash discounts, payment of commissions, provision of after-sales services, sales negotiations, collection of payment, and warranty service.²² Accordingly, based on the four selling function groups listed above, we find that Golden Dragon performed sales and marketing, freight and delivery, inventory maintenance and warehousing, and warranty and technical support for home market sales. Because the sales in the home market are made at two different stages in the marketing process and the selling functions are greater for sales made by the U.S. affiliate, we preliminarily determine that there are two different LOTs in the home market (i.e., sales made by Golden Dragon in Mexico and sales made by its U.S. affiliate).

Finally, we compared the U.S. LOT to both home market LOTs and found that the selling functions performed for U.S. and home market customers differ significantly. We preliminarily determine that sales to the home market during the POR were made at a more advanced LOT than the sales in the U.S. LOT. In addition, we preliminarily determine that sales made by Golden Dragon in Mexico are at the closest LOT to the U.S. LOT and sales made by its U.S. affiliate are at the next closest LOT to the U.S. LOT. We did not make an 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.²³ 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: order input/processing, strategic/economic planning, provision of freight and delivery, 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.²⁴ Based on these selling function categories, we find that

²¹ See Golden Dragon's May 1, 2013, submission at 2-3.

²² Id.

²³ See 19 CFR 351.412(d).

²⁴ See OJ from Brazil at Comment 7 and Shrimp from India, 74 FR at 9996.

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. 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. Nonetheless, Nacobre stated that its Channel 1 sales required considerable investments in sales personnel, storage facilities, planning, and the stocking of inventory to meet local business requirements. As a result, Nacobre argued that the functions performed for its Channel 1 sales were at a distinct, and higher, LOT. However, because Nacobre: 1) reported no changes between the first and second administrative reviews in the selling activities it performed for home market sales (except for the merger of Nacobre and its affiliate Productos Nacobre, S.A. de C.V.) and we found that Nacobre's channels of distribution constituted one LOT in the first administrative review²⁵; and 2) not only maintained inventory for Channel 2 and Channel 3 sales, but also employed sales personnel and performed planning activities for sales through these channels, we find that the differences claimed by Nacobre are insufficient to warrant treating Channel 1 sales as a different LOT.

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, 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 activities 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 sales to the home market during the POR were made at a more advanced LOT than the sales in the U.S. LOT. We did not make an 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.²⁶ 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.

²⁵ See [Mexican Copper Pipe Preliminary Results](#) at 13, unchanged in [Mexican Copper Pipe Final Results](#).

²⁶ See 19 CFR 351.412(d).

C. *Cost of Production Analysis*

We found that Golden Dragon and Nacobre made sales below the COP in the most recently completed segment of this proceeding for each company as of the date of initiation of this review, and such sales were disregarded.²⁷ Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Golden Dragon and Nacobre made home market sales at prices below the cost of producing the merchandise in the current POR.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated each respondents' COPs based on the sum of materials and conversion for the foreign like product, plus amounts for general and administrative (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 cost data and determined that our quarterly cost methodology is not warranted. Therefore, we have applied our standard methodology of using annual costs based on the reported data.

a. Golden Dragon

We relied on the weighted-average cost database submitted on June 25, 2013, in order to reflect the weighted-average copper costs for the POR in the reported cost of manufacturing for each control number. We made no changes to Golden Dragon's reported costs.

b. Nacobre

We relied on the COP data submitted by Nacobre in its September 12, 2013, cost database for the COP calculation, except in the following instance: Nacobre's reported material costs were significantly lower than both the average per-unit consumption value of the materials recorded on the company's books and its purchase price for the materials. Our analysis indicates that the company reduced the cost of materials by certain items; Nacobre was unable to provide an explanation as to what these items represent and how they relate to the calculated COP.²⁸ Therefore, for the preliminary results, we adjusted Nacobre's reported material costs to bring them in line with the average per-unit cost of materials recorded on the company's books.

Details regarding the calculation of COP, including the adjustment made to the COP reported by Nacobre, as well as other calculation details, can be found in the Memorandum from Frederick Mines, Staff Accountant, to Neal Halper, Director, Office of Accounting, titled, "Cost of

²⁷ See New Shipper Review 77 FR 25136, 25139 (Apr. 27, 2012) and Seamless Refined Copper Pipe and Tube From Mexico: Final Determination of Sales at Less Than Fair Value, 75 FR 60723, 60724 (Oct. 1, 2010) (Pipe and Tube from Mexico).

²⁸ In its section D supplemental questionnaire response, Nacobre informed the Department that it transitioned from an "AS400" accounting system to an SAP system at the beginning of the POR. Nacobre indicated that it experienced difficulties during the transition, and thus it reported its costs using the standard costs from the old system. See Nacobre's September 12, 2013, response at 1-12.

Production and Constructed Value Calculation Adjustments for the Preliminary Results-Nacional de Cobre, S.A. de C.V.,” dated concurrently with this notice.

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 purposes of 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.

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 on the reported packed, FOB plant or delivered prices, as appropriate, to home market customers. We made adjustments to the starting price, where appropriate, for early payment discounts, in accordance with 19 CFR 351.401(c). We also made deductions for inland freight and insurance, 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 also made adjustments, in accordance with 19 CFR 351.410(e), for indirect

selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, also known as the “commission offset.” Specifically, where commissions are incurred in only one market, we limit the amount of such allowance to the amount of either the indirect selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

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.²⁹

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 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 on the reported packed, delivered prices to home market customers. We made adjustments to the starting price, where appropriate, for billing adjustments, early payment discounts, commercial discounts, special discounts, and other adjustments, in accordance with 19 CFR 351.401(c). We also made deductions for inland freight from the plant to the warehouse, warehousing expenses, inland freight to the customer, and inland insurance expenses pursuant to section 773(a)(6)(B)(ii) of the Act. We adjusted certain of Nacobre’s reported warehousing expenses paid to Logtec because Nacobre was unable to substantiate the arm’s-length nature of these expenses. Consistent with our adjustment for U.S. warehousing expenses, we based Nacobre’s home market warehousing expenses for these sales on Logtec’s costs by deducting its profit from the reported amounts.³⁰

In addition, we made deductions pursuant to section 773(a)(6)(C) of the Act for home market credit expenses. For those sales for which Nacobre had not received payment as of the date of its most recent questionnaire response, Nacobre reported the date of that response as the date of payment. We have accepted this information for purposes of the preliminary results. We intend to request that Nacobre provide updated payment information for use in the final results. If we determine that Nacobre will not receive payment for certain of these transactions, we plan to remove them from our analysis for purposes of the final results.

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

²⁹ See 19 CFR 351.411(b).

³⁰ See Nacobre Calculation Memo for further discussion.

CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise.³¹

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 on the home market sales or the indirect selling expenses deducted from the starting price in calculating CEP. We reclassified certain distribution department expenses, reported as movement expenses, as indirect expenses because they are indirect in nature.³²

Duty Absorption

On January 30, 2013, the petitioners requested that the Department determine whether antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Act directs the Department, if requested, to determine during an administrative review initiated two or four years after the publication of an AD order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. In the current review, Golden Dargon and Nacobre sold to the United States through importers that are affiliated within the meaning of section 751 (a)(4) of the Act.

Section 351.213(j)(1) of the Department's regulations provides that during an administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping order, the Department will conduct a duty absorption review, if requested by a domestic interested party. Because the antidumping duty order underlying this review was issued in 2010, and this review was initiated in 2012, the request for the Department to conduct a duty absorption inquiry was timely. Therefore, the Department is conducting a duty absorption inquiry for this segment of the proceeding pursuant to the petitioners' request.

In determining whether the antidumping duties have been absorbed by the respondents during the POR, we examine the antidumping duties calculated in the administrative review in which the absorption inquiry is requested.³³ The Department presumes that the duties will be absorbed for those sales that have been made at less than NV. This presumption can be rebutted with evidence (e.g., an enforceable agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise.³⁴

On February 1, 2013, we issued letters to Golden Dragon and Nacobre requesting proof that the companies' unaffiliated purchasers would ultimately pay the antidumping duties to be assessed on entries during the POR. On March 7, 2013, Golden Dragon submitted a letter to the Department stating that its supply agreement and other declarations support its claim that the

³¹ See 19 CFR 351.411(b).

³² See Nacobre Calculation Memo for further discussion.

³³ See 19 CFR 351.213(j)(3).

³⁴ See, e.g., Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind, 70 FR 39735, 39737 (July 11, 2005).

U.S. customer will pay the antidumping duties to be assessed in this review. However, although the agreement indicates that Golden Dragon will charge an increased price, the documentation provided by Golden Dragon does not indicate that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise.³⁵ Moreover, Golden Dragon's response indicates that its U.S. affiliate pays the antidumping cash deposits at the time of import and will either owe additional duties or receive a refund when final duties are assessed.³⁶ Because Golden Dragon has confirmed that its unaffiliated U.S. customers will not pay the full antidumping duty ultimately assessed on the subject merchandise, the Department preliminarily determines that Golden Dragon has absorbed antidumping duties on its U.S. sales made through its affiliated importer.

With respect to Nacobre, we did not receive a response from Nacobre to the Department's request for proof that its unaffiliated purchasers would ultimately pay the antidumping duties to be assessed on entries during the POR. Therefore, the Department preliminarily determines that the duties will be absorbed for those sales that have been made at less than NV.

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.

Recommendation

We recommend applying the above methodology for these preliminary results.

✓

Agree

Disagree

Ronald K Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

December 18, 2013

(Date)

³⁵ See Golden Dragon's March 7, 2013, submission at Attachmet 2.

³⁶ See Golden Dragon's February 21, 2013, submission at C-49.