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January 22, 2014

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

**SUBJECT:** Issues and Decision Memorandum for the Final Results of the  
Administrative Review of the Antidumping Duty Order on Light-  
Walled Rectangular Pipe and Tube from Mexico; 2011-2012

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## I. Summary

We have analyzed the comments of the interested parties in the antidumping duty administrative review of light-walled rectangular pipe and tube (LWR pipe and tube) from Mexico. The companies subject to this administrative review are Regiomontana de Perfiles y Tubos S.A. de C.V. (Regiopytsa) and Maquilacero S.A. de C.V. (Maquilacero). As a result of our analysis, we did not make changes from the *Preliminary Results* in the margin calculations.<sup>1</sup> Based on our analysis of the comments, we recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

## II. Background

On September 6, 2013, the Department of Commerce (the Department) published the *Preliminary Results* of the 2011-2012 administrative review of the antidumping duty order on LWR pipe and tube from Mexico in the *Federal Register*. We invited parties to comment on the *Preliminary Results*.<sup>2</sup> In response, we received case briefs from both Regiopytsa and Maquilacero.<sup>3</sup> We received no rebuttal briefs from interested parties. No party requested a hearing.

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<sup>1</sup> See *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 54864 (September 6, 2013) (*Preliminary Results*), and the accompanying Decision Memorandum (Preliminary Decision Memorandum).

<sup>2</sup> See *Preliminary Results* at 54865

<sup>3</sup> See “Light-Walled Rectangular Pipe and Tube from Mexico; Case Brief for Regiomontana de Perfiles y Tubos S.A. de C.V.,” dated October 22, 2013 (Regiopytsa’s Case Brief), and “Light-Walled Rectangular Pipe and Tube from Mexico; Case Brief of Maquilacero S.A. de C.V.,” dated October 23, 2013 (Maquilacero’s Case Brief), respectively.



## **Tolling of Deadlines**

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.<sup>4</sup> Therefore, all deadlines in this segment of the proceeding were 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. Accordingly, the revised deadline for the final results of this review is now January 22, 2014.

## **III. Scope of the Order**

The merchandise subject to the order is certain welded carbon-quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.

The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to the order is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.5000 and 7306.61.7060.

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

## **IV. Discussion of Issues**

### **Issue 1: Authority to Consider an Alternative Comparison Methodology Absent an Allegation of Targeted Dumping**

#### **Regiopytsa's Comments:**

Regiopytsa disputes the Department's consideration of an alternative comparison method in this review. In particular, Regiopytsa states that there has not been an allegation of targeted dumping by the domestic industry in this review and that the Department has not explained its reason for applying such methodology absent such an allegation.<sup>5</sup>

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<sup>4</sup> See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (October 18, 2013).

<sup>5</sup> See Regiopytsa's Case Brief at 1-2.

Citing 19 CFR 351.414(c)(1), Regiopytsa states that in an administrative review the Department normally calculates weighted-average dumping margins by comparing the weighted-average normal values (NVs) to the weighted-average of the export prices (EPs) (or constructed export prices (CEPs)) for comparable merchandise (*i.e.*, the average-to-average or A-to-A methodology).<sup>6</sup> For the *Preliminary Results*, Regiopytsa states the Department instead compared the weighted-average NVs to the EPs of the individual transactions (*i.e.*, the average-to-transaction or A-to-T methodology) to obtain Regiopytsa's weighted-average dumping margin.

Regiopytsa argues that, consistent with section 777A(d)(1)(B) of the Tariff Act of 1930, as amended (the Act), the Department should only calculate dumping margins by using the A-to-T methodology when: (i) there is a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and (ii) the Department can explain why such differences cannot be taken into account by using the A-to-A methodology.<sup>7</sup> While Regiopytsa acknowledges that the regulations regarding targeted dumping have been withdrawn, still it insists that the Department must still have an allegation from the domestic industry in order for the Department to consider an alternative comparison method. Regiopytsa notes that there has been no involvement by the petitioners<sup>8</sup> in this segment of this proceeding, nor has there been an allegation of targeted dumping in the instant review. Thus, Regiopytsa argues, the Department should not have considered the application of an alternative comparison method (*i.e.*, by applying the differential pricing analysis) to calculate Regiopytsa's weighted-average dumping margin.<sup>9</sup>

Additionally, Regiopytsa references two recent cases – *STR from the PRC* and *CWP from Thailand*<sup>10</sup> – which it claims affirm the Department reliance on an allegation from the domestic industry identifying either targeted dumping or some other factor (e.g., the use of a constructed market) which might be masking dumping with using the A-to-A methodology.

No other party commented on this issue.

### **Department's Position:**

The Department disagrees with Regiopytsa that an allegation of targeted dumping is necessary for the Department to consider the application of an alternative comparison method. 19 CFR 351.414, which fills the gap in the statute for selecting a comparison method in administrative reviews, states that the Department “will use the average-to-average method unless the

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<sup>6</sup> *Id.* at 1.

<sup>7</sup> *Id.* at 1-2 and 4.

<sup>8</sup> The companies as identified in the petition for the underlying investigation of LWR pipe and tube include: California Steel and Tube, Hannibal Industries, Inc., Leavitt Tube Company, LLC, Maruichi American Corporation, Northwest Pipe Company, Searing Industries, Inc., Vest Inc., and Western Tube and Conduit Corporation (collectively, the petitioners). We note, as Regiopytsa stated, that no petitioner has entered an appearance or been active in this segment of the proceeding.

<sup>9</sup> See Regiopytsa's Case Brief at 5.

<sup>10</sup> See *Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 21101 (April 9, 2013) (*STR from the PRC*); and *Circular Welded Carbon Steel Pipes and Tubes From Thailand: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 21105 (April 9, 2013) (*CWP from Thailand*).

{Department} determines that another method is appropriate in a particular case.” In the *Final Modification for Reviews*,<sup>11</sup> the Department stated that it will calculate weighted-average dumping margins in a manner “paralleling the WTO-consistent methodology that the Department applies in original investigations.”<sup>12</sup> Section 777A(d)(1)(B) of the Act has no requirement that a party submit an allegation for the Department to consider an alternative comparison method in antidumping investigations, and, likewise, the Department finds that none should be required based on the statute, the regulations or the *Final Modification for Reviews* in administrative reviews.

The requirement for an allegation of targeted dumping was based on the targeted dumping regulations, which only applied to antidumping investigations and which the Department withdrew.<sup>13</sup> Subsequent to the *2008 Withdrawal*, the Department requested that an allegation be submitted as part of the initiation of an antidumping investigation.<sup>14</sup> For the targeted dumping analysis, the allegation served the purpose of providing the basis for analyzing the respondent’s sales under the *Nails*<sup>15</sup> test.

Beginning with the use of the differential pricing analysis,<sup>16</sup> the Department has not required that an interested party allege targeted dumping in order for the Department to consider whether an alternative comparison method is appropriate.<sup>17</sup> For the differential pricing analysis, the Cohen’s *d* test examines all purchasers, regions and time periods,<sup>18</sup> and this test is not dependent on an

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<sup>11</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification (Final Modification for Reviews)*, 77 FR 8101 (February 14, 2012).

<sup>12</sup> *Id.* at 8101.

<sup>13</sup> See *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (December 10, 2008) (*2008 Withdrawal*). See also, e.g., *Commodity Matchbooks from India: Initiation of Antidumping Duty Investigation*, 73 FR 70965 (November 24, 2008) (where no allegation was required in the initiation notice because the requirement was included in the then governing targeted dumping regulations).

<sup>14</sup> See, e.g., *Polyethylene Retail Carrier Bags From Indonesia, Taiwan, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 74 FR 19049 (Monday, April 27, 2009) and *Silica Bricks and Shapes From the People's Republic of China: Initiation of Antidumping Duty Investigation*, 77 FR 73982 (December 12, 2012) (initiations of antidumping investigations where the Department included the requirement for the submission of an allegation of targeted dumping in order for it to consider an alternative comparison methodology).

<sup>15</sup> See *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) and *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008) (collectively, *Nails*).

<sup>16</sup> See Memoranda to Paul Piquado, Assistant Secretary for Import Administration, from Abdelali Elouaradia, Director of AD/CVD Operations Office 4, entitled “Less Than Fair Value Investigation of Xanthan Gum from Austria: Post-Preliminary Analysis and Calculation Memorandum,” “Less Than Fair Value Investigation of Xanthan Gum from the People's Republic of China: Post-Preliminary Analysis and Calculation Memorandum for Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., Ltd.) and Shandong Fufeng Fermentation Co., Ltd.,” and “Less Than Fair Value Investigation of Xanthan Gum from the People's Republic of China: Post-Preliminary Analysis and Calculation Memorandum for Deosen Biochemical Ltd.,” all dated March 4, 2013.

<sup>17</sup> See, e.g., *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Initiation of Antidumping Duty Investigation*, 78 FR 23905 (April 23, 2013) and *Prestressed Concrete Steel Rail Tie Wire From Mexico, the People's Republic of China, and Thailand: Initiation of Antidumping Duty Investigations*, 78 FR 29325 (May 20, 2013) (initiations of antidumping duties where the Department no longer required the submission of allegations of targeted dumping).

<sup>18</sup> See Preliminary Decision Memorandum at 4-5.

allegation to form the basis to identify a potential pattern of prices that differ significantly. Therefore, an allegation was not necessary in antidumping investigations, nor when using the differential pricing analysis in an administrative review to consider whether an alternative comparison method is more appropriate pursuant to 19 CRF 351.414(c)(1).<sup>19</sup>

Regiopytsa's references to *STR from the PRC* and *CWP from Thailand* are inapposite. In the initiations for both of these administrative reviews,<sup>20</sup> there was no requirement for the submission of an allegation of targeted dumping in order for the Department to consider whether an alternative comparison methodology was appropriate, consistent with the *Final Modification for Reviews* and the Department's current practice in antidumping investigations.

## Issue 2: Differential Pricing Analysis

### Regiopytsa's Comments:

Regiopytsa argues that in applying the differential pricing analysis, the Department should not include sales that are above the NV when calculating the percent of sales that pass the Cohen's *d* test.<sup>21</sup> Citing to the *Preliminary Decision Memorandum*, Regiopytsa states the Department determined that 69.03 percent of its sales passed the Cohen's *d* test, and, therefore, that a pattern of prices that differ significantly was found.<sup>22</sup> Regiopytsa clarifies that a significant amount of those sales were not dumped.<sup>23</sup> Regiopytsa asserts that the Department has failed to provide a justification as to why, in attempting to use the differential pricing analysis to determine an appropriate comparison method, that it would include sales that are above the NV.<sup>24</sup>

Regiopytsa also affirms that including non-dumped sales in determining if there is sufficient reason to consider an alternative comparison method is unreasonable because it punishes, and potentially discourages, the foreign producer for selling to the United States at prices above the NV, as these sales would be considered to be "passing" the Cohen's *d* test.<sup>25</sup>

Finally, Regiopytsa argues that the Department should not include non-dumped sales when determining if Regiopytsa's export sales were made at less than NV because it is "contrary to the intentions, if not the language, of the Act."<sup>26</sup>

No other party commented on this issue.

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<sup>19</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 59168 (September 26, 2012) (where the Department initiated this administrative review).

<sup>20</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 77 FR 31568 (May 29, 2012) and *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 25401 (April 30, 2012), respectively.

<sup>21</sup> See Regiopytsa's Case Brief, at 1 and 2.

<sup>22</sup> *Id.* at 2 and 6.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 2-3 and 6.

<sup>25</sup> *Id.* at 6.

<sup>26</sup> *Id.* at 7.

## Department's Position:

The Department disagrees with Regiopytsa that consideration of both higher- and lower-priced sales as potentially creating a pattern of prices that differ significantly is contrary to the intent, if not the language, of the statute. For the Department to calculate dumping margins using the A-to-T method in an antidumping investigation, section 777A(d)(1)(B)(i) of the Act states that there must be “a pattern of export prices (or constructed export prices) that differ significantly among purchasers, regions, or periods of time.” In the *Final Modification for Reviews*, the Department stated its intention to apply in administrative reviews “the WTO-consistent methodology that the Department applies in original investigations”<sup>27</sup> with respect to the selection of an appropriate comparison method. This is reflected in the Department’s revised regulations, at 19 CFR 351.414 (2012).

Contrary to Regiopytsa’s assertions, section 777A(d)(1)(B)(i) of the Act makes no reference to whether higher- or lower-priced U.S. sales may be part of a pattern of prices that differ significantly, or whether these U.S. sales are above or below the NV. The statute directs the Department to consider whether there exists a pattern of prices that differ significantly. The statutory language references prices that “differ” and does not specify whether the prices differ by being lower or higher than the comparison prices. The statute does not require that the Department considers only higher priced sales or only lower priced sales when conducting its analysis, nor does the statute specify whether the difference must be the result of certain sales being priced higher or lower than other sales. As explained here, higher-priced sales and lower-priced sales do not operate independently; all sales are relevant to the analysis.

The Department has the discretion to consider sales information on the record in its analysis and to draw reasonable inferences as to what the data show. It is reasonable for the Department to consider both lower-priced and higher-priced sales in the Cohen’s *d* analysis because higher-priced sales are equally capable as lower-priced sales to create a pattern of prices that differ significantly. Lower, higher, or both are each possibilities for establishing a pattern consistent with section 777A(d)(1)(B) of the Act. Further, when considering a pattern, this is a pattern of export prices (or constructed export prices) and is limited to an analysis of prices in the U.S. market. There is no reference to the NVs for these U.S. sales or a comparison between the prices of the U.S. sales and their NVs. Accordingly, “dumping” is not part of the analysis in establishing whether there exists a pattern of prices that differ significantly.

One purpose for considering an alternative comparison method is to address the potential of masked dumping. Masked dumping is the result of two concurrent situations: dumped sales and non-dumped sales. One, without the other, does not result in masked dumping. The existence of both dumped and non-dumped sales have the potential for masked dumping. Masking can occur in two ways: (1) higher-priced, non-dumped sales may offset lower-priced, dumped sales, implicitly through the calculation of a weighted-average export price or constructed export price for an averaging group, or (2) higher-priced, non-dumped sales may offset lower-priced, dumped sales explicitly through the granting of offsets. Further, any potential masking is being generated by the higher-priced sales because these sales, if not dumped, are what create potential offsets whether implicitly or explicitly applied. Therefore, the Department finds it reasonable and

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<sup>27</sup> See *Final Modification for Reviews* at 77 FR 8101.

consistent with the statute to consider both higher-priced and lower-priced U.S. sales as potentially contributing to a pattern of prices that differ significantly pursuant to section 777A(d)(1)(B)(i) of the Act and as applied in administrative reviews consistent with 19 CFR 351.414 and the *Final Modification for Reviews*.

Furthermore, it seems as though Regiopytsa is confusing the individual results for each comparison of the Cohen's *d* test with the application of an alternative comparison method. The Cohen's *d* test, for each combination of comparison merchandise and either purchaser, region or period of time, determines whether the weighted-average sales price to a particular test group is different from the weighted-average sale price to the comparison group. However, this is only the first step of the Department's differential pricing analysis. As described in the *Preliminary Results*, the Department next aggregates the results for each of the comparisons of the Cohen's *d* coefficient to confirm whether a pattern of prices that differ significantly exists for the respondent. If a pattern is found to exist, then based on the results of the Cohen's *d* and ratio test, the Department will determine an appropriate alternative comparison method and determine whether the A-to-A method can account for the observed pattern. Therefore, whether or not there is dumping or masked dumping from lower or higher priced sales is immaterial in the Cohen's *d* test, because the question is whether there is a pattern of export prices that differ significantly, and this analysis includes no comparisons with normal values. By considering all sales, higher-priced sales and lower-priced sales, the Department is able to analyze an exporter's pricing practice and to identify whether there is a pattern of prices that differ significantly. Moreover, finding such a pattern of prices that differ significantly among purchasers, regions, or periods of time signals that the exporter is discriminating between purchasers, regions, or periods of time within the U.S. market, rather than following a more uniform pricing behavior. Where the evidence indicates that the exporter is engaged in a discriminating pricing behavior, there is cause to continue with the analysis to determine whether masked dumping is occurring. Accordingly, both higher and lower priced sales are relevant to the Department's analysis of the exporter's pricing behavior.

Finally, the statute makes no provision that a pattern of prices that differ significantly involves sales that are dumped. The SAA discusses targeted dumping in reference to section 777A(d)(1)(B)(i) of the Act, which the Department considers to be one type of pattern which might exist. Similarly, another possible pattern could be that there are a few high, "differentially-priced," "targeted" sales which provide offsets to "normally" priced sales which provide a small amount of dumping. However, the total amount of dumping is being masked by offsets from the few, high-priced sales. Whether masking is actually occurring is then evaluated by considering section 777A(d)(1)(B)(ii) of the Act, under which the Department assesses whether the standard method can account for the observed differences.

For these reasons, we will continue to consider both lower and higher priced sales as potentially contributing to a pattern of prices that differ significantly.

**Issue 3: Arm's-Length Analysis of Certain of Maquilacero's Sales**

**Maquilacero's Comments:**

Maquilacero argues that our statement in the Preliminary Decision Memorandum that certain of the sales Maquilacero made to its affiliated customer(s) during the POR failed the arm's-length test is inconsistent with (1) the information submitted by Maquilacero on the record and (2) our assessment of the issue, as detailed in our preliminary analysis memorandum pertaining to Maquilacero<sup>28</sup>

No other party commented on this issue.

**Department's Position:**

We agree. Based on our analysis, Maquilacero's sales through its affiliated reseller were included in the Department's margin calculation for the *Preliminary Results*. The arm's-length nature of these sales, as well as our inclusion of them in the *Preliminary Results* for Maquilacero, was detailed in the preliminary analysis memorandum.<sup>29</sup>

**V. Recommendation:**

Based on our analysis of the comments received, we recommend adopting the position set forth in the "Department's Position," sections above. If these recommendations are accepted, we will publish these final results, including the weighted-average dumping margins for all companies subject to this review in the *Federal Register*.

Agree  \_\_\_\_\_ Disagree \_\_\_\_\_

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

22 JANUARY 2014  
Date

<sup>28</sup> See Maquilacero's Case Brief at 1-3.

<sup>29</sup> See Memorandum from Brian C. Davis to the File, "Analysis of Data Submitted By Maquilacero S.A. de C.V. for the Preliminary Results of the Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from Mexico," (August 30, 2013) at 10.