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April 18, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: James Doyle
Director, Office V
Antidumping and Countervailing Duty Operations

Subject: Decision Memorandum for the Preliminary Determination of the
Less-Than-Fair-Value Investigation of Steel Concrete Reinforcing
Bar from Mexico

I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that steel concrete reinforcing bar (rebar) from Mexico is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2012, through June 31, 2013. The estimated weighted-average dumping margins of sales at LTFV are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

II. BACKGROUND

On September 4, 2013, the Department received antidumping (AD) duty petitions¹ concerning imports of rebar from Mexico and Turkey filed in proper form on behalf of the Rebar Trade Action Coalition (RTAC) and its individual members (collectively, petitioners).² On September 25, 2013, we placed U.S. import data of rebar from Mexico obtained from U.S. Customs and Border Production (CBP) on the record and invited interested parties to comment on the data and the Department’s respondent selection methodology.

The Department published the initiation of the LTFV investigation of rebar from Mexico on

¹ See Petitions for the Imposition of Antidumping Duties on Steel Concrete Reinforcing Bar from Mexico and Turkey and the Imposition of Countervailing Duties on Steel Concrete Reinforcing Bar from Turkey, dated September 4, 2013, (Petitions).

² Petitioners are RTAC and its individual members: Byer Steel Group, Inc., Schnitzer Steel Industries d/b/a Cascade Steel Rolling Mills, Inc., Commercial Metals Company, Gerdau Ameristeel U.S. Inc., and Nucor Corporation.



October 2, 2013.³ The Department invited comments regarding the CBP data and respondent selection within seven days of publication of the *Initiation Notice*.⁴ The Department set aside a period of time for parties to raise issues regarding product coverage and invited parties to submit comments by October 15, 2013.⁵

On November 6, 2013, the U.S. International Trade Commission (ITC) determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of rebar from Mexico.⁶

Between October 31, 2013, and November 12, 2013, the Department received comments and rebuttal comments on physical characteristics and the model matching hierarchy from interested parties.⁷

On November 20, 2013, the Department selected Deacero S.A. de C.V. (Deacero)⁸ and Grupo Acerero S.A. de C.V. (Acerero) as mandatory respondents.⁹ On December 3, 2013, the Department issued the initial Section A questionnaire to these two respondents. On December 16, 2013, the Department issued the initial Section B-D questionnaire to these two respondents. Deacero submitted its initial Section A questionnaire response on December 23, 2013, and its Sections B and C initial response on February 3, 2014. In addition, Deacero timely responded to all supplemental questionnaires issued by the Department. Acerero did not respond to the Department's initial questionnaire.

On December 19, 2013, Grupo Simec (Simec) requested to be treated as a voluntary respondent and expressed its intention to submit a voluntary response.¹⁰ On December 24, 2013,¹¹ Simec timely submitted its response to Section A of the Department's initial December 3, 2013, questionnaire. On February 3, 2014, Simec timely submitted its response to Sections B and C of

³ See *Steel Concrete Reinforcing Bar From Mexico and Turkey: Initiation of Antidumping Duty Investigations*, 78 FR 60827 (October 2, 2013) (*Initiation Notice*) and accompanying Initiation Checklist.

⁴ *Id.* at 60827.

⁵ *Id.* at 60830.

⁶ See *Steel Concrete Reinforcing Bar from Mexico and Turkey: Investigation Nos. 701-TA-502 and 731-TA-1227-1228 (Preliminary)* (November 2013) (*ITC Preliminary Report*); *Steel Concrete Reinforcing Bar from Mexico and Turkey*, 78 FR 68090 (November 13, 2013).

⁷ See Letter from petitioners titled "Product Characteristics and Product Matching Comments," dated October 31, 2013 (Petitioners Model Match Comments); Letter from Deacero titled, "Comments on Product Characteristics," dated October 31, 2013; see also Letter from petitioners titled "Rebuttal Comments Concerning Product Characteristics and Product Matching Comments," dated November 12, 2013; and Letter from Deacero titled, "Rebuttal Comments on Product Characteristics," dated November 12, 2013.

⁸ On December 16, 2013, Deacero S.A. de C.V. changed its legal name to Deacero S.A.P.I. de C.V. See letter from Deacero dated December 23, 2013.

⁹ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations through Melissa G. Skinner, Director, Office III Antidumping and Countervailing Duty Operations from Stephanie Moore and Joy Zhang, Case Analysts, titled *Antidumping and Countervailing Duty Operations Selection of Respondents for the Antidumping Investigation of Steel Concrete Reinforcing Bar from Mexico*, dated November 20, 2013.

¹⁰ See Letter from Grupo Simec to the Honorable Penny Pritzker, titled "Antidumping Duty Investigation of Steel Concrete Reinforcing Bar From Mexico--Request for Voluntary Treatment," dated December 19, 2013.

¹¹ Simec's Section A questionnaire response was dated December 24, 2014. Because the Department had an early release on Christmas Eve, Simec's response was not time stamped until December 26, 2014.

the Department's initial questionnaire.

On January 3, 2014, the Department stated that if a company submits a voluntary response in accordance with section 782(a) of the Act and 19 CFR 351.204(d), then the Department would evaluate the circumstances as the investigation progresses to determine whether the Department could examine a voluntary respondent in addition to the two mandatory respondents, Deacero and Acerero.¹² On February 12, 2013, the Department designated Acerero as a non-cooperative mandatory respondent and selected Simec as a voluntary respondent.¹³

On December 18, 2013, petitioners filed a timely critical circumstance allegation, pursuant to section 733(e) of the Act and 19 CFR 351.206(c)(1), alleging that critical circumstances exist with respect to imports of rebar from Mexico.¹⁴ On December 27, 2013, Deacero submitted comments regarding petitioners' critical circumstance allegations. On January 6, 2014, petitioners submitted rebuttal comments to Deacero's December 27, 2013 comments. On January 10, 2014, the Department requested that Deacero report its shipment data for a six-month period covering June – November 2013. On January 17, 2014, Deacero submitted its shipment data. On January 23, 2014, petitioners submitted comments on Deacero's January 17, 2014 critical circumstances questionnaire response. On March 4, 2014, the Department issued a critical circumstances supplemental questionnaire to Deacero, to which Deacero responded on March 7, 2014. On February 14, 2014, the Department requested that Simec report its shipment data for a six-month period covering June – November 2013. On February 21, 2014, Simec submitted its shipment data.

On April 4, 2014, petitioners filed comments for the Department to consider in its preliminary determination. Specifically, petitioners claim that the Department should find that certain sales in the home market are outside the ordinary course of trade, and, therefore, should be excluded from the preliminary dumping margin calculations.¹⁵ On April 14, 2014, Deacero filed pre-preliminary determination comments and a response to petitioners' April 4, 2014, pre-preliminary determination comments.

On April 15, 2014, Deacero requested a postponement of the final determination and an extension of provisional measures.¹⁶

¹² See Memorandum to Melissa G. Skinner, Director, Office III AD/CVD Operations Enforcement and Compliance through Eric Greynolds, Program Manager, AD/CVD Operations Enforcement and Compliance from Stephanie Moore, Case Analyst AD/CVD E&C titled, "Selection of Respondents for the Antidumping Investigation of Steel Concrete Reinforcing Bar from Mexico," dated January 3, 2014.

¹³ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations from Melissa G. Skinner, Director, Office III Antidumping and Countervailing Duty Operations, titled, "Antidumping and Countervailing Duty Operations Antidumping Investigation of Steel Concrete Reinforcing Bar (Rebar) from Mexico: Selection of Voluntary Respondent," dated February 12, 2014.

¹⁴ See petitioners' submission, "Steel Concrete Reinforcing Bar from Mexico: Critical Circumstances Allegation" (Mexico Critical Circumstances Allegation), dated December 17, 2014.

¹⁵ See petitioners' April 4, 2014, submission at 5.

¹⁶ See Letter from Deacero titled, "Rebar from Mexico; request to postpone final determination," dated April 15, 2014.

III. PERIOD OF INVESTIGATION

The POI is July 1, 2012, through June 30, 2013. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the Petition, which was September 2013.¹⁷

IV. INITIATION OF SALES-BELOW-COSTS INVESTIGATION

On February 24 and 27, 2014, petitioners timely alleged that Simec and Deacero each made sales of rebar in Mexico at prices below cost of production (COP) during the POI pursuant to 19 CFR 351.301(c)(2)(ii)(A).

On March 7, 2014, the Department initiated an investigation to determine whether Simec's sales of rebar in the home market were made at prices below the COP during the POI and requested that Simec submit a response to section D of the AD questionnaire.¹⁸ On March 10, 2014, Simec filed rebuttal comments on petitioners' cost allegation and argued that the Department should have given Simec ten full days to rebut the factual information contained in petitioners' cost allegation before initiating the cost investigation for Simec pursuant to 19 CFR 351.301(c)(2)(vi).¹⁹ We considered Simec's rebuttal comments and continued to find sufficient reason to proceed with the cost investigation initiated on March 7, 2014.²⁰ On April 7, 2014, Simec submitted its section D response.

On March 14, 2013, the Department initiated an investigation to determine whether Deacero's sales of rebar in the home market were made at prices below the COP during the POI and requested that Deacero submit a response to section D of the Department's AD questionnaire.²¹ On April 1, 2014, Deacero submitted its section D response, and on April 7, 2014, Deacero submitted its response to a section D supplemental questionnaire, dated March 25, 2014.

V. POSTPONEMENT OF PRELIMINARY DETERMINATION

On February 4, 2014, the Department fully extended the deadline for issuing the preliminary determination to no later than 190 days after the date on which it initiated this investigation.²² 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, 2013.²³ Accordingly,

¹⁷ See 19 CFR 351.204(b)(1).

¹⁸ See Memorandum to Melissa Skinner, AD/CVD Operations, Office III, from The Team "Petitioner's Allegation of Home Market Sales at Prices Below the Cost of Production for Grupo Simec" (March 7, 2014) (Simec Cost Initiation Memo).

¹⁹ See Simec's Rebuttal to Petitioner's Sales-Below-Cost Allegation, dated March 10, 2014.

²⁰ See The Department's letter to Simec, dated March 13, 2014.

²¹ See Memorandum to Melissa G. Skinner, Director, AD/CVD Operations, Office III Enforcement and Compliance from the Team, titled, "Petitioner's Allegation of Home Market Sales at Prices Below the Cost of Production for Deacero S.A.P.I. de C.V. and the Department's Section D questionnaire," dated March 14, 2014 (Deacero Cost Initiation Memo).

²² See *Steel Concrete Reinforcing Bar from Mexico and Turkey: Postponement of Preliminary Determination in the Antidumping Duty Investigations*, 79 FR 6541 (February 4, 2014).

²³ See Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding "Deadlines Affected by the Shutdown of the Federal Government," dated October 18, 2013.

the revised deadline for the preliminary determination of this investigation is now April 18, 2014.

VI. POSTPONEMENT OF FINAL DETERMINATION AND EXTENSION OF PROVISIONAL MEASURES

Pursuant to section 735(a)(2) of the Act, on April 15, 2014, Deacero requested that the Department postpone the final determination and that the Department extend the provisional measures from a period of four months to a period not longer than six months. In accordance with section 735(a)(2) of the Act and 19 CFR 351.210(b) and (e), because (1) our preliminary determination is affirmative, (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the request and are postponing the final determination until no later than 135 days after the publication of the preliminary determination notice in the *Federal Register*, and we are extending provisional measures from a period of four months to a period not to exceed six months. Suspension of liquidation will be extended accordingly.

VII. SCOPE OF THE INVESTIGATION

The merchandise subject to this investigation is steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade. The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010. The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0015, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth rebar). HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains dispositive.

VIII. SCOPE COMMENTS

In the *Initiation Notice*, the Department notified interested parties that “we are setting aside a period for interested parties to raise issues regarding product coverage” and invited parties to submit comments by October 15, 2013.²⁴

On November 1, 2013, we received scope comments from Deacero requesting that the Department confirm that two of its product families are outside the scope of the investigation.²⁵ We received rebuttal comments from petitioners on November 22, 2013.²⁶ On November 27, 2013, Deacero submitted rebuttal comments.²⁷

²⁴ See *Initiation Notice*, 78 FR at 60827.

²⁵ See Letter from Deacero titled, “Steel Concrete Reinforcing Bar from Mexico; Scope Comments,” dated October 31, 2014.

²⁶ See Petitioners’ November 22, 2013, scope rebuttal comments.

²⁷ See Deacero’s November 27, 2013, rebuttal comments.

For the reasons set forth in the Preliminary Scope Comments Decision Memorandum, we preliminarily find that the products at issue are inside the scope of the investigation.²⁸ Parties may comment on this issue in their briefs.

IX. SELECTION OF RESPONDENTS

On September 25, 2013, we released a memorandum to interested parties in which we stated that the Department intended to select mandatory respondents based on U.S. import data obtained from U.S. Customs and Border Protection (CBP). On October 25, 2013, counsel for Deacero and Deacero USA, Inc. submitted comments on the CBP import data. We received no comments from other interested parties. On November 20, 2013, we selected Deacero and Acerero as mandatory respondents for examination in this investigation.²⁹ The Department issued an initial AD questionnaire to Deacero and Acerero on December 3, 2013. Acerero did not respond to the Department's questionnaire.

On October 17, 2013, counsel for Simec entered an appearance on the company's behalf. On December 19, 2013, Simec requested to be treated as a voluntary respondent and expressed its intention to submit a voluntary response.³⁰ On December 26, 2013, and February 3, 2014, Simec submitted its response to Section A, and Sections B and C of the Department's initial questionnaire, respectively. On February 4, 2014, the Department designated Acerero as a non-cooperating mandatory respondent and selected Simec as a voluntary respondent in this investigation.³¹

X. PHYSICAL CHARACTERISTICS AND MODEL MATCHING HIERARCHY

In the *Initiation Notice*, the Department solicited comments on the physical characteristics and model matching hierarchy for the Department's initial AD duty questionnaire.³² The Department extended the deadline for comments to October 31, 2013, and the deadline for rebuttal comments to November 12, 2013.³³

On October 31, 2013, Deacero and petitioners filed comments on the physical characteristics of

²⁸ Interested parties' scope comments reference business proprietary information. For further discussion, see the Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar ('Rebar') from Mexico," (April 18, 2014) (Preliminary Scope Comments Decision Memorandum).

²⁹ See Memorandum to Christian March, Deputy Assistant Secretary of Antidumping and Countervailing Duty Operations, "Selection of Respondents for the Antidumping Investigation of Steel Concrete Reinforcing Bar from Mexico," (November 20, 2014) (Respondent Selection Memorandum).

³⁰ See Letter from Grupo Simec to the Honorable Penny Pritzker, "Antidumping Duty Investigation of Steel Concrete Reinforcing Bar From Mexico - Request for Voluntary Treatment," dated December 19, 2013.

³¹ See Antidumping Investigation of Steel Concrete Reinforcing Bar ("Rebar") from Mexico: Selection of Voluntary Respondent, Memorandum from Melissa G. Skinner, Director, Office III, Antidumping and Countervailing Duty Operations, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, dated February 4, 2014.

³² See *Initiation Notice* 78 FR at 60828.

³³ See Memorandum to the File, titled "Deadlines for Comments on Customs and Border Protection Data and Product Characteristics for Antidumping Questionnaires," dated October 18, 2013.

rebar. Deacero recommends that the Department use the following physical characteristics in the model matching hierarchy: (1) rebar grade (2) specification (3) size, and (4) form. Petitioners suggests that the Department not use rebar grade as a physical characteristic because it could increase the likelihood of manipulation by renaming a particular grade in the home market, selling small amounts of ASTM graded product in the home market in order to match U.S. sales or adopting a unique or customized grading system.³⁴ Petitioners suggest that the Department use the following physical characteristics in the model matching hierarchy: (1) type of steel (2) form of rebar (3) type of rebar (4) imported versus domestic billets (5) basic oxygen furnace versus electric arc furnace billets (6) yield strength (7) size, and (4) length.³⁵

Petitioners also suggest that the Department add the cooling method (*i.e.*, air-cooled or water-cooled rebar) as a physical characteristic. Petitioners state that the cooling production process is an important physical characteristic that is commercially significant in terms of the customers' expectations, the end-use of the product, and the cost of production. According to petitioners, because of the differences in the cooling method, these sales should not be treated as identical products for comparison purposes, and that the Department should include a distinction in the physical characteristics for water-cooled rebar versus air-cooled rebar.

On November 12, 2013, petitioners submitted rebuttal comments concerning Deacero's October 31, 2013, recommendations. Petitioners contend that Deacero's proposed physical characteristics are based on a prior rebar model matching hierarchy from 1996, which was largely rejected by the Department and replaced by an alternate model matching hierarchy in the 2000 multi-country LTFV investigations of rebar.³⁶ Petitioners state that the multi-country investigations focused on the actual physical characteristics of the rebar itself. In contrast, the arbitrary grade and national standards proposed by Deacero are not tied to differences in physical characteristics and would merely skew the dumping calculations by creating opportunities for manipulation of the results.³⁷ Moreover, petitioners claim that to the extent that grade has any meaningful connection with physical characteristics, the Department can account for grade by assessing the yield strength of the product. Petitioners also state that Deacero's suggestion to include specification has the same flaws as grade.

On November 12, 2013, Deacero submitted rebuttal comments to petitioners' October 31, 2013, recommendations. Deacero contends that petitioners' concern regarding why the Department should not include grade and specification as a physical characteristic included in the model matching hierarchy in this investigation is unfounded. Deacero, however, agrees with petitioners' suggestion to include cooling method (*i.e.*, air-cooled or water-cooled) as a physical characteristic.

Since the issuance of the Department's initial questionnaire, petitioners reiterated certain initial comments regarding the physical characteristics and the model matching hierarchy in its

³⁴ See Letter from Deacero titled, "Steel Concrete Reinforcing Bar from Mexico; Comments on Product Characteristics," dated October 31, 2013.

³⁵ See Petitioners' Product Characteristics and Product Matching Comments, dated October 31, 2013.

³⁶ See, *e.g.*, the Department's "Request for Information, Steel Concrete Reinforcing Bars," attached at Exhibit 2 of Petitioner's Rebuttal Comments Concerning Product Characteristics and Product Matching Comments, dated November 12, 2013.

³⁷ *Id.* at 3.

submissions.³⁸ Petitioners made these comments primarily in the context of the Turkish investigation, but we also considered these comments within the context of the Mexican rebar investigation, which shares the same scope of merchandise that is under consideration. In particular, petitioners address the rebar cooling method, asserting that there are two types of rebar involved in these investigations that are fundamentally different: one which utilizes air cooling and is predominantly sold in the United States while the other uses water cooling and is predominantly sold in Turkey.³⁹ Further, petitioners assert that the two different cooling methods result in different physical characteristics and cost structures of each type of rebar, and these physical characteristics are commercially significant.⁴⁰

Petitioners assert that the method in which rebar is cooled after rolling imparts important physical characteristics to the final product; namely, the level of vulnerability of the surface to oxidization. Petitioners state that the rebar sold in Turkey, and to a lesser extent Mexico, is typically produced using low-strength billets, primarily because they are cheaper, but also because of the necessity for producing weldable rebar. Low-strength billets have a higher iron content and lower alloy content. This lower level of alloys also greatly increases the weldability of the rebar. Petitioners assert that, because these low-strength billets are not as strong, the rebar must be water cooled in order to reach the required tensile and yield strengths. Water cooling also removes the thick outer scales and makes the surface porous and thus, much more prone to rust, according to petitioners. Petitioners further state that the air cooling process utilizes higher-strength billets achieved through the addition of alloys, which add to the cost of producing the rebar. Petitioners indicate that the air-cooling process reduces throughput rates, which also adds to production costs.

The Department's initial Section B-C questionnaire utilized physical characteristics and a model matching hierarchy that is patterned after the criteria used in the prior multi-country rebar investigations,⁴¹ which petitioners affirmed stating, "{t}he multi-country investigation, which had similar scope coverage to the original Turkish order (save for coiled rebar), focused on the actual physical characteristics of the rebar itself."⁴² Further, the model match hierarchy included in the initial B-C questionnaire accounted for weldability, an important end-use function of water-cooled rebar according to petitioners,⁴³ by including equivalent carbon content along with the minimum yield strength ranges, which we find is a more quantifiable method than the air versus water-cooled method proposed by petitioners.⁴⁴ In fact, petitioners affirmed our model matching hierarchy with regard to weldability, stating,

³⁸ See, e.g., petitioners' March 14, 2014, submission at 2, made in the context of the Turkish rebar AD investigation, a public document which has been placed on the record of this investigation. See Memorandum to the File, from Eric B. Greynolds, Program Manager, Office III, Operations, "Documents Originally Filed on the Record of the Companion Turkish AD Rebar Placed on the Record of the Mexican Rebar Investigation," (April 18, 2014) (Model Match Documents Memorandum) at Attachment 4.

³⁹ See petitioners' October 31, 2013, model match comments at 5-6.

⁴⁰ *Id.* at 7.

⁴¹ See, e.g., the Department's December 16, 2014, Initial Section B-C Questionnaire at B-7 – B-11.

⁴² See Letter from Petitioners titled, "Rebuttal Comments Concerning Product Characteristics and Product Matching Comments," dated November 12, 2013 at 2-3.

⁴³ See Petitioners' October 31, 2013, model match comments at 6-7.

⁴⁴ See, e.g., the Department's December 16, 2014, Initial Section B-C Questionnaire at B-7 – B-11.

{a}s discussed in Petitioner’s model match submission of October 31, 2013, the “carbon equivalency” determines the rebar’s weldability. The Department has recognized this important physical characteristic in its CONNUM creation instructions in the questionnaire. Specifically, the physical characteristic for yield strength in the CONNUM (MSYSTRU/H) has carbon equivalency categories that distinguish weldable and non-weldable rebar (*i.e.*, .55% CE).⁴⁵

An excerpt from the *ITC Preliminary Report*⁴⁶ provides background on the two cooling methods:

...Rebar can be water-quenched and tempered, rather than air-cooled. Water-quenching is a cooling process used to increase tensile strength in order for the rebar to comply with ASTM standards. {n45} Quenched-and-tempered rebar can meet the same physical property requirements of the ASTM A615/A615M specification without the addition of certain alloys to the steel billets that are rolled into rebar, and thus is slightly less expensive to produce. In this process (the Thermex process), {n46} hot-rolled rebar passes through a water-quenching stand (a series of water coolers), which rapidly cools the outer case of the rebar, before the final finishing process. The quench-and-temper treatment causes a dual metallurgical structure to form in the cross-section of the bar, which ultimately produces a rebar with a stronger outer case and a more ductile core...

{n45} Conference transcript, p. 151 (Porter).

{n46} Thermex refers to both the water-quench and tempering process, as well as the mill equipment used to produce rebar through this process. The Thermex process was developed and branded by Germany engineering firm Hennigsdorfer Stahl Engineering (HSE) in the 1970s.

As an initial matter, we disagree with petitioners that differences in the costs of the production process alone should be considered as a basis for determining whether cooling method should be included as a physical characteristic included in the product control number (CONNUM) used in the instant investigation. The primary objective of the product characteristics and the model matching hierarchy is to identify the identical or most similar product sold in the comparison market with respect to the characteristics of the merchandise sold in the United States. While variations in cost may suggest the existence of variation in product characteristics, such variations do not constitute differences in products in and of themselves.⁴⁷ Furthermore, the

⁴⁵ See Petitioners March 5, 2014 submission, at 7, made in the context of the Turkish rebar AD investigation, for which the public version has been placed on the record of this investigation. See Model Match Documents Memorandum at Attachment 3. See also Petitioners’ submission titled “Habas’ Pre-Preliminary Comments, dated April 8, 2014, at 18-19, made in the context of the Turkish rebar AD investigation, for which the public version has been placed on the record of this investigation. See Model Match Documents Memorandum at Attachment 6.

⁴⁶ See *ITC Preliminary Report* at I-11 (footnotes included); see also, the Department’s Memorandum to the File titled, “Documents Placed on the Record for the Preliminary Determination,” dated concurrently with this memorandum.

⁴⁷ See *Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 77 FR 32539, 32546 (June 1, 2012) (*Preliminary Determination of Steel Pipe from the UAE*), unchanged in *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Determination of Sales at Less than Fair Value*, 77 FR 64475 (October 22, 2012).

magnitude of variations in cost may differ from company to company, and even for a given company over time, and therefore do not, in and of themselves, provide a reliable basis for identifying the relative importance of different physical characteristics.⁴⁸ The Department stated that for defining products and creating a model match hierarchy, “{t}he physical characteristics are used to distinguish the differences among products across the industry,” that “{c}ost is not the primary factor for establishing these characteristics,” and, in short, “{c}ost variations are not the determining factor in assigning product characteristics for model-matching purposes.”⁴⁹

We find in this investigation that a different production process is not a physical characteristic, because a producer can achieve the same essential physical characteristics in a product using more than one process.⁵⁰ For example, in the companion Turkish LTFV investigation, the Turkish respondent Icdas Celik Enerji Tersane Ve Ulasim Sanayi A.S. (Icdas) and the Turkish interested party Colakoglu Metalurji (Colakoglu) reported that they do not measure the cost differential between air and water cooled rebar in their normal course of business because they claim such differences are negligible.⁵¹ The Department has not made cooling method a product characteristic in the prior antidumping proceedings involving rebar.⁵² Furthermore, in general, the Department rejected efforts in other proceedings to use commercially insignificant processing differences with no significant physical manifestations.⁵³

The reason why the physical differences in the production process or inputs may not matter to our analysis is because the resulting subject merchandise, which is the end product of these processes and inputs, is not different in any commercially meaningful manner. There may be many ways to produce a given product using different chemical formulas. However, unless the differences in production or inputs result in commercially different end products, there is no need to take differences in production or inputs into consideration when establishing the physical characteristics necessary to define the subject merchandise. The Department may amend the established physical characteristics when new factual information identifies a commercially

⁴⁸ See *Preliminary Determination of Steel Pipe from the UAE*, 77 FR at 32456.

⁴⁹ See *Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review*, 73 FR 12950 (March 11, 2008), and accompanying Issues and Decision Memorandum at Comment 1. Also, the Department’s “selection of model match characteristics {is based} on unique measurable physical characteristics that the product can possess{,}” and “differences in price or cost, standing alone, are not sufficient to warrant inclusion in the Department’s model-match of characteristics which a respondent claims to be the cause of such differences.” *Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000) (*Cold-Rolled Turkey*), and accompanying Issues and Decision Memorandum at Model Match Comment 6.1.

⁵⁰ See ITC Hearing Transcript for Steel Concrete Reinforcing Bar from Mexico and Turkey, Investigation 701-TA-502 and 731-TA-1227-1228 (Preliminary) (*ITC Preliminary Hearing Transcript*), dated September 25, 2013, at 110-111; see also, the Department’s Memorandum to the File titled, “Documents Placed on the Record for the Preliminary Determination,” dated concurrently with this memorandum.

⁵¹ See Letters from Icdas and Colakoglu, titled “Rebuttal Comments on Product Characteristics & Product Matching,” dated November 12, 2013, at 5, submitted in the context of the Turkish rebar investigation, a public document which has been placed on the record of this investigation. See Model Match Documents Memorandum at Attachment 2.

⁵² See, e.g., *Certain Steel Concrete Reinforcing Bars From Turkey; Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 22525, 22527 (May 4, 2001) unchanged in *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review*, 66 FR 56274 (November 7, 2001).

⁵³ See, e.g., *Certain Warmwater Shrimp From Thailand, Preliminary Results of Administrative Review and Final Results of Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 12188, 12191 (March 15, 2010).

relevant distinction between end products.⁵⁴ If the differences in material inputs and production processes do not result in a commercially significant difference in the end product, adding additional physical characteristics to account for such commercially insignificant differences arbitrarily narrows the pool of sales for comparison purposes. Therefore, we do not find that cost differences alone warrant a change to our physical characteristics and model matching hierarchy to include the cooling method in the CONNUM, as there is no reason to assume significant cost differences that would persist over time across companies and countries.

Furthermore, during the ITC's *Second Sunset Review*, petitioners conceded, "that the water-quenching process is not new, the cost difference is small, and the process is used by some U.S. producers to make ASTM-compliant rebar sold in the U.S. market."⁵⁵ In addition, the ITC hearing testimony for this investigation indicates that domestic producers utilize both water- and air-cooled rebar production methods in the United States.⁵⁶ Thus, information from petitioners themselves belies their claims that substantial cost differences exist between water- and air-cooled rebar, and that water-cooled rebar is too inferior for the U.S. market.

We also disagree with the notion that the cooling method imparts a physical characteristic that is not accounted for elsewhere in the CONNUM. Petitioners contend this difference is due to the fact that U.S. customers require a rust-free product and that only air-cooled rebar is immune to rust during overseas transportation. However, for Mexico, one respondent sold air-cooled rebar exclusively in the Mexican and U.S. markets, and the other Mexican respondent sold both air- and water-cooled rebar in both the Mexican and U.S. markets. Such sales by U.S. and Mexican producers do not require overseas transportation.⁵⁷ Further, as noted above, U.S. producers stated that they produce air-cooled rebar in the United States.⁵⁸ Therefore, while air-cooling may protect against rust on rebar when shipped overseas, we find such a process does not result in a commercially significant difference in the product. As a result, we find that there is no need to account for cooling method as a physical characteristic included in the model matching hierarchy for the subject merchandise. Accordingly, we find that record evidence does not support petitioners' claims that the different inputs and production processes result in rebar with commercially significant differences.

Moreover, we find that testimony before the ITC addresses the issue of fungibility and lack of differentiation in the rebar market with respect to air-cooled rebar, as compared to water-cooled rebar. Specifically, an excerpt from the ITC hearing for the instant investigation states the following:

⁵⁴ See, e.g., *Allegheny Ludlum Corp v. United States*, 346 F.3d 1368, 1373 (Fed. Cir. 2003); see also *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from Malaysia*, 66 FR 12759 (February 28, 2001) and accompanying Issues and Decision Memorandum at Comment 3.

⁵⁵ See ITC's *Steel Concrete Reinforcing Bar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine* Investigation Nos. 731-TA-873-875, 878-880, and 882 (Second Review), Publication 4409 (July 2013) at 13 (*Second Sunset Review*); see also, the Department's Memorandum to the File titled, "Documents Placed on the Record for the Preliminary Determination," dated concurrently with this memorandum.

⁵⁶ See *ITC Preliminary Hearing Transcript* at 157; see also, the Department's Memorandum to the File titled, "Documents Placed on the Record for the Preliminary Determination," dated concurrently with this memorandum.

⁵⁷ See Deacero's February 4, 2014, Initial Section C Questionnaire Response at Exhibit C-10; see also Simec's Initial Section C Questionnaire Response at C-22.

⁵⁸ See *ITC Preliminary Hearing Transcript* at 157; see also, the Department's Memorandum to the File titled, "Documents Placed on the Record for the Preliminary Determination," dated concurrently with this memorandum.

2 MR. HENDERSON: Thank you. We've obviously
3 been hearing a lot this morning about how rebar is
4 fungible, et cetera. And, you know, we'll hear more
5 this afternoon from the Respondents about any
6 particular characteristics of Mexican or Turkish
7 rebar. But I'm just wondering if I can hear any
8 reactions or comments from domestic producers here
9 about any differences of subject rebar from Mexico or
10 Turkey.
11 I mean, in the five-year review there was a
12 lot of discussion of, I guess, whether it was Latvian
13 producers that had some Thermex project. So anyway, I
14 wanted to hear some comments from domestic producers
15 on that question.
16 MR. PRICE: That was actually -- they always
17 do the last name with our product.
18 MR. DARSEY: Jim Darsey with Nucor. And
19 there are no differences. It is a commodity product.
20 It's traded on a world basis, and it is completely
21 fungible. The rebar is all produced to an ASTM spec,
22 and it has to meet the performance standards and
23 specifications of ASTM spec for strength and
24 flexibility. And there are a number of ways to get,
25 and that's what you were hearing earlier that you
1 referenced about some water-cool, air-cool. Some add
2 alloys. There are different ways to get there, but at
3 the end of the day, the end product, there is no
4 difference. It meets the spec. It's sold as meeting
5 those specs. And, you know, it's end use. It goes
6 into concrete."⁵⁹

Furthermore, the Turkish respondent Habas stated that the “{w}ater-cooled rebar sold in the home market does meet the ASTM specifications. There is nothing in ASTM A-615 specification prohibiting water cooling. Air-cooled and water-cooled rebar are interchangeable products. Habas understands that the air-cooling requirement in the U.S. market principally reflects cosmetic concerns, as water-cooled rebar tends to rust faster in the long voyage overseas, while the company's U.S. customers prefer a completely rust-free surface.”⁶⁰

Accordingly, we find that the sales of both water- and air-cooled rebar in the United States by U.S. and Mexican producers indicates that customer preferences are driven, in part, by differences in strength and weldability characteristics and not by rust-related concerns. Thus, we

⁵⁹ *Id.*, at 110-111.

⁶⁰ See Habas' April 7, 2014, Second Section A-C supplemental questionnaire response, at 4, file in the context of the Turkish rebar investigation, for which the public version has been placed on the record of this investigation. See Model Match Documents Memorandum at Attachment 5.

find that the physical characteristics included in the initial questionnaire already properly account for the differences in physical characteristics, including strength and weldability, by virtue of the “minimum specified yield strength” field, which also distinguishes rebar based on the amount of equivalent carbon content.

Our finding in this regard is consistent with the Department’s statement in the *Initiation Notice*,

{w}e note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe steel concrete reinforcing bar, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics.⁶¹

Based on our analysis, the Department finds that it already accounted for the meaningful commercial differences that impact comparisons of rebar in both the home market and the United States. Furthermore, we find that adding the cooling method as a physical characteristic included in the model matching hierarchy is redundant and not in accordance with the Department’s practice. Accordingly, we preliminary find that no change to the Department’s physical characteristics included in the model matching hierarchy is warranted for this preliminary determination.

XI. APPLICATION OF FACTS AVAILABLE

Sections 776(a)(2)(A)-(D) of the Act provide that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, significantly impedes a proceeding, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination.

Acerero filed neither an appearance in this proceeding nor a response to the Department’s AD Questionnaire, and there was no subsequent communication from Acerero in the proceeding. As such, we preliminarily find that Acerero did not respond to our request for information, withheld information the Department requested, and significantly impeded the proceeding. Accordingly, pursuant to section 776(a) of the Act, we are relying upon facts otherwise available for Acerero’s margin.

⁶¹ See *Initiation Notice*, 78 FR at 60828.

Adverse Facts Available

Section 776(b) of the Act provides that, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994) (SAA), explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference. It is the Department’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.

Acerero’s failure to respond to the Department’s questionnaire indicates that Acerero determined not to cooperate with our requests for information, or to participate in this investigation. Acerero’s decision not to participate in this investigation precluded the Department from performing the necessary analysis and verification of Acerero’s questionnaire responses, as required by section 782(i)(1) of the Act. Accordingly, the Department concludes that Acerero failed to cooperate to the best of its ability to comply with a request for information by the Department pursuant to section 776(b) of the Act and 19 CFR 351.308(c). Based on the above, the Department preliminarily determines that Acerero failed to cooperate to the best of its ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted.

Section 776(b) of the Act states that the Department, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate based on adverse facts available (AFA), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. The Department’s practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated dumping margin of any respondent in the investigation. In this investigation, the highest dumping margin is the Petition rate of 66.70 percent.

Corroboration of Information

The rates in the Petition range from 48.82 to 66.70 percent. We selected the Petition rate of 66.70 percent as AFA. Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.”

The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists,

official import statistics and customs data, and information obtained from interested parties during the particular investigation. To corroborate secondary information, the Department will, to the extent practicable, determine whether the information used has probative value by examining the reliability and relevance of the information.

We determined that the Petition margin of 66.70 percent is reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination.

We examined evidence supporting the calculations in the Petition to determine the probative value of the margins alleged in the Petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we examined the key elements of the export price (EP) and normal value (NV) calculations used in the Petition to derive an estimated margin. During our pre-initiation analysis, we also examined information from various independent sources provided either in the Petition or, on our request, in the supplements to the Petition that corroborates key elements of the EP and NV calculations used in the Petition to derive an estimated margin.

Based on our examination of the information, as discussed in detail in the Initiation Checklist, we consider the petitioners' EP and NV calculations to be reliable.⁶² Because we obtained no other information that would make us question the validity of the sources of information or the validity of information supporting the U.S. price or NV calculations provided in the Petition, based on our examination of the aforementioned information, we preliminarily consider the EP and NV calculations from the Petition to be reliable. Because we confirmed the accuracy and validity of the information underlying the derivation of the margin in the Petition by examining source documents and affidavits, as well as publically available information, we preliminarily determine that the margins in the Petition are reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. The courts acknowledge that the consideration of the commercial behavior inherent in the industry is important in determining the relevance of the selected AFA rate to the uncooperative respondent by virtue of it belonging to the same industry.⁶³ Therefore, we examined the information on the record and find that we are able to corroborate the 66.70 dumping margin in the Petition.⁶⁴

Specifically, for purposes of this preliminary determination, we find that the 66.70 percent dumping margin from the Petition is within the range of the transaction-specific dumping margins for Deacero. Accordingly, we preliminarily determine that the 66.70 percent dumping margin from the Petition is relevant as applied to Acerero for this investigation because it falls

⁶² See Initiation Checklist at 6-8.

⁶³ See, e.g., *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1334 (1999).

⁶⁴ For details regarding this finding, see the Memorandum to Melissa G. Skinner, Director, Office III, Operations, "Certain Steel Concrete Reinforcing Bar from Mexico: Corroboration of Margin Based on Adverse Facts Available," dated concurrently with this memorandum (Corroboration Memorandum).

within the range of the transaction-specific dumping margins calculated for the other mandatory respondent, Deacero.

The Department is aware of no other independent sources of information that would enable it to corroborate further the U.S. and home-market prices, as furnished by petitioners, for this preliminary determination. Accordingly, by using this information that was corroborated in the pre-initiation stage of this investigation, as well as examining individual dumping margin calculations with respect to Deacero, we preliminarily determine the 66.70 percent dumping margin from the Petition to be both reliable and relevant to Acerero in this investigation, and we therefore corroborated this rate as the AFA rate “to the extent practicable.”⁶⁵

Therefore, based on our efforts described above to corroborate the highest dumping margin in the Petition, we find that the rate of 66.70 percent has probative value within the meaning of section 776(c) of the Act.⁶⁶ Consequently, in selecting an AFA rate with respect to Acerero, we applied the Petition’s highest dumping margin of 66.70 percent.⁶⁷

XII. ALL OTHERS RATE

Section 735(c)(5)(A) of the Act provides that the estimated “all others” rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding all rates that are zero, *de minimis*, or determined entirely under section 776 of the Act. However, the Department’s regulations state that in calculating the all-others rate under section 735(c)(5) of the Act, the Department will also exclude rates calculated for voluntary respondents.⁶⁸ In this investigation, Simec is a voluntary respondent and Deacero is the only mandatory respondent for which we calculated a weighted-average dumping margin that is not zero, *de minimis* or based entirely on facts otherwise available. Therefore, for purposes of determining the “all others” rate and pursuant to section 735(c)(5)(A) of the Act, we are using the weighted-average dumping margin calculated for Deacero, as the weighted-average dumping margin for all other producers and exporters of subject merchandise.

XIII. DISCUSSION OF METHODOLOGY

A. Fair Value Comparisons

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1), in order to determine whether sales of rebar from Mexico to the United States were made at LTFV, we compared the

⁶⁵ See section 776(c) of the Act; 19 CFR 351.308(d); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating, “pursuant to the to the extent practicable language...the corroboration requirement itself is not mandatory when not feasible.”); see also *Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Canada*, 63 FR 59527, 59529 (November 4, 1998) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Canada*, 64 FR 15457 (March 31, 1999)).

⁶⁶ See section 776(c) of the Act; see also 19 CFR 351.308(d).

⁶⁷ See *Initiation Notice*, 78 FR at 60830.

⁶⁸ See 19 CFR 351.204(d)(3). See also *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27310 (May 19, 1997).

constructed export prices (CEP) to the NV, as described in the “Constructed Export Price” and “Normal Value” sections of this memorandum below.

B. 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 EPs or CEPs (the average-to-average method), unless the Secretary determines that another method is appropriate in a particular situation. In AD proceedings, the Department examines whether to compare weighted-average NVs to the EP or CEP of individual export transactions (the average-to-transaction method) as an alternative comparison method consistent with section 777A(d)(1)(B) of the Act. In order to determine whether the average-to-average method is the appropriate comparison method, in recent proceedings, pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act, the Department applied a “differential pricing” (DP) analysis pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.⁶⁹ The Department finds that the DP analysis used in those recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. 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 DP analysis used in this preliminary determination requires a finding of a pattern of prices for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the DP analysis evaluates whether such differences can be taken into account using the average-to-average method to calculate the weighted-average dumping margin. The DP analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes for both Deacero and Simec. Regions are defined using the reported destination zip code for Simec and state for Deacero, 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 POI 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 DP 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

⁶⁹ See, e.g., *Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013), and accompanying Issues and Decision Memorandum at Comment 3; and *Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013), and accompanying Issues and Decision Memorandum at Comment 3.

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 DP 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, then 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 DP approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.

C. Results of the DP Analysis

Based on the results of the DP analysis, the Department finds that 80.60 percent of Deacero's U.S. sales pass the Cohen's *d* test, which confirms the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions or time periods. Further, the Department determines that the average-to-average method can appropriately account for such differences because there is not a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and an alternative method based on the average-to-transaction method applied to all U.S. sales. Accordingly, the Department has determined to use the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Deacero.

Based on the results of the DP analysis, the Department finds that 92.09 percent of Simec's U.S. sales pass the Cohen's *d* test, which confirms the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions or time periods. Further, the Department determines that the average-to-average method can appropriately account for such differences because there is not a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and an alternative method based on the alternative average-to-transaction method applied to all U.S. sales. Accordingly, the Department determines to use the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Simec.

D. Product Comparisons

In making product comparisons, we identified identical and similar foreign like products based on the physical characteristics established by the Department and reported by Deacero and Simec in the following order of importance: type of steel, minimum specified yield strength, size designation, and form.⁷⁰ The goal of the physical characteristics and the model matching hierarchy is to identify the best possible matches with respect to the physical characteristics of the merchandise. While variations in cost may suggest the existence of variation in physical characteristics, such variations do not constitute differences in products in and of themselves. As the Department noted "... selection of model match characteristics {is based} on unique measurable physical characteristics that the product can possess," and "differences in price or cost, standing alone, are not sufficient to warrant inclusion in the Department's model-match of characteristics which a respondent claims to be the cause of such differences."⁷¹

E. Date of Sale

The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms.⁷² In identifying the date of sale of the merchandise under consideration, the Department will

⁷⁰ See the Questionnaire, at Sections B and C.

⁷¹ See *Cold-Rolled Turkey*, and accompanying Issues and Decision Memorandum, at Model Match Comment 6.1.

⁷² See, e.g., *Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying Issue and Decision Memorandum; *Cold-Rolled Turkey* at Date of Sale Comment 2.1.

normally, in accordance with 19 CFR 351.401(i), “use the date of invoice, as recorded in the exporter or producer’s records kept in the normal course of business.” However, the Department’s practice is to use shipment date as the date of sale when shipment date precedes invoice date.⁷³ Both Deacero and Simec, in both the U.S. and home markets, reported the invoice date as the date of sale. In instances when the shipment date precedes the invoice date, we used the shipment date as the date of sale in accordance with our practice.

F. Constructed Export Price

Section 772(b) of the Act defines CEP as “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation . . . by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.” In accordance with section 772(b) of the Act, we used the CEP methodology for Deacero and Simec because the subject merchandise was sold in the United States by U.S. sellers affiliated with the producers. We calculated CEP based on the delivered price to unaffiliated purchasers in the United States. We made adjustments, where appropriate, from the starting price for billing adjustments, early payments, other discounts, rebates, and miscellaneous revenue. We also made deductions for any movement expenses (*e.g.*, foreign inland freight, port charges, export processing fees, testing expenses (courier fees to deliver test samples), U.S. brokerage and handling, international freight, marine insurance, U.S. inland freight, and U.S. duty), in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we further adjusted the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct and indirect selling expenses. For Deacero, we allowed a CEP offset adjustment. Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.⁷⁴

G. Normal Value

1. Home Market Viability

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 equal to or greater than five percent of the aggregate volume of U.S. sales⁷⁵), we compared each of Simec’s and Deacero’s volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. Based on these comparisons, we determined that both Simec’s and Deacero’s aggregate volumes of home market sales of the foreign like product were greater

⁷³ See, *e.g.*, *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52065 (September 12, 2007) (*Frozen Shrimp Final Results*) and accompanying Issues and Decision Memorandum, at Comment 11.

⁷⁴ See Memorandum to the File regarding “Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Mexico: Deacero Preliminary Analysis Memorandum,” dated concurrently with this memorandum (Deacero Preliminary Analysis Memorandum); see also Memorandum to the File regarding “Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Mexico: Grupo Simec Preliminary Analysis Memorandum,” dated concurrently with this memorandum (Simec Preliminary Analysis Memorandum).

⁷⁵ See 19 CFR 351.404(b)(2).

than five percent of their aggregate volume of U.S. sales of the subject merchandise.⁷⁶ Therefore, we used home market sales as the basis for NV for both companies in accordance with section 773(a)(1)(B) of the Act.

2. Affiliated Party Transactions and Arm's Length Test

Pursuant to the Act and the Department's regulations, the Department will examine whether inputs purchased from or sales made to an affiliate were made at arm's-length before relying on reported costs and sales prices in its margin calculation. We exclude home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because we consider them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "the Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length."⁷⁷

We preliminarily find that certain of the sales Deacero and Simec made to their affiliated customers during the POI failed the arm's-length test. Accordingly, we excluded these certain sales from our preliminary margin analysis and relied on the downstream sales reported by both companies' affiliates.

3. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP sales.⁷⁸ The LOT for NV is based on the starting prices of sales in the home market or, when NV is based on constructed value, those of the sales from which we derived selling, general, and administrative expenses and profit.⁷⁹ For EP, the LOT is based on the starting price, which is usually the price from the exporter to the importer.⁸⁰ For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.⁸¹

To determine if the home market sales are made at a different LOT than EP or CEP sales, we examined stages in the marketing process and the selling functions performed along the chain of distribution between the producer and the unaffiliated customer.⁸² If home market sales are at a different LOT, as manifested in a pattern of consistent price differences between the sales on which NV is based and home market sales made at the LOT of the export transaction, and the difference affects price comparability, then we make a LOT adjustment to NV under section

⁷⁶ See Simec's Section A response at Exhibit A-1.

⁷⁷ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003); *Light-Walled Rectangular Pipe and Tube From Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011).

⁷⁸ See also section 773(a)(7)(A) of the Act.

⁷⁹ See 19 CFR 351.412(c)(1)(iii).

⁸⁰ See 19 CFR 351.412(c)(1)(i).

⁸¹ See 19 CFR 351.412(c)(1)(ii).

⁸² See 19 CFR 351.412(c)(2).

773(a)(7)(A) of the Act and 19 CFR 351.412.⁸³

In this investigation, we obtained information from the respondents regarding the marketing stages involved in making the reported home market and U.S. market sales, including a description of the selling activities performed by each respondent for each channel of distribution.⁸⁴ Simec did not claim a LOT or CEP adjustment. After examining the record evidence, we find that Simec's home market and U.S. market constitute the same, single LOT. Simec reported no differences in the selling activities and functions between Simec's different channels of sales in the home market or the U.S. market.⁸⁵ We therefore made no LOT adjustment or CEP offset for Simec because we preliminarily find that there was only one home market LOT and one U.S. LOT, and both levels are identical.

Deacero reported no differences in the selling activities and functions between its different channels of sales in the home market.⁸⁶ Deacero claimed that its sales in the home market are made at a more advanced LOT than the LOT of sales in the United States. Deacero did not claim a LOT adjustment, but requested a CEP offset.⁸⁷ Based on information on the record, we granted a CEP offset adjustment for Deacero.⁸⁸

4. Cost of Production

As noted in the Initiation of Sales-Below-Cost Investigation section above, we received allegations from petitioners that Deacero and Simec made home market sales below the COP. Based on our analysis of this allegation, we found that there were reasonable grounds to believe or suspect that Deacero's and Simec's sales of rebar in the home market were made at prices below their COPs. Accordingly, on March 10, 2014 and March 14, 2014, the Department initiated a sales-below-costs investigation of Simec's and Deacero's sales, respectively.

a. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses, interest expenses, and packing costs.⁸⁹ We examined the cost data and determined that our quarterly cost methodology is not warranted. Therefore, we applied our standard methodology of using annual costs based on the reported data.⁹⁰ There were no cost adjustments to the COP data submitted by Deacero.⁹¹ We relied on Simec's submitted COP data

⁸³ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61733 (November 19, 1997).

⁸⁴ See Simec's Section B questionnaire response at B-22 and Section C response at C-19.

⁸⁵ See Simec's Section A questionnaire response at Exhibit A-3.

⁸⁶ See Deacero Section A questionnaire response at A-15, dated December 23, 2013.

⁸⁷ *Id.*, at A-22.

⁸⁸ See Deacero's Preliminary Sales Analysis Memorandum.

⁸⁹ See "Test of Comparison Market Sales Prices" section, below, for treatment of comparison market selling expenses.

⁹⁰ See "Test of Comparison Market Sales Prices" section, below, for treatment of comparison market selling expenses.

⁹¹ See "Test of Comparison Market Sales Prices" section, below, for treatment of comparison market selling expenses.

except as follows:

The Department's questionnaire requests that a single cost be provided for identical control numbers (CONNUMS).⁹² However, rather than comply with this instruction, Simec reported multiple costs for identical control numbers (CONNUMS) in its cost database. Because Simec did not provide a single cost per CONNUM as requested in the Department's questionnaire, necessary information is not on the record. Therefore, pursuant to section 776(a) of the Act, as facts available, we calculated a weighted average cost per CONNUM.⁹³ We will pursue this issue with Simec in a subsequent supplemental questionnaire following the preliminary determination.

Further, Simec reported several CONNUMS with either no general and administrative (G&A) and financial expenses or with expenses that do not reflect the reported G&A and financial expense rates. For the preliminary determination, we applied the reported G&A and financial expense rates to the per-unit TCOM for each CONNUM, thereby ensuring that the per-unit total cost of production for each CONNUM includes the appropriate amount for G&A and financial expenses.⁹⁴

b. Test of Home Market Sales Prices

With respect to each respondent, on a product-specific basis, pursuant to section 773(a)(1)(B)(i) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sale prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were net of billing adjustments, movement charges, direct and indirect selling expenses and packing expenses, where appropriate.⁹⁵

c. Results of the COP Test

Section 773(b)(1) of the Act provides that where sales made at less than the COP "have been made within an extended period of time in substantial quantities" and "were not at prices which permit recovery of all costs within a reasonable period of time" the Department may disregard such sales when calculating NV based on comparison market prices. Pursuant to section 773(b)(2)(C)(i) of the Act, we did not disregard below-cost sales that were not made in "substantial quantities," (*i.e.*, where less than 20 percent of sales of a given product were at prices less than the COP). We disregarded below-cost sales when they were made in substantial quantities, (*i.e.*, where 20 percent or more of a respondent's sales of a given product were at prices less than the COP) and where "the weighted average per unit price of the sales . . . is less than the weighted average per unit cost of production for such sales."⁹⁶ Finally, based on our comparison of prices to the weighted-average COPs for the POI, we considered whether the

⁹² See the March 7, 2014 Section D questionnaire at page 2.

⁹³ See Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Grupo Simec, Memorandum to Neal M. Halper, Director, Office of Accounting, from Heidi K. Schriefer, Senior Accountant (Simec Cost Analysis Memorandum), dated April 18, 2014.

⁹⁴ *Id.*

⁹⁵ See Deacero Cost Analysis Memorandum and Simec Cost Analysis Memorandum.

⁹⁶ See section 773(b)(2)(C)(ii) of the Act.

prices would permit the recovery of all costs within a reasonable period of time when these prices are less than the annual weighted-average COP.⁹⁷

Based on the analysis described above, for both Deacero and Simec, we disregarded certain below-cost sales for this preliminary determination where 20 percent or more of the sales of a given CONNUM were priced below their COP, and used the remaining sales of that CONNUM as the basis for determining NV, in accordance with section 773(b)(1) of the Act.⁹⁸

5. Calculation of Normal Valued Based on Comparison Market Prices

We calculated NV for Deacero and Simec on the reported packed, FOB plant or delivered prices, as appropriate, to home market customers. We made billing adjustments, early payment discount and rebate adjustments to the home market prices. We also made deductions for inland freight expenses, pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made, where appropriate, circumstance-of-sale adjustments (*i.e.*, credit expenses and direct selling expenses). We also made adjustments in accordance with 19 CFR 351.410(e) for indirect selling expenses incurred on comparison market sales. In accordance with sections 773(a)(6)(A) and (B)(i) of the Act, we also deducted home market packing costs and added U.S. export packing costs.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the comparable foreign like product and the subject merchandise.

6. Constructed Value

In accordance with section 773(e) of the Act, and where applicable, we calculated constructed value (CV) based on the sum of the respondent's material and fabrication costs, SG&A expenses, profit, and packing costs. We calculated the COP component of CV as described above in the "Cost of Production" section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the comparison market. We made the same adjustments to CV that we made for COP, as referenced above.⁹⁹

7. Price-to-Constructed Value Comparison

Where we were unable to find a home sales of comparable merchandise, in accordance with section 773(a)(4) of the Act, we based NV on CV. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act.

⁹⁷ See section 773(b)(2)(D) of the Act.

⁹⁸ See Deacero Preliminary Analysis Memorandum and Simec Preliminary Analysis Memorandum.

⁹⁹ See Deacero Cost Analysis Memorandum.

H. 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 date of the U.S. sale as certified by the Federal Reserve Bank.

XIV. VERIFICATION

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

XV. CONCLUSION

We recommend applying the above methodology for this preliminary determination.

Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

(Date)