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DATE: September 8, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Large Residential Washers from Mexico

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SUMMARY

We analyzed the case and rebuttal briefs of interested parties in the 2012-2014 administrative review of the antidumping duty order on large residential washers (LRWs) from Mexico. The review covers two mandatory respondents: Electrolux[1] and Samsung Electronics Mexico S.A. de C.V. (Samsung).[2] As a result of our analysis, we made changes to Electrolux's margin calculation. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues for which we have received comments and rebuttal comments from the interested parties:

1. Clerical Errors in Electrolux's Preliminary Dumping Margin
2. Electrolux's Affiliated Party Transactions
3. Methodological Issues in the Differential Pricing Analysis
4. Zeroing and Differential Pricing
5. Monthly Time Periods in Differential Pricing Analysis

[1] Electrolux includes Electrolux Home Products, Corp. N.V. and Electrolux Home Products de Mexico, S.A. de C.V.
[2] In the preliminary results of this review, based on our analysis of U.S. Customs and Border Protection information and information provided by Samsung, we determined that Samsung had no shipments of the subject merchandise, and, therefore, no reviewable transactions, during the period of this review (POR). For the final results of this review, we continue to find that Samsung made no shipments of the subject merchandise during the POR.

BACKGROUND

On March 9, 2015, the Department published in the Federal Register the preliminary results of the 2012-2014 administrative review of the antidumping duty order on LRWs from Mexico.[3] The POR is August 3, 2012, through January 31, 2014.

We invited parties to comment on the Preliminary Results. In April 2015, we received timely case and rebuttal briefs from Whirlpool Corporation (the petitioner) and Electrolux. At the request of the petitioner, the Department held a hearing on June 2, 2015. On June 11, 2015, the Department postposed the final results by 60 days.[4] Based on our analysis of the comments received, we recalculated the weighted-average dumping margin for Electrolux from the Preliminary Results.

MARGIN CALCULATIONS

We calculated constructed export price and normal value using the same methodology stated in the Preliminary Results, except as follows:

- We corrected currency conversion-related clerical errors in the calculation of Electrolux's preliminary dumping margin. See Comment 1.

- We corrected an error in the calculation of Electrolux's cost of production by including the markups charged by Electrolux's affiliated service providers. See Comment 2.

SCOPE OF THE ORDER

The products covered by the order are all large residential washers and certain subassemblies thereof from Mexico. The term "large residential washers" denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, except as noted below, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).

Also covered are certain subassemblies used in large residential washers, namely: (1) all assembled cabinets designed for use in large residential washers which incorporate, at a minimum: (a) at least three of the six cabinet surfaces; and (b) a bracket; (2) all assembled tubs[5] designed for use in large residential washers which incorporate, at a minimum: (a) a tub; and (b) a seal; (3) all assembled baskets[6] designed for use in large residential washers which incorporate,

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[3] See Large Residential Washers From Mexico: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2012-2104, 80 FR 12436 (March 9, 2015) (Preliminary Results).

[4] See the June 11, 2015, memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through Melissa Skinner, Director, Office II, from Ross Belliveau, International Trade Compliance Analyst, Office II, entitled, "Large Residential Washers from Mexico: Extension of Deadline for Final Results of Antidumping Duty Administrative Review."

[5] A "tub" is the part of the washer designed to hold water.

[6] A "basket" (sometimes referred to as a "drum") is the part of the washer designed to hold clothing or other fabrics.

at a minimum: (a) a side wrapper;[7] (b) a base; and (c) a drive hub;[8] and (4) any combination of the foregoing subassemblies.

Excluded from the scope are stacked washer-dryers and commercial washers. The term "stacked washer-dryers" denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term "commercial washer" denotes an automatic clothes washing machine designed for the "pay per use" market meeting either of the following two definitions:

> (1) (a) it contains payment system electronics;[9] (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners;[10] or
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> (2) (a) it contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,[11] the unit cannot begin a wash cycle without first receiving a signal from a bona fide payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

Also excluded from the scope are automatic clothes washing machines with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet, as certified to the U.S. Department of Energy pursuant to 10 CFR § 429.12 and 10 CFR § 429.20, and in accordance with the test procedures established in 10 CFR Part 430.

The products subject to this order are currently classifiable under subheadings 8450.20.0040 and 8450.20.0080 of the Harmonized Tariff System of the United States (HTSUS).[12] Products

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[7] A "side wrapper" is the cylindrical part of the basket that actually holds the clothing or other fabrics.
[8] A "drive hub" is the hub at the center of the base that bears the load from the motor.
[9] "Payment system electronics" denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.
[10] A "security fastener" is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a "center pin reject" feature to prevent standard Allen wrenches or Torx drivers from working.
[11] "Normal operation" refers to the operating mode(s) available to end users (i.e., not a mode designed for testing or repair by a technician).
[12] The HTSUS numbers are revised from the numbers previously stated in the scope. See Memorandum to the file entitled "Changes to the HTS Numbers to the ACE Case Reference Files for the Antidumping Duty Orders," dated January 6, 2015.

subject to this order may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

DISCUSSION OF THE ISSUES

Comment 1: Clerical Errors in Electrolux's Preliminary Dumping Margin

The petitioner contends that the Department made the following programming errors[13] in Electrolux's Preliminary Results margin calculation:

1. The Department did not properly convert to U.S. dollars the currency of certain Canadian sales Electrolux reported in Canadian dollars, an error which affects the cost test results, the net comparison price and expense calculations, the CEP profit calculation, and the normal value calculation. The petitioner proposes the SAS language at Attachment B of its case brief in order to correct this error.

2. The Department failed to correct Electrolux's reported consolidated customer code field to account for Electrolux's sales to certain customers. The petitioner proposed the SAS language at pages 16-17 of its case brief in order to correct this error.

Electrolux states that with respect to the first clerical error noted above, the Department must modify the petitioner's proposed SAS language in order to remove any missing values generated by it and to correct the macros program. Accordingly, Electrolux proposes the SAS language at page 13 of its rebuttal brief in order to correct the errors. Electrolux did not comment on the second clerical error noted above.

The Department's Position:

We agree with both parties and have corrected the above-mentioned clerical errors in the final results of this review, but also have made adjustments and corrections to the petitioner's proposed programming language in the comparison and margin SAS programs.[14]

Comment 2: Electrolux's Affiliated Party Transactions

Electrolux purchases its labor and overhead services from three affiliated Mexican companies: Appliance Electrolux de Juarez S.A. de C.V. (MXH), Servicios Electrolux de Juarez S.A. de C.V. (MXS), and Electrolux Home Products de Mexico S.A. de C.V. (MXP). Each of these companies charges Electrolux for its services at full cost plus pre-established markups and in Electrolux's audited financial statements, the cost of these services is captured at the full value charged by the affiliates inclusive of the markup. In reporting its costs to the Department, Electrolux included the markups paid to its affiliated companies in a separate cost data field. In

[13] See the petitioner's case brief at pages 14-17 and Attachment B.
[14] See Memorandum to the File, "Analysis of the Final Results Margin Calculation for Electrolux," dated concurrently with this memorandum.

the Preliminary Results, the Department excluded these markups from the calculation of total cost of manufacturing.

The petitioner argues that the Department should include the markups paid by Electrolux to its affiliates in the reported cost of production as was required in the investigation.[15] The petitioner asserts that the inclusion of the markups is in compliance with section 773(f)(1)(A) of the Tariff Act of 1930, as amended (the Act), because the markups are recorded in Electrolux normal books and records as required under Mexican generally accepted accounting principles (GAAP) and maquila law. The petitioner cites to Wire Rod from Indonesia,[16] and contends that the cost plus markups paid by Electrolux reasonably reflect the costs of the services because the profit that a supplier earns on the sale of services represents a cost to the buyer/producer, whether or not the supplier is an affiliate. Also, the petitioner points out that the Department considered the same issue in the investigation and determined that the transfer prices, inclusive of markups, reasonably reflect Electrolux's cost of production. The petitioner specifically states that the transactions disregarded rule requires the Department to test the prices between affiliated parties to determine whether they "fairly reflect the amount usually reflected in sales of merchandise under consideration."[17] The petitioner argues that the case facts have not changed since the investigation and, thus, the Department should include the affiliates' markups in the reported cost of production as in the investigation.

Electrolux argues that the internal markups on the labor and overhead services provided by its affiliates are not actual costs and, therefore, the Department properly excluded them from the reported cost of production. Electrolux asserts that the manufacturer of the subject merchandise BMX, a division of Electrolux Home Products Corp., NV (BEE), owns all of the production machinery and equipment at the plant in Mexico where the subject merchandise is produced, and purchases all of the materials and components used in production. Electrolux adds that MXP, MXH, and MXS provide the management, labor, and overhead services to operate the plant using the equipment and materials owned by BMX. Electrolux notes that BEE, MXP, MXH, and MXS are all ultimately owned by AB Electrolux, which is the ultimate parent of all Electrolux companies.

Electrolux argues that the substance of the operation is that MXP, MXH, and MXS are "paper" entities that are "subsumed" within the operations of BMX. Electrolux states that these companies do not have separate physical locations, but rather operate under the same roof and with the same management as BMX. Moreover, Electrolux asserts, MXP, MXH, and MXS exist solely to provide contract services to BMX, and provide no goods or services to any outside entity. Citing section 773(b)(3) of the Act, Electrolux argues that the internal markups are not part of the cost of materials and fabrication of the subject merchandise, but rather only paper accounting entries made to comply with Mexican regulations. Further, Electrolux contends, the markups are not actual costs associated with the production and sale of the merchandise under

[15] See Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from Mexico, 77 FR 76288 (December 27, 2012), and accompanying Issues and Decision Memorandum at Comment 3.
[16] See Carbon and Certain Alloy Steel Wire Rod from Indonesia: Final Results of Antidumping Duty Administrative Review, 70 FR 60787 (October 19, 2005), and accompanying Issues and Decision Memorandum at Comment 1 (Wire Rod from Indonesia).
[17] See section 773(f)(2) of the Act.

consideration as stipulated under section 773(f)(1)(A) of the Act. Rather, Electrolux asserts, the markups are simply internal allocations among legal entities that are ultimately owned by the same parent company and, as such, they do not reasonably reflect BMX's actual production costs.

Additionally, Electrolux asserts that section 773(f)(2) of the Act provides no grounds for the Department to include these internal markups in the cost of manufacturing. Electrolux notes that section 773(f)(2) of the Act allows the Department to disregard transactions between affiliated parties when they are not deemed to be at arm's length. Electrolux contends that the petitioner is requesting the Department to do the exact opposite by including an accounting charge between 100 percent-owned affiliates that does not represent a transaction in any meaningful sense and does not "fairly reflect" any element of value that is usually reflected in the sales of the merchandise under consideration.

Electrolux notes that MXH, MXS, and MXP are essentially departments or divisions of BMX that, for legal and tax purposes in Mexico, are separately incorporated legal entities. Further, Electrolux contends that the Department's treatment of the internal markups in the Preliminary Results is consistent with its practice regarding the collapsing of affiliated entities. According to Electrolux, when the Department collapses affiliated producers, it considers the collapsed entity as a single integrated producer and treats the transactions between the entities therein as if they were transfers between divisions of the same company.[18] Thus, Electrolux maintains, the Department does not include internal markups between the entities in the calculation of the cost of production, and does not apply the transactions disregarded or major input rule to such transactions.[19] Citing AK Steel Corporation. v. United States,[20] Electrolux asserts that the Department's practice of not recognizing inter-company markups between collapsed entities has been upheld by the Court of International Trade. Thus, Electrolux concludes that the Department reasonably excluded the markups between these entities from the cost of production.

The Department's Position:

We disagree with Electrolux that the Department should continue to exclude from the reported cost of production the markups charged on labor and overhead services provided by its affiliates. Electrolux reported the markups paid to its affiliated companies in a separate cost data field.[21] However, in the Preliminary Results, the Department inadvertently excluded the data in this field from the calculation of the cost of manufacturing.

We note that the Department specifically addressed the same issue in the investigation and found that the markups paid by Electrolux to its affiliates should be included in the reported cost of

[18] See 19 CFR 351.401(f)(1).
[19] See Notice of Final Determination of Sales at Not Less Than Fair Value: Certain Steel Nails from the United Arab Emirates, 73 FR 33985 (June 16, 2008), and accompanying Issues and Decision Memorandum at Comment 10 (Nails from the UAE); and Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil, 69 FR 76910 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 5 (Shrimp from Brazil).
[20] See AK Steel Corporation. v. United States, 34 F. Supp. 2d 756 (1998) (AK Steel Corporation v. United States).
[21] See Electrolux's submission on December 12, 2014, cost file name eluxcop03.

production.[22] Nevertheless, while the facts have not changed since the investigation, Electrolux makes the same arguments in this review. Because Electrolux buys all of its labor and overhead services from MXH, MXS and MXP, and these three companies do not sell their services to other outside parties, a market price is unavailable. Thus, we used the affiliates' cost of production as a proxy to determine whether the transfer price approximates a market price (i.e., some reasonable profit markup was earned) for the affiliated services. Consequently, we compared the transfer price charged by each affiliate for these services to each affiliate's corresponding cost of production.[23] Because the transfer price exceeded the affiliate's cost of production, we determined that the respondent did not receive such services at preferential prices. Further, in addition to representing an arm's-length price for the services, the transfer price between BMX and its affiliates is in accordance with Mexican GAAP and is from respondent's normal books and records. As such, the price Electrolux paid to its affiliates (i.e., including the markups) should be reflected in the reported costs in accordance with section 773(f)(2) of the Act.[24]

We also note that the producer and seller of the merchandise under consideration is BMX, and MXH, MXS, and MXP are not a part of BMX, but rather distinct, separate legal entities. Thus, contrary to Electrolux's assertions, the transactions between BMX and its affiliates are not simply internal accounting entries or paper transactions, but rather actual transactions for services rendered between distinct legal entities. Accordingly, the full cost plus markups charged by each affiliate represents the actual cost paid by Electrolux. Thus, these costs represents the actual cost associated with the production and sale of the merchandise under consideration as recorded in Electrolux's normal books and records, in accordance with section 773(f)(1)(A) of the Act.

Further, Electrolux's reliance on AK Steel Corporation v. United States is misplaced.[25] In that case, the Department collapsed a respondent and its affiliated entities because they met the Department's criteria for collapsing. However, in this case, BMX, MXH, MXS, and MXP are not collapsed, and, therefore, the argument as to whether the Department's treatment of the transactions between BMX and its affiliates is in accordance with the Department's treatment of transactions between collapsed entities is inapposite.

As stated above, Electrolux reported the affiliated markups in its cost data file and the Department intended to include these markups in the calculation of the cost of production. However, the Department inadvertently excluded them from the calculation of the cost of manufacturing in the Preliminary Results. Because the full cost plus markups charged by Electrolux's affiliates represent the actual price paid by Electrolux as recorded in its normal

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[22] See Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from Mexico, 77 FR 76288 (December 27, 2012), and accompanying Issues and Decision Memorandum at Comment 3 (Large Residential Washers from Mexico I).

[23] See Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia, 72 FR 60636 (October 25, 2007), and accompanying Issues and Decision Memorandum at Comment 5, where the Department compared the transfer price charged to the respondent to the affiliate's cost of production when faced with a similar fact pattern.

[24] See Large Residential Washers from Mexico I at Comment 3.

[25] See AK Steel Corporation v. United States, 34 F.Supp. 2d at 762.

books and records, and reasonably reflect the amount in the market under consideration, we included the markups in the calculation of the cost of manufacturing in the final results.

Comment 3: Methodological Issues in the Differential Pricing Analysis

Electrolux submitted several comments regarding the inappropriateness of the Department's utilization of the Cohen's *d* test in the differential pricing analysis and the potential application of the average-to-transaction (A-T) methodology as a result of that utilization.[26]

The petitioner contends that the Department's Cohen's *d* analysis is a reasonable interpretation of the statute and Electrolux's claims that the Department's methodology is incomplete, internally inconsistent, and unrealistic are meritless.[27]

The Department's Position:

For the final results of this review, the Department continued to apply the Cohen's *d* test and as a result of that test, is applying the standard A-to-A method to calculate Electrolux's weighted-average dumping margin.[28] Therefore, the comments regarding the use of the Cohen's *d* test in a differential pricing analysis and its potential outcome are moot.

Comment 4: Zeroing and Differential Pricing

Electrolux submitted several comments alleging that the WTO Agreements prohibit the Department from zeroing when making A-T comparisons in administrative reviews.[29]

The petitioner submitted comments in support of the Department's zeroing practice when applying the A-T methodology.[30]

The Department's Position:

For the final results of this review, the Department used the standard A-to-A method to calculate Electrolux's weighted-average dumping margin.[31] The Department does not employ a zeroing methodology when making A-to-A comparisons. Therefore, Electrolux's arguments regarding zeroing in A-to-T comparisons are moot.

Comment 5: Monthly Time Periods in Differential Pricing Analysis

The petitioner contends that the Department should revise the differential pricing methodology in the Preliminary Results by analyzing whether prices differed significantly by time period on a

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[26] See Electrolux's case brief at pages 9-22.
[27] See the petitioner's rebuttal brief at pages 2-14.
[28] See Memorandum to the File, "Analysis of the Final Results Margin Calculation for Electrolux," dated concurrently with this memorandum.
[29] See Electrolux's case brief at pages 1-4
[30] See the petitioner's rebuttal brief at pages 16-17.
[31] See Memorandum to the File, "Analysis of the Final Results Margin Calculation for Electrolux," dated concurrently with this memorandum.

monthly basis, rather than quarterly basis. According to the petitioner, a monthly price analysis more accurately reveals patterns of price differences for comparable merchandise among periods of time, and more effectively unmasks Electrolux's dumped sales. The petitioner states that its analysis demonstrates that significant dumped sales during short promotional periods within a quarter were masked by non-promotional sales that took place during the remainder of that quarter.[32] Furthermore, the petitioner asserts that testing for patterns of price differences by month is consistent with the Department's practice when the evidence indicates that such an approach is necessary to unmask significant dumped sales.[33] In addition, the petitioner notes that assessing monthly price differences is consistent with the Department's use of monthly average export (or constructed export) prices in reviews when applying the average-to-average comparison methodology. Therefore, for the final results, the petitioner asserts that the Department should compare Electrolux's U.S. sales prices on a monthly basis to determine whether significant and meaningful price differences exist for comparable merchandise among different time periods.

Electrolux asserts that the petitioner's argument misrepresents the stated objective of the Department's differential pricing analysis. Electrolux points out that the objective of the Department's differential pricing analysis is not to "unmask dumping" but rather to determine whether there is a "pattern of pricing differences," and the petitioner has not provided a sufficient basis for the Department to find that the pattern of pricing differences masks dumping as opposed to simply a difference in prices. Moreover, Electrolux claims that the petitioner misconstrues the Department's statutory requirement, which is not merely to identify some random differences in pricing, but rather a pattern of prices for comparable merchandise that differs significantly among purchasers, regions or periods of time.

Electrolux also states that the petitioner's argument has no factual basis and is erroneously based on a premise which is not supported by the record evidence, i.e., that there is a correlation between holiday promotional periods and monthly pricing patterns. According to Electrolux the petitioner's analysis merely shows the obvious: within a quarter, there are monthly average prices that are lower and higher than the quarterly average. Electrolux argues that the petitioner's claim that monthly prices are significantly impacted by specific holiday promotions is not supported by the results of the Cohen *d* test. Moreover, Electrolux claims that the petitioner's proposal is arbitrary and lacks a theoretical basis, as the promotions the petitioner relies on can be offered on a weekly basis. Electrolux also points out that different customers follow different procurement strategies[34] such that Electrolux's sales of washers to its customers in anticipation of promotions occur in every month of the year. Therefore, Electrolux contends that a monthly analysis would not capture masked dumping even if it was occurring in connection with a retailer's holiday promotions. For this reason alone, Electrolux argues that the petitioner's proposal should be rejected, as it does not actually address the alleged problem.

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[32] See the petitioner's case brief at Attachment A.

[33] See, e.g., Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Results of Antidumping Administrative Review: 2011-2012, 79 FR 23,324 (April 28, 2014), and accompanying Issues and Decision Memorandum at Comment 6 (Copper Pipe and Tube from the PRC).

[34] For example, some customers look for deals to buy in large quantities, some buy in minimal quantities with a short lead time, and others plan for promotional activities well ahead of time by stocking up on washers in prior months.

Finally, Electrolux points out that the Department has developed an established practice of defining the weight-averaging groups used in the differential pricing analysis, and to depart from it by adopting a results-oriented micro-analysis proffered by the petitioner would dilute its purpose and undermine its objective. Electrolux maintains that the petitioner has not provided a factual or theoretical basis or articulated an objective which would compel the Department to apply a different definition of the time period (i.e., monthly instead of quarterly) in this case. Therefore, Electrolux argues that the Department should reject the petitioner's request to use monthly averaging periods in the differential pricing analysis.

The Department's Position:

In recent proceedings, the Department has applied a "differential pricing" analysis for determining whether application of A-T comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act. When using this methodology, the Department has established quarterly time periods as the baseline standard for temporal analysis. The Department has consistently used quarterly time periods in recent investigations and reviews. [35] A benefit of a quarterly analysis is that where the Department frequently uses annual comparisons in investigations, and normally uses monthly comparisons in administrative reviews, the use of a quarterly time period provides a uniform and predictable period of time in which the Department may conduct its analysis across proceedings. Still, the Department has maintained that it may modify the definition of time periods where it finds a logical basis for doing so.[36] To date, the Department has found such a basis in only one instance.[37] In Copper Pipe and Tube from the PRC, the Department stated that:

> Because a major contractually-determined portion of the price changes monthly, there exists a logical basis for grouping sales by month when examining whether there are prices that differ significantly among time periods.[38]

In the present instance, however, we do not find a logical basis for deviating from our standard quarterly analysis. Unlike Copper Pipe and Tube from the PRC, where the respondent's export pricing was contractually tied to a published monthly index for a raw material (i.e., copper), here, the price of LRWs is free of such commitment.

[35] See Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013), and accompanying Issues and Decision Memorandum (IDM) at Comment 3; and Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 51309 (August 28, 2014), and accompanying Issues and Decision Memorandum at Comment 1.
[36] See Differential Pricing Analysis: Request for Comments, 79 FR 26720, 26722 (May 9, 2014).
[37] See Copper Pipe and Tube from the PRC at Comment 6.
[38] Id.

Furthermore, we do not agree with the petitioner that the evidence on the record shows that the periods of sales promotions (e.g., Black Friday, Independence Day, etc.) vary throughout the POR such that there is a direct correlation between holiday promotional periods and monthly pricing patterns. For example, Electrolux offers numerous rebate and promotion programs, few of which are tied to specific time periods.[39] Furthermore, in the absence of evidence of a direct correlation, it would be inappropriate for the Department to presume the reason behind certain changes in prices, and to modify the time period used in its analysis based on that presumption. The Court of Appeals for the Federal Circuit held recently in JBF RAK LLC v. United States that section 777A(d)(1)(B) of the Act "does not require Commerce to determine the reasons why there is a pattern of export prices for comparable merchandise that differs significantly among purchasers, regions, or time periods . . . "[40] Likewise, section 777A(d)(1)(B) of the Act does not require the Department to presume a correlation between prices and certain time periods absent direct evidence to that effect.

Accordingly, we will continue to employ quarterly time comparisons in our differential pricing analysis for the purposes of these final results.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions in these final results. If this recommendation is accepted, we will publish the final results of the review and the final weighted-average dumping margin for Electrolux in the Federal Register.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

8 SEPTEMBER 2015
(Date)

[39] See Electrolux's June 8, 2015, response to section C of the Department's questionnaire at pages C-55 through C-62, and Exhibits C-18, C-20, C-21, and C-22.

[40] JBF RAK LLC v. United States, 790 F. 3d 1358, 2015 U.S. App. LEXIS 10652 (Fed. Cir. 2015), at *21-*22. See also Borusan Mannesmann v. United States, 2015 U.S. App. LEXIS 10653 (Fed. Cir. 2015) at *3.