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DATE: July 14, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
For Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in the Less-Than-Fair-Value Investigation of Heavy
Walled Rectangular Welded Carbon Steel Pipes and Tubes from
Mexico

Summary

We analyzed the comments of the interested parties in the less-than-fair-value (LTFV) investigation of heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from Mexico. As a result of our analysis, and based on our findings at verification, we made changes to the margin calculations for Maquilacero S.A. de C.V. (Maquilacero) and Productos Laminados de Monterrey S.A. de C.V. (Prolamsa), the two mandatory respondents in this case. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

General Comments

1. Weight basis for Comparison Methodology

Company- Specific Comments

Maquilacero

2. Home Market Rebates
3. Home Market Commission Expenses
4. Miscellaneous Adjustments Arising from Sales Verification



5. Purchases of Hot-Rolled Coils (HRC) from an Affiliated Supplier
6. Interest Income Offsets
7. Other Cost Corrections at Verification

Prolamsa

8. Level of Trade (LOT)
9. Constructed Export Price (CEP) Offset Claim
10. Affiliated Reseller Warehousing Expenses
11. Credit Expenses
12. U.S. Indirect Selling Expenses (ISE)
13. Scrap Offset

Background

On March 1, 2016, the Department of Commerce (the Department) published the Preliminary Determination of sales of HWR pipes and tubes from Mexico at LTFV.¹ The period of investigation (POI) is July 1, 2014, through June 30, 2015. In February and March 2016, the Department conducted verification of the sales and cost data reported by Maquilacero and Prolamsa, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).²

We invited parties to comment on the Preliminary Determination. In May and April 2016, the petitioners,³ Maquilacero, and Prolamsa submitted case and rebuttal briefs. Based on our analysis of the comments received, as well as our verification findings, we revised the weighted-average dumping margins for Maquilacero and Prolamsa from those calculated in the Preliminary Determination.

Scope of the Investigation

The products covered by this investigation are certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm. The merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A-500, grade B specifications, or comparable domestic or foreign specifications.

¹ See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Mexico: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 81 FR 10587 (March 1, 2016) (Preliminary Determination), as amended by Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Mexico: Amended Preliminary Determination of Sales at Less Than Fair Value, 81 FR 14090 (March 16, 2016).

² In May 2016, we requested that Maquilacero and Prolamsa submit revised home market and U.S. sales databases and Prolamsa submit a revised COP database to reflect minor corrections made at verification; we received the revised databases in this same month.

³ The petitioners in this investigation are Atlas Tube, a division of JMC Steel Group; Bull Moose Tube Company; Hannibal Industries, Inc.; Independence Tube Corporation; Maruichi American Corporation; Searing Industries; Southland Tube; and Vest, Inc.

Included products are those in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.0 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

The subject merchandise is currently provided for in item 7306.61.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under HTSUS 7306.61.3000. While the HTSUS subheadings and ASTM specification are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Margin Calculations

We calculated export price (EP) or constructed export price (CEP) and normal value (NV) using the same methodology stated in the Preliminary Determination,⁴ except as follows:

- We based Prolamsa's per-unit sales, expenses, and costs of production on theoretical weight. See Comment 1.
- We made an adjustment for Maquilacero's direct commission expenses in the home market. See Comment 3.
- We revised our margin calculations for Maquilacero and Prolamsa to take into account our findings from the sales and cost verifications.⁵ See Comments 4, 6, and 7.

⁴ See Preliminary Determination, and accompanying Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled "Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico" (Preliminary Decision Memorandum), at 4 - 7.

⁵ See Memorandum to the File from Robert B. Greger, Senior Accountant, entitled, "Verification of Productos Laminados de Monterrey, S.A. de C.V. in the Antidumping Duty Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes & Tubes from Mexico, dated March 31, 2016; Memorandum to the File from Blaine Wiltse and David Crespo, Senior Analysts, entitled, "Verification of the Sales Response of Maquilacero S.A. de

- We reversed an adjustment made in the Preliminary Determination to Maquilacero’s HRC costs based on our findings at verification. See Comment 5.
- We found that Prolamsa made sales in the home market during the POI at two LOTs. See Comment 8.
- We made no adjustment for certain of Prolamsa’s home market warehousing expenses because these expenses did not verify. See Comment 10.
- We revised Prolamsa’s Mexican peso- and U.S. dollar-denominated interest rates to remove affiliated party borrowings found not to be at arm’s length. We recalculated Prolamsa’s home market credit expenses and U.S. credit expenses accordingly. See Comment 11.
- We deducted certain administrative expenses incurred by Prolamsa’s U.S. sales affiliate as indirect selling expenses. See Comment 12.
- We revised Prolamsa’s reported scrap offset to reflect the quantities of scrap generated during the POI, rather than the quantities sold. See Comment 13.

Discussion of the Issues

Comment 1: Weight Basis for Comparison Methodology

For the preliminary determination, we based all per unit prices, costs, and expenses for both respondents on actual weight because we found that actual weight “yields the most accurate results.”⁶

The petitioners argue that the Department should make its sales comparisons on the basis of theoretical weight (or length), which is how both respondents sold HWR pipes and tubes in the United States.⁷ According to the petitioners, it is the Department’s practice to make its sales comparisons on the same basis as subject merchandise is sold.⁸

C.V. in the Antidumping Duty Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico” (Maquilacero Sales Verification Report), dated April 15, 2016; Memorandum to the File from David Crespo, Senior Analyst, and Manuel Rey, Analyst, entitled, “Verification of Prolamsa USA in the 2014-2015 Antidumping Duty Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico,” dated May 9, 2016 (Prolamsa USA Verification Report), dated May 9, 2016, at 7; Memorandum to the File from David Crespo and Blaine Wiltse, Senior Analysts, entitled, “Verification of Productos Laminados de Monterrey, S.A. de C.V. (Prolamsa) in the Antidumping Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico,” dated May 11, 2016 (Prolamsa Sales Verification Report); and Memorandum to the File from Frederick W. Mines, Accountant, and Robert B. Greger, Senior Accountant, entitled, “Verification of the Cost Response of Maquilacero S.A. de C.V. in the Antidumping Duty Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipe and Tube from Mexico,” dated May 11, 2016 (Maquilacero Cost Verification Report).

⁶ See Preliminary Determination, and accompanying Preliminary Decision Memorandum at 6 n. 28.

⁷ See Maquilacero’s November 2, 2015, Section B and C Response, at C-20 and C-22 (Maquilacero Section B and C

The petitioners state that the relationship between length and theoretical weight is connected; as a result, the ratio between theoretical weight and length remains constant regardless of the unit in which HWR is sold (*i.e.*, length, theoretical weight, or pieces). The petitioners point out that this relationship does not hold for quantities stated on an actual-weight basis because it is not possible to convert a measured scale weight to a theoretical weight using a fixed conversion to length or pieces. Thus, the petitioners claim that the Department should base its price comparisons on theoretical weight to provide more accuracy and reliability, rather than relying on an actual-weight basis.⁹

The petitioners further argue that scale weights are inherently inaccurate because of a number of factors. As an initial matter, the petitioners note that scales themselves have three sources of mechanical inaccuracy: resolution (*i.e.*, the increments in which a scale generates values); tolerance (*i.e.*, the amount by which a scale's reading differs from the true weight); and calibration drift (*i.e.*, the fact that, because a scale is a mechanical device, it will go out of tolerance over time). The petitioners also state that scale weight values are affected by environmental conditions (such as windload, or snow, mud, and ice on the truck, or around the load cells), which may cause weight distortions. Furthermore, the petitioners contend that the use of packing materials such as straps, chains, plastic wrap, tarps, and dunnage not only distorts the net weight, but also differences in market-specific packing materials may distort any gross weights used in the Department's margin calculations. Moreover, the petitioners claim that human error distorts scale measured weights, consisting of driver error (*i.e.*, whether the driver and/or passenger remain in the truck during weigh-in and weigh out, and the position of the truck on the platform) and bridge operator error (*i.e.*, entering the incorrect truck identification

Response); and Prolamsa's October 13, 2015, Section A Response (Prolamsa Section A Response), at A-29 and Exhibit A-1.

⁸ As support for their assertion, the petitioners cite Circular Welded Stainless Steel Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value, 57 FR 53693 (November 12, 1992); Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 57 FR 17885 (April 28, 1992), unchanged in Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea, 57 FR 49453 (November 2, 1992) (CWP from Korea). See also Certain Welded Stainless Steel Pipes from Taiwan: Final Determination of Sales at Less Than Fair Value, 57 FR 53705 (November 12, 1992) (Welded Pipe from Taiwan); Light-Walled Rectangular Pipe and Tube from Mexico: Notice of Final Determination of Sales at Less Than Fair Value, 69 FR 53677 (September 2, 2004), and accompanying Issues and Decision Memorandum, at Comment 16 (2004 LWRPT from Mexico); Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 61 FR 1328 (January 19, 1996); and Certain Welded ASTM A-312 Stainless Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 65 FR 30071 (May 10, 2000).

⁹ According to the petitioners, the Department provided no explanation or support for its decision to base its comparisons on an actual-weight basis in the Preliminary Determination beyond the statement that "this yields the most accurate results." See Preliminary Determination, and accompanying Preliminary Decision Memorandum at 6 n. 28. The petitioners contend that the Court of International Trade (CIT) has held that the Department has an obligation to articulate a "rational connection between the facts found and the choices made," and it failed to fulfill this obligation here. See China Nat'l Mach. Imp. and Exp. Corp. v. United States, 27 CIT 255, 264, 270, F.Supp.2d 1229, 1242 (CIT 2003) (quoting Queens Flowers De Columbia v. United States, 21 CIT 968, 978 (CIT 1997).

number, resulting in the use of the wrong tare weight).¹⁰ Finally, the petitioners contend that system-related error (i.e., the frequency of scale calibration and how often system historical weight values are refreshed) contributes to inaccuracies in measured weights.

In addition, the petitioners argue that the inaccuracies inherent in scale weights are compounded by the allocation methodology employed by both Maquilacero and Prolamsa, in which they: 1) determine the total net weight of the truck; and 2) allocate that weight to each item in the shipment using the theoretical weight of each item.^{11,12} The petitioners contend that this methodology is flawed because it spreads out the differences resulting from the scale tolerances among all items in a shipment, while failing to capture the true scale weight on a per-item basis.¹³

Furthermore, the petitioners claim that, with respect to Maquilacero, its reported scale weights were not necessarily measured on a scale, pointing to a production line without a functioning scale during the POI.¹⁴ According to the petitioners, as a result, the scale weights Maquilacero reported for a certain percentage of its home market and U.S. sales are not actually measured weights. The petitioners also point to other distortions in the weights reported on Maquilacero's packing lists and warehouse release slips resulting from the reporting of weights on inconsistent bases.¹⁵ Therefore, the petitioners ask that the Department request that Maquilacero now report theoretical weight data for use in the final determination.¹⁶

Finally, the petitioners point to the Department's inconsistent approach regarding actual and theoretical weights among the three HWR pipes and tubes cases. The petitioners note that in HWR from Korea, the Department used theoretical weight for both respondents,¹⁷ while in HWR

¹⁰ The petitioners also argue that changes in fuel levels between weigh-in and weigh-out would affect the measured scale weight. Specifically, according to the petitioners, the fuel burned during extended loading times and/or wait times at the weighbridge could affect the final weight reading.

¹¹ The petitioners point out that during the POI Maquilacero used the "expected weight" of HWR pipes and tubes in lieu of the theoretical weight for allocation purposes for some sales. Thus, the petitioners contend that Maquilacero's scale weights have been reported on an "apples and oranges" basis and, thus, cannot be used for the final determination.

¹² See Prolamsa Sales Verification Report, at 11; and Maquilacero Sales Verification Report, at 18.

¹³ The petitioners provide a numeric illustration of these perceived inaccuracies on pages 11 and 12 of their case brief. According to the petitioners, allocated scale weights are rendered useless in all cases because of flaws in the allocation methodology itself, rather than any case-specific facts.

¹⁴ See Maquilacero Sales Verification Report, at 18-19. The petitioners claim that neither Mexican respondent reported scale weights exclusively.

¹⁵ See Maquilacero Sales Verification Report, at 19 and 21-22.

¹⁶ The petitioners also note that the Department should choose its language carefully when discussing the quantity bases on which it relies in the final determinations of these HWR investigations. According to the petitioners, the Department's use of the word "actual" in these HWR investigations was not clear in the preliminary determinations. As a result, the petitioners state that the Department should develop and employ a uniform vocabulary to describe the weight bases employed in these HWR investigations.

¹⁷ See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 81 FR 10585 (March 1, 2016), and accompanying Preliminary Decision Memorandum, at 4 (HWR from Korea).

from Turkey, the Department used scale weight for one respondent and theoretical weight for the other.¹⁸ Thus, the petitioners assert that, across the three HWR pipes and tubes cases, the Department based its comparisons on scale weight for three respondents (a methodology the petitioners claim to be distorted) and on theoretical weight for three respondents. According to the petitioners, the Supreme Court has held that an administrative agency may not treat like cases differently without providing sufficient explanation of the reason for the varying treatment.¹⁹ Thus, the petitioners maintain that, for the final determination, the Department should revert to its “general preference for making sales comparisons on the basis of which U.S. sales were made” and specific “practice with respect to pipe and tube cases” by making sales comparisons on a theoretical weight basis.²⁰

Prolamsa asserts that it accurately reported both its actual and theoretical weights on a transaction-specific basis. According to Prolamsa, not only do the petitioners significantly overstate any inaccuracy that may result from allocating the total actual weight of a truck to individual products, but Prolamsa’s allocation methodology is as reasonable as relying on the petitioners’ proposed theoretical weight. Prolamsa notes that the Department verified its reported actual weights and found that they match its scale weights recorded for each truck.²¹ Moreover, Prolamsa contends that the Department has rejected claims similar to those raised by the petitioners regarding theoretical pipe weights.²² Therefore, Prolamsa argues that the Department should continue to rely on Prolamsa’s reported actual weights because: 1) the Department found no inconsistencies in the manner in which Prolamsa allocated or reported its pipe weights; and 2) these amounts are consistent with Prolamsa’s books and records. However, Prolamsa notes that the Department can base Prolamsa’s margin calculations on its reported transaction-specific data on either an actual or theoretical weight basis because Prolamsa provided its data on both bases.

Maquilacero states that it records its production and home market sales on an actual-weight basis, and its U.S. sales on an actual weight and linear feet basis.²³ According to Maquilacero, it

¹⁸ See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 81 FR 10583 (March 1, 2016), and accompanying Preliminary Decision Memorandum, at 5 (HWR from Turkey).

¹⁹ See Martin v. Franklin Capital Corp., 546 U.S. 132, 1396, 126 S. Ct. 704 (2005); SKF USA Inc. v. United States, 263 F.3d 1369, 1378, 1382 (CAFC 2001); and NSK Ltd. v. United States, 390 F.3d 1352, 1358 (CAFC 2004).

²⁰ See Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipe from the Republic of Korea, 57 FR 53693 (November 12, 1992) (Welded Pipe from Korea).

²¹ See Prolamsa Sales Verification Report, at 11.

²² See Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review, 75 FR 6627 (February 10, 2010), and accompanying Issues and Decision Memorandum at Comment 5; Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part, 64 FR 2173 (January 13, 1999), and accompanying Issues and Decision Memorandum, at Comment 1; and Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom, 63 FR 33320, 33340 (June 18, 1998).

²³ See Maquilacero’s October 13, 2015, Section A Response (Maquilacero Section A Response) at Exhibits A-1, A-2, and A-31. According to Maquilacero, it recorded the actual weight in metric tons for each U.S. sale and identified the actual weight on a line-item basis on the accompanying packing list. *Id.* See also Maquilacero Section B and C

does not record the theoretical weight of its production or sales in the ordinary course of business, and the petitioners' arguments ignore that fact. Instead, Maquilacero states that the Department should make no adjustments to its reported actual weights for purposes of the final determination.

Further, Maquilacero states that the Department verified that it neither tracks nor uses theoretical weight for production or home market sales, and only uses theoretical weight at the order confirmation stage for its U.S. sales.²⁴ Thus, according to Maquilacero, only its actual weight information flows into its sales ledgers for both markets.²⁵ Moreover, while Maquilacero acknowledges that one of its mill scales was out of order during the POI, it contends that its reported sales quantities are nonetheless based on an actual weight because they are "trued up" by weighing the material on the truck at the time of shipment.²⁶ Thus, Maquilacero maintains that its reported actual weights are reliable and non-distortive.

Maquilacero also disagrees with the petitioners' claim that the Department prefers to make sales comparisons based on how subject merchandise is sold in the United States. According to Maquilacero, the cases cited by the petitioners reflect situations in which the respondents had reported sales values on a theoretical-weight basis, but costs on an actual-weight basis.²⁷ Specifically, Maquilacero notes that in each of these cases the Department converted the reported cost data to a theoretical weight basis so as to make its comparisons on the same weight basis. Thus, Maquilacero asserts that the Department's rationale in these cases was not based on an overarching preference for reporting theoretical weight-based data, but rather for weights to be expressed on the same basis to ensure accurate margin calculations.²⁸ In any event, Maquilacero finds it significant that in Welded Pipe from Taiwan, the Department actually made its sales comparisons on an actual-weight basis for one respondent, Ta Chen, because this respondent reported its product cost on an actual-weight basis.²⁹ As a result, Maquilacero asserts that, similar to Welded Pipe from Taiwan, there is no need for the Department to convert its reported data to a theoretical-weight basis and doing so would only introduce a potential distortion in the margin calculations.

Response, at B-24 and C-20. Maquilacero notes that the Department verified this information. See, e.g., Maquilacero Sales Verification Report, at 13.

²⁴ See Maquilacero Sales Verification Report, at 18.

²⁵ Id., at 3 and 18.

²⁶ Specifically, Maquilacero states that, at the time of invoicing, all of Maquilacero's products are "trued up" from an expected-weight to an actual-weight basis when merchandise is loaded onto the delivery truck and weighed before leaving the factory. See Maquilacero's February 16, 2016, Second Supplemental Sections B and C Response (Maquilacero Second Supplemental Section B and C Response), at 15. Further, Maquilacero contends that it demonstrated at verification that its scale malfunction had no impact on its reported costs. See Maquilacero Cost Verification Report, at 19.

²⁷ See Welded Pipe from Korea, 57 FR at 53693-94; Welded Pipe from Taiwan, 57 FR at 53711; and LWRPT from Mexico, and accompanying Issues and Decision Memorandum, at Comment 16.

²⁸ See Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Preliminary Results of Antidumping Duty Administrative Review, 73 FR 77618, 77620 (December 19, 2008).

²⁹ See Welded Pipe from Taiwan, 57 FR at 53711.

Moreover, Maquilacero takes issue with the petitioners' contention that the Department has a preference for calculating margins using theoretical data. Rather, Maquilacero contends that the Department has a clear preference for using accurate recorded data, rather than standard measurements.³⁰ According to Maquilacero, it records its actual weights in its books and records. In any event, Maquilacero maintains that it used the same actual-weight reporting methodology in this investigation as it did in the 2004 LWRPT from Mexico proceeding, and the Department accepted this methodology without question there.³¹

Furthermore, Maquilacero disagrees with the petitioners that scale weights are inherently distortive and that Maquilacero's reported scale weights are unreliable. Maquilacero notes that many of the petitioners' hypothetical scale weight distortions do not apply to it (given that it does not use the allocation methodology that the petitioners discuss) and it provided evidence on the record demonstrating that its reported actual weight data are not distortive. Maquilacero also contends that the petitioners' arguments regarding the inherent unreliability of scales are pure speculation. For example, Maquilacero notes that the petitioners' environmental concerns of ice and frozen mud are not conditions that exist at any time of year in Monterrey, Mexico, where Maquilacero is located. Further, Maquilacero points out that mechanical, human, and system errors can exist in all industries, and the antidumping duty law does not require perfection.³²

Finally, Maquilacero asserts that there is no compelling rationale for the Department to adopt a theoretical weight basis across all HWR pipes and tubes investigations, given that each investigation is a separate proceeding with its own administrative record. Nonetheless, Maquilacero notes that, even within the same proceeding, the Department has the authority to use a different weight basis for different respondents depending on their individual circumstances.³³ Therefore, according to Maquilacero, because it has reported its actual weights consistently in all of its databases as recorded in its books and records in the ordinary course of business, the Department should continue to rely on its verified actual weights in the final determination.

³⁰ See Polyethylene Retail Carrier Bags From Malaysia: Final Results of Antidumping Duty Administrative Review, 74 FR 58947 (November 16, 2009), and accompanying Issues and Decision Memorandum at Comment 7. See also Frontseating Service Valves From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances, 74 FR 10886 (March 13, 2009), and accompanying Issues and Decision Memorandum, at Comment 13.

³¹ See Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Mexico, 73 FR 35649 (June 24, 2008) (LWRPT from Mexico); Light-Walled Rectangular Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review, 76 FR 9547 (February 18, 2011); Light-Walled Rectangular Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review, 77 FR 1915 (January 12, 2012); and Light-Walled Rectangular Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2011–2012, 79 FR 5375 (January 31, 2014).

³² See NSK Ltd. v. United States, 481 F.3d 1355, 1361 (CAFC 2007); and Dorbest Ltd. v. United States, 462 F.Supp. 2d 1262, 1277 (CIT 2006).

³³ See, e.g., Welded Pipe from Taiwan, 57 FR at 53711.

Department's Position:

In previous pipe cases, the Department based price comparisons on theoretical or actual weight, depending on the particular facts of each case.³⁴ Upon further consideration of the facts in this case, we find that theoretical weight is the more appropriate basis for price comparisons (where such information exists on the record) for several reasons. First, the product CONNUM, which is used to match sales in the home and U.S. markets, is created from the nominal product dimensions as reported by the respondents in their responses to the Department's questionnaire,³⁵ and theoretical weight is derived from nominal dimensions.³⁶ Second, U.S. customers normally order products based on nominal dimensions, and are normally invoiced on a theoretical weight basis, as is the case for Prolamsa.³⁷ In addition, we are able to compare sales and costs on a consistent weight basis for Prolamsa, as Prolamsa provided theoretical weight data for its home market and U.S. sales,³⁸ and a cost database based upon those theoretical weights.³⁹ Accordingly, we are changing our methodology from our preliminary determination to base price comparisons on theoretical weight for Prolamsa.

With regard to Maquilacero, this company does not maintain its sales or cost records on a theoretical weight basis,⁴⁰ and therefore, it reported all sales and cost information using actual weight.⁴¹ Accordingly, we are basing our calculation on actual weight. We continue to use this methodology in the final determination because it is based on Maquilacero's books and records maintained in the ordinary course of business, and we verified that its information is accurate.⁴² We disagree with the petitioners that it is inappropriate to use these actual weight data given that

³⁴ For instances in which we have used theoretical weight, see e.g., Welded Pipe from Korea, and accompanying Issues and Decision Memorandum, at Comment 3, and CWP from Korea; for instances in which we have used actual weights, see, e.g., Welded Carbon Steel Pipe and Tube Products from Turkey: Final Results of Antidumping Administrative Review and Final Determination of No Shipments, 2013-2014, 80 FR 76674 (December 10, 2015), and Light-Walled Rectangular Pipe and Tube from Turkey: Notice of Final Results of Antidumping Administrative Review, 75 FR 61127 (October 4, 2010).

³⁵ See Letter to Maquilacero, from Shawn Thompson, Program Manager, AD/CVD Operations, Office II, dated September 11, 2015, at B-7 – B-10; and Letter to Prolamsa, from Shawn Thompson, Program Manager, AD/CVD Operations, Office II, dated September 11, 2015, at B-7 – B-10.

³⁶ Accordingly, there is a correspondence between the product CONNUM, i.e., the basis for market comparisons, and theoretical weight. This correspondence does not exist between the product CONNUM and actual weight.

³⁷ See Prolamsa USA Sales Verification Report, at page 7.

³⁸ See Prolamsa's November 2, 2015, Section B and C Response, at B-23, C-17 – C-18.

³⁹ See Memorandum to the File from Robert B. Greger, Senior Accountant, entitled, "Ex Parte Phone Conversation with Prolamsa Counsel," dated February 12, 2016.

⁴⁰ See Maquilacero Second Supplemental Sections B and C Response, at 14-15

⁴¹ We disagree with the petitioners' argument that Maquilacero's reported weights for products made on its production line without a functioning scale are not actually measured weights. Maquilacero used the weights determined on the truck scale to "true up" the theoretical weights of these products and it recorded these trued-up weights in its books and records and reported these trued-up weights in its sales databases (see Maquilacero Sales Verification Report at 18-19). Therefore, we consider the weights reported for these particular products to be based on actual scale weights.

⁴² See Maquilacero Sales Verification Report, at pages 17-20.

they are the only data on the record, and we found no evidence that these data were distorted.⁴³ We note that the use of actual weight is consistent with the Department's treatment of Maquilacero in other investigations.⁴⁴

It is within the Department's discretion to choose two different methods in the same investigation as long as it articulates a reasonable rationale explaining why it has chosen each method and that rationale is supported by the record evidence. As explained above, it is both reasonable and supported by the record evidence for the Department to use theoretical weight for Prolamsa and actual weight for Maquilacero.

Finally, the petitioners argue for the application of a uniform theoretical weight formula in this and future segments of the proceeding. They also suggest that in future pipe cases the Department require length as a reporting basis, or create a special questionnaire that requires respondents to report the information necessary to calculate theoretical weight using a uniform formula. It is not practical to implement the suggested methodology in this investigation because the necessary cost information is not on the record. However, for future pipe cases, we intend to reevaluate the reporting requirements in our questionnaire in order to take the concerns expressed by all parties into account.

Comment 2: Home Market Rebates

In the Preliminary Results, we accepted Maquilacero's home market rebates as reported, with limited exceptions.⁴⁵ We examined Maquilacero's home market rebate programs at verification and found that the rebate program between Maquilacero and its affiliated customer did not start until the third quarter of 2014 and Maquilacero had no other rebate programs in place prior to that time.⁴⁶

The petitioners urge the Department to disallow Maquilacero's rebates because, under its practice, the Department does not consider a price adjustment that reduces or eliminates a dumping margin unless the terms and conditions of the adjustment were established and known to the customer at the time of the sale.⁴⁷ The petitioners acknowledge that the Court's ruling in

⁴³ Id.

⁴⁴ See Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Mexico, 73 FR 35649 (June 24, 2008); Light-Walled Rectangular Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review, 76 FR 9547 (February 18, 2011); Light-Walled Rectangular Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review, 77 FR 1915 (January 12, 2012); and Light-Walled Rectangular Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 5375 (January 31, 2014).

⁴⁵ See Preliminary Results, and accompanying Preliminary Decision Memorandum, at 19.

⁴⁶ See Maquilacero Sales Verification Report, at 2 and 25.

⁴⁷ In support of this statement, the petitioners cite Lightweight Thermal Paper From Germany: Notice of Final Results of the 2009-2010 Antidumping Duty Administrative Review, 77 FR 21082 (April 9, 2012), and accompanying Issues and Decision Memorandum, at Comments 1 and 2; Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Final Results of Antidumping Duty Administrative Review, 73 FR 31961 (June 5, 2008), and accompanying Issues and Decision Memorandum, at Comment 27; Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Thirteenth Administrative Review,

Koehler⁴⁸ called this practice into question but argue that the Department addressed that ruling by modifying its regulation governing rebates.⁴⁹ Moreover, the petitioners contend that, while the current investigation is not covered by the Final Modification, the Department has made clear that the Court's decision in Koehler is an outlier⁵⁰ which the Department is not bound to follow. The petitioners assert that, in decisions made since issuing the Proposed Modification, the Department has only allowed price adjustments that were established and known to the customer at the time of the sale and has disallowed rebates where this was determined not to be the case.⁵¹ Therefore, the petitioners argue that, consistent with this practice, the Department should disregard Maquilacero's rebates⁵² because their terms and conditions were not known to the customer at the time of the sale.⁵³

The petitioners maintain that, even if the Department disagrees with the above argument, it should disallow Maquilacero's rebates for two other reasons. First, the petitioners claim that the relationship between Maquilacero and its affiliated customer creates a significant potential for manipulation, as defined in 19 CFR 351.401(f), and, as such, the Department should collapse these companies, treat them as a single entity, and remove the inter-company sales from Maquilacero's home market sales listing. In line with this argument, the petitioners claim that the rebates in question amount to little more than inter-company transfers and have no commercial relevance.

Second, the petitioners note that the affiliated customer returned certain merchandise which lowered its sales volume below the rebate threshold; despite this, however, Maquilacero granted

73 FR 14220 (March 17, 2008), and accompanying Issues and Decision Memorandum, at Comment 1; Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, 71 FR 40064 (July 14, 2006), and accompanying Issues and Decision Memorandum, at Comment 19; and Modification of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings, 79 FR 78742, 78744 (December 31, 2014) (Proposed Modification).

⁴⁸ See Papierfabrik August Koehler AG v. United States, 971 F. Supp. 2d 1246 (CIT 2014) (Koehler).

⁴⁹ See Proposed Modification, finalized by Modification of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings, 81 FR 15641, 15645 (March 24, 2016) (Final Modification).

⁵⁰ See Nachi-Fujikoshi Corp. v. United States, 890 F. Supp. 1106 (CIT 1995).

⁵¹ The petitioners cite Certain Oil Country Tubular Goods from Taiwan: Final Determination of Sales at Less Than Fair Value, 79 FR 41979 (July 18, 2014) (OCTG from Taiwan), and accompanying Issues and Decision Memorandum, at Comment 3 (citing Koenig & Bauer-Albert AG v. United States, 15 F. Supp. 2d 834, 840 (CIT 1998)); Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 17034 (March 31, 2015), and accompanying Issues and Decision Memorandum, at Comment 12 (LPTs from Korea); and Certain Corrosion-Resistant Steel Products from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part, 81 FR 35313 (June 2, 2016) (CORE from Taiwan), and accompanying Issues and Decision Memorandum, at Comment 2.

⁵² Although the petitioners frame their argument in terms of home market rebates in general, they also state that the "rebate at issue is between Maquilacero and {a specific affiliated customer}." Therefore, we addressed this argument with respect to that customer alone.

⁵³ Specifically, the petitioners claim that: 1) there is no indication in the rebate agreement that the customer knew of the rebate at the time of the sale; and 2) the documents taken at verification similarly do not show that the customer knew of these rebates. See Maquilacero Sales Verification Report, at Verification Exhibit 24.

it a full rebate anyway. The petitioners find this behavior consistent with its above theory that the allocation of profit between affiliates is a “zero sum game,” and that the affiliation affects the conduct of commercial transactions. According to the petitioners, if the customer in question were not affiliated, a reasonable mind would expect Maquilacero to ask that the money be returned. For these reasons, the petitioners urge the Department to disallow Maquilacero’s rebates to the affiliated customer.

Maquilacero disagrees, maintaining that the Department verified that it set the terms of its rebate agreements prior to the period when qualifying sales were made. According to Maquilacero, neither the law nor the Department’s regulations provide any exceptions to the rule that prices used for the margin calculation should be net of rebates.⁵⁴

According to Maquilacero, the Department practice cited by the petitioners has twice been determined to be unlawful – once in Koehler and more recently in Tension Steel.⁵⁵ Maquilacero notes that the Department did not appeal the Court’s decision in Koehler, and, although it chose instead to modify its regulations, the Final Modification does not apply to this investigation. Maquilacero concludes that Koehler is a binding decision as evidenced by the Court’s identical conclusion in Tension Steel, and it argues that, as a result, the Department should not disallow its rebates based on an unlawful practice.

Maquilacero also maintains that its rebates should not be disallowed because, even were the above practice valid, the rebates at issue meet the Department’s standard. Maquilacero acknowledges the Department’s concern that a respondent may attempt to eliminate dumping margins by providing rebates, but it states that such a concern is unfounded here because its rebates were granted months prior to the filing of the petition (*i.e.*, before Maquilacero could have known that it would be subject to a dumping margin).

Maquilacero notes that it provided the rebate terms in a supplemental response,⁵⁶ and it discussed these agreements with the Department at verification. Maquilacero claims that documentation examined during verification confirms that the terms of the rebates were set prior to sale because: 1) the rebate agreements reference the customer’s historic purchases, showing that the latest sales data available were prior to the agreement; and 2) customer correspondence shows the monthly mechanism for approving the rebate.

Maquilacero further argues that, as a matter of logic, even if the Department were to accept that its affiliated customer had no knowledge of the rebate terms at the time of sale, this could only be true for the first month in which a rebate was granted (*i.e.*, after receiving the first rebate, the

⁵⁴ See 19 CFR 351.401(c) (directing the Department to use prices net of price adjustments reasonably attributable to subject merchandise or foreign like product), and 19 CFR 351.102(b) (defining price adjustment as any change in the price, such as rebates, affecting the purchaser’s net outlay).

⁵⁵ In support of this assertion, Maquilacero cites Koehler, 971 F. Supp. 2d at 1246; and Tension Steel Industries v. United States, No. 14-218, 2016 WL 3022058, at *3 (CIT 2016) (Tension Steel). Maquilacero notes that the underlying case in Tension Steel litigation is OCTG from Taiwan, a case cited by the petitioners in support of their position.

⁵⁶ See Maquilacero’s December 14, 2015, Supplemental Section B Response (Maquilacero Supplemental Section B Response), at 14, 17, and Exhibit SB-20.

customer must have been aware of the rebate program). In any event, Maquilacero notes that these rebates follow the same general terms and payment procedures as its rebates to other customers and, therefore, are consistent with the company's practice.

Finally, Maquilacero disagrees that the nature of the relationship between it and its affiliated customer is grounds to disallow the rebates in question. Maquilacero notes that the petitioners cited no authority in support of their argument, nor could they, given that there is no provision in the regulations to disallow price adjustments between affiliated parties. Moreover, Maquilacero notes that the Department found that its sales, and all accompanying adjustments, to the affiliated customer were made at arm's length. Accordingly, Maquilacero urges the Department to use the rebate amounts as reported in the calculation of NV.

Department's Position:

The Department's regulations, at 19 CFR 351.401(c), direct the Department to "use a price that is net of any price adjustment, as defined in section 351.102(b), that is reasonably attributable to the subject merchandise or the foreign like product..." Under 19 CFR 351.102(b), the term "price adjustments" is defined to include rebates. The Department reasonably interprets these regulations as requiring the Department to deduct rebates from the starting price, where those rebates are known to the customer prior to the sale and are customer-specific.⁵⁷

In this case, Maquilacero reported that it granted volume-based rebates to its affiliated home market customer on a monthly basis during the third quarter of 2014 and the first quarter of 2015.⁵⁸ Maquilacero's rebate agreements were dated at the beginning of each rebate period (*i.e.*, prior to any sales during those periods) and were specific to the customer at issue.⁵⁹ During verification, we examined agreements and correspondence between Maquilacero and its customer that established these rebate programs and facilitated their payment, as appropriate.⁶⁰ Furthermore, we tied the payment of these rebates to Maquilacero's accounting system and to supporting correspondence with the customer.⁶¹ We noted that the terms of these agreements were consistent with the information reported in Maquilacero's responses, and the amounts were accurately reported.⁶² Further, we found no evidence that these rebate agreements were unknown to the customer at the time of sale or entered into prior to the filing of the petition in this investigation. Therefore, we disagree with the petitioners that it would be appropriate to disallow Maquilacero's rebates to its affiliated home market customer because this information was verified by the Department and we are satisfied that the customer had knowledge of the rebates prior to making the purchases. Thus, we find the petitioners' reliance on OCTG from Taiwan, LPTs from Korea, and CORE from Taiwan to be misplaced.

⁵⁷ See, e.g., CORE from Taiwan, and accompanying Issues and Decision Memorandum, at Comment 2.

⁵⁸ See Maquilacero Sales Verification Report, at 25.

⁵⁹ *Id.*, at verification exhibit 24.

⁶⁰ *Id.*

⁶¹ *Id.*, at 25 and verification exhibit 24.

⁶² *Id.*, at verification exhibit 24; see also Maquilacero Section B and C Response, at B-30 and Exhibit B-9; and Maquilacero Supplemental Section B Response, at 17-18 and Exhibit SB-20.

With regard to the petitioners' arguments that the Department should: 1) disallow the rebates in question because they are affected by non-commercial considerations; and/or 2) collapse the two entities, we find no basis for either action. We examined the market-based nature of the rebates in the context of the arm's-length test performed on the associated sales, and we determined that the transactions were made at arm's-length.⁶³ Although Maquilacero based the customer's rebate eligibility on the gross (rather than net) purchase volume, we verified that Maquilacero actually paid the rebates in question and recorded them in its accounting system,⁶⁴ and we have no reason to believe that it would have acted any differently had the customer been unaffiliated.⁶⁵

Finally, there is insufficient information on the record to support collapsing Maquilacero with this customer. The petitioners' argument is based solely upon affiliation of the two entities. Under 19 CFR 351.401(f), the Department considers whether affiliated producers should be collapsed in light of a number of criteria, only one of which is the degree of affiliation. The Department has held that, when performing a collapsing analysis, a finding of affiliation alone is insufficient.⁶⁶ Further, while the Department may apply this regulation to non-producing entities under special circumstances (e.g., where the exporter purchases subject merchandise from an affiliated producer), those circumstances are not present here. The Department does not have a general practice of collapsing a respondent with its affiliated home market customers, but rather, as in this case, it performs the arm's-length test to determine whether the sales transactions between the affiliates are useable in a dumping analysis.

For the foregoing reasons, we accept Maquilacero's rebates with its affiliated customer for purposes of the final determination.

Comment 3: Home Market Commission Expenses

In the Preliminary Results, we made no adjustment for Maquilacero's home market direct commission expenses because Maquilacero failed to respond fully to the Department's requests for information with respect to these expenses.⁶⁷ Maquilacero requests that the Department rely on its reported home market direct commission expenses in the final determination because: 1) contrary to the Department's preliminary finding, it did, in fact, report complete information for these commissions⁶⁸; and 2) the Department successfully verified that information.

⁶³ See Preliminary Determination, and accompanying Preliminary Decision Memorandum, at 13-14.

⁶⁴ See Maquilacero Sales Verification Report, at 25 and verification exhibit 24.

⁶⁵ We note that the petitioners' argument is based on speculation, and the U.S. Court of Appeals for the Federal Circuit (CAFC) has found that speculation is not evidence. See Asociacion Columbiana de Exportadores de Flores v. United States, 704 F. Supp. 1114, 1117 (CIT 1989), aff'd 901 F.2d 1089 (CAFC 1990) (Asocolflores).

⁶⁶ See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2013-2014, 81 FR 1396 (January 12, 2016), and accompanying Issues and Decision Memorandum, at Comment 1 (finding that the degree of affiliation among affiliates is but one part of the Department's collapsing analysis).

⁶⁷ See Preliminary Results, and accompanying Preliminary Decision Memorandum, at 19.

⁶⁸ See Maquilacero Supplemental Section B Response, at 23-24 and Exhibit SB-29 – 31, and Maquilacero Second Supplemental Section B and C Response, at 4.

The petitioners disagree, arguing that the information on the record continues to be incomplete. The petitioners point out that the record does not contain all the commission agreements, as requested by the Department, nor is the information cited by Maquilacero either new or different from the information that the Department reviewed and found to be insufficient in the Preliminary Determination. Furthermore, while the petitioners acknowledge that the Department reviewed certain commission expenses at verification, they claim that the information examined at verification does not cure the deficiencies previously identified. Accordingly, the petitioners maintain that the Department should continue to deny an adjustment for Maquilacero's home market direct commission expenses in the final determination.

Department's Position:

We disagree with the petitioners. Maquilacero reported information related to its home market commission expenses in its initial Section B Response⁶⁹ and in its Supplemental Section B Response.⁷⁰ Because certain of the information contained in the Maquilacero Supplemental Section B Response was illegible, we requested that Maquilacero provide this information again in a readable format. Although Maquilacero resubmitted its data in a timely manner, its response was not received in time for use in the Preliminary Determination.⁷¹

In the Preliminary Determination, we stated the following:

{W}e made no adjustment for home market commission expenses because Maquilacero failed to respond completely to the Department's requests for information with respect to these expenses. However, we will examine these expenses at verification and reconsider this decision in the final determination, if appropriate.

Maquilacero's resubmitted response was legible and timely submitted on February 16, 2016.⁷² Furthermore, we examined these expenses at verification and found that Maquilacero accurately reported the commissions it paid on each of the sales with reported commissions selected for review.⁷³ Therefore, because Maquilacero reported all information requested of it in a timely manner, and because we found no discrepancies in this information at verification, we are accepting Maquilacero's home market direct commission expenses as reported, consistent with our practice.⁷⁴

⁶⁹ See Maquilacero Section B and C Response, at 36-37 and Exhibit B-11.

⁷⁰ See Maquilacero Supplemental Section B Response, at 23-26 and Exhibit SB-29 – 31.

⁷¹ See Maquilacero Second Supplemental Section B and C Response, at 4 and Exhibits 6, 7, 8, and 9.

⁷² Id.

⁷³ See Maquilacero Sales Verification Report, at 22-23 and Verification Exhibits 10 and 14.

⁷⁴ See Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers From the Republic of Korea, 77 FR 75988 (December 26, 2012), and accompanying Issues and Decision Memorandum, at Comment 5.

Comment 4: Miscellaneous Adjustments Arising from the Sales Verification

The petitioners request that the Department make changes to Maquilacero's margin program based on information found during verification. Specifically, the petitioners argue that the Department's verification report states that Maquilacero could not tie its commission-related expenses to the trial balance, nor could it demonstrate that a certain unreported fine was not related to transporting U.S. sales. Because Maquilacero did not demonstrate that it is entitled to any adjustment for these items, the petitioners assert that the Department should not make any such adjustments in the final determination.⁷⁵

Maquilacero urges the Department to disregard the petitioners' comments because the petitioners did not articulate an argument regarding their proposed corrections, and, as a result, waived their right to have these issues considered. However, Maquilacero requests that the Department incorporate the corrections to its U.S. rebates, which were examined and verified by the Department, into the margin calculation.

Department's Position:

We reviewed the information on the record and agree that certain corrections and adjustments to Maquilacero's reported data are appropriate based on our findings at verification. Specifically, we find that it is appropriate to make an adjustment to Maquilacero's reported home market commission-related indirect expenses because Maquilacero was unable to tie these reported expenses to its financial statements at verification.⁷⁶ In making this adjustment, we relied on the commission-related expenses recorded in Maquilacero's trial balance during the POI. We disagree with the petitioners that it is appropriate to disregard these expenses altogether because we verified that Maquilacero recognized them in its accounting system during the POI and all the information necessary to make an accurate adjustment is on the record of this investigation.

Further, we agree with the petitioners that it is appropriate to account for an unreported fine related to moving goods across the border in determining Maquilacero's U.S. price. Maquilacero was unable to demonstrate that this fine was unrelated to the movement of subject merchandise despite the Department's requests that it do so at verification.⁷⁷ Therefore, we allocated the amount of this fine to Maquilacero's U.S. sales and determined the amount per metric ton. This fine has been deducted from the calculation of Maquilacero's U.S. price as an international movement expense.

Regarding Maquilacero's U.S. rebates, we agree it is appropriate to incorporate Maquilacero's corrections presented at verification in the final determination because we accepted these corrections at verification and found that the revisions were accurate.⁷⁸

⁷⁵ As support for this position, the petitioners cite, e.g., *Agro Dutch Foods Ltd. v. United States*, 24 CIT 510, 518 n. 10, 110 F. Supp. 2d 950, 958 n.10 (2000) (*Agro Dutch*).

⁷⁶ See Maquilacero Sales Verification Report, at 27-28.

⁷⁷ See Maquilacero Sales Verification Report, at 9.

⁷⁸ *Id.*, at 3, 16-17.

Comment 5: Purchases of HRC from an Affiliated Supplier

Maquilacero claims that the Department erred in the Preliminary Determination by increasing the company's cost of HRC purchased from its affiliated supplier. Maquilacero argues that the record shows that the HRC purchased from its affiliated supplier are of a thickness which could not have been used to produce subject pipe and tube (i.e. greater than 4mm or 0.1575 inches). Maquilacero states that when the Department applies a cost adjustment pursuant to section 773(f)(2) of the Act, it has recognized such an adjustment must involve "identical" or "comparable transactions of similar inputs."⁷⁹ Maquilacero holds that the Department has considered grade and specification,⁸⁰ as well as the difference in physical properties,⁸¹ of the input when applying the major input rule. According to Maquilacero, the thickness of the subject pipes and tubes is a defining scope characteristic, and Maquilacero has demonstrated that the input coils used to produce in-scope merchandise are of a thickness that meets the same numeric threshold. Accordingly, Maquilacero argues, because the HRC purchased from its affiliated supplier are of a thickness that could not have been used to produce subject pipe, the Department should not make an adjustment for those purchases.

The petitioners argue that the Department should continue to increase Maquilacero's reported HRC cost to account for the price difference between HRC obtained from unaffiliated parties and Maquilacero's affiliated supplier. The petitioners point to the cost verification report where the Department observed such an adjustment may be appropriate.⁸²

Department Position:

We agree with Maquilacero that an increase to its reported HRC costs is not warranted because record evidence supports the fact that the particular gauge HRC purchased from its affiliated supplier could not have been used to produce subject merchandise. Section 773(f)(2) of the Act, the transactions disregarded rule, states that "A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration." When adjusting Maquilacero's reported HRC costs in the Preliminary Determination, we made the comparison between a single POI average market price for HRC and a single POI average transfer price of HRC, because the average prices were the only prices on the record at that time.⁸³ At verification, Maquilacero provided a list of HRC purchases showing detail by supplier

⁷⁹ In support of this assertion, Maquilacero cites Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan: Final Determination of Sales at Less Than Fair Value, 62 FR 24394, 24412 (May 5, 1997).

⁸⁰ As support, Maquilacero cites SeAH Steel Corp. v. United States, 704 F. Supp. 2d 1353, 1378-1379 (CIT 2010) (SeAH).

⁸¹ Maquilacero cites Coated Free Sheet Paper from Indonesia: Final Determination of Sales at Less Than Fair Value, 72 FR 60636, (October 25, 2007) (Coated Paper from Indonesia), and accompanying Issues and Decision Memorandum, at Comment 4.

⁸² See Maquilacero Cost Verification Report, at 2 and 17-19.

⁸³ See Memorandum to Neal M. Halper, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Maquilacero S.A. de C.V.," dated February 22, 2016.

and by gauge (thickness).⁸⁴ Our analysis of the data shown on the purchase list shows that the HRC purchased from Maquilacero's affiliate could not have been used to make merchandise under consideration. The purchase list and our analysis contain business proprietary information and cannot be summarized here.⁸⁵

As noted by Maquilacero, in previous cases we considered the specific physical characteristics of inputs when valuing inputs between affiliates.⁸⁶ In the current case, it is clear that the HRC purchased by Maquilacero from its affiliated supplier is of a particular gauge which could not have been used to produce subject merchandise. Therefore, there are no affiliated HRC purchases that are relevant in this case and for the final determination and, we are not adjusting Maquilacero's reported HRC cost.

Comment 6: Interest Income Offsets

The petitioners argue that the Department should disallow the discounts on raw materials and interest earned on late payments as offsets to the reported interest expense in accordance to verification findings.

Maquilacero did not comment on this issue.

Department Position:

We agree with the petitioners. As stated in the Maquilacero Cost Verification Report, based on our testing of the interest income offset to the reported financial expense, we noted that the offset contained discounts for raw material purchases earned by Maquilacero and interest earned from customers for late payments on the sale of merchandise.⁸⁷ Since the discounts for raw materials were used as offsets to Maquilacero's reported raw material costs, and the interest earned from customers relate to the sales of merchandise, for the final determination we excluded these offsets from the calculation of the reported financial expenses.

Comment 7: Other Cost Corrections at Verification

The petitioners argue that the Department should adjust Maquilacero's costs to correct a misclassification of G&A expenses reported as labor expenses which was presented as a correction at verification.

Maquilacero agrees, and it also argues that the Department should correct two additional errors noted at the cost verification: 1) an error in headcount upon which the allocation between selling expenses and G&A expenses was based; and 2) the failure to include certain variable overhead expenses in its reported costs.

⁸⁴ See Maquilacero Cost Verification Report, at 18 and Cost Verification Exhibit 14, at pages 2 and 3.

⁸⁵ For details, see Memorandum to Neal M. Halper, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Maquilacero S.A. de C.V.," dated July 14, 2016.

⁸⁶ See Coated Paper from Indonesia, and accompanying Issues and Decision Memorandum, at Comment 4.

⁸⁷ See Maquilacero Cost Verification Report, at 2 and 21.

Department's Position:

We agree with both petitioners and Maquilacero, and incorporated the above corrections regarding G&A expenses and variable overhead expenses in our revision to the reported costs.⁸⁸

Comment 8: LOT

Prolamsa reported that it sold HWR pipes and tubes in the home market during the POI to end users, retailers, distributors, and original equipment manufacturers (OEMs).⁸⁹ Prolamsa reported that sales in the first three of these categories were made at the same LOT, while sales made in the fourth (i.e., parts sales to OEMs) were made at a different, and more advanced, LOT.⁹⁰ In the Preliminary Determination, we analyzed the selling functions Prolamsa performed to make HWR pipes and tubes sales to these customers.⁹¹ Based on this analysis, we determined that Prolamsa made home market sales at a single LOT during the POI.⁹²

Prolamsa argues that the Department's preliminary finding is inconsistent with the information on the record of this investigation, which shows that Prolamsa made home market sales at two LOTs. According to Prolamsa, the Department incorrectly disregarded many of the selling functions performed for its OEM customers⁹³ on the grounds that they were production, rather than selling, activities. However, Prolamsa asserts that the record shows that not only are many of these activities, in fact, selling activities, but also that these activities are significantly more complex, and are performed at a higher level of intensity, than the selling functions performed for other customers.

According to Prolamsa, it performs the following activities to sell to OEM customers: 1) maintains a dedicated sales team devoted solely to all aspects of these parts sales to OEMs;⁹⁴ 2) undertakes numerous steps to meet strict qualification requirements for approval as a parts supplier, including working extensively with the customer to show it can produce parts to specifications (e.g., by preparing diagrams, analyzing whether it has the capability to produce the parts, conducting trial runs, and providing product samples);⁹⁵ and 3) sends technical personnel to OEM sites to monitor the assembly of these parts.⁹⁶ Prolamsa argues that the Department

⁸⁸ Id.

⁸⁹ See Prolamsa Section A Response, at A-17.

⁹⁰ Id.

⁹¹ See Preliminary Determination, and accompanying Preliminary Decision Memorandum, at 16-17.

⁹² Id.

⁹³ Prolamsa also calls OEM customers "parts" customers because they purchased the HWR in question as parts used in their own production.

⁹⁴ See Prolamsa Sales Verification Report, at 7-8 and Verification Exhibit 1 (at 11-13).

⁹⁵ Id. See also Prolamsa's November 9, 2015, Supplemental Section A Response (Prolamsa Supplemental Section A Response), at 3; and Prolamsa's February 10, 2016, submission, at 7. Prolamsa claims that this is a sales activity because any failure to perform at the quality required would result in a lost sale.

⁹⁶ According to Prolamsa, its qualification process is called the "Production Part Approval Process" (PPAP).

mischaracterized the qualification process as production activities because this process both is required as a precondition to OEM sales and depends upon the management of an OEM-specific sales team. Prolamsa contends that the successful completion of the qualification process is part and parcel of the “customer approval” process, and it notes that the Department has found that customer approval activities are sales activities.⁹⁷ Prolamsa maintains that the presence of a customer approval process in only one sales channel supports a finding that there are separate LOTs.⁹⁸ Similarly, Prolamsa argues that, under the Department’s precedent, the Department has found that respondents engaged in like activities sold at a more advanced LOT.⁹⁹ In contrast, Prolamsa maintains that activities the Department has deemed production-related in other cases are dissimilar to Prolamsa’s own activities.¹⁰⁰

Prolamsa notes that its argument does not rest solely on the activities noted above. Prolamsa points out that it has provided a selling activity chart depicting numerous other selling activities performed for OEM customers but not for non-OEM customers.¹⁰¹ Prolamsa claims that this chart shows that its OEM selling activities are extensive, while those for non-OEM customers are limited and basic. Prolamsa maintains that the Department verified the accuracy of its claims.¹⁰²

Finally, Prolamsa contends that the Department has consistently found channels of distribution involving intensive selling activities for OEMs – such as providing custom-designed products, just-in-time delivery, and salesperson and engineer visits -- to be made at a more advanced LOT.¹⁰³ In light of this precedent, Prolamsa argues that the Department should find two LOTs in the home market.¹⁰⁴

⁹⁷ See Final Results of Antidumping Duty Changed-Circumstances Review: Gray Portland Cement and Clinker from Mexico, 72 FR 61863 (November 1, 2007) (Cement from Mexico), and accompanying Issues and Decision Memorandum, at Comment 2.

⁹⁸ Id.

⁹⁹ In support of this argument, Prolamsa cites Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Steel Alloy Wire Rod from Canada, 71 FR 3822 (January 24, 2006) (Wire Rod from Canada), and accompanying Issues and Decision Memorandum, at Comment 2 (where the respondent provided advanced freight, delivery, and customer services for certain customers); Ball Bearings and Parts Thereof From Japan and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Reviews; 2010-2011, 79 FR 56771 (September 23, 2014), and accompanying Preliminary Decision Memorandum, at 14-15, unchanged in Ball Bearings and Parts Thereof From Japan and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews; 2010-2011, 80 FR 4248 (January 27, 2015) (Ball Bearings) (where the respondent conducted on-site visits and had frequent customer contact); and Notice of Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission and Postponement of the Final Results: Certain Softwood Lumber Products from Canada, 71 FR 33964, 33976, 33980 (June 12, 2006) (where the respondent dedicated resources to manage the flow and volume of products to customers).

¹⁰⁰ In support of this claim, Prolamsa cites Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 61731, 61746 (November 19, 1997) (CTL Plate from South Africa) (finding that “rolling planning” for production efficiency and production progress reports to customers were found to be production, rather than selling, activities).

¹⁰¹ Prolamsa cites Prolamsa Sales Verification Report, at Verification Exhibit 1 (at 15-16, 21-22, and 25-126).

¹⁰² Prolamsa points to the selling activities chart referenced in Prolamsa Sales Verification Report, at 8, and contained in Verification Exhibit 6. Prolamsa also cites Prolamsa’s February 10, 2016, submission, at Exhibit 3.

¹⁰³ See Ball Bearings, and accompanying Preliminary Decision Memorandum, at 14-15; see also Certain Welded

The petitioners argue that the Department should continue to find one home market LOT for Prolamsa. The petitioners note that the Department's regulations at 19 CFR 351.412(c)(2) require substantial differences in the selling activities performed for the home market and U.S. sales prior to finding different LOTs. The petitioners further note that the preamble to those regulations states that LOT adjustments "must be demonstrated to the Department's satisfaction,"¹⁰⁵ a burden which Prolamsa has failed to meet.

The petitioners point out that in the Preliminary Determination, the Department found that Prolamsa performed selling activities to both OEM and non-OEM customers in each of the four selling function categories traditionally used in the LOT analysis (*i.e.*, sales and marketing, freight and delivery, inventory maintenance, and warranty and technical support),¹⁰⁶ it performed three activities within the sales and marketing category at the same level of intensity for both OEM and non-OEM sales, and it performed certain activities only for non-OEM sales. According to the petitioners, Prolamsa's claims of performing certain OEM-related selling functions at a higher level of intensity are immaterial in light of these facts.

The petitioners agree with the Department's preliminary finding that Prolamsa's OEM-specific activities are not significantly different from those performed for its sales to other customers,¹⁰⁷ and they also agree that certain of Prolamsa's claimed selling activities relate instead to production.¹⁰⁸ For example, with respect to Prolamsa's just-in-time delivery claim, the petitioners point out that the Department regarded this as "not a significant selling function attributable to sales in one market versus another."¹⁰⁹ The petitioners disagree that the involvement by the sales team in Prolamsa's design transforms legitimate production functions into selling, nor does the company's just-in-time delivery procedures warrant the finding of distinct home market LOTs.

Similarly, while the petitioners do not dispute Prolamsa's assertion that the qualification process is a prerequisite to making sales, they argue that this fact does not render the activity a selling activity. The petitioners assert that customer approval in the context of sales is distinct from the

Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of New Shipper Antidumping Duty Administrative Review, 62 FR 23760, 23761 (May 1, 1997).

¹⁰⁴ See Notice of Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission and Postponement of the Final Results: Certain Softwood Lumber Products from Canada, 71 FR 33964, 33976, 33980 (June 12, 2006) (LOT analysis for Weyerhaeuser channels of distribution).

¹⁰⁵ In support of this claim, the petitioners cite Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296, 27370 (May 19, 1997) (Preamble).

¹⁰⁶ The petitioners cite Preliminary Determination, and accompanying Preliminary Decision Memorandum, at 16-17. In fact, the petitioners allege that Prolamsa has mischaracterized its own data, given that certain selling functions labeled as "OEM only" (*e.g.*, quote analysis) clearly also relate to non-OEM sales.

¹⁰⁷ In support of this statement, the petitioners cite Id., at 16.

¹⁰⁸ The petitioners cite Id.

¹⁰⁹ In support of this claim, the petitioners cite CTL Plate from South Africa, 62 FR, at 61745. Thus, the petitioners find that, rather than supporting Prolamsa's position, this case squarely supports the petitioners' argument.

qualification process, and, thus, they disagree that Cement from Mexico is on point.¹¹⁰ In support of this, the petitioners point to correspondence between Prolamsa's OEM sales team and customers, which discuss the preconditions to making any sales.¹¹¹

The petitioners further disagree that verification supports Prolamsa's claim for two LOTs. The petitioners point to a statement in the verification report that "if an OEM customer requests a new product, Prolamsa will conduct a feasibility study regarding the process needs, the raw materials specifications, approved equipment, and investment needs with respect to equipment, tooling, and quality fixtures."¹¹² According to the petitioners, the verification process did not reveal, nor did the Department preliminarily find, these efforts to constitute selling activities.¹¹³

Finally, the petitioners disagree that the Department routinely finds separate home market LOTs based on sales to OEMs.¹¹⁴ Rather, the petitioners contend that the Department only grants multiple LOTs on a case-by-case basis, based on compelling evidence.¹¹⁵ The petitioners assert that, because Prolamsa's selling activities do not differ significantly across its channels of distribution, the Department should continue to find one home market LOT for Prolamsa in the final determination.

Department's Position:

After reconsidering the evidence on the record, we find that Prolamsa's POI sales to OEMs were made at a different LOT than its sales to other home market customers. 19 CFR 351.412(c)(2) outlines the Department's policy regarding differences in the LOTs as follows:

The Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing.

¹¹⁰ In support of this assertion, the petitioners cite Cement from Mexico, and accompanying Issues and Decision Memorandum, at Comment 2.

¹¹¹ See Prolamsa Section A Response, at Exhibit A-10.

¹¹² In support of this claim, the petitioners cite Prolamsa Sales Verification Report, at 8.

¹¹³ The petitioners cite Id.

¹¹⁴ In support of this claim, the petitioners cite Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China, 69 Fed. Reg. 67,313 (November 17, 2004), and accompanying Issues and Decision Memorandum, at Comment 44 ("according to Lacquer Craft, the selling expenses for sales of subject merchandise to OEM customers are less than for direct sales to end-users. . . . Lacquer Craft did not provide sufficient evidence of different levels of trade or the performance of different selling functions").

¹¹⁵ See, e.g., Granular Polytetrafluoroethylene Resin from Japan: Preliminary Results of Antidumping Duty Administrative Review, 71 FR 27459 (May 11, 2006) (where the Department "found that the selling activities associated with sales to OEMs differed significantly from activities associated with sales to distributors in terms of sales forecasting, distributor/dealer training, and use of direct sales personnel).

In the Preliminary Determination, we analyzed Prolamsa's home market selling functions, and organized them into the following four categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. We found that Prolamsa performed selling activities in three of these categories for all home market customers, and it performed selling activities in the fourth category (i.e., freight and delivery) for all home market customers except affiliated distributors.¹¹⁶ While we also acknowledged that Prolamsa reported additional activities for OEM customers, we found these activities were either production- (rather than sales-) related or not different enough to find that OEM sales constituted a different marketing stage. Therefore, we preliminarily determined that sales to the home market during the POI were made at a single LOT.¹¹⁷

At verification, we discussed Prolamsa's home market sales process with company officials, including the differences in activities performed to sell to customers in different channels of distribution. Prolamsa officials grouped the company's home market sales into two categories: industrial sales (i.e., home market further manufactured and parts sales) and commercial sales (i.e., home market sales primarily made from inventory).¹¹⁸ They then described the differences in the sales process as follows:

According to company officials, commercial sales reflect sales of standard length pipe produced in Prolamsa's Escobedo plant. These types of sales require minimum order quantities and less documentation, interaction, and fulfillment time. Regarding commercial price lists, company officials stated that they typically change every two or three months, when the price of steel changes.

With respect to the industrial sales process (i.e., home market sales of custom-designed parts and certain cut-to-length parts), company officials stated that dedicated sales teams work closely with each customer (e.g., original equipment manufacturers (OEMs)) in order to complete fulfillment. Company officials stated that if an OEM customer requests a new product, Prolamsa will conduct a feasibility study regarding the process needs, the raw materials specifications, approved equipment, and investment needs with respect to equipment, tooling, and quality fixtures. Once Prolamsa completes this study, it incorporates the costs required to produce the item, and the quoting process begins, as described above. In addition, company officials explained that an additional approval process takes place with respect to tooling purchases and the design of processes and quality fixtures. In order to confirm the specifications of the final product, company officials stated that Prolamsa performs trial runs, produces samples, and holds customer meetings. In conjunction with this process is the production parts approval process (PPAP) development. The PPAP is an industry-specific process which ensures the quality and the processes of customer-specific products. According to company officials, OEM customers certify manufacturers through this process after a rigorous inspection of machinery, logistics, and processes; once the customers approve the product, the industrial sales team facilitates post-production meetings with them to provide quality

¹¹⁶ See Preliminary Determination, and accompanying Preliminary Decision Memorandum, at 16.

¹¹⁷ Id.

¹¹⁸ See Prolamsa Sales Verification Report, at 7.

and assurance services. According to company officials, industrial sales are made in U.S. dollars and rely heavily upon service and quality.¹¹⁹

After examining this issue during verification and reexamining the information on the record, we agree with Prolamsa that the company undertakes significant activities when selling HWR pipes and tubes to OEMs that it does not perform when selling to its other customers. As noted above, Prolamsa has dedicated sales teams which work extensively with the customer in order to ensure that Prolamsa's products will meet the customer's quality standards by providing custom-produced sample merchandise and conducting pre- and post-production on-site visits to address customer concerns. Each of these activities is properly considered a selling activity, despite our initial assessment to the contrary.¹²⁰

When we consider these selling activities in conjunction with the other activities performed for OEM customers (*i.e.*, maintaining sufficient inventory of custom-designed parts to permit just-in-time delivery,¹²¹ providing a high level of technical assistance to the customer, and performing extensive post-sale quality assurance services),¹²² which were either performed sparingly or not at all for other customers, we find that Prolamsa's OEM selling activities are so substantial that they meet the requirements of 19 CFR 351.412(c)(2).¹²³

We disagree with the petitioners that it is appropriate to perform a formulaic counting up of Prolamsa's selling functions, or that the Department should find Prolamsa's performance of at least one selling activity in each of the four selling function categories to be meaningful. The Department's LOT analysis takes into account qualitative factors, such as the significance of the activities themselves and the extent to which the activities are performed.¹²⁴ In this case, as noted above, we find substantial qualitative differences in the selling activities performed to sell to OEMs vis-à-vis other customers.¹²⁵

¹¹⁹ *Id.*, at 7-8.

¹²⁰ See, e.g., Ball Bearings, and accompanying Preliminary Decision Memorandum, at 14 (finding that prototype-development services, and custom-designed products, and customer-specific R&D are selling functions).

¹²¹ We disagree with the petitioners that CTL Plate from South Africa supports its argument. In that case, the Department found that just-in-time delivery was not a significant selling function because most of the respondent's merchandise was produced to order, not because it generally is not significant. See CTL Plate from South Africa, 62 FR, at 61745.

¹²² See, e.g., Prolamsa's February 10, 2016, submission, at 8-9.

¹²³ See, e.g., Ball Bearings, and accompanying Preliminary Decision Memorandum, at 14 (finding just-in-time delivery, prototype-development services, and custom-design products and customer-specific R&D, among other things, to be significant selling functions considered in the LOT analysis).

¹²⁴ See, e.g., Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination, 77 FR 63291 (October 16, 2012), and accompanying Issues and Decision Memorandum, at Comment 3; Chlorinated Isocyanurates From Spain: Final Results of Antidumping Duty Administrative Review, 72 FR 64194 (November 15, 2007), and accompanying Issues and Decision Memorandum, at Comment 1.

¹²⁵ We do not find meaningful the fact that Prolamsa performed two activities (*i.e.*, engaging commissionaires and providing off-site warehousing) only for non-OEM sales. See Prolamsa Section A Response, at Exhibit A-10. With respect to the former activity, we note that commissionaires typically take on selling activities that a respondent otherwise would perform itself, and, thus, the fact that Prolamsa sells to non-OEMs via commissionaires indicates

Therefore, based on the facts and circumstances of the present investigation, we find that there are two LOTs in the home market.

Comment 9: CEP Offset Claim

In the Preliminary Determination, we analyzed the selling functions Prolamsa performed to make sales in the home market and to its U.S. affiliate, Prolamsa Inc. (Prolamsa USA). Based on this analysis, we determined that Prolamsa's selling functions to the U.S. and home market were at the same LOT during the POI. Therefore, we did not grant Prolamsa a CEP offset in our calculations for the preliminary determination.¹²⁶

Prolamsa disagrees with the Department's LOT analysis, arguing that both of its home market LOTs are more advanced than its CEP LOT and, thus, it is entitled to a CEP offset. Prolamsa notes that the Department grants CEP offsets when it determines that the home market LOT is more advanced, and it cannot determine a LOT adjustment under section 773(a)(7)(A) of the Act.¹²⁷

Prolamsa points to its selling functions chart submitted on the record which it claims shows that it performed 14 selling activities to sell in the home market, and three selling activities for sales to Prolamsa USA.¹²⁸ According to Prolamsa, this chart demonstrates that Prolamsa not only performed more activities in the home market at both levels of trade, but those activities were normally done at significantly higher levels of intensity. Prolamsa asserts that the Department confirmed these facts at verification.¹²⁹

Prolamsa contends that finding its CEP sales to be at a less advanced LOT would be consistent with the Department's precedent, both in general¹³⁰ and with respect to other proceedings in which Prolamsa itself has been involved.¹³¹ Specifically, Prolamsa notes that in LWRPT from

that its selling activities are potentially fewer for these customers (not more as the petitioners suggest). Similarly, the fact that Prolamsa may use off-site warehouses for products sold to non-OEM customers and on-site warehouses for OEMs is not significant from a selling function perspective.

¹²⁶ See Preliminary Determination, and accompanying Preliminary Decision Memorandum, at 14.

¹²⁷ See 19 CFR 351.412(f).

¹²⁸ See Prolamsa's case brief, at Exhibit 1.

¹²⁹ Prolamsa cites to Prolamsa Sales Verification Report, at 8, where the Department stated that information provided was consistent with the information contained in Prolamsa's responses.

¹³⁰ See Stainless Steel Sheet and Strip in Coils from Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review, 71 FR 45024, 45029 (August 8, 2005) (finding that CEP sales were made at a less advanced LOT because the respondent performed fewer customer sales contracts, technical services, delivery services, and warranty services,"), unchanged in Stainless Steel Sheet and Strip in Coils From Germany; Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 73729 (December 13, 2005); and Preliminary Results of Antidumping Duty Administrative Review of Carbon and Certain Alloy Steel Wire Rod from Mexico (2012-2013), 79 FR 66358 (November 7, 2014), and accompanying Preliminary Determination Memorandum, at 2 (granting respondent a CEP offset where the U.S. CEP LOT involved very limited selling activities when compared to the extensive activities performed in the more advanced home-market LOT).

¹³¹ See Prolamsa's case brief, where Prolamsa cites Notice of Preliminary Determination of Light-Walled

Mexico the Department granted Prolamsa a CEP offset after finding that Prolamsa performed limited functions when selling to Prolamsa USA and various activities in the home market.¹³² In sum, because the fact pattern in LWRPT from Mexico is similar to that in this instant investigation, the Department should find that granting Prolamsa a CEP offset is warranted.

The petitioners argue that the Department should continue to deny Prolamsa's CEP offset claim for the final determination because 1) Prolamsa did not provide sufficient evidence to support it, thus failing to meet its burden of demonstrating different LOTs between markets, as established in Ad Hoc Shrimp¹³³; and 2) no additional information has been placed on the record since the Preliminary Determination to warrant granting Prolamsa a CEP offset. The petitioners point to 19 CFR 351.412(c)(2), which requires substantial differences in the selling activities performed for the home market and U.S. sales prior to finding different LOTs. However, the petitioners maintain that, in its Preliminary Determination, the Department found that the types of selling functions Prolamsa performed for its home market customers do not differ significantly from those performed for its sales to Prolamsa USA.¹³⁴

The petitioners note that Prolamsa performed selling activities in the home market and on sales to Prolamsa USA in three of the four selling functions categories used in the Department's analysis.¹³⁵ The petitioners disagree that, when one views the individual selling activities within these categories, the outcome is any different because: 1) three of the home market activities relate to production and, thus, are irrelevant; and 2) two others were performed at a low level of intensity and, for this reason, do not affect the analysis. According to the petitioners, these minor differences in home market and U.S. selling activities do not warrant a CEP offset, and the Department should not grant one here consistent with its practice.¹³⁶

Rectangular Pipe and Tube from Mexico, 73 FR 5515, 5525 (January 8, 2008), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Mexico, 73 FR 35649 (June 24, 2008) (LWRPT from Mexico). Prolamsa states that, in that case, it performed limited U.S. selling activities and the following home market selling activities: granting technical assistance, arranging for freight and delivery; packing; order/input processing, employing direct sales personnel and providing marketing support; and granting rebates, cash discounts, and commissions.

¹³² Id.

¹³³ The petitioners note that the CIT emphasized the burden for entitlement to CEP offset claims falls on the respondent in Ad Hoc Shrimp Trade Action Committee v. United States, 33 CIT 533, 566 (CIT 2009) (Ad Hoc Shrimp).

¹³⁴ See Preliminary Determination, and accompanying Preliminary Decision Memorandum, at 17.

¹³⁵ Id. Specifically, the petitioners point out that the three selling functions both home market customers and Prolamsa USA had in common consisted of the following: 1) sales and marketing; 2) freight and delivery; and 3) inventory maintenance.

¹³⁶ See the petitioners' case brief, where the petitioners cite Certain Frozen and Canned Warmwater Shrimp from Thailand: Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum (Shrimp from Thailand), and accompanying Issues and Decision Memorandum at Comment 5; and Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum, at Comment 13 (denying a CEP offset where a respondent performed certain selling activities in the home market alone, after finding that these activities, either individually or in the aggregate, were not significant enough to conclude that the marketing stages of the companies differ).

The petitioners further disagree with Prolamsa's claim that the Department verified Prolamsa's CEP offset claim, contending that instead the Department only found that Prolamsa's selling activity information presented at verification was "consistent with the information contained in the responses."¹³⁷ The petitioners maintain that Prolamsa declined to submit any additional evidence supporting its claim, but rather elected to stand on an inadequate record already considered, and rejected, by the Department. The petitioners assert that, in similar circumstances, the Department has found no basis to grant a CEP offset.¹³⁸

Further, the petitioners disagree that LWRPT from Mexico, a case from almost a decade ago, is relevant because the courts have held that "each agency determination is *sui generis*, involving a unique combination and interaction of many variables."¹³⁹ Nonetheless, the petitioners point out that, to the extent that this is relevant (*i.e.*, we find Prolamsa's OEM selling activities to be significant), Prolamsa reported only a single home market LOT in that case, which included both OEM and non-OEM sales.¹⁴⁰

In sum, the petitioners assert the record of this investigation remains deficient, notwithstanding Prolamsa's citations to a selling functions chart, because the chart does not adequately describe the differences in sales activities with any particularity. Thus the petitioners contend that the Department should continue to deny Prolamsa a CEP offset.

Department's Position:

We continue to find that a CEP offset is not warranted for Prolamsa for the final determination. As noted in Comment 8 above, the Department's regulations at 19 CFR 351.412(c)(2) direct the Department to find sales at different LOTs only where they are made at different marketing stages (or their equivalent). This regulation further stipulates that "{s}ubstantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing."¹⁴¹

With respect to the U.S. market, Prolamsa reported that it made sales to its U.S. affiliate, Prolamsa USA through two channels of distribution (*i.e.*, sales to Prolamsa USA, which were shipped directly to Prolamsa USA's unaffiliated US customers from the factory, and sales

¹³⁷ See Prolamsa Sales Verification Report, at 8.

¹³⁸ See the petitioners' rebuttal brief, at 15-16, where the petitioners cite Shrimp from Thailand, and accompanying Issues and Decision Memorandum, at Comment 5 (finding that a consistent description of a company's sales process at verification provides no basis in and of itself to reconsider a CEP offset claim); and Silicomanganese from Australia: Final Determination of Sales at Less Than Fair Value, 81 FR 8682 (February 22, 2016), and accompanying Issues and Decision Memorandum, at Comment 2 (finding that verification did not change the Department's CEP offset analysis in the absence of new evidence).

¹³⁹ See the petitioners' rebuttal brief, at 17, where the petitioners cite U.S. Steel Corp. v. United States, 637 F. Supp. 2d 1199, 1218 (CIT 2009).

¹⁴⁰ See the petitioners' rebuttal brief, where the petitioners cite LWRPT from Mexico, 73 FR at 5524.

¹⁴¹ See 19 CFR 351.412(c)(2) (emphasis added).

shipped to the customer from Prolamsa USA itself).¹⁴² Prolamsa reported that it performed the same selling activities for both distribution channels, including: 1) inputting and processing sales orders; 2) maintaining an inventory at the plant in Mexico; and 3) arranging deliveries.¹⁴³ In the Preliminary Determination, we analyzed Prolamsa's U.S. selling functions and found that it sold to Prolamsa USA at a single LOT.¹⁴⁴

With regard to the home market, as noted in Comment 8 above, Prolamsa reported that it sold HWR pipes and tubes in four channels of distribution, three to non-OEMs and one to OEMs. Prolamsa claimed that the non-OEM channels constituted a single LOT which was less advanced than its separate OEM LOT. After reconsidering the information on the record of this investigation and Prolamsa's arguments on the topic, we agree with Prolamsa that it sold in two LOTs in the home market. Specifically, we find that the selling activities that Prolamsa undertakes to sell to OEM customers are substantially greater than those it performs for all other home market customers; thus we find that this LOT is more advanced than the non-OEM LOT. For the analysis behind these conclusions, see Comment 8, above.

Prolamsa reported that it performed the following selling functions for sales at to non-OEM customers (hereinafter, referred to as "HM LOT 1"): 1) inputting and processing sales orders; 2) maintaining an inventory at the plant in Mexico; 3) arranging deliveries; 4) storing inventory off-site; 5) providing technical assistance; 6) performing after sale service for quality; 7) preparing sales promotion materials; 8) retaining sales agents; 9) attending industry events; 10) preparing market research; and 11) employing in-house sales personnel.¹⁴⁵ Prolamsa reported that it performed most of the same activities, at a higher level of intensity, as well as a number of additional ones related to designing and selling custom-designed products to OEMs (hereinafter, referred to as "HM LOT 2").¹⁴⁶

Prolamsa argues that its CEP LOT is less advanced than both LOTs in the home market. We agree that the U.S. LOT is less advanced than the HM LOT 2, given that the selling activities in home market at this LOT are significant. However, we continue to find that the selling activities performed for non-OEM sales (hereinafter, referred to as "HM LOT 1") do not differ significantly from those performed for its sales to Prolamsa USA, such that they would constitute a different marketing stage. Under 19 CFR 351.412(c)(2), the Department must find substantial differences in selling activities between markets before making such an adjustment.

In essence, Prolamsa's claim is that it performs only three selling activities to sell to Prolamsa USA, but 11 to sell at HM LOT 1. However, we note that, of Prolamsa's 11 home market activities: 1) three are common to the U.S. market and performed at equivalent levels of intensity¹⁴⁷; 2) five are performed infrequently and/or appear to be minimal¹⁴⁸; and 3) two are not

¹⁴² See Prolamsa Section A Response, at A-13.

¹⁴³ Id., at Exhibit A-10.

¹⁴⁴ See Preliminary Determination, and accompanying Preliminary Decision Memorandum, at 18.

¹⁴⁵ See Prolamsa Section A Response, at Exhibit A-10.

¹⁴⁶ Id.

¹⁴⁷ Id.

clearly distinct selling activities at all.¹⁴⁹ With respect to the final selling function (i.e., employing in-house personnel), this appears merely to consist of having a sales staff,¹⁵⁰ which is simply a basic sales function. When these activities are viewed as a whole, we find that the differences do not rise to the level of a “substantial difference in selling activities,” a necessary, but not sufficient, condition to finding different LOTs.

We disagree with Prolamsa that the Department verified its entitlement to a CEP offset. Rather, at verification, we merely discussed Prolamsa’s sales process with company officials.¹⁵¹ Although these officials provided a description of Prolamsa’s selling functions, which was consistent with that set forth in its questionnaire responses, they provided no new or better evidence to support Prolamsa’s CEP offset claim. Therefore, we find that Prolamsa provided no new information on the record of this investigation that would cause us to reconsider our preliminary decision.

We also disagree with Prolamsa that the Department should grant it a CEP offset based on a decision made in LWRPT from Mexico, a separate proceeding with separate facts concerning a different product. Indeed, we note that we found only a single LOT in the home market in that proceeding, even though Prolamsa sold goods to OEMs and non-OEMs alike, and Prolamsa has not argued that we follow our decision in LWRPT from Mexico in that regard.¹⁵² Our decision here is based on specific evidence on this record, and, as noted above, that evidence shows that Prolamsa has not met the standard required to find that the home market LOT differs from the CEP LOT, and, thus, a CEP offset is not warranted in this case. Instead, where applicable, we made an LOT adjustment for U.S. comparisons to HM LOT 2.¹⁵³

¹⁴⁸ Id., showing that Prolamsa performs the following four activities at its lowest-designated intensity level (i.e., providing technical assistance; preparing sales promotion materials; attending industry events; and preparing market research); and it provided a fifth (i.e., after sale service for quality) on only a slightly higher basis. Further, when queried about the nature and frequency of its technical assistance, Prolamsa stated that this assistance was occasional and did not require significant time or resources, which is why Prolamsa coded it “light” intensity, and it made almost identical statements with respect to quality claims. See Prolamsa Supplemental Section A Response, at 2 and 5.

¹⁴⁹ Id., showing that Prolamsa classified “off-site warehousing” and “retaining sales agents” as separate selling activities. However, it is unclear how storing merchandise in a warehouse differs from storing it on the factory grounds, or why the act of retaining commissionaires qualifies as a selling function. Prolamsa did not explain either point in its responses to the Department, but rather merely listed these items on its selling functions chart contained in Exhibit A-10.

¹⁵⁰ See Prolamsa Supplemental Section A Response, at 4.

¹⁵¹ See Prolamsa Sales Verification Report.

¹⁵² See LWRPT from Mexico, 73 FR at 5523.¹⁵³ Under section 773(a)(7)(A) of the Act, the Department’s practice is to make an LOT adjustment if the comparison-market sales are at a different LOT than the LOT of the U.S. sales, and the difference affects price comparability, as manifested in a pattern of consistent price differences, between the sales on which normal value is based and comparison-market sales at the LOT of the export transaction.

¹⁵³ Under section 773(a)(7)(A) of the Act, the Department’s practice is to make an LOT adjustment if the comparison-market sales are at a different LOT than the LOT of the U.S. sales, and the difference affects price comparability, as manifested in a pattern of consistent price differences, between the sales on which normal value is based and comparison-market sales at the LOT of the export transaction.

Accordingly, based on the foregoing, we continue to deny Prolamsa's claim for a CEP offset for purposes of the final determination. This decision is consistent with the Department's general practice in this area.¹⁵⁴

Comment 10: *Affiliated Reseller Warehousing Expenses*

The petitioners argue that the Department should disregard Prolamsa's warehousing expenses related to resales of merchandise in the home market by affiliated parties. The petitioners note that Prolamsa's explanation at verification of how it determined these expenses was inconsistent with the descriptions in the company's questionnaire response,¹⁵⁵ and, as a result, the Department could not verify this information in the time allotted for verification.¹⁵⁶

Prolamsa argues that its warehousing expenses were accurately reported and that the Department did, in fact, verify these expenses without noting any discrepancies.¹⁵⁷ While Prolamsa acknowledges that the Department did not have time to verify the expenses at the verification conducted at Prolamsa itself, it examined them during the verification conducted at one of Prolamsa's resellers.¹⁵⁸ Therefore, Prolamsa contends that record evidence demonstrates that it correctly reported warehousing expenses for affiliated resellers.

Department's Position:

We agree with the petitioners. At verification, we discussed with Prolamsa warehousing expenses incurred by the company in Mexico related to sales to its affiliated resellers. Prolamsa reported these expenses in the field WAREHSH in its home market sales listing in its responses to the Department. However, because company officials provided an explanation for their reporting methodology which was inconsistent with information contained in Prolamsa's responses to the Department, this warehouse expense did not verify. Specifically, the Prolamsa Sales Verification Report states:

During the course of the above checks, we noted that Prolamsa reported sales made from a warehouse with location code 1100 (reported in the field WARELOCH) in its home market sales listing. Company officials stated that this location code represents a warehouse used to store merchandise produced at the Escobedo plant which was then resold by Prolamsa's affiliated resellers. Company officials explained that they reported an allocated warehousing expense for downstream sales made by Prolamsa's affiliated

¹⁵⁴ See CTL Plate from South Africa, 62 FR at 61746 (where the Department found that minimal differences in selling functions do not warrant a CEP offset); Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Determination of Sales at Less Than Fair Value, issued on the same date as this notice, and accompanying Issues and Decision Memorandum, at Comment 7.

¹⁵⁵ See Memorandum to the File from David Crespo and Blaine Wiltse, Senior Analysts, entitled, "Verification of the Sales Response of a Reseller in the Antidumping Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico," dated May 17, 2016, at 2.

¹⁵⁶ Id., at 2 and 21.

¹⁵⁷ See Prolamsa Reseller Verification Report, at 15.

¹⁵⁸ Id.

resellers (indicated as 9999 and 8888 in field SELLERH) of merchandise stored at this warehouse. However, we noted that this explanation was inconsistent with Prolamsa's description of how it reported its warehousing expenses on page 20 of its December 21, 2015, response.¹⁵⁹

The purposes of verification is to test the accuracy and completeness of information submitted on the record, not to permit interested parties an opportunity to submit substantial revisions to their questionnaire responses.

The Department's regulations at 19 CFR 351.401(b) state that, "{t}he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment." Specifically, because Prolamsa did not fully identify the nature of this expense as it relates to warehouse location codes over the course of its questionnaire and supplemental questionnaire responses to the Department, we were not able to properly verify information that was not on the record. Moreover, during verification, company officials' explanation of expenses as it related to WARELOCH 1100 did not comport to the methodology established on the record, and thus, were not prepared to fully explain its methodology to the Department. Here, because the information presented by company officials at verification conflicted with the record, we find that Prolamsa did not meet the burden of providing satisfactory information regarding the adjustment.

Finally, we disagree with Prolamsa that the Department verified the per-unit expense amounts without discrepancy. In its argument, Prolamsa references a completely different warehousing expense, reported under the field WAREHSARH. Prolamsa does not address our inability to verify the information it reported in WAREHSH or its differing explanations. However, we agree with Prolamsa that we found no discrepancies at verification in the information reported for that expense (i.e., in the field WAREHSAR), and accordingly we continue to allow it in the final determination.

Comment 11: Credit Expenses

Prolamsa included POI affiliated party borrowings in the interest rates used to calculate home market and U.S. credit expenses. The petitioners argue that the Department should disregard these affiliated party borrowings because: 1) they are at higher rates than Prolamsa's loans from unaffiliated parties;¹⁶⁰ and 2) Prolamsa could not substantiate the short-term nature of certain of them. As a result, the petitioners assert that the Department should rely on the interest rates set

¹⁵⁹ See Prolamsa Sales Verification Report, at 21. We note that the verification report also states that the Department did not have time to verify this new description of how it determined this expense provided at verification. We are now clarifying that, regardless of the amount of time the Department had at verification, this warehouse expense did not verify. That is, the purpose of verification is to test the accuracy and completeness of the information submitted on the record. It was not an opportunity for Prolamsa to submit a substantial revision to its description of how it determined this expense. Because Prolamsa's original explanation of how it determined this expense was inaccurate and incomplete, this expense did not verify.

¹⁶⁰ See Prolamsa Sales Verification Report, at 26.

from in the Prolamsa Sales Verification Report which excludes these borrowings, consistent with its practice.¹⁶¹

Prolamsa argues that the interest rates in question are at arm's length, and, thus, it correctly included them in its POI calculations. According to Prolamsa, the Department's practice is to determine if the respondent's input price paid to unaffiliated suppliers¹⁶² are reflective of market prices.¹⁶³ Prolamsa further notes that Pasta from Italy supports its position because the Department found in that case that an adjustment is warranted only in instances where the price from an affiliated supplier is less than the market price for that same input.¹⁶⁴ Finally, Prolamsa notes that transactions between affiliates often involve an element of profit, which is a legitimate cost to the buyer.¹⁶⁵ Thus, Prolamsa contends that the Department should not reject its credit expenses simply because its affiliates charged higher rates.

Department's Position:

In the preliminary determination, we accepted Prolamsa's reported interest rates used to calculate its home market and U.S. credit expenses. We reconsidered this position for the final determination, however, and are now recalculating Prolamsa's weighted-average interest rates in both markets to remove affiliated party borrowings because they were not set at arm's length prices.

In determining whether to use transactions between affiliated parties, our practice is to compare the transfer price either to prices charged to other unaffiliated parties who provide the same service or prices for the same service paid by the respondent to unaffiliated parties.¹⁶⁶ We examined the evidence on the record and find that the interest rates charged by affiliated and unaffiliated parties are sufficiently different so as to find that the rates charged by Prolamsa's affiliates were not at arm's length.¹⁶⁷ We agree with Prolamsa that the Department will not

¹⁶¹ See Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review, 69 FR 6255 (February 10, 2004) (Pasta from Italy), and accompanying Issues and Decision Memorandum, at Comment 32.

¹⁶² We presume that Prolamsa meant affiliated suppliers, not unaffiliated ones.

¹⁶³ See Pasta from Italy, and accompanying Issues and Decision Memorandum, at Comment 32.

¹⁶⁴ Id.

¹⁶⁵ 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.

¹⁶⁶ See Notice of Final Determination of Sales at Not Less Than Fair Value: Structural Steel Beams from Italy, 67 FR 35481 (May 20, 2002), and accompanying Issues and Decision Memorandum, at Comment 7. See also Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From France, 64 FR 30820, 30830 (June 8, 1999); and Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review 74 FR 40167 (August 11, 2009) (OJ from Brazil 2009), and accompanying Issues and Decision Memorandum, at Comment 10.

¹⁶⁷ The Department typically considers prices charged by affiliated parties that fall within a range of 98 to 102 percent of the price charged by unaffiliated parties to be at arm's length. Because Prolamsa claimed business propriety treatment for its affiliated party borrowings, we are unable to disclose how different these rates are from those provided by unaffiliated parties. For further discussion, see memorandum from David Crespo, Senior Analyst, to the File, entitled, "Calculation for the Final Determination of Productos Laminados de Monterrey S.A. de C.V. in

reject affiliated party borrowing rates simply because they contain an element of profit. However, the mere fact that prices between affiliated parties are higher (and/or that include profit) does not mean that they are at arm's length.¹⁶⁸ In this case, the interest rates at issue differ significantly from the rates charged to an unaffiliated company, which leads us to conclude that they are affected by the relationship between Prolamsa and its affiliates. Accordingly, we are excluding Prolamsa's affiliated party borrowings.

Comment 12: U.S. ISE

Prolamsa stated in its January 6, 2016, response that it did not include administrative expenses in its reporting of U.S. ISE because none of these expenses relate to selling functions.¹⁶⁹ In the Preliminary Determination, we accepted Prolamsa's reported U.S. ISE for our calculations.

The petitioners argue that the Department's longstanding practice is to treat all selling, general, and administrative (SG&A) expenses, as well as interest expenses, incurred by an affiliated importer as ISE. As support for this position, the petitioners cite Citric Acid from Canada,¹⁷⁰ as well as the Department's Antidumping Manual,¹⁷¹ which states that U.S. ISE "includes all selling and general and administrative expenses for Company C, the affiliated importer (i.e., those expenses not directly related to a particular sale) incurred in the United States." As applied here, petitioners argue that the Department should change its preliminary determination and include Prolamsa USA's administrative expenses in Prolamsa's U.S. ISE.

The petitioners disagree with Prolamsa's rationale for excluding administrative expenses from its reported U.S. ISE, contending that Prolamsa incorrectly focused on the account and cost centers' names, rather than the nature of the activity captured within those accounts or at those cost centers. The petitioners assert that this is contrary to the intent of Congress, given that section 772(d) of the Act directs the Department to reduce CEP by "any of the following expenses generally incurred... in selling subject merchandise."¹⁷² Moreover, the petitioners also maintain that Prolamsa incorrectly relied on CORE from Korea when setting forth that rationale, given that: 1) the Department preliminarily included all expenses in the numerator, and all sales in the denominator, of the ISE calculation; and 2) it only changed this decision after the respondent in that case met its evidentiary burden that a particular expense was unrelated to sales of subject merchandise.¹⁷³ The petitioners claim that Prolamsa has not met its burden here.¹⁷⁴

the Less Than Fair Value Antidumping Duty Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico," issued on the same date as this memorandum (Prolamsa Final Calc Memo).

¹⁶⁸ See OJ from Brazil 2009, and accompanying Issues and Decision Memorandum, at Comment 10.

¹⁶⁹ See Prolamsa's January 5, 2016, Supplemental Section C Response (Prolamsa Supplemental Section C Response), at 10.

¹⁷⁰ See Citric Acid and Certain Citrate Salts from Canada: Final Results of Antidumping Duty Administrative Review: 2012-2013, 79 FR 37286 (July 1, 2014) (Citric Acid from Canada), and accompanying Issues and Decision Memorandum, at Comment 3.

¹⁷¹ See the U.S. Department of Commerce Antidumping Manual (Antidumping Manual), at Chapters 7 and 18 n.6.

¹⁷² See section 772(d) of the Act. The petitioners note that subsection (1)(D) of this provision is the "catchall" category, which they argue should include all" language should cover Prolamsa's "general managerial expenses."

¹⁷³ See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of the Final

Further, the petitioners disagree that the excluded expenses are unrelated to sales, despite Prolamsa's claim that "key components" of these expenses include compensation of executives and accountants, as well as costs recorded in particular cost centers. The petitioners note that: 1) the executives had direct managerial oversight of sales employees, and the accountants performed various sales support activity such as recording the purchase and resale of subject merchandise¹⁷⁵; and 2) the cost centers reference the location where Prolamsa has both its plant and warehouse used to store subject merchandise.¹⁷⁶ The petitioners contend that assuming that the cost centers in question relate solely to manufacturing expenses amounts to speculation, which the CIT has found impermissible.¹⁷⁷

Finally, the petitioners maintain that, if the Department does carve out a group of expenses because of Prolamsa's manufacturing activity, it should similarly reduce the denominator to remove all sales of U.S. manufactured goods, consistent with its treatment of unrelated expenses in CORE from Korea.¹⁷⁸

Prolamsa argues that it properly excluded administrative expenses from U.S. ISE because these expenses are general in nature and do not relate to selling activities for subject merchandise. According to Prolamsa, Prolamsa USA makes a distinction between administrative and selling expenses in the normal course of its business, and the Department relied on this information when verifying that Prolamsa's U.S. ISE were reported correctly.¹⁷⁹

Prolamsa asserts that the petitioners' reliance on Citric Acid from Canada is misplaced, given that the U.S. affiliate in that case was only a reseller, and, thus any distinction between administrative and selling expenses was irrelevant.¹⁸⁰ In the instant investigation, Prolamsa contends that its U.S. affiliate is more than just a sales entity; it is also a U.S. producer of pipe and tube. Prolamsa argues that, to the contrary, where a U.S. subsidiary of a foreign producer incurs expenses unrelated to the sale of subject merchandise, the Department does not include them in its U.S. ISE calculation.¹⁸¹ According to Prolamsa, this is consistent with the

Results of the Twelfth Administrative Review of the Antidumping Duty Order, 72 FR 13086 (March 20, 2007) (CORE from Korea) and accompanying Issues and Decision Memorandum, at Comment 21. The petitioners note that, even so, the Department excluded the unrelated expenses at issue from the numerator and the unrelated revenue from the denominator.

¹⁷⁴ The petitioners cite the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. 103-316, 103d Cong. 2d Sess., 829 (1994), which states the following: "as with all adjustments which benefit a responding firm, the respondent must demonstrate the appropriateness of such adjustment."

¹⁷⁵ See Prolamsa Supplemental Section C Response, at 10; and Prolamsa Section A Response, at Exhibit A-3.

¹⁷⁶ See Prolamsa Supplemental Section C Response, at 10; and Prolamsa Section A Response, at Exhibit A-3, pdf at 53 and Exhibit A-10, pdf at 84.

¹⁷⁷ See Asociacion Columbiana de Exportadores de Flores v. United States, 704 F. Supp. 1114, 1117 (CIT 1989), aff'd 901 F.2d 1089 (Fed. Cir. 1990).

¹⁷⁸ See CORE from Korea, and accompanying Issues and Decision Memorandum, at Comment 21.

¹⁷⁹ See Prolamsa USA Verification Report, at 11.

¹⁸⁰ See Citric Acid from Canada, and accompanying Issues and Decision Memorandum, at Comment 3.

¹⁸¹ See Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Final Results of Antidumping Duty

Department's practice, which is to exclude expenses that are not incurred in selling subject merchandise from the indirect selling expense calculation.¹⁸²

Prolamsa suggests that the petitioners' reliance on CORE from Korea is similarly misplaced, because that case supports the Department's preliminary decision to exclude the administrative expenses in question. According to Prolamsa, in both CORE from Korea and here, the respondents provided evidence that certain expenses are related to sales of non-subject merchandise, and the Department excluded those expenses from ISE.¹⁸³ In any event, Prolamsa disagrees that there is any basis to remove all sales of U.S. manufactured goods from the denominator of the ISE calculation, as suggested by the petitioners, because Prolamsa USA sells U.S. products, as well as Mexican products, and, thus, the selling expenses apply to both.

As to the specifics of Prolamsa's calculation, Prolamsa asserts it included certain salaries and benefits of the Prolamsa USA sales team, as well as the rent, depreciation, and all other expenses incurred in relation to Prolamsa USA's sales activities, in its U.S. ISE calculation, and the Department verified this information.¹⁸⁴ Prolamsa notes that it excluded the salaries of its executives because they were not involved in sales,¹⁸⁵ and Prolamsa USA tracks production and warehousing costs in separate cost centers. Prolamsa asserts that Prolamsa USA's trial balances illustrate how the amounts in its accounts were separated into the appropriate accounting "buckets,"¹⁸⁶ and the Department verified that none of the administrative expenses relate to selling functions.¹⁸⁷

Therefore, Prolamsa maintains that the Department should continue to exclude administrative expenses from Prolamsa's U.S. ISE. However, Prolamsa contends that, in the event that the Department disagrees, it should include administrative expenses in Prolamsa's ISE in Mexico to ensure a fair comparison.

Department's Position:

Section 772(d)(1)(D) of the Act directs the Department to reduce CEP by the amount of "any selling expenses not deducted under subparagraph (A), (B), or (C)." Consistent with this section of the Act, it is our general practice to include G&A expenses related to selling operations in the calculation of ISE, and to deduct these expenses from U.S. price.¹⁸⁸ Where a U.S. affiliate is

Administrative Review, 73 FR 31961 (June 5, 2008), and accompanying Issues and Decision Memorandum, at Comment 4.

¹⁸² See Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 75 FR 70901 (November 19, 2010), and accompanying Issues and Decision Memorandum, at Comment 5.

¹⁸³ See CORE from Korea, and accompanying Issues and Decision Memorandum, at Comment 21.

¹⁸⁴ See Prolamsa USA Verification Report, at 11.

¹⁸⁵ Id.

¹⁸⁶ See Prolamsa Supplemental Section C Response, at 9-10 and Exhibit SC1S-8.

¹⁸⁷ See Prolamsa USA Sales Verification Report, at 11.

¹⁸⁸ See, e.g., Citric Acid from Canada, and accompanying Issues and Decision Memorandum, at Comment 3 (stating

both a manufacturer and a seller, our practice is to require respondents to allocate these expenses between manufacturing and selling operations by calculating a G&A ratio.¹⁸⁹

The record of this investigation shows that Prolamsa's affiliated reseller, Prolamsa USA, manufactures non-subject merchandise.¹⁹⁰ Thus, Prolamsa USA's employees are responsible for overseeing and coordinating both sales and manufacturing activities of the company. As the Department explained in Line Pipe from Korea, as a general rule, when faced with such facts, the Department calculates separate ISE and G&A expense ratios and applies the "G&A ratio to the total cost of further manufactured products . . . as well as to the cost of all non-manufactured products."¹⁹¹ We did this for this final determination. Although Line Pipe from Korea related to a case involving further manufacturing, and this involves manufacturing, the same principle applies.

We therefore calculated a G&A expense ratio for Prolamsa USA.¹⁹² Because Prolamsa USA's G&A activities support the general activities of the company as a whole, including its sales and manufacturing functions, following our methodology used in Line Pipe from Korea we applied the G&A expense ratio to the cost of all subject merchandise sold by the affiliate.¹⁹³

We recognize that under this method there is a theoretical difference between how the G&A expense ratio is calculated (i.e., based on the affiliated reseller's cost of goods sold that represents Prolamsa USA's transfer price for the pipe), and how it is applied (i.e., to the cost of producing the pipe). However, we consider such approach reasonable, as it avoids the double counting of costs, allocates all of the company's G&A expenses and, given the size of the G&A expense ratio, any difference resulting from the theoretical difference noted above is negligible.¹⁹⁴

In this case, we disagree with Prolamsa that the record clearly establishes that Prolamsa appropriately accounted for its administrative expenses. Rather, it appears that Prolamsa merely assigned expenses as administrative using cost centers maintained in its accounting system.¹⁹⁵

that it is our normal practice to include administrative expenses in the ISE total because these expenses support the selling functions of the respondent).

¹⁸⁹ See, e.g., Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value, 80 FR 61366 (October 13, 2015) (Line Pipe from Korea), and accompanying Issues and Decision Memorandum, at Comment 20.

¹⁹⁰ See Prolamsa Supplemental Section C Response, at page 9.

¹⁹¹ See Line Pipe from Korea, at Comment 20.

¹⁹² See Prolamsa Final Calc Memo.

¹⁹³ Id.

¹⁹⁴ See Line Pipe from Korea, at Comment 20.

¹⁹⁵ At verification, the Department reviewed Prolamsa USA's reported indirect selling expenses, and we tied these expenses to the company's response and to its general ledger. See Prolamsa USA Sales Verification Report, at 11. However, we disagree with Prolamsa that we performed a detailed review of its methodology, or that we reviewed any of the costs recorded in its administrative cost centers. Rather, we simply discussed Prolamsa USA's calculation methodology in general terms, selected an item shown on its calculation worksheet which Prolamsa USA had classified as ISE, and reviewed supporting documentation.¹⁹⁶ See Prolamsa Supplemental Section C Response,

For example, documents submitted by Prolamsa show that it classified expenses related to its sales office in Houston as administrative expenses, and it treated computer maintenance and other computer-related costs, which presumably benefit the company as a whole, in a similar manner.¹⁹⁶

Similarly, we note that Prolamsa excluded salary expenses of certain of Prolamsa USA company executives from its reported ISE, based on its treatment of these expenses as administrative in its accounting system. However, we disagree with Prolamsa that executive salaries must be directly related to selling activities in order to be properly included as ISE. The activities of company executives support the operations of a company as a whole and, thus, the Department appropriately considers a portion of their salaries as related to selling activities, even if this relationship is indirect. We also find that the salaries of accountants charged with recording sales and expense information are also properly considered to be ISE-related administrative expenses. Because Prolamsa failed to include these expenses in the reported figures, we find that its ISE is understated and therefore, we have corrected this understatement by including G&A expenses in the manner noted above.

For the reasons stated above, we deducted a portion of Prolamsa USA's administrative expenses from U.S. price for purposes of our final determination.

Comment 13: Scrap Offset

The petitioners argue that the Department should revise Prolamsa's reported scrap offset to reflect the quantities of scrap generated during the POI rather than the quantities of scrap sold.

Prolamsa did not comment on this issue.

Department's Position:

We agree with the petitioners and revised the reported scrap offset to reflect the quantities of scrap generated during the POI, rather than the quantities sold.¹⁹⁷

at Exhibit SC1S-8.

¹⁹⁶ See Prolamsa Supplemental Section C Response, at Exhibit SC1S-8.

¹⁹⁷ For details, see Memorandum from Robert B. Greger, Senior Accountant, to Neal M. Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Productos Laminados de Monterrey S.A. de C.V.," dated July 14, 2016.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination in the investigation and the final weighted-average dumping margins in the Federal Register.

✓
Agree

Disagree

Pe P
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

14 July 2016
(Date)