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July 2, 2013

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Import Administration

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

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping  
Duty Administrative Review: Chlorinated Isocyanurates from  
Spain; 2011-2012 Administrative Review

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## SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on chlorinated isocyanurates (chlorinated isos) from Spain. The period of review (POR) is June 1, 2011 through May 31, 2012, and covers one producer/exporter of subject merchandise, Ercros, S.A. (Ercros). We preliminarily find Ercros to be the successor-in-interest to Aragonesas Industrias y Energia S.A. (Aragonesas), the respondent in the last administrative review that covered the 2007-2008 review period. We preliminarily find Ercros did not sell chlorinated isos in the United States below normal value (NV) during the POR.

## Background

Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and in accordance with 19 CFR 351.213(b)(2), Ercros requested a review of its shipments on June 21, 2012.<sup>1</sup> On July 31, 2012, the Department published a notice of initiation of administrative review of the antidumping duty order on chlorinated isos from Spain. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 77 FR 45338 (July 31, 2012). On October 31, 2012, the Department tolled the preliminary results deadline for the duration of the closure of the federal government.<sup>2</sup> Further, on February 20, 2013, the

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<sup>1</sup> See Letter from Ercros to the Department dated June 21, 2012.

<sup>2</sup> See Memorandum to the Record from Paul Piquado, Assistant Secretary for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Hurricane Sandy," dated October 31, 2012.

Department extended the due date for the preliminary results by an additional 120 days to July 2, 2013.<sup>3</sup>

On August 24, 2012, the Department placed on the record of this review the memorandum from the 2006-2007 administrative review, the last completed review of the order, which found that chlorinated isos starting from raw materials, regardless of whether the inputs were purchased or self-produced, is the foreign like product or subject merchandise.<sup>4</sup> We requested that Ercros use the same set of variables to identify the quantity of purchased merchandise and the quantity of self-produced merchandise for every sales observation. As in prior reviews and for purposes of this review, we are preliminarily using only the variable QTY8H/U in our margin calculation to identify the quantity of chlorinated isos that Ercros manufactures from raw materials, regardless of whether the inputs were purchased or self-produced, and sells the product.

Ercros requested that the Department limit reporting of home market sales to only the product, identified by CONNUM, that was sold in the United States during the POR.<sup>5</sup> Clearon Corp. and Occidental Chemical Corporation (collectively, petitioners), opposed Ercros' request to limit reporting because it would inhibit the Department's ability to perform its cost-recovery test.<sup>6</sup> On September 12, 2012, the Department denied Ercros' request stating that it is not the Department's practice to limit reporting of home market sales to identical merchandise or to a period of time more narrow than the normal reporting window.<sup>7</sup> Accordingly, for purposes of these preliminary results, we have used all the home market sales of subject merchandise to analyze whether the sales were made below the cost of production (COP).

On June 14, 2013, the petitioners filed comments arguing that Ercros' U.S. sales are not bona fide sales. Ercros submitted information regarding this issue on June 20, 2013. The Department had insufficient time to analyze these comments and the underlying data for the July 3, 2013 deadline for these preliminary results. Therefore, in accordance with 19 CFR 351.309(c)(2), parties must present all arguments as it relates to this issue in their case briefs, if they deem them to be relevant to the Secretary's final determination.

### Scope of the Order

The products covered by the order are chlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) trichloroisocyanuric acid (Cl<sub>3</sub>(NCO)<sub>3</sub>), (2) sodium dichloroisocyanurate (dihydrate) (NaCl<sub>2</sub>(NCO)<sub>3</sub> 2H<sub>2</sub>O), and (3) sodium dichloroisocyanurate (anhydrous) (NaCl<sub>2</sub>(NCO)<sub>3</sub>). Chlorinated isocyanurates are available in powder, granular, and tableted forms. The order covers all chlorinated isocyanurates. Chlorinated isocyanurates are currently classifiable under subheadings 2933.69.6015,

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<sup>3</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Import Administration, regarding "Extension of Deadline for Preliminary Results of Antidumping Duty Review," dated February 20, 2013.

<sup>4</sup> See Memorandum to the Record from Milton I. Koch, entitled "Placing Business Proprietary Memorandum on the 2011-2012 Administrative Review of the Antidumping Duty Order of Chlorinated Isocyanurates from Spain," dated August 24, 2012.

<sup>5</sup> See Letters from Ercros to the Department dated August 10, 2012; August 27, 2012; and September 10, 2012.

<sup>6</sup> See Letters from petitioners to the Department dated August 20, 2012 and September 6, 2012.

<sup>7</sup> See Letter from the Department to Ercros dated September 12, 2012.

2933.69.6021, and 2933.69.6050 of the Harmonized Tariff Schedule of the United States (“HTSUS”). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isocyanurates and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

### Successor-In-Interest

On August 27, 2012, the Department issued its antidumping duty questionnaire to Ercros. In the original questionnaire, the Department requested copies of agreements and other documents associated with the merger related to changes in the corporate structure of Aragonesas when it was merged into Ercros. This included information regarding changes in ownership, management, production facilities, supplier relationships, and customer base. The Department issued a supplemental questionnaire on March 22, 2013, requesting additional information concerning mergers or acquisitions by Ercros, Aragonesas, and other subsidiaries since the last administrative review period. We find the information contained in Ercros’ responses sufficient to warrant a successor-in-interest analysis within the context of the instant administrative review.<sup>8</sup>

In determining whether a change in a company results in a new company that is not a successor to the pre-change company for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in management, production facilities, supplier relationships, and customer base. See, e.g., Ball Bearings and Parts Thereof from France: Final Results of Changed Circumstances Review, 75 FR 34688 (June 18, 2010), and accompanying Issues and Decision Memorandum (IDM) at Comment 1. Although no single or even several of these factors will necessarily provide a dispositive indication of succession, generally the Department will consider a company to be a successor if its resulting operation is not materially dissimilar from that of its predecessor. See, e.g., Fresh and Chilled Atlantic Salmon From Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review, 64 FR 9979 (March 1, 1999). Thus, if the “totality of circumstances” demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, the Department will assign the new company the cash-deposit rate of its predecessor. See id., 64 FR at 9980; see also Brass Sheet and Strip from Canada: Final Result of Administrative Review, 57 FR 20461 (May 13, 1992), and accompanying IDM at Comment 1.

#### A. Background

Ercros reported that Aragonesas, the company that was the respondent in the last completed administrative review and 100% owned by Ercros, was merged by absorption into Ercros on

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<sup>8</sup> See Letter from Ercros entitled, “Section A Response of Ercros S.A. of Spain to the Department’s Antidumping Duty Questionnaire,” dated October 1, 2012 (Section A Response). See also Letter from Ercros entitled, “Ercros S.A. of Spain/ Response to Section A, B & C Portions of First Supplemental Questionnaire,” dated April 15, 2013 (Supplemental).

May 25, 2010.<sup>9</sup> According to the information provided by Ercros regarding this merger, this absorption was done in order to simplify the structure of Ercros by creating a single and unique trademark in the market for its products, and by reducing direct costs associated with having to provide separate audited reports for one of its wholly-owned companies such as Aragonesas.<sup>10</sup>

In analyzing changes in management as a result of this merger, Ercros reported that there was no direct change of management as a result of this merger other than the retirement of directors who were not replaced.<sup>11</sup> Ercros further explained that the directors are the management because the directors follow the business lines of the company. In the case of Aragonesas, only one employee was a director and continued to be so after the merger.<sup>12</sup> Ercros provided a list of both the board of directors and the management both before and after the merger, which identifies the same people as both managers and directors, and shows no changes as a result of this merger.<sup>13</sup>

Ercros reported that the merger of Aragonesas entirely through absorption did not result in change of production facilities, stating that there were no changes in production processes or capacities following the merger.<sup>14</sup> Ercros provided relevant copies of the merger documents which state that the absorption is carried out "... with the ensuing dissolution and extinguishment without liquidation of the latter, and the attribution of their full universal balance sheet to the absorbing company, who becomes subrogated in all the rights and obligations of the absorbed companies."<sup>15</sup> In addition, Ercros noted that there were no jobs eliminated as a result of the merger because all the employees of Aragonesas were transferred to Ercros.<sup>16</sup> Finally, Ercros reported no changes in supplier relationships or the customer base following the merger.

## B. Analysis

The information on the record of this review regarding the merger of Aragonesas by Ercros through absorption shows no changes in the shareholders and ownership of the company. Although the legal structure has been simplified as a result of this merger, it has not interrupted the operations of the company or resulted in changes to production facilities, employment conditions, or capacities. Moreover, the continuity of leadership within the ranks of senior management provides additional evidence under the Department's successor-in-interest criteria, that Ercros day-to-day operations following the May 25, 2010 merger, are materially similar to those of Aragonesas prior to the merger. Therefore, we preliminarily find that in the absence of changes in the ownership, management, structure, production facilities and supplier relationships, Ercros is the successor-in-interest to Aragonesas.

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<sup>9</sup> See Section A response at 19 and Exhibit A-4.

<sup>10</sup> See *id.* at 19-20.

<sup>11</sup> See *id.*

<sup>12</sup> See Supplemental at 3.

<sup>13</sup> See Supplemental at 3 and Exhibit S-3 for the list of the Board of Directors; see also Section A response at 19-20 for list of management personnel, noting that any changes in management were the result of either the retirement of directors or by divisions that were absorbed by the Base Chemical Division, which occurred independently from the merger.

<sup>14</sup> See Section A response at 20, which also notes that the only production asset that was not included in the merger was Fosfatos de Cartagena, a manufacturer of dicalcium phosphate.

<sup>15</sup> See Section A response at Exhibit A-4, page 12 of translated document.

<sup>16</sup> See *id.* at 21.

## Comparisons to Normal Value

Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.414(c)(1) and (d)(2012), to determine whether Ercros' sales of subject merchandise from Spain to the United States were made at less than NV, the Department compared the export price (EP) to the NV as described in the "Export Price" and "Normal Value" sections of this memorandum.

### A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1) (2012), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average EPs (or constructed export prices (CEPs)) (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In antidumping investigations, the Department examines whether to use the average-to-transaction method as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in antidumping investigations.<sup>17</sup> In recent proceedings, the Department applied a "differential pricing" analysis for determining whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.<sup>18</sup> The Department finds the differential pricing analysis used in those recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer

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<sup>17</sup> See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011, 77 FR 73415 (December 10, 2012).

<sup>18</sup> See Memoranda to Paul Piquado, Assistant Secretary for Import Administration, from Abdelali Elouaradia, Director of AD/CVD Operations Office 4, entitled "Less Than Fair Value Investigation of Xanthan Gum from Austria: Post-Preliminary Analysis and Calculation Memorandum," "Less Than Fair Value Investigation of Xanthan Gum from the People's Republic of China: Post-Preliminary Analysis and Calculation Memorandum for Neimenggu Fufeng Biotechnologies Co., Ltd. (aka Inner Mongolia Fufeng Biotechnologies Co., T Jd.) and Sfhandong Fufeng Fermentation Co., Ltd.," and "Less Than Fair Value Investigation of Xanthan Gum from the People's Republic of China: Post-Preliminary Analysis and Calculation Memorandum for Deosen Biochemical Ltd.," dated March 4, 2013.

names. Regions are defined using the reported destination code (*i.e.*, city name) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is calculated to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for 66 percent or more of the value of total sales, then the identified pattern of EPs that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of EPs that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, this

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

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

## B. Results of the Differential Pricing Analysis

For Ercros, based on the results of the differential pricing analysis, the Department preliminarily finds that 51.29 percent of Ercros' export sales pass the Cohen's *d* test, and confirms the existence of a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the average-to-average method can appropriately account for such differences because there is not a meaningful difference in the weighted-average dumping margins when calculated using the average-to-average method and an alternative method based on the average-to-transaction method applied to the U.S. sales which pass the Cohen's *d* test. Accordingly, the Department has determined to use the average-to-average method to calculate the weighted-average dumping margin for Ercros.<sup>19</sup>

### Product Comparisons

In accordance with section 771(16) of the Act, we compared products produced by Ercros and sold in the U.S. and home markets on the basis of the comparison product which was either identical or most similar in terms of the physical characteristics to the product sold in the United States. In the order of importance, these physical characteristics are chemical structure, free available chlorine content, physical form, and packaging.

### Date of Sale

Section 351.401(i) of the Department's regulations states that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulation further provides that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. Ercros reported invoice date as the date of sale for U.S. sales. Specifically, Ercros reported that the earlier price in the customer's purchase order may not be the ultimate price if Ercros believes that the price is no

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<sup>19</sup> In these preliminary results for Ercros, the Department applied the weighted-average dumping margin calculation method adopted in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (February 14, 2012). In particular, the Department compared monthly weighted-average EPs with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

longer appropriate. See Section A response at 31. Based on the questionnaire responses and the sales documentation placed on the record by Ercros, we determine that invoice date is the appropriate date of sale in both the U.S. and home markets.

However, in accordance with the Department's practice, whenever shipment date precedes invoice date, we used shipment date as the date of sale. See, e.g., Stainless Steel Sheet and Strip in Coils from the Republic of Korea; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 18074, 18079-80 (April 10, 2006), unchanged in Stainless Steel Sheet and Strip in Coils from the Republic of Korea; Final Results and Rescission of Antidumping Duty Administrative Review in Part, 72 FR 4486 (January 31, 2007); and Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Determination To Revoke in Part, 72 FR 62630 (November 6, 2007), and accompanying IDM at Issue 2, where the Department found "that it is appropriate to use the earlier of shipment or invoice date as Colakoglu's and Habas' U.S. date of sale in the instant review, consistent with the date-of-sale methodology established in the previous review." Ercros has reported that shipment date preceded invoice date for some of its home market and U.S. sales. In such instances, Ercros reported and we used, as the date of sale, shipment date if it was earlier than the invoice date.

#### Export Price

For sales to the United States, the Department calculated EP in accordance with section 772(a) of the Act because the merchandise was sold prior to importation by the exporter or producer outside the United States to the first unaffiliated purchaser in the United States and because CEP methodology was not otherwise warranted. We calculated EP based on the "cost-and-freight" price or other basis negotiated with the customer.

Where appropriate, we made deductions, consistent with section 772(c)(2)(A) of the Act, for the following movement expenses: foreign inland freight, foreign inland and marine insurance, international freight, foreign and U.S. brokerage and handling, U.S. inland freight and insurance, and commissions and U.S. duty.

#### Normal Value

##### A. Home Market Viability as Comparison Market

To determine whether there was a sufficient volume of sales of chlorinated isos in the home market to serve as a viable basis for calculating NV, the Department compared the volume of the respondent's home market sales of the foreign like product to its volume of U.S. sales of the subject merchandise in accordance with section 773(a) of the Act. Pursuant to section 773(a)(1)(B) of the Act, because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for comparison purposes.

## B. Level of Trade

In accordance with section 773(a)(1)(B) of the Act and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act,<sup>20</sup> to the extent practicable, the Department determines NV based on sales in the comparison market at the same level of trade as the EP. Pursuant to 19 CFR 351.412(c)(1), the NV level of trade is based on the starting price of the sales in the comparison market or, when NV is based on constructed value, the starting price of the sales from which we derive selling, general, and administrative expenses and profit. For EP sales, the U.S. level of trade is based on the starting price of the sales in the U.S. market, which is usually from the exporter to the importer.

To determine whether comparison market sales are at a different level of trade than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.<sup>21</sup> If the comparison market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and the comparison market sales at the level of trade of the export transaction, we make a level of trade adjustment under section 773(a)(7)(A) of the Act.

The Department obtained information from Ercros regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution. Ercros reported that it made EP sales in the U.S. market through a single distribution channel (*i.e.*, sales to industrial users). Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one level of trade in the U.S. market.

Ercros reported that it made sales in the home market through two channels of distribution (*i.e.*, industrial customers and distributor/retail customers). We compared the selling functions performed by Ercros for these two distribution channels and preliminarily find that Ercros performed similar selling activities in the home market for these two distribution channels. Ercros reported that nine of the 16 reported selling activities had identical levels of activity. Of the remaining seven selling activities for which Ercros reported differences in the two channels of distribution, we find that three were provided at essentially the same levels of activity and two can be accounted for as adjustments to NV. Ercros reported that for freight and delivery in the home market, the merchandise is almost always sent by truck with carriage and insurance paid terms, no matter the channel of distribution.<sup>22</sup> In addition, Ercros noted that the respective procedures for its quantity rebates and cash discounts do not differ between the two channels of distribution in the home market.<sup>23</sup> The two other selling activities that Ercros reported, packing and commissions, can already be accounted for as adjustments to NV.<sup>24</sup> Finally, Ercros noted that in the normal course of business, it does not identify its customers by categories.<sup>25</sup> Based on

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<sup>20</sup> See H.R. Doc. No. 316, 103d Cong., 2d Sess. 829-831 (1994).

<sup>21</sup> See 19 CFR 351.412(c)(2).

<sup>22</sup> See Section A response at 28.

<sup>23</sup> See *id.*

<sup>24</sup> See *id.* at 26.

<sup>25</sup> See Supplemental at 3.

this analysis, we preliminarily find that only two of the 16 reported selling activities, order processing and direct sales personnel, differ among the two distribution channels. Thus, we preliminarily find that the industrial and distributor/retail customers in the home market constitute one NV level of trade.

Finally, the Department compared the EP level of trade to the home market level of trade. The Department finds that selling activities performed by Ercros for industrial users in the U.S. market and industrial and distributor/ retail customers in the home market, are similar. Because Ercros provided virtually the same level of customer support services on its U.S. sales (all of which were EP) as it did on its home market sales, and that the minor differences that do exist do not establish a distinct and separate level of trade, we determine that the EP and the starting price of home market sales represent the same stage in the marketing process, and are, thus, at the same LOT. For this reason, we preliminarily find that a level of trade adjustment is not warranted for Ercros. As there are no CEP sales, no CEP offset is appropriate.

### C. Cost of Production Analysis

In the last administrative review of the order completed prior to the initiation of this review, the Department disregarded certain home-market sales made by respondent at prices below the COP.<sup>26</sup> Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Ercros made sales of the foreign like product in its comparison market at prices below the COP in the current review period. Pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of home market sales by Ercros.

#### 1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the respondent's cost of materials and fabrication for the foreign like product plus amounts for general and administrative expenses, interest expenses, and the costs of all expenses incidental to preparing the foreign like product for shipment. We examined the cost data and determined that our quarterly cost methodology is not warranted. Therefore, we have applied our standard methodology of using annual costs based on the reported data, adjusted as noted below.

We relied on Ercros' submitted COP data except that we adjusted the cost of manufacturing to include certain research and development costs, amortization expenses and salaries that were excluded by Ercros.<sup>27</sup>

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<sup>26</sup> See Chlorinated Isocyanurates from Spain: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review, 74 FR 25215 (May 27, 2009), unchanged in Chlorinated Isocyanurates from Spain: Final Results of Antidumping Duty Administrative Review, 74 FR 50774 (October 1, 2009).

<sup>27</sup> For a detailed explanation of these adjustments, see Memorandum to Neal M. Halper entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Ercros, S.A. of Spain," dated July 2, 2013.

## 2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP for the POR to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales had been made at prices below the COP. In particular, in determining whether to disregard home market sales made at prices below their COP, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(2)(B), (C), and (D) of the Act. We determined the net comparison market prices for the below-cost test by adjusting the gross unit price for all applicable movement charges, discounts, rebates, billing adjustments, direct and indirect selling expenses, and packing expenses excluding all adjustments for imputed expenses.

## 3. Results of the Cost of Production Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given CONNUM were at prices less than the COP, we did not disregard below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of a respondent's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because (1) they were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act and (2) based on our comparison of prices to the weighted average of the COPs, they were at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Because we are applying our standard annual average cost methodology in these preliminary results, we have also applied our standard cost-recovery test with no adjustments.

Our cost test for Ercros indicated that for home market sales of certain products, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we disregarded these below-cost sales in our analysis as outside of the ordinary course of trade and used the remaining sales to determine NV.

## D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on the prices Ercros reported for home market sales to unaffiliated customers that we determined were within the ordinary course of trade. We adjusted the starting price, where appropriate, for discounts, rebates, billing adjustments, and interest revenue. We also made deductions from NV, consistent with section 773(a)(6)(B)(ii) of the Act, for movement expenses. In addition, we made adjustments for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made these adjustments, where appropriate, by deducting direct selling expenses incurred on home market sales and adding U.S. direct selling expenses to NV. Direct selling expenses consisted of credit expenses, advertising, warranty expenses, and bank fees. We made an additional adjustment, where appropriate, for duty drawback. We also made adjustments for differences in domestic

and export packing expenses in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act.<sup>28</sup>

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

#### Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. The exchange rates are available on the Import Administration website at <http://ia.ita.doc.gov/exchange/index.html>.

#### Recommendation

We recommend applying the above methodology for these preliminary results.

✓  
Agree

\_\_\_\_\_  
Disagree

*Paul Piquado*  
Paul Piquado  
Assistant Secretary  
For Import Administration

2 July 2013  
(Date)

<sup>28</sup> See Memorandum to the File entitled "Calculation Memorandum for the Preliminary Results of the Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from Spain," dated July 2, 2013.