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Investigation  
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February 16, 2017

MEMORANDUM TO: Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Determination in the  
Less-Than-Fair-Value Investigation of Emulsion Styrene-  
Butadiene Rubber from Mexico

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## I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that emulsion styrene-butadiene rubber (ESB rubber) from Mexico is, or is likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average dumping margins are shown in the “Preliminary Determination” section of the accompanying *Federal Register* notice.

## II. BACKGROUND

On July 21, 2016, the Department received an antidumping duty (AD) petition covering imports of emulsion styrene-butadiene rubber products from Mexico,<sup>1</sup> which was filed in proper form by Lion Elastomers LLC and East West Copolymers (collectively, Petitioners). The Department initiated this investigation on August 10, 2016.<sup>2</sup>

In the *Initiation Notice*, the Department noted that only one company from Mexico, Industrias Negromex S.A. de C.V.—Planta Altamira (Negromex), was identified in the Petition. Petitioners provided independent third-party sources as support and the Department knew of no additional producers/exporters of merchandise under consideration.<sup>3</sup> Therefore, consistent with section 777A(c) of the Act and the Department’s practice in such situations, we examined

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<sup>1</sup> See the Petitions for the Imposition of Antidumping Duties on Emulsion Styrene Butadiene Rubber from Brazil, the Republic of Korea, Mexico and Poland, dated July 21, 2016 (the Petition).

<sup>2</sup> See *Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, Mexico and Poland: Initiation of Less-Than-Fair-Value Investigations*, 81 FR 55438 (August 19, 2016) (*Initiation Notice*).

<sup>3</sup> See *Initiation Notice*, 81 FR at 55443.

Negromex (the sole respondent/exporter identified for Mexico in the Petition). No interested party submitted comments on this issue.

Also in the *Initiation Notice*, the Department notified parties of an opportunity to comment on the appropriate physical characteristics of ESB rubber to be reported in response to the Department's AD questionnaire.<sup>4</sup> On August 30, 2016, Petitioners and various other interested parties in this, and the companion AD investigations for Brazil, Korea, and Poland, submitted comments to the Department regarding the physical characteristics of the merchandise under consideration to be used for reporting purposes. Between September 9 and 12, 2016, Petitioners and various other interested parties filed rebuttal comments. Based on the comments received, the Department issued a memorandum to interested parties which contained the product characteristics for this and the companion AD investigations.<sup>5</sup>

On September 12, 2016, the U.S. International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of ESB rubber from Mexico.<sup>6</sup>

The Department issued its AD questionnaire to Negromex on August 25, 2016. Between October 2016 and January 2017, Negromex timely responded to the Department's original and supplemental questionnaires.

In November 2016, and pursuant to section 733(c)(1)(B) of the Act, and 19 CFR 351.205(f)(1), the Department published in the *Federal Register* a postponement of the preliminary determination until no later than February 16, 2017.<sup>7</sup>

We are conducting this investigation in accordance with section 733(b) of the Act.

### **III. PERIOD OF INVESTIGATION**

The period of investigation (POI) is July 1, 2015, through June 30, 2016. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition, which was July 2016.<sup>8</sup>

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<sup>4</sup> See *Initiation Notice*, 81 FR at 55439, 55440.

<sup>5</sup> See Memorandum to The File, entitled, "Antidumping Duty Investigations of Emulsion Styrene-Butadiene Rubber from Mexico, Brazil, Poland and the Republic of Korea: Product Characteristics for Sections B-D Questionnaire," dated September 27, 2016.

<sup>6</sup> See *Emulsion Styrene-Butadiene Rubber from Brazil, Korea, Mexico, and Poland*, 81 FR 62762 (September 12, 2016).

<sup>7</sup> See *Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, Mexico, and Poland: Postponement of Preliminary Determination of Sales at Less Than Fair Value Investigations*, 81 FR 85208 (November 25, 2016).

<sup>8</sup> See 19 CFR 351.204(b)(1).

#### IV. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations,<sup>9</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, "scope").<sup>10</sup> No interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. Therefore, the Department is preliminarily not modifying the scope language as it appeared in the *Initiation Notice*.

#### V. DISCUSSION OF THE METHODOLOGY

##### Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Negromex's sales of subject merchandise were made in the United States at LTFV, the Department compared the export price (EP) and constructed export price (CEP), as appropriate, to the normal value (NV), as described in the "Constructed Export Price" and "Normal Value" sections of this memorandum.

##### A) *Determination of the Comparison Method*

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs), *i.e.*, the average-to-average method, unless the Secretary determines that another method is appropriate in a particular situation. In LTFV investigations, the Department examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales, *i.e.*, the average-to-transaction method, as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act.

In recent investigations, the Department has applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>11</sup> The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this investigation. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, 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 a respondent's weighted-average dumping margin. The differential pricing analysis used in this preliminary determination examines whether there exists a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchasers,

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<sup>9</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

<sup>10</sup> See *Initiation Notice*, 81 FR at 555439.

<sup>11</sup> See, *e.g.*, *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

regions, and time periods to determine whether a pattern of prices that differ significantly exists. 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 analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code, *i.e.*, zip code, and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POI based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region, and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that the Department uses in making comparisons between EP (or CEP) and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean, *i.e.*, weighted-average price, of a test group and the mean, *i.e.*, weighted-average price, of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region, or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region, or time period differ significantly from the 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 (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, 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 prices 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 prices that differ significantly such that an alternative comparison method should

be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison 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 margins 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 margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

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

#### *B) Results of the Differential Pricing Analysis*

For Negromex, based on the results of the differential pricing analysis, the Department preliminarily finds that 87.47 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>12</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for this preliminary determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Negromex.

## **VI. DATE OF SALE**

Section 351.401(i) of the Department's regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Department normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, the Department may use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>13</sup>

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<sup>12</sup> See the Memorandum to the File, entitled, "Analysis for the Preliminary Determination of the Less-Than-Fair-Value Investigation of Emulsion Styrene-Butadiene Rubber from Mexico," dated concurrently with this memorandum (Negromex Preliminary Analysis Memorandum).

<sup>13</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

### *Non-consignment Sales*

For both home market and U.S. sales, Negromex reported that, typically, the date of shipment and date of invoice are the same, but that there are times when the date of invoice will be issued shortly after (*i.e.*, two days) the day that merchandise is released for shipment.<sup>14</sup> Although Negromex stated that the material terms of sale (*i.e.*, quantity, gross unit price, total value, and sales terms) do not change between issuance of the delivery note (shipment date) and the commercial invoice (invoice date) for its home market and U.S. sales,<sup>15</sup> the Department's practice is to use the invoice date as the date of sale, as that is the date on which the parties establish the material terms of the sale.<sup>16</sup> For those sales where shipment date precedes invoice date, we have used the shipment date as the date of sale.<sup>17</sup>

### *Consignment Sales*

In both the home market and the U.S. market, Negromex or its U.S. affiliate, INSA LLC (INSA), reported consignment sales and reported the date of sale for consignment sales in each market as the date when the consignee notified Negromex or INSA of its withdrawal of its merchandise from the consignment warehouse. In both the home market and U.S. market, Negromex or INSA will issue the commercial invoice for each sale within two days after the consignee notifies Negromex, or INSA, of its withdrawal from the consignment warehouse. Negromex provided supporting sales documentation for sample home market and U.S. market consignee sales showing that the terms of sale (quantity) are not finalized until the merchandise is withdrawn from the warehouse. For consignment sales such as these, it is our practice to establish the date of sale as the warehouse withdrawal date, as the final terms of sale (*i.e.*, quantity) are not set until the merchandise is withdrawn from warehouse.<sup>18</sup> Thus, for consignment sales in both markets, we have established warehouse withdrawal date as the date of sale.

## **VII. PRODUCT COMPARISONS**

In accordance with section 771(16) of the Act, we considered all products produced and sold by Negromex in Mexico during the POI that fit the description in the "Scope of Investigation" section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade.

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<sup>14</sup> See Negromex's January 3, 2017 Supplemental Section A Questionnaire Response at 14-17.

<sup>15</sup> *Id.*

<sup>16</sup> See 19 CFR 351.401(i).

<sup>17</sup> *Id.*

<sup>18</sup> See *Seamless Refined Copper Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 33482 (June 12, 2015) and accompanying Issues and Decision Memorandum at Comment 1.

In making product comparisons, we matched foreign like products based on prime versus non-prime merchandise and the physical characteristic reported by Negromex: IISRP grade. For Negromex's sales of ESB rubber in the United States, the reported control number (CONNUM) identifies the characteristics of ESB rubber, as exported by Negromex.

## **VIII. CONSTRUCTED EXPORT PRICE**

In accordance with section 772(b) of the Act, we calculated CEP for all of Negromex's U.S. sales, because the merchandise under consideration was sold in the United States by U.S. sellers affiliated with Negromex, and EP, as defined by section 772(a) of the Act, was not otherwise warranted. The Department calculated CEP based on packed, delivered prices to unaffiliated purchasers in the United States.

The Department made adjustments to the prices for billing adjustments, and rebates. The Department adjusted these prices for movement expenses, including foreign inland freight, insurance, brokerage and handling, U.S. brokerage and handling, warehousing and inland freight, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, the Department also deducted selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses (credit expenses and other direct selling expenses) and indirect selling expenses (inventory carrying costs and other indirect selling expenses). In accordance with section 772(f) of the Act, the Department calculated the CEP profit rate using the expenses incurred by Negromex and its U.S. importer/affiliate, INSA, related to their sales of the foreign like product in the comparison market and their sales of the merchandise under consideration in the United States and the profit associated with those sales.<sup>19</sup>

## **IX. NORMAL VALUE**

### *A) Home Market Viability*

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, *i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales, we normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with sections 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third-country market as the basis for comparison market sales in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404.

In this investigation, we determined that the aggregate volume of home market sales of the foreign like product for Negromex was greater than five percent of the aggregate volume of its U.S. sales of merchandise under consideration. Therefore, we used home market sales as the basis for NV for Negromex, in accordance with section 773(a)(1)(B) of the Act.

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<sup>19</sup> See Negromex Preliminary Analysis Memorandum.

### B) *Affiliated-Party Transactions and Arm's-Length Test*

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales were made at arm's-length prices.<sup>20</sup> The Department excludes home market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because the Department considered them to be outside the ordinary course of trade. Consistent with 19 CFR 351.403(c) and (d) and our practice, "the Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's-length."<sup>21</sup>

During the POI, Negromex made sales of ESB rubber in the home market to affiliated parties, as defined in section 771(33) of the Act.<sup>22</sup> Consequently, the Department tested these sales to ensure that they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). To test whether the sales to affiliates were made at arm's-length prices, we compared the unit prices of sales to affiliated and unaffiliated customers net of all direct selling and packing expenses. Pursuant to 19 CFR 351.403(c) and, in accordance with the Department's practice, where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade (LOT), we determined that the sales made to the affiliated party were at arm's length. Sales to affiliated customers in the home market that were not made at arm's-length prices were excluded from our analysis because we considered these sales to be outside the ordinary course of trade.<sup>23</sup>

### C) *Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>24</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>25</sup> In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices), we consider the

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<sup>20</sup> See 19 CFR 351.403(c).

<sup>21</sup> See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003), *aff'd*, 306 F. Supp. 2d 1291 (CIT 2004) (*China Steel*) (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 55352, 55355 (September 7, 2011) (*Mexican Pipe*)).

<sup>22</sup> See Negromex Preliminary Analysis Memorandum for a detailed discussion of the Arm's-Length Test.

<sup>23</sup> See section 771(15) of the Act and 19 CFR 351.102(b); see also *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002) (explaining the Department's practice).

<sup>24</sup> See 19 CFR 351.412(c)(2).

<sup>25</sup> *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) and accompanying Issues and Decision Memorandum at Comment 7 (*OJ from Brazil*).

starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.<sup>26</sup> When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>27</sup>

In this investigation, we obtained information from Negromex regarding the marketing stages involved in making their reported home market and U.S. sales, including a description of the selling activities performed by Negromex. Our LOT findings are summarized below.

Negromex reported that it made its home market sales through four channels-of-distribution, which are distinguished by which party sold directly to the distributor or end-user: (1) Home Market Channel 1: Negromex sells directly to large end-users; (2) Home Market Channel 2: Negromex sells directly to small end-users; (3) Home Market Channel 3: Negromex sells directly unaffiliated distributors; and (4) Home Market Channel 4: Negromex sells directly to unaffiliated distributors with consignment.<sup>28</sup> Negromex reported that it performed the following selling functions for the home market customers in four different channels: sales forecasting; strategic planning; personnel training/exchange; advertising; packing; inventory maintenance; order input/processing; direct sales personnel; provide rebates; product and quality warranty; and freight and delivery.<sup>29</sup> While Negromex stated that the levels of these selling functions differed in the four channels of distribution in the home market, in examining Negromex's questionnaire responses and the home market sales database, the Department finds that the selling activities performed by Negromex to its customers in the home market in Channels 1, 2, 3, and 4 do not significantly differ. Specifically, the Department finds that many sales and marketing activities were performed at the same level or similar level for these four customer categories.<sup>30</sup> More specifically, the Department finds that the only activities not at either the same level or close to the same level of intensity for the four channels in the home market are rebates and packing.<sup>31</sup> As the selling activities are essentially the same in the four channels of distribution, the Department finds that Negromex's home market sales are at a single LOT.

In the U.S. market, Negromex made only CEP sales. For CEP sales, Negromex sold the merchandise through three channels of distribution, sales of merchandise to its U.S. importer/affiliate which, in turn, are sold to unaffiliated U.S. large end-users, small end-users,

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<sup>26</sup> See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>27</sup> See, e.g., *OJ from Brazil* at Comment 7.

<sup>28</sup> See Negromex's September 23, 2016 Section A Response at Exhibits A-4 and A-5.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*, at Exhibit A-4 (where Negromex reported a total of 12 selling functions in the home market and Negromex reported half of the selling functions either as medium or low in each home market channel).

<sup>31</sup> *Id.*

and small end-users with consignment.<sup>32</sup> Similar to our analysis for Negromex's home market sales, the Department finds that many sales and marketing activities were performed at the same level or similar level for these three customer categories in the U.S. market.<sup>33</sup> In contrast to the selling activities performed by Negromex for sales in Mexico, the record shows the relatively limited selling functions that Negromex performs for its U.S. affiliate, INSA.<sup>34</sup> Thus, we also find that the three U.S. channels of distribution are at a single LOT.

The Department also considered the role played by Negromex's U.S. affiliate, INSA, to be relevant in its decision concerning LOT. In prior cases, the Department found that evidence showing that the U.S. affiliate performs significant selling activities in the U.S. market supports the conclusion that the foreign producer's sales in the comparison market are made at a more advanced LOT than CEP sales.<sup>35</sup> The Department's reasoning, as explained in past cases, is that if the U.S. affiliate performs significant selling activities in the U.S. market that are handled by the foreign producer in the comparison market, then the comparison-market LOT is necessarily more advanced than the CEP LOT, which excludes the activities performed by the U.S. affiliate from the price, pursuant to section 772(d) of the Act.<sup>36</sup>

The Department compared the selling activities reported by Negromex at the CEP LOT with its selling activities at the comparison market LOT. The Department finds that while two channels of distribution in the home market have more sales forecasting, inventory maintenance, and provide freight and delivery associated with it, these selling functions are not exclusive to these two channels, and as noted above, we find Negromex's comparison market sales to constitute one LOT.<sup>37</sup> In contrast, the Department finds that these selling activities were at a lower level for sales at the CEP LOT. Therefore, we considered the comparison market sales to be at a different LOT and at a more advanced stage of distribution than the CEP LOT.

Because the comparison market LOT was different from the CEP LOT, the Department could not match to sales at the same LOT in the comparison market. Moreover, because there was only one LOT in Negromex's comparison market, there is no basis for an LOT adjustment. However, for Negromex's CEP sales, the Department made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act. The Department determined the CEP offset based on the sum of comparison market indirect selling expenses, up to the amount of U.S. indirect selling expenses deducted from CEP.

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*, at Exhibit A-4 (where Negromex reported a total of twelve selling functions in the home market and Negromex reported half of the selling functions either as medium or low in each home market channel).

<sup>34</sup> *Id.*

<sup>35</sup> See, e.g., *Stainless Steel Sheet and Strip in Coils from Germany; Notice of Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 45024, 45029 (August 6, 2006) (finding that in the home market the respondent made sales "further down the chain of distribution by providing certain downstream selling functions that are normally performed by the affiliated resellers in the U.S. market") (unchanged in *Stainless Steel Sheet and Strip in Coils from Germany; Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 74897 (December 13, 2006)).

<sup>36</sup> See *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47551 (September 16, 2009) and accompanying Issues and Decision Memorandum at Comment 8.

<sup>37</sup> See Negromex's Preliminary Analysis Memo; Negromex's September 23, 2016 Section A Response at Exhibit A-4.

#### D) *Cost of Production (COP) Analysis*

Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request CV and COP information from respondent companies in all AD proceedings.<sup>38</sup> Accordingly, the Department requested this information from Negromex. We examined Negromex's cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual costs based on the reported data.

##### 1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative (SG&A) and interest expenses.<sup>39</sup> For Negromex, we made the following adjustments:

- We adjusted the cost of inputs purchased by Negromex's from affiliated suppliers to reflect the market price of the inputs, in accordance with section 773(f)(2) of the Act.
- We revised Negromex's SG&A expense ratio to include certain expenses.
- We revised Negromex's financial expense ratio based on its own audited financial statements for the financial year ended December 31, 2015.<sup>40</sup>

##### 2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

##### 3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were

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<sup>38</sup> See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46794-95 (August 6, 2015).

<sup>39</sup> See "Test of Comparison Market Sales Prices" section, below, for treatment of comparison market selling expenses.

<sup>40</sup> For additional details, see Memorandum to Neal M. Halper, Director, Office of Accounting, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination— Negromex," dated concurrently with this memorandum.

made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard 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 COPs for the POI, 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. We found that, for certain products, more than 20 percent of Negromex's home market sales during the POI were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We, therefore, excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

*E) Calculation of NV Based on Comparison-Market Prices*

For those comparison products for which there were an appropriate number of sales at prices above the COP for Negromex, we based NV on comparison market prices. We calculated NV based on packed, ex-factory or delivered prices to unaffiliated customers in Mexico.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, the Department also made adjustments for differences in merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. The Department based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and merchandise under consideration.<sup>41</sup>

The Department calculated the NV based on prices to unaffiliated customers. The Department increased or decreased, where appropriate, the starting price to account for billing adjustments and rebates, in accordance with 19 CFR 351.401(c).<sup>42</sup> The Department then adjusted the starting price for foreign inland freight and insurance, pursuant to section 773(a)(6)(B) of the Act. Next, the Department made deductions pursuant to section 773(a)(6)(C) of the Act and 19 CFR 351.410 for differences in circumstances of sale for home market credit expenses. Additionally, in accordance with 19 CFR 351.410(e), the Department made an adjustment to U.S. sales where commissions were granted on sales in one market and not granted in the other market. In accordance with 19 CFR 351.410(e), the Department also made adjustments to Negromex's NV for indirect selling expenses and inventory carrying costs incurred in the comparison market. In accordance with sections 773(a)(6)(A) and (B) of the Act, the Department also deducted home market packing costs, and added U.S. packing costs.

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<sup>41</sup> See 19 CFR 351.411(b); Negromex Preliminary Analysis Memorandum.

<sup>42</sup> See Negromex Preliminary Analysis Memorandum.

**X. CURRENCY CONVERSION**

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415(a), based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

**XII. CONCLUSION**

We recommend applying the above methodology for this preliminary determination.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

2/16/2017

**X** Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

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Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance