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June 7, 2017

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

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

SUBJECT: Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bar from Mexico; 2014-2015

I. SUMMARY

We analyzed the case and rebuttal briefs of the petitioner[1] and the respondents[2] for the final results in the 2014-2015 antidumping duty (AD) administrative review of steel concrete reinforcing bar (rebar) from Mexico for the period of review (POR) of April 24, 2014, through October 31, 2015. Based on our analyses of the comments received from interested parties, these final results differ from the *Preliminary Results*[3] with respect to the final weighted-average dumping margin calculated for Deacero, but do not differ with respect to Grupo Simec. We recommend that you approve the positions set forth in the "Analysis of Comments" section of this memorandum. Below is the complete list of the issues in this review for which we received comments.

[1] The petitioner is the Rebar Trade Action Coalition and its individual members, which are Nucor Corporation, Gerdau Ameristeel US Inc., Commercial Metals Company, Cascade Steel Rolling Mills, Inc. and Byer Steel Corporation.
[2] The mandatory respondents in this review are Deacero S.A.P.I. de C.V. (Deacero) and Grupo Simec S.A.B. de C.V. (Grupo Simec).
[3] *See* Steel *Concrete Reinforcing Bar from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 89053 (December 9, 2016) (*Preliminary Results*), and accompanying Decision Memorandum (Preliminary Decision Memorandum).

II. LIST OF COMMENTS

Comments Concerning Deacero:

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Comment 2: Treatment of Scrap Values Reported by Deacero
Comment 3: Treatment of Non-prime merchandise Reported by Deacero
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Comment 5: Treatment of G&A and Interest Expense Ratios Reported by Deacero
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Comment 7: Treatment of Rebar Costs Relating to Non-Subject Merchandise
Comment 8: Inventory Adjustments
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Comment 11: Whether to Apply Adverse Facts Available to Grupo Simec
Comment 12: Whether to Adjust Grupo Simec's Reported Costs
Comment 13: Whether to Revise the Department's Collapsing Analysis
Comment 14: Clerical Errors

III. BACKGROUND

On December 9, 2016, the Department published the *Preliminary Results* in the *Federal Register*.[4] On January 31, 2017, Deacero, Grupo Simec and the petitioner submitted their case briefs.[5] On February 7, 2017, the Deacero, Grupo Simec and the petitioner submitted their respective rebuttal briefs.[6]

On February 9, 2017, the Department extended the deadline for the final results of this review by 30 days until May 8, 2017.[7] On May 4, 2017, the Department extended the deadline for the final results by an additional 30 days until June 7, 2017.[8]

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[4] *See Preliminary Results*.
[5] *See* the respective letters from Deacero (Deacero's Case Brief), Grupo Simec (Grupo Simec's Case Brief), and the petitioner (Petitioner's Case Brief) dated January 31, 2017.
[6] *See* the respective letters from Deacero (Deacero's Rebuttal Brief), Grupo Simec (Grupo Simec's Rebuttal Brief) and the petitioner (Petitioner's Rebuttal Brief) dated February 7, 2017.
[7] *See* Memorandum titled "Steel Concrete Reinforcing Bar from Mexico: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated February 9, 2017.
[8] *See* Memorandum titled "Steel Concrete Reinforcing Bar from Mexico: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated May 4, 2017.

IV. SCOPE OF THE ORDER

The merchandise subject to this order is steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade. The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010.

The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0015, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth rebar). Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.*, mill mark, size or grade) and without being subject to an elongation test. HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains dispositive.

V. ANALYSIS OF COMMENTS

COMMENTS CONCERNING DEACERO

Comment 1: Whether to Apply Adverse Inferences to Deacero

Petitioner's Arguments

- Deacero's failures to properly respond to the Department's requests for information have affected its cost reporting and made it impossible for the Department to calculate an accurate margin using Deacero's reported information. Specifically, these failures have led to incomplete and inaccurate reporting of scrap values, non-prime merchandise, affiliated inputs, manufacturing costs, general and administrative (G&A) and interest expense ratios, and certain reconciling items. Therefore, the Department should apply the highest dumping margin of 66.70 percent from the Petition to determine Deacero's margin for the final results.
- If the Department does not apply total adverse inferences to Deacero for its reporting failures, the Department should nevertheless apply adverse inferences with respect to Deacero's cost data. In applying adverse facts available (AFA) to Deacero's costs, the Department should replace individual product matching control number (CONNUM)-specific cost data in its calculations with the CONNUM having the highest cost.
- If the Department does not apply total AFA or apply AFA to Deacero's costs, it should make several cost adjustments to Deacero's scrap values, non-prime products, affiliated electricity purchases, G&A and financial expenses, reconciling items, misreported rebar costs, and inventory adjustments.

Deacero's Rebuttal Arguments

- There is no basis for the Department to apply AFA to calculate Deacero's margin or to adjust Deacero's costs. Deacero provided complete and accurate information in its questionnaire responses to the information that was requested by the Department. Moreover, Deacero fully explained the reconciling items in the cost reconciliation. Therefore, use of AFA is unwarranted in the final results.

Department's Position: We disagree with the petitioner that applying total AFA is appropriate in the instant case.

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (the Act) provide that, if necessary information is missing from the record, or if an interested party: (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsection 782(c)(1) and (e) of the act, (C) significantly impedes proceeding under the AD statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable decision. Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Under the Trade Preferences Extension Act of 2015 (TPEA), numerous amendments to the AD and CVD laws were made, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.[9] The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and therefore, apply to this review. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[10]

For analyzing a respondent's cost reporting, section 773(f)(1)(A) of the Act directs that "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise." Accordingly, the Department will normally rely on a company's normal books and records if two conditions are met: 1) the books are kept in accordance with the home country's GAAP; and 2) the books reasonably reflect the cost to produce and sell the merchandise.

In this case, Deacero has fully and timely responded to all of the Department's questionnaires and requests for information. Furthermore, the information that the petitioner purports is missing from the record was not specifically requested by the Department, nor, as articulated below, do we find that the absence of these data impedes our cost calculations. Thus, we disagree with the petitioner that Deacero has failed to provide critical information that was requested by the Department. Hence, the question facing the Department is whether Deacero's reported per-unit costs are based on their GAAP-based records and whether they reasonably reflect the cost to produce and sell the merchandise under consideration. Therefore, we have addressed sequentially below each of the cost reporting issues raised by the petitioner to determine whether they warrant either AFA or an adjustment for these final results.

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[9] *See* Trade Preference Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015).
[10] *See* section 776(b)(1)(B) of the Act; TPEA, Section 502(1)(B).

Comment 2: Treatment of Scrap Values Reported by Deacero

Petitioner's Arguments

- Under the Department's practice, the value of internally generated scrap should be measured based on the sales prices charged to unaffiliated purchasers of this scrap.[11]
- Deacero provides a value for "Scrap sold but not consumed," that it claims represents the "steel scrap that Deacero produced at its own scrapyards and sold to unaffiliated customers."[12] However, Deacero failed to provide critical information on the corresponding quantity. As such, Deacero improperly impeded the Department's ability to measure the value of internally generated scrap.
- To the extent that the Department decides not to apply adverse inferences, the Department must, nonetheless, calculate an adjustment to the value of internally generated scrap (both the offset when generated and the scrap input when reintroduced to production) using the best information available on the record. Among the various types of scrap and waste sold during the POR, the quantity and value information on irregular billet, tips and tales of rebar, and tips and tales of billet, provide the best information available to calculate the weighted-average value of Deacero's internally generated scrap.[13]

Deacero's Rebuttal Arguments

- The petitioner mistakenly argues that Deacero withheld critical information because it failed to report the quantity of steel scrap that Deacero produced at its own scrapyards and sold to unaffiliated customers. This sales quantity, however, is irrelevant to Deacero's reported steel scrap costs and was never requested by the Department. Consequently, there is no basis for the Department to resort to facts available, let alone AFA, for steel scrap costs.
- The petitioner's argument is erroneous and based on a false premise that the steel scrap sourced from Deacero's scrapyards and steel waste generated in Deacero's production are the same thing. The petitioner refers to both as "internally generated scrap." Steel scrap and steel waste are distinct. Steel scrap is an input used to produce steel that Deacero's steel mills obtained from scrapyards, including its own scrapyards. Steel waste, in contrast, is generated in Deacero's production of billet or rebar. Deacero's steel mills reuse the waste to make steel or sell it to third parties.
- There is no basis to revalue steel scrap sourced from Deacero's scrapyards. The major input rule under section 773(f)(3) of the Act applies only to inputs purchased from affiliated suppliers, not to inputs that are produced by the respondent itself.
- The petitioner wrongly compares the weighted-average cost of steel scrap sourced from Deacero's scrapyards to the weighted-average price of Deacero's sale of steel waste generated in production to unaffiliated customers.

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[11] *See* Petitioner's Case Brief at 8 citing *Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances*: *Certain Lined Paper Products from India,* 71 FR 45012 (August 8, 2006) (*Lined Paper from India 2006 Final*), and accompanying Issues and Decision Memorandum (IDM) at Comment 4 (noting that "Kejriwal valued the scrap produced during the {period of investigation (POI)} using the average sales price it received for the scrap paper sold after the POI which we traced to invoices. The average selling price for scrap has been accepted by the Department in previous cases.")

[12] *See* Petitioner's Case Brief at 8.

[13] *Id*., at 16-17.

- *Lined Paper from India 2006 Final* is inapposite to the instant case, as the issue was the valuation of paper scrap for the purposes of calculating a scrap offset to direct material costs, not the valuation of direct material costs as in the current case.

Department's Position: We disagree with the petitioner that the use of AFA is warranted for Deacero's steel scrap costs. We find that Deacero timely submitted all information requested by the Department and that Deacero did not impede the Department's ability to analyze the value of scrap inputs. Further, we find that the scrap inputs used by Deacero in the production of rebar, as adjusted by the Department at the *Preliminary Results*, have been appropriately valued and require no further adjustment.

The petitioner's call for AFA or for a partial AFA adjustment of Deacero's reported scrap values rests on the assumption that all scrap inputs obtained from the company's own scrapyards were scrap waste that Deacero generated during the production of its steel products. This assumption, in turn, stems from Deacero's identification of its main scrap input source as "internally generated scrap, *i.e.*, steel scrap sourced from Deacero's scrapyards."[14] While this singular statement may seem to support such an assumption, a more comprehensive review of the record fails to support the interpretation that "internally generated" scrap from the scrapyards means scrap generated during production at Deacero's steel and wire production mills. In fact, based on the POR steel product production quantities and yield losses experienced by Deacero, it was not possible for Deacero to generate as waste the quantities of scrap inputs that it obtained from its own scrapyards.[15] As further explained in the Sales & Cost Memo, information on the record leads us to conclude that is more plausible to infer that the Deacero's scrapyards purchased scrapped products from outside parties and transformed or sorted the scrap into forms usable for steel production. Because we do not find that the scrap obtained from Deacero's scrapyards was comprised of scrap waste generated at the company's steel and wire production mills, there is no need to revalue Deacero's scrap inputs or offsets. Rather, the scrap obtained from the scrapyards was appropriately valued at actual cost, while the scrap offsets reflect their respective net realizable values.[16] Due to the proprietary nature of this discussion, *see* Sales & Cost Memo for additional details on the analysis of the scrap obtained from Deacero's scrapyards and the scrap that Deacero could have generated during the production of steel at its steel mills.[17]

Comment 3: Treatment of Non-prime Merchandise Reported by Deacero

Petitioner's Argument

- Deacero departed from its normal books and records where it normally assigns no costs to non-prime merchandise and, instead, allocated full production costs to non-prime merchandise for AD cost reporting purposes.[18]

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[14] *See* Deacero's December 6, 2016 5th Supplemental Questionnaire Response (Deacero December 6, 2016 SQR) at 5.
[15] *See* Memorandum to File, titled "Steel Concrete Reinforcing Bar from Mexico: Final Results Sales and Cost Analysis Memorandum for Deacero S.A.P.I. de C.V.," dated concurrently with this memorandum (Sales & Cost Memo), at 3.
[16] *Id*.
[17] *Id*., at 2.
[18] *See* Petitioner's Case Brief at 9.

- Deacero failed to explain why it was deviating from its normal books and records or explain why its methodology for allocating costs to non-prime merchandise was appropriate.
- By failing to provide the necessary justification, and otherwise by reporting its costs on a basis that is not in keeping with its normal records, Deacero has failed to provide relevant information and impeded the Department's proceedings.
- If the Department does not apply adverse inferences, the Department should reject Deacero's allocation of costs to non-prime products and remove the non-prime sales from the home market database.[19]

Deacero's Rebuttal Arguments

- Deacero fully explained why it assigned costs of production to non-prime merchandise and, furthermore, used a reasonable and previously verified methodology to do so. Therefore, adverse facts available is not warranted.[20]
- It was necessary to allocate costs to non-prime rebar in order to avoid overstating the costs reported for prime rebar, because non-prime rebar is used in the same applications as prime rebar (concrete reinforcement), and because Deacero sold non-prime rebar during the POR.
- It is not uncommon for respondents to modify cost allocations used in the normal course of business to be able to report costs at the level of detail required by the Department. In this review, Deacero had to depart from its normal allocation methodology, under which the company assigns a single average per-unit cost of manufacture to all prime rebar products, regardless of physical characteristics, to be able to report costs on a CONNUM-specific basis.
- The petitioner fails to provide any support for its request that the Department remove sales of non-prime products from Deacero's sales database and exclude non-prime products from its cost database, as if such sales and production never occurred. Thus, there is no basis to reject Deacero's reported sales and costs for non-prime merchandise.

Department's Position: We disagree with the petitioner and have not excluded the non-prime production from Deacero's reported cost database, nor have we removed the non-prime sales from the home market sales database.

Our practice with respect to non-prime products is to analyze the products sold as non-prime on a case-by-case basis to determine how such products are costed in the respondent's normal books and records, whether they remain in scope, and likewise whether they can still be used in the same applications as the prime subject merchandise.[21] Sometimes the downgrading is minor and the product remains within a product group, while at other times the downgraded product differs significantly, and it no longer belongs to the same group and cannot be used for the same applications as the prime product. If the product is not capable of being used for the same

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[19] *Id*., at 19.
[20] *See* Deacero's Rebuttal Brief at 6-8.
[21] *See Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*Welded Line Pipe from Korea*), and accompanying IDM at Comment 9. *See also Steel Concrete Reinforcing Bar From Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 21986 (September 15, 2014) (*Rebar from Turkey*), and accompanying IDM at Comment 15.

applications, the product's market value is usually significantly impaired, often to a point where its full cost cannot be recovered and assigning full costs to that product would not be reasonable.[22] Instead of attempting to judge the relative values and qualities between grades, we adopted the reasonable practice of looking at whether the downgraded product can still be used in the same general applications as its prime counterparts.[23]

With this distinction in mind, we reviewed the information on the record of this review with regard to the non-prime merchandise. Deacero explained that non-prime rebar is classified as such if it is an undesirable length, has a bent shape, or undesired coiling.[24] Deacero also stated that non-prime rebar is used in the same applications as prime rebar (concrete reinforcement) and that Deacero sold non-prime rebar in the home market during the POR.[25] Based on the information supplied by Deacero, we find there is sufficient evidence that Deacero's non-prime rebar can be used in the same general applications as its prime counterparts, and that the non-prime rebar did not have a significantly downgraded value in the marketplace such that allocating full production costs to the downgraded products was unreasonable. We also fail to find merit in the petitioner's argument that Deacero provided no justification or explanation for its departure from its normal books and records. Rather, Deacero fully explained that it normally does not assign costs to non-prime production, that the company had POR production and sales of the non-prime merchandise, and that the non-prime rebar was reportable merchandise.[26] As such, Deacero reported the non-prime sales in its home market sales database and, accordingly, assigned a cost to the non-prime production and reported those costs in the cost database. Therefore, we find it reasonable that Deacero assigned costs to its non-prime production. Furthermore, we find no evidence to support assigning a lower value, rather than full production costs, to the non-prime production.

Comment 4: Treatment of Affiliated Electricity Purchases Reported by Deacero

Petitioner's Argument

- Deacero's claim that "during the months in which Deacero purchased electricity from both its affiliate and Mexico's public utility, Deacero generally paid higher rates to its affiliate" is not supported by the evidence of record.[27] Accordingly, by providing this unsupported statement, Deacero failed to act to the best of its ability and impeded the Department's review.
- If the Department does not apply adverse inferences, the Department should apply the transactions disregarded provision to Deacero's purchase of electricity from its affiliate and adjust Deacero's reported costs accordingly.

[22] *See Welded Line Pipe from Korea* IDM at Comment 9.
[23] *Id*. *See also Rebar From Turkey* IDM at Comment 15.
[24] *See* Deacero December 6, 2016 SQR at 1.
[25] *Id*., at 2.
[26] *Id*., at 1-5, and Deacero March 21, 2016 Section D Questionnaire Response (DQR) at 25 and 28-30.
[27] *See* Petitioner's Case Brief at 10.

- Contrary to Deacero's position that the Department should apply the transactions disregarded rule on a monthly basis, the Department should apply the rule on a POR basis in accordance with its normal practice.[28]

Deacero's Rebuttal Arguments

- Deacero did, in fact, pay higher rates to its affiliated supplier when the affiliated and unaffiliated purchase data are weight averaged for those five months in which Deacero purchased electricity from its affiliate.[29]
- In comparing a POR weighted-average unaffiliated price to an only five month weighted-average affiliated price, the petitioner relies on a skewed comparison of Deacero's electricity purchases and, therefore, the petitioner's argument for the application of the transactions disregarded rule should be rejected.
- Electricity rates fluctuate widely and are typically higher during the colder months of winter and the hotter months of summer. Consequently, it was distortive for the petitioner to compare weighted-average prices for the entire POR. Thus, there is no basis to disregard Deacero's purchases from its affiliate.
- The Department's analysis in *Retail Carrier Bags from Thailand* is distinguishable from the instant case. The Department normally compares transfer and market prices on the same basis as it computes COP and CV throughout the POR to avoid distorting the results. However, Deacero did not purchase the affiliated electricity throughout the entire POR. Therefore, in this case, the POR average approach would be distortive because Deacero only purchased electricity from its affiliate during the latter months of the POR.

Department's Position: We do not agree that adverse inferences are warranted; however, we do agree with the petitioner that an adjustment to Deacero's affiliated electricity costs is appropriate, in accordance with our practice. Further, we agree with the petitioner that the time period used in the analysis and subsequent adjustment of costs under sections 773(f)(2) and (3) of the Act should conform with the period of time over which the per-unit costs have been calculated. As we explained in *Retail Carrier Bags from Thailand*, it is our normal practice to use annual average costs in order to even out swings in the production cost experienced by the respondent over short periods of time.[30] Likewise, we compare transfer prices, market values, and affiliated supplier costs on the same basis as we compute COP and CV. Therefore, in these final results, we compared Deacero's POR average electricity prices from affiliated and unaffiliated parties and, based on this comparison, we have adjusted Deacero's electricity expenses to reflect an arm's-length value.

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[28] *See* Petitioner's Case Brief at 20 (citing *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982 (January 17, 2007) (*Retail Carrier Bags from Thailand*), and accompanying IDM at Comment 6 (rejecting application of major-input and transactions-disregarded rules on a monthly basis and stating "we compare transfer prices and market value on the same basis as we compute COP and {constructed value (CV)} to avoid distorting the results")).

[29] *See* Deacero's Rebuttal Brief at 9-11.

[30] *See Retail Carrier Bags from Thailand*, IDM at Comment 6.

Comment 5: Treatment of G&A and Interest Expense Ratios Reported by Deacero

Petitioner's Arguments

- Deacero failed to demonstrate that the denominators of the G&A and interest expense ratios are on the same basis as the reported per-unit cost of manufacture (COM). Deacero made various adjustments in its overall cost reconciliation which are not seen in the calculation of the cost of goods sold (COGS) denominators used in the G&A and financial expense ratios. This failure severely impacted Deacero's cost reporting.[31]
- The Department should include in G&A expenses the 2015 administrative expenses that Deacero capitalized as related to certain ongoing fixed asset projects.[32]
- The Department should reject Deacero's claimed interest income offset to its financial expenses since the company failed to demonstrate that the income was generated on short-term assets.[33]

Deacero's Rebuttal Arguments

- Deacero made all necessary adjustments to its COGS denominators in calculating the G&A and net interest expense ratios; thus, there is no basis to apply AFA to Deacero's reporting of G&A and net interest expenses.[34]
- The petitioner's argument to include in G&A expenses the administrative expenses capitalized by Deacero in 2015 is meritless, relies on no case precedent, and should be rejected.[35]
- Section 773(f)(l)(A) of the Act directs the Department to follow the normal records of the respondent if such records are kept in accordance with home-country GAAP and reasonably reflect the costs associated with the production and sale of the merchandise under consideration. Deacero's capitalization of administrative expenses was in accordance with Mexican GAAP and is reasonable.
- The Department has recognized that "{i}t is not unusual or unreasonable for a company to capitalize certain costs with the intent to amortize and expense such costs over time," and has not required capitalized expenses to be added to reported G&A expenses.[36]
- The Department never notified Deacero of a deficiency nor requested support for the interest income offset; therefore, there is no basis to reject the offset in the calculation of the financial expense ratio.

Department's Position: We agree with both parties, in part. First, we agree with the petitioner that to ensure a proper mathematical calculation, the denominators to the G&A and financial expense ratios and the per-unit costs, to which the ratios are applied should be on the same basis, *i.e.*, they should reflect the same pool of costs. Therefore, we have analyzed the components of

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[31] *See* Petitioner's Case Brief at 11.
[32] *See* Petitioner's Case Brief at 21.
[33] *See* Petitioner's Case Brief at 22.
[34] *See* Deacero's Rebuttal Brief at 11.
[35] *See* Deacero's Rebuttal Brief at 12, referencing Petitioner's Case Brief at 21.
[36] *See* Deacero's Rebuttal Brief at 13 (citing *Certain Lined Paper Products from India*, 74 FR 17149 (April 14, 2009) (*Lined Paper from India 2009*), and accompanying IDM at Comment 5; and, *Certain Polyethylene Terephthalate Resin from India*, 81 FR 13327 (March 14, 2016) (*PTR from India*), and accompanying IDM at Comment 13(K)).

Deacero's COGS and the reported per-unit costs finding that one additional adjustment to the reported denominators is needed. Because Deacero's reported per-unit manufacturing costs include an offset for scrap waste, the denominators to the G&A and financial expense ratios should likewise include the total scrap waste offset. Therefore, for these final results, we have revised the denominators to Deacero's G&A and financial expense ratios to include the total scrap waste offset.

Next, we agree with Deacero that it is not appropriate in this case to include as G&A expenses the 2015 expenses related to fixed assets that Deacero capitalized on its balance sheet. These expenses were capitalized on the company's normal GAAP-based books and records and, as the expenses will be amortized over the future periods that it benefits when the asset is placed into service, we do not find that the capitalization of these costs is unreasonable. The Department has recognized that it is not unusual or unreasonable for a company to capitalize certain costs with the intent to amortize and expense such costs over time.[37] Normally, under GAAP, a company will capitalize an expense and amortize it over a number of years because it benefits future periods.[38] In the instant case, the costs in question are associated with certain fixed asset projects.[39] As such, we find the company's normal books and records in this regard to be reasonable, and we have not adjusted Deacero's G&A expenses to include these capitalized costs.

Finally, we disagree with the petitioner that Deacero's interest income offset should be rejected because the company failed to demonstrate that it was generated on short-term assets. The Department's standard questionnaire directs the respondents to offset financial expenses with interest income that is related to short-term assets.[40] In reporting to the Department, Deacero included the interest income that was reported on its consolidated financial statements as an offset to its financial expenses.[41] While we did not request additional support from Deacero in this specific matter, we examined the balance sheet of the consolidated financial statements to determine if an adjustment to the interest income offset is warranted. Based on our examination of the current and long-term assets reported on the consolidated balance sheet, we did not find evidence of significant long-term interest-bearing assets. Therefore, we do not find that there is basis to reject or limit Deacero's interest income offset for these final results.

Comment 6: Treatment of Reconciling Items Reported by Deacero

Petitioner's Arguments

- Deacero has failed to provide adequate responses and failed to clarify its incomplete and confusing statements about certain reconciling items in its overall cost reconciliation.

[37] *See Lined Paper from India 2009* IDM at Comment 5.
[38] *Id*.
[39] *See* Deacero March 21, 2016 DQR at 16.
[40] *See* the Department's Standard Section D Questionnaire at D-15.
[41] *See* Deacero November 30, 2016 SQR at Exhibit 5th Supp.-8, and Deacero June 29, 2016 SQR at Exhibit A-1.

- Deacero excluded "Liabilities CANCELLED" as "an amount charged to COGS for purchases of steel scrap that were not recorded in Deacero's accounting," but it is very unlikely that any purchase would not be booked by the company.[42]
- Deacero excluded "Finished Products and Alloys Purchased" under the inadequate and confusing statement that they were the costs of "finished goods that Deacero purchases for resale."[43] However, alloys are not finished goods, but rather raw material inputs.

Deacero's Rebuttal Argument

- Adverse inferences with respect to Deacero's cost reconciliation are unwarranted.
- Deacero explained that "Liabilities CANCELLED" refers to an amount charged to COGS for purchases of steel scrap that were not recorded in Deacero's accounting, and that the charge relates to purchases made before the POR.[44] Consequently, it was necessary for Deacero to deduct the amount from COGS in order to reconcile to the reported COM.
- Deacero explained that "Finished Products and Alloys Purchased" refers to the costs of finished goods purchased for resale and that the petitioner's argument that alloys are not a finished good is mere speculation and conjecture, not a sufficient basis for rejecting Deacero's explanation.[45]

Department's Position: We agree with Deacero that the company's descriptions of the reconciling items in question do not provide evidence of a failure to cooperate in this review and do not support the use of adverse inferences. While it would have been in Deacero's best interest to take more care with its descriptions, *e.g.*, defining the line item "Finished Goods and Alloys Purchased" as the cost of finished goods and raw materials purchased for resale, the reasoned implication is that both items, the finished goods and the alloys, were sold and not consumed. Further, the petitioner provides no other evidence, nor have we found any record evidence to suggest, that these particular alloys were consumed in production or that the reported alloy costs are understated.

With regard to "Liabilities CANCELLED," while we find Deacero's description of the item adequate, we disagree with Deacero that the item should be excluded since it relates to a steel scrap purchase made prior to the POR. Section 773(f)(1)(a) of the Act directs that costs will be calculated based on records kept in accordance with GAAP. GAAP specifies that financial statements be prepared on the accrual basis since this ensures that revenues and expenses are recognized in the period in which they are earned or occur, regardless of when they are actually collected or paid.[46] Therefore, because these steel scrap expenses were recognized in Deacero's

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[42] *See* Petitioner's Case Brief at 12.
[43] *Id.*
[44] *See* Deacero's Case Brief at 14.
[45] *Id.*, at 15.
[46] *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18448, 18456 (April 15, 1997) at Comment 3 explaining that "Financial statements prepared on the accrual basis are GAAP," and, that recognizing an interest expense based on the total interest a company incurs is done on an accrual basis, while interest calculated solely based on the interest paid is done on a cash basis: "Financial statements prepared on the cash bases are not GAAP."

GAAP-based financial statements during the POR, we have adjusted the reported COM to include this amount.

Comment 7: Treatment of Rebar Costs Relating to Non-Subject Merchandise

Petitioner's Arguments

- Deacero excluded production costs related to wire rod product codes that it claims were mistakenly recorded as rebar costs in its normal books. As such, it is likely that Deacero likewise mistakenly recorded rebar production costs under non-subject product codes.
- Because Deacero failed to provide these likely mistakes, the Department should assume that there were manufacturing costs omitted from the reported costs.[47]

Deacero's Rebuttal Arguments

- Deacero explained that "Rebar costed in Wire Rod" refers to wire rod product codes for which the manufacturing costs were mistakenly recorded as rebar costs.
- The petitioner provides no evidence in support of its contentions, but rather mere speculation, which is an insufficient basis to reject Deacero's certified explanations. Therefore, the petitioner's argument for adverse inferences should be rejected.[48]

Department's Position: We disagree with the petitioner that rebar manufacturing costs have been omitted and that adverse inferences are warranted. There is no evidence to support the petitioner's argument that Deacero's manufacturing costs for rebar were mistakenly recorded as wire rod or as some other non-subject merchandise. Rather, Deacero's overall cost reconciliation enumerates the various reconciling items that were applied in calculating the total pool of reported rebar costs.[49] Further, Deacero was fully responsive to our requests for additional information related to these reconciling items.[50]

Comment 8: Inventory Adjustments

Petitioner's Arguments

- Deacero's costs should be adjusted to include the line item for "Adjustments to Production Cost of Rebar," which Deacero explained reflects auditor's adjustments for physical inventory count, reclassifications of products in inventory, and differences in actual versus nominal weight.[51]

Deacero's Rebuttal Arguments

- The Department should not modify Deacero's costs to include these auditor adjustments as they are related to inventory movements, not manufacturing costs.[52]

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[47] *See* Petitioner's Case Brief at 13.
[48] *See* Deacero's Rebuttal Brief at 16.
[49] *See* Deacero March 21, 2016 DQR at Exhibit D-18.
[50] *See* Deacero November 30, 2016 DQR at 4-7.
[51] *See* Petitioner's Case Brief at 22.
[52] *See* Deacero's Rebuttal Brief at 15.

Department's Position: We agree with the petitioner and have adjusted Deacero's reported costs to include the expenses that were recognized as a result of the auditor inventory adjustments that account for physical inventory counts, inventory reclassifications, and weight adjustments. The Department routinely includes gains and losses on inventory adjustments in the calculation of the reported costs and only excludes those gains and losses related to the devaluation of finished goods inventories.[53] In responding to our request for detailed information, Deacero provided only that the amount excluded as "Adjustments to Production Cost of Rebar" includes auditor adjustments for physical inventory counts, reclassifications of products in inventory, and differences in actual versus nominal weight with no indication that any portion of the amount is related to the devaluation of finished goods inventories.[54] Therefore, we have revised the reported costs to include the auditor adjustments in the final results.

Comment 9: Method Used to Calculate Deacero's Final Margin

Deacero's Arguments

- The Department should calculate Deacero's margin without "zeroing" for two reasons: (1) the differential pricing analysis does not reveal any dumping to "unmask;" and (2) the Department's use of zeroing based on the differential pricing analysis violates U.S. obligations under the World Trade Organization (WTO) Agreements.
- Although the Department's practice is to use zeroing based on the results of the differential pricing analysis, the Department has discretion to depart from prior practice when it explains reasonable grounds for doing so. In the instant review, declining to apply zeroing is necessary to avoid a result that conflicts with the purpose of the differential pricing analysis, which is the "unmasking" of dumping.
- The Department used the average-to-transaction (A-T) method, with zeroing, based on its preliminary finding that 81.27 percent of Deacero's U.S. sales passed the Cohen's *d* test. However, the U.S. sales passing the Cohen's *d* test were not dumped.
- The Department's preliminary margin calculation shows that, even using the A-T method, the dumping margin for Deacero's U.S. sales passing the Cohen's *d* test is *de minimis*. Thus, use of the A-T method does not reveal any dumping to "unmask."
- The Department's use of "zeroing" based on the differential pricing analysis is inconsistent with U.S. obligations under the WTO Agreements. In *US - Washing Machines (Korea),* the WTO Appellate Body found that (1) the Department's differential pricing analysis is inconsistent with Article 2.4.2 of the WTO Antidumping Agreement, and (2) the Department's use of zeroing under the A-T method based on application of the differential

[53] *See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Mexico*, 67 FR 55800, (August 30, 2002), and accompanying IDM at Comment 15, where the Department included physical inventory losses in the reported costs; and, *Certain Carbon and Alloy Steel Cut-to-Length Plate From Taiwan: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 82 FR 16372, (April 4, 2017), and accompanying IDM at Comment 6, where the Department included gains and losses on market price declines of inventory for by-products, supplies, and raw materials, but excluded the valuation losses related to finished goods.
[54] *See* Deacero November 30, 2016 SQR at 6-7.

pricing analysis is inconsistent with Articles 2.4, 2.4.2, and 9.3 of the WTO Antidumping Agreement and Article VI:2 of GATT 1994.55.

- To avoid violations of U.S. obligations under the WTO Agreements, the Department must calculate Deacero's final margin using the preferred average-to-average (A-A) method, without zeroing.

Petitioner's Rebuttal Arguments

- Deacero provides no precedent or any well-reasoned basis for accepting its argument that the Department should use the A-A method to calculate Deacero's margin for the final results because the A-T method does not reveal any dumping to unmask.
- Contrary to Deacero's claims, the Department properly applied its differential pricing analysis to rely on the A-T method in calculating the dumping margin for all of Deacero's U.S. sales.
- The only rationale that Deacero provides for disregarding the A-T method is that the dumping margin calculated under this method is *de minimis* for the 81.27 percent of Deacero's U.S. sales that passed the Cohen's *d* test. However, this does not establish any grounds for departure from the Department's prior practice of selecting the appropriate comparison methodology based on the results of the differential pricing analysis.
- According to the preliminary results, 81.27 percent of Deacero's U.S. sales passed the Cohen's *d* test, confirming the existence of a pattern of prices that differ significantly among purchasers, regions or time periods.
- In addition, the Department found that there was a 25 percent relative change between the margin calculated using the A-A method and the A-T method. As such, the Department properly relied on the A-T method to calculate Deacero's weighted-average dumping margin.
- Deacero's argument assumes that the ultimate dumping margin is relevant to the question of whether differential pricing exists. But, the Department's differential pricing analysis is not meant to measure, or to depend upon, dumping margins in general or the dumping margin of only those sales whose prices differed significantly, *i.e.,* those that passed the Cohen's *d* test.
- The analysis calls for an examination of significant differences in prices in order to determine what comparison methodology should be employed to properly calculate the dumping margins for all sales.
- Contrary to Deacero's claim that the Department's declining to apply zeroing is necessary to avoid a result that conflicts with the purpose of the differential pricing analysis the 'unmasking' of dumping the Department has previously considered and rejected claims to this effect.[56] As such, not only is it not necessary to determine whether differently priced sales were dumped, it is also not necessary to determine whether any sales were dumped in order to apply the A-T method.

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[55] *See* Deacero's Case Brief at 3, citing to Appellate Body Report, *United States- Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea,* WT/DS464/AB/R (Sept. 7, 2016) at paras. 5.42-5.43, 5.56, 5.140, 5.160, 5.171, 5.180, 5.182, 5.187-5.188, 5.190 ("*U.S. -Washing Machines*").

[56] *See Final Results of the Fourth Antidumping Duty Administrative Review: Certain Steel Nails from the People's Republic of China,* 79 FR 19316 (April 8,2014), and accompanying IDM at Comment 7. S*ee also Final Results of the Antidumping Duty Administrative Review; 2012-2013: Cut-to-Length Plate from the People's Republic of Korea,* 79 FR 54264 (September 4, 2014), and accompanying IDM at Comment 1.

- The Department should reject Deacero's argument that the Department should disregard its differential pricing analysis, abandon the A-T method, and instead adopt the A-A method because of a decision by the WTO Appellate Body in *US - Washing Machines (Korea).*
- WTO Appellate Body reports do not have instant operation in U.S. law. Specifically, the Uruguay Round Agreements Act (URAA) establishes that a WTO decision has no effect in U.S. law by itself. Rather, such a report becomes effective only to the extent that the U.S. government determines to adopt its conclusions through a specific process, pursuant to which the Department may change a regulation or practice in response to the relevant WTO decision.[57]
- The United States has not pursued the statutory process for altering its practice regarding differential pricing in administrative reviews pursuant to the WTO report cited by Deacero or any similar report. Therefore, the cited WTO report provides no reason for the Department to alter its practice concerning differential pricing in the final results.
- Deacero fails to consider that the Department may make adjustments for the final results that will modify Deacero's dumping margin program. As such, it may well be the case that instead of reflecting a *de minimis* margin, the U.S. sales that pass the Cohen's *d* test in the final results will, in fact, reflect dumping.

Department's Position: The Department disagrees with Deacero's argument that the application of a differential pricing analysis with zeroing, including the Cohen *d* and ratio tests to calculate Deacero's margin, does not reveal any dumping to unmask, and is inconsistent with U.S. obligations under the WTO Agreements. Nothing in the statute or the Statement of Administrative Action (SAA) mandates how the Department measures whether there is a pattern of prices that differ significantly, how the Department explains why one of the standard comparison methods, *i.e.*, the A-A method or the transaction-to-transaction (T-T) method, cannot account for such differences, or how the Department applies the A-T method as an alternative comparison method. Accordingly, the Department has reasonably created a framework to determine whether the A-A method is appropriate,[58] and if it is determined not to be appropriate, then how the A-T method may be considered as an alternative to the standard A-A method based on the extent of the pattern of prices that differ significantly, as identified by the Cohen's *d* test.[59]

Furthermore, the Department's application of the A-T method as an alternative comparison method to the A-A method is reasonable and consistent with a series of decisions from the Court of Appeals for the Federal Circuit (CAFC) and the Court of International Trade (CIT), including *JBF RAK*,[60] in which the CAFC held that the Department may apply the A-T method in administrative reviews and that the Act does not "mandate which comparison methods Commerce must use in administrative reviews."[61] In that decision, the CAFC also held that the SAA "does not limit the proceedings in which Commerce may consider an alternative comparison method" when an A-A comparison "cannot account for a pattern of United States

[57] *See* Petitioner's Rebuttal Brief dated February 7, 2017, at 9.
[58] *See* 19 CFR 351.414(c)(1).
[59] *See Large Residential Washers from Mexico: Final Results of the Antidumping Duty Administrative Review; 2014-2015,* 81 FR 52714 (September 12, 2016), and accompanying IDM at Comment 1.
[60] *See JBF RAK LLC v. United States*, 790 F.3d 1358 (Fed. Cir. 2015) (*JBF RAK*).
[61] *Id.*, at 1368.

prices that differ significantly among purchasers, regions or time periods" in an administrative review.[62]

Section 777A(d)(1)(B)(i) of the Act, the "pattern" requirement, requires that the Department examine whether there exists a pattern of prices that differ significantly among purchasers, regions or time periods. The Department considers whether the respondent's pricing behavior has created conditions in the U.S. market in which dumping may be "targeted" or masked. This is the result of higher U.S. prices offsetting lower U.S. prices where the dumping which may be found on lower-priced U.S. sales is hidden by the higher U.S. prices, such that the A-A method would be unable to account for such conditions. This relationship is specifically recognized in the SAA as where "an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions."[63] The SAA states that consideration of the A-T method, as an alternative comparison method, is in response to such concerns, and that this is "where targeted dumping *may* be occurring."[64]

Section 777A(d)(1)(B)(ii) of the Act, the "explanation" requirement, then requires the Department to explain why the A-A method cannot account for "such differences," *i.e.*, the conditions identified in the "pattern" requirement which may lead to hidden or masked dumping. To consider this requirement, the Department uses a "meaningful difference" test where it compares the weighted-average dumping margin calculated using the A-A method only and the weighted-average dumping margin calculated using an appropriate alternative comparison method based on the application of the A-T method. The simple comparison of these two results belies all of the complexities in calculating and aggregating individual dumping margins. It is the interaction of these many comparisons of export or constructed export prices with normal values which determine whether there is a meaningful difference in these two results.

When using the A-A method, lower-priced U.S. sales, *i.e.*, sales which may be dumped, are offset by higher-priced U.S. sales. This is reflected in the SAA, which states that "targeted dumping" is a situation where "an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions."[65] The comparison of a dumping margin based on a weighted-average U.S. price with a dumping margin based on the individual, constituent transaction-specific U.S. prices precisely examines the impact of the amount of dumping which is hidden or masked. Both the weighted-average U.S. price and the individual U.S. prices are compared to a normal value that is independent and constant because the characteristics of the individual U.S. sales remain constant whether a weighted-average U.S. price or individual U.S. prices are used in the analysis.

There must be a significant and meaningful difference in U.S. prices in order to resort to an alternative comparison method. These differences in U.S. prices must be large enough, relative to the absolute price level in the U.S. market, where not only is there a *non-de minimis* amount of dumping, but that there also is a meaningful amount of offsets to impact the identified amount of dumping. Furthermore, the normal value must fall within an even narrower range of values, *i.e.*,

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[62] *Id.*, at 1364-65.
[63] *See* SAA at 842.
[64] *Id.*, at 843 (emphasis added).
[65] *Id.*, at 842.

narrower than the price differences exhibited in the U.S. market, such that the limiting circumstances are present. This required fact pattern must then be repeated across averaging groups in the calculation of the weighted- average dumping margin in order to result in an overall weighted-average dumping margin which changes to a meaningful extent. Further, for each individual dumping margin which does not result in this set of circumstances, the "meaningfulness" of the difference in the weighted-average dumping margins between the two comparison methods will be diluted.

Further, the extent of the amount of dumping and potential offsets for non-dumped sales is measured relative to the total export value, *i.e.*, the denominator of the weighted-average dumping margin, of the subject merchandise. Thus, the differential pricing analysis accounts for the difference in the U.S. prices relative to the absolute price level of the subject merchandise. The Department finds that the A-A method is not appropriate where there is an above *de minimis* amount of dumping along with an amount of potential offsets generated from non-dumped sales such that the amount of dumping is changed by a meaningful amount. Both of these amounts are measured relative to the total export value, *i.e.*, absolute price level, of the subject merchandise sold by the exporter in the U.S. market.

As stated in *Wood Flooring*,[66] the decision by the CAFC in *Union Steel* resolved the outstanding question of whether the Department's statutory interpretation is reasonable. The CAFC affirmed the Department's explanation that it may interpret the statute to permit the denial of offsets for non-dumped sales with respect to the A-T comparison method in administrative reviews, while permitting the Department to grant offsets for non-dumped transactions when applying the A-A comparison method in investigations. The CAFC also affirmed the Department's explanation that it may interpret the same statutory provision differently because there are inherent differences between the comparison methods used in investigations and reviews. Indeed, the CAFC noted that although the Department recently modified its practice "to allow for offsets when making A-A comparisons in administrative reviews . . . {t}his modification does not foreclose the possibility of using the zeroing methodology when {the Department} employs a different comparison method to address masked dumping concerns."[67] Likewise, in *U.S. Steel Corp.*, the CAFC sustained the Department's decision to no longer apply zeroing when employing the A-A comparison method in investigations while recognizing the Department's intent to continue to apply zeroing in other circumstances. Specifically, the CAFC recognized that the Department may use zeroing when applying the A-T comparison method where patterns of significant price differences are found.[68]

The Department reasonably aggregated the results of each of these distinct comparison methods in calculating Deacero's weighted-average dumping margin, specifically summing the amount of dumping and the U.S. sales value for each of these methods. Accordingly, the Department has

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[66] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Results of New Shipper Review; 2012-2013*, 80 FR 41476 (July 15, 2015) (*Wood Flooring*), and accompanying IDM at Comment 1.B.
[67] *See Union Steel v. United States*, 713 F. 3d 1101, 1109 (Fed. Cir. 2013) (*Union Steel*).
[68] *See U.S. Steel Corp. v. United States*, 621 F.3d. at 1351 and 1363 (recognizing that the use of the A-T method with zeroing would combat "targeted or masked dumping") (*U.S. Steel Corp.*).

not altered its approach in combining the comparison results between the A-A method and the A-T method for these final results.

With regard to U.S. obligations under the WTO Agreements and *U.S. – Washing Machines (Korea)*, we note that WTO findings are not self-executing under U.S. law and can only be implemented through the statutory procedure for such implementation.[69] The WTO's findings in *U.S. – Washing Machines (Korea)* have not been implemented under U.S. law. The Department has not revised or changed its use of the differential pricing methodology, nor has the United States adopted changes to its methodology pursuant to the URAA's implementation procedure. The Department cannot and will not circumvent the statutory process established for implementing WTO findings.

Comment 10: Sales Passing the Cohen's *d* Test Based on Time

Deacero's Arguments

- If the Department declines to use the preferred A-A method, it should omit U.S. sales that passed the Cohen's *d* test based on time period from the "ratio test," because differences in quarterly prices during the POR reflect market conditions, not an effort to dump product during certain time periods. In fact, the CONNUMs covering U.S. sales passing the Cohen's *d* test based on time period were not dumped in the U.S. market.
- The record evidence indicates that the prices of U.S. sales passing the Cohen's *d* test based on time periods were set in accordance with market conditions and were not dumped. The fact that the prices of certain CONNUMs followed the same price trend during the POR support the conclusion that changes in price during the POR reflect market conditions, and were not an effort to dump product during certain periods.
- Furthermore, even using the A-T method, with zeroing, none of these CONNUMs were dumped in the United States during the POR. Therefore, in applying the "ratio test," the Department should disregard U.S. sales that pass the Cohen's *d* test based on time period.
- While the case law holds that the Department is not obligated to consider whether factors other than targeted dumping account for a pattern of significant price differences, it is equally true that the statute does not prohibit the Department from considering other factors.
- The Department itself recognizes that its differential pricing analysis is not settled practice, and that the Department is continuing to develop its approach for unmasking targeted dumping under section 777A(d)(l)(B) of the Act. Thus, in this instant case, the Department should find that market conditions explain the differences in quarterly prices during the POR particularly since none of the CONNUMs were dumped, and should omit U.S. sales passing the Cohen's *d* test based on time period from the "ratio test."

Petitioner's Rebuttal Arguments

- The statute explicitly identifies "time periods" as one of three variables to be examined by the Department. Without any support, evidence, or cited precedent, Deacero requests that the Department remove the "time periods" component from its differential pricing analysis by

[69] *See, e.g.*, SAA at 659 ("WTO dispute settlement panels will have no power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it."); *see also Corus Staal BV v. United States*, 395 F.3d 1343, 1349 (Fed. Cir. 2005).

excluding sales that pass the Cohen's *d* test based on time periods. The Department should summarily reject Deacero's argument.

- Deacero cites no record evidence to support its argument that the prices of U.S. sales passing the Cohen's *d* test based on time periods were set in accordance with the market conditions and were not dumped.
- The mere existence of price fluctuations that follow a certain pattern does not suffice to show that market conditions explain the trends. Rather, the existence of price trends only confirms that a seller is selling at lower prices in some periods and at higher prices in others.
- The statute does not require the Department to consider whether there were any alternative causes to price differences observed in a differential pricing analysis. Consequently, the Department has consistently rejected similar arguments as meritless in prior antidumping proceedings,[70] and should continue to do so here.
- The CAFC has repeatedly held that the differential pricing analysis does not require the Department to determine why price variations exist, adding that doing so would create a tremendous burden on the Department that is not required or suggested by the statute.[71]

Department's Position: We disagree with Deacero that if the Department declines to use the preferred A-A method, the Department should omit U.S. sales that passed the Cohen's *d* test based on time period from the "ratio test," because differences in quarterly prices during the POR reflect market conditions. In determining whether a pattern of export prices existed, the Department correctly applied the Cohen's *d* test to all of Deacero's export prices.

As the Department stated in *Shrimp from Vietnam*,[72] the purpose of the Cohen's *d* test is to evaluate whether sales of comparable merchandise to a particular purchaser, region or time period in each test group exhibit prices that are significantly different from sales to all other purchasers, regions, or time periods, respectively. In other words, each time the Cohen's *d* test compares a group of sales defined by purchaser, region or time period, the comparison group of sales must include all other sales reported in the U.S. sales database, regardless of whether they "Pass" or "Fail" the Cohen's *d* test or whether they have even been tested. It is that universe of sales which serves as the basis for determining whether prices differ significantly, not only the sales that "Fail" the Cohen's *d* test. Therefore, excluding any sales from the comparison group will skew the universe of sales against which the test group is compared, and the results of the Cohen's *d* test will be flawed.

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[70] *See Final Results of Antidumping Duty Review: Certain Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China*, 80 FR 40998 (July 14, 2015), and accompanying IDM at 69. *See also Final Results of Antidumping Duty Review: Polyethylene Terephthalate Film, Sheet, and Strip from India*, 80 FR 11160 (March 2, 2015), and accompanying IDM at 13.

[71] See *JBF RAK*, 790 F.3d 1358, 1368; *see also Borusan Mannesmann Boru Sanayi ve Ticaret A.S.* v. *United States,* 608 F. App'x 948, 949 (Fed. Cir. 2015) (finding that "{n}othing in the language of the statute requires Commerce to take the extra analytical step proposed by {the respondent}, consideration of {the respondent's} alternate explanations for the pricing patterns observed through use of the *Nails* test").

[72] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57047 (September 24, 2014) (*Shrimp from Vietnam*), and accompanying IDM at Comment 2.

When the Department applies the first stage of the differential pricing analysis, the Department is unaware for purposes of its analysis if sales are dumped or not. That is not the issue at that stage of the differential pricing analysis. The question at that stage is whether or not a pattern of prices that differ significantly exists. In answering the question of whether there is a pattern of prices that differ significantly, this analysis includes no comparisons with NVs. Indeed, section 777A(d)(1)(B)(i) of the Act contemplates no such comparisons.

In addition, it would be impossible to implement Deacero's suggestion to exclude the sales which pass the Cohen's *d* test from being part of the comparison group. First, when the first comparison is made, the status of all other sales is unknown. Further, whether the sales to particular purchasers, regions or time periods pass or fail will depend on the order in which they are tested and either excluded or included in the comparison group.

The statute directs the Department to examine the significance of price differences among purchasers, regions or time periods. The Department's methodology reflects the direction of the statute. The Cohen's *d* test examines the weighted-average price to each purchaser, region or time period with the weighted-average price for all other sales of comparable merchandise. The Department continues to find that this is a reasonable, transparent and predictable approach to implement the language of the statute and the SAA.

Further, the statute requires only a finding of a pattern of prices that differ "significantly;" the statute does not require that the Department identify and address causal links or the intent of the exporter as an excuse for observed prices that differ significantly. The CAFC and CIT have held that the purpose or intent behind an exporter's pricing behavior in the U.S. market is not relevant to the Department's analysis of the statutory provisions of section 777A(d)(1)(B) of the Act.[73] The CAFC has stated:

> Section {777A(d)(1)(B)} does not require Commerce to determine the reasons why there is a pattern of export prices for comparable merchandise that differs significantly among purchasers, regions, or time periods, nor does it mandate which comparison methods Commerce must use in administrative reviews. As a result, Commerce looks to its practices in antidumping duty investigations for guidance. Here, the CIT did not err in finding there is no intent requirement in the statute, and we agree with the CIT that requiring Commerce to determine the intent of a targeted dumping respondent "would create a tremendous burden on Commerce that is not required or suggested by the statute."[74]

Therefore, in the final results the Department has continued to use the same differential pricing methodology employed in the *Preliminary Results*.

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[73] *See JBF RAK LLC v. United States*, 991 F. Supp. 2d 1343, 1355 (CIT 2014); aff'd *JBF RAK*, 790 F.3d 1358. *See also Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. v. United States*, 2015 U.S. App. LEXIS 10653 (Fed. Cir. 2015). *See also Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1301 (CIT 2014) (stating that "the statute does not require Commerce to decide why sales were targeted before imposing the A-T remedy").

[74] *See JBF RAK*, 991 F. Supp. 2d at 1355 (internal quotation marks and citation omitted). *See also JBF RAK*, 790 F.3d at 1368.

COMMENTS CONCERNING GRUPO SIMEC

Comment 11: Whether to Apply Adverse Facts Available to Grupo Simec

Petitioner's Arguments

- Grupo Simec consistently failed to distinguish with completeness and clarity the legal entities that produced subject merchandise at the unincorporated production facilities, and as a result, has frustrated the Department's ability to calculate an accurate dumping margin.[75]
- Grupo Simec's fifth supplemental questionnaire response filed just prior to the *Preliminary Results* revealed information that prevented the Department from performing a collapsing analysis that included all the companies that owned or controlled production assets, or which otherwise correctly reflected the deployment of production assets within Grupo Simec's larger structure.[76]
- The Department's questionnaires focus on the legal entities that cause subject merchandise to be produced and exported, not on individual production facilities. However, Grupo Simec failed to observe this distinction and instead reported on the basis of its unincorporated plants, rather than on the independently incorporated legal entities operating those plants.[77]
- Grupo Simec's inappropriate and inadequate production facility-based reporting does not capture all expenses associated with fixed assets, such as depreciation, maintenance improvements, *etc*. By failing to report completely and accurately the costs associated with its fixed assets, Grupo Simec has necessarily failed to act to the best of its ability to comply with Department instructions and impeded the Department's ability to make appropriate and accurate calculations in this review.[78]
- Because Grupo Simec has reported affiliated transfers on the basis of plant-specific information rather than by legal entities, the Department lacks the information necessary to evaluate the scrap, labor and fixed asset inputs provided by affiliated suppliers, in accordance with sections 773(f)(2) and (3) of the Act, *i.e.*, the transactions disregarded and major input rules.[79]
- G&A expenses reflect a bizarre amalgamation of data taken from individual plants blended with some company-specific data, rather than the G&A expenses of the legal entities that caused the subject merchandise to be produced. Furthermore, Grupo Simec's fifth supplemental identifies additional companies as the asset owners of the production facilities, but these companies were not listed in the G&A expense calculations. This improper and inadequate reporting renders the reported G&A expense data incomplete and unreliable.[80]
- As a result of these deficiencies, the Department should apply total adverse inferences to Grupo Simec for the final results. Because Grupo Simec's cost information cannot reliably be used in this review, the Department should apply the Petition's highest dumping margin of 66.70 percent to determine Grupo Simec's margin.[81]

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[75] *See* Petitioner's Case Brief at 23.
[76] *Id.,* at 32-36.
[77] *Id.,* at 24-26.
[78] *Id.,* at 30-32.
[79] *Id.,* at 36-38.
[80] *Id.,* at 27-30.
[81] *Id.,* at 38-40.

- Alternatively, if the Department determines not to apply total adverse inferences to the margin calculation, the Department should apply adverse inferences to Grupo Simec's cost reporting by replacing the individual CONNUM-specific cost data in its calculations with the CONNUM that has the highest cost.

Grupo Simec's Rebuttal Arguments

- The record demonstrates that Grupo Simec has been fully cooperative in this review and has submitted timely and complete responses to all requests for information by the Department in the form requested by the Department. Furthermore, the Department has not informed Grupo Simec of any remaining deficiencies or concerns regarding its responses, nor, as further discussed below, is there any basis to the petitioner's contentions that there are inaccuracies in Grupo Simec's reported costs. As such, there is no justification for the application of adverse facts available, which is the Department's harshest penalty for the most egregious of circumstances, in the instant case.[82]
- Contrary to the petitioner's claims, Grupo Simec did not report on the basis of production plants. Rather, consistent with the Department's longstanding practice of collapsing affiliated producers in determining the cost of production, Grupo Simec properly reported the costs for all affiliated rebar producers on a collapsed basis.[83] Because Grupo Simec groups costs by plants in the normal course of business, the reported cost files were likewise broken down by plant. However, Grupo Simec demonstrated that the costs reported for each plant reconciled to the financial statements of the affiliated legal entities that operated the plants, *i.e.*, the collapsed companies. Thus, the fact that Grupo Simec groups costs by plants in the normal course of business does not impact the accuracy and the completeness of the reported costs, given that all costs of production incurred at the plants and recorded by the affiliated companies were reported on a collapsed basis.[84]
- Much of the petitioner's argument rests on the incorrect premise that there are separately-recorded plant costs that are not reflected in the producing companies' financial records. Grupo Simec has demonstrated through numerous reconciliations that all costs incurred at Grupo Simec's plants are captured in the financial statements of the producing companies, which, in turn, are fully captured in the cost of production reported to the Department. Further, Grupo Simec has demonstrated that all costs associated with inputs provided by affiliated suppliers are likewise included in the reported costs.
- Grupo Simec has identified the companies that incur the production costs and sell the merchandise, *i.e.*, have ownership over the materials and merchandise and operate the plants, and those that own the production assets. Grupo Simec's reporting methodology was described clearly in each of its questionnaire responses, and the Department neither indicated any issues or concerns over Grupo Simec's methodology nor requested Grupo Simec to report its costs on any alternative basis. Accordingly, Grupo Simec cannot now be faulted for its reporting methodology.
- Grupo Simec's reporting methodology did not lead to any flaws in the Department's collapsing analysis or the application of transactions disregarded and major input rules. While the petitioner references the additional fixed asset owners identified in the fifth supplemental response, Grupo Simec counters that there is no reason to collapse companies

[82] *See* Grupo Simec's Rebuttal Brief at 2-4.
[83] *Id.,* at 4 (citing 19 CFR 351.401(f)).
[84] *Id.,* at 4-6.

that provide inputs, but do not produce the merchandise under consideration or operate the facilities producing such merchandise. Consequently, all information relevant to collapsing and the application of transactions disregarded and major input rules were fully reported by Grupo Simec and properly considered in the Department's analysis.[85]

- Grupo Simec's narrative explanations and the requested reconciliations demonstrate that all costs related to fixed assets, including depreciation, maintenance and upkeep, were fully reported.[86]
- Grupo Simec reported all data requested by the Department with regard to its affiliated scrap and labor transactions. Furthermore, because all affiliated rebar producers have been collapsed and are treated as a single entity for the purposes of the dumping analysis, it is irrelevant which particular operating company within the collapsed entity purchased scrap from affiliated suppliers. Thus, the affiliated party transactions between the collapsed entity and affiliated suppliers were properly reported and analyzed by the Department and any transactions between the individual collapsed entities are irrelevant.[87]
- Grupo Simec's G&A ratio calculation is consistent with the Department's instructions and practice. Because its plant costs are recorded by multiple affiliated companies all under the control of Grupo Simec, the company initially reported the G&A expenses based on the consolidated financial results of Grupo Simec. However, the Department then instructed Grupo Simec to report the G&A expenses based on the unconsolidated financial statements of the producing companies; therefore, as requested by the Department, Grupo Simec recalculated the G&A expense ratio based on the unconsolidated results of these companies.[88]
- There is no basis to the petitioner's argument that Grupo Simec omitted the G&A expenses that were incurred by the companies that own the production facilities. In accordance with the Department's normal practice and instructions, the reported G&A expenses were based on the expenses incurred by the producing companies. Other than the costs related to the fixed assets (such as depreciation which were captured in the reported fixed overhead costs in the cost database), the expenses of other non-collapsed fixed asset owners are properly not considered in the G&A expense calculation.

Department's Position: The Department disagrees with the petitioner that the application of total adverse facts available is warranted and finds that Grupo Simec acted to the best of its ability in providing the Department with complete questionnaire responses. Sections 776(a)(1) and (2) of the Act provide that the Department, subject to section 782(d) of the Act, shall apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

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[85] *Id.,* at 9-12.
[86] *Id.,* at 10.
[87] *Id.,* at 11.
[88] *Id.,* at 6-8.

For analyzing a respondent's cost reporting, section 773(f)(1)(A) of the Act directs that "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise." Accordingly, the Department will normally rely on a company's normal books and records if two conditions are met: 1) the books are kept in accordance with the home country's GAAP; and, 2) the books reasonably reflect the cost to produce and sell the merchandise.

While Grupo Simec's corporate structure is complex and requires the consideration of multiple entities for reporting purposes, the statute explains that the application of AFA is exclusively dependent upon whether a respondent cooperated and acted to the best of its ability in providing the Department with the information requested. In this case, Grupo Simec has fully and timely responded to all of the Department's questionnaires, including answering all questions related to their corporate structure and identifying all producers of subject merchandise.[89] See our discussion of these entities in the Collapsing Memorandum.[90] Thus, we do not find that Grupo Simec failed to provide information or impeded the Department's ability to determine the relevant entities for collapsing purposes such that total AFA is warranted. *See* Comment 13 below for the Department's discussion of the parties' arguments concerning revisions to the collapsing analysis. Hence, the question facing the Department is whether Grupo Simec's reported per-unit costs are based on their GAAP-based records and whether they reasonably reflect the cost to produce and sell the merchandise under consideration. We have addressed below each of the cost reporting issues raised by the petitioner to determine whether they warrant adverse facts available for the final results.

First, we disagree with the petitioner that because Grupo Simec reported a distinct cost database for each production facility and these production facilities are not separate legal entities, an adverse inference with regard to costs is necessary. Grupo Simec operates under a complex corporate structure whereby eight legal entities operated the group's five production facilities during the POR.[91] Grupo Simec explained that each production plant functions as a separate business unit and maintains its own accounting, production, and inventory records.[92] The monthly accounting records accumulated by each plant are then compiled into plant-specific financial statements that are forwarded for incorporation into the individual operating company and consolidated group financial statements.[93] Because the detailed information regarding production quantities and costs are maintained at the plant level, Grupo Simec likewise compiled

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[89] *See* Grupo Simec's initial questionnaire response (IQR) section A (AQR), dated February 22, 2016, at Exhibit A-2c and fourth supplemental questionnaire dated November 7, 2016 (Nov 7 SQR) at Exhibit S4-1a.
[90] *See* Memorandum, "Preliminary Results of Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bar from Mexico; 2014-2015: Affiliation and Collapsing Memorandum for the Grupo Simec," dated December 5, 2016 (Collapsing Memorandum) where the Department collapsed Simec, the parent company, with the eight affiliated companies that operated its plants during the POR.
[91] *See* Grupo Simec's AQR at 5-6 and 13.
[92] *Id.,* at 6 and 23.
[93] *Id.*

a separate cost database for each plant.[94] The plant-specific CONNUM costs were then weight-averaged to reflect the per-unit CONNUM costs for the collapsed entity. This methodology enables Grupo Simec to demonstrate how the costs reported for each plant reconcile with the plant's underlying production and accounting records. Further, Grupo Simec's overall cost reconciliation commences with the total costs reported in the consolidated Grupo Simec financial statements, which include the eight operating companies, and reconciles the total costs of the eight operating companies to the total of the reported costs, thereby ensuring that any additional costs incurred by the operating companies not reflected in the plant records have been captured in the reported costs.[95] Therefore, we find that Grupo Simec based its cost reporting on its normal books and records, which reflect home country GAAP, in accordance with section 773(f)(1)(A) of the Act. Further, we find no record evidence to support that such reporting resulted in a distortion of the per-unit manufacturing costs of the merchandise under consideration because, as noted above, the reported costs reconcile to the audited financial statements of Grupo Simec. Thus, we do not find that Grupo Simec's production plant-based cost reporting is grounds for adverse inferences.

With regard to fixed asset expenses, we agree with the petitioner, in part. We agree that there are certain deficiencies in Grupo Simec's reported depreciation expenses for which adjustments are necessary; however, we do not find that adverse inferences are appropriate. Grupo Simec provided, as requested, the depreciation and any fixed asset-related expenses recorded by each of the fixed asset owners in relation to each production plant and a reconciliation of these expenses to the reported costs.[96] As directed by the Department, Grupo Simec also reconciled the depreciation expenses for two selected plants to the fixed asset owner's audited financial statement, which in turn reconciles to Grupo Simec's consolidated financial statement.[97] While Grupo Simec has been responsive to our requests, our review of the solicited information uncovered certain depreciation expenses that were excluded from the reported costs. We find that it is not appropriate to exclude these depreciation expenses and have, therefore, revised the reported fixed overhead expenses accordingly in these final results. Additionally, we agree with the petitioner that the transactions with the non-collapsed fixed asset owners should be analyzed in accordance with section 773(f)(2) of the Act, *i.e.*, the transactions disregarded rule. *See* Comment 12 and 13 below for our discussion of the fixed overhead adjustments and the application of the transactions disregarded and major input rules. Finally, we disagree with the petitioner that the other costs associated with fixed assets, such as maintenance and upkeep of the equipment, have been excluded from the reported costs. Rather, the Department requested a schedule of all fixed asset-related expenses that were recognized on the books of the fixed asset owners, and Grupo Simec provided the requested schedules demonstrating how those expenses were captured in the reported costs.[98] Further, we note that the variable overhead expenses

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[94] *See, e.g.*, Grupo Simec's supplemental questionnaire response dated September 20, 2016 (Sept 20 SQR), at Exhibits D-40 and D-41.
[95] *Id.* at Exhibit D-39 and Grupo Simec's supplemental questionnaire response dated November 14, 2016 (Nov 14 SQR) at Exhibit 1.
[96] *See* Grupo Simec's supplemental questionnaire response dated November 22, 2016 (Nov 22 SQR) at 1 and Exhibit S5-2.
[97] *Id.*
[98] *Id.*

captured at the plant level include maintenance expenses.[99] Thus, with the exception of the depreciation expense adjustments noted above, we found no record evidence to support that there are any additional fixed asset-related expenses that have been excluded from the reported costs.

We also disagree with the petitioner that Grupo Simec's plant-specific cost reporting prevents a proper analysis of Grupo Simec's affiliated scrap, labor and fixed asset transactions, in accordance with sections 773(f)(2) and (3) of the Act, *i.e.*, the transactions disregarded and major input rules. Rather, we find that Grupo Simec, as instructed, provided sufficient information for the Department to analyze the company's transactions with affiliated and unaffiliated parties.[100] *See* Comment 12 and 13 below for our discussion regarding the application of the transactions disregarded and major input rules. Thus, while our analysis of the data regarding affiliated transactions provided by Grupo Simec may result in adjustments to the reported costs, we do not find support for adverse inferences.

Finally, we do not agree that Grupo Simec's G&A expense calculation methodology supports adverse inferences. As noted by Grupo Simec, the company originally provided its G&A ratio based on its consolidated 2014 financial statement.[101] Pursuant to the Department's instructions, the company revised its calculation to reflect the G&A expenses from the producing companies' unconsolidated 2015 financial statements.[102] However, Grupo Simec's complex corporate structure complicates the calculation of the G&A expense ratio under the Department's normal practice, *i.e.*, a separate G&A ratio for each collapsed producer to be applied to its own manufacturing costs.[103] Thus, while there are certain unique circumstances to consider in this case to ensure that G&A expenses are appropriately accounted for, we disagree with the petitioner's assertion that Grupo Simec was unresponsive and non-cooperative in this regard. *See* Comment 12 for our discussion of the G&A expense ratio calculation. Furthermore, where Grupo Simec has transacted with non-collapsed affiliated parties, the costs of such inputs have been analyzed in accordance with the transactions disregarded and major input rules. As such, the G&A expenses of the affiliated suppliers will be incorporated, if applicable, in the affiliated supplier's cost of the input and not as part of the respondent producers' G&A expenses. *See* Comment 12 and 13 below for our discussion regarding the application of the transactions disregarded and major input rules.

Therefore, based on the foregoing discussion, we did not apply AFA to either the margin calculation or the cost information for the final results.

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[99] *See* Grupo Simec's section D questionnaire response dated March 21, 2016 (Mar 21 DQR) at Exhibit D-9.
[100] *See* Grupo Simec's Mar 21 DQR at Exhibits D-3 and D-4; Grupo Simec's supplemental section A, B, and D questionnaire response dated September 7, 2016 (Sept 7 SQR) at Exhibit D-19; Grupo Simec's Sept 20 SQR at Exhibits D-35 and D-36; and, Grupo Simec's Nov 22 SQR at Exhibits S5-3, S5-5, and S5-5.
[101] *See* Grupo Simec's Mar 21 DQR, at Exhibit D-12.
[102] *See* Grupo Simec's Nov 7 SQR at S4-2 and Exhibit S4-2.
[103] *See, e.g.*, *Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review*, 69 FR 13813 (March 24, 2004) (*Silicomanganese from Brazil*) and accompanying IDM at Comment 11; and *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Canada*, 67 FR 55782 (August 30, 2002) (*Wire Rod from Canada*) and accompanying IDM at Comment 26.

Comment 12: Whether to Adjust Grupo Simec's Reported Costs

Petitioner's Arguments

- If the Department determines that adverse inferences are not warranted, the Department should recalculate Grupo Simec's cost of scrap, labor, depreciation and G&A by re-analyzing the affiliated transactions to determine whether they were at arm's length and considering the convoluted corporate structure in the calculation of G&A.[104]
- If adverse inferences are not applied, the Department must revisit its transactions disregarded and major input analyses for scrap, depreciation and labor in light of the most recent data regarding the ownership and control of Grupo Simec's production assets.[105]
- The Department must fill in the gaps in the record and upwardly adjust Grupo Simec's expenses to account for omitted depreciation, maintenance, and similar expenses that were incurred, but not reported, by the owners of the fixed assets.[106]
- The Department should recalculate Grupo Simec's G&A expenses based on its standard practice, to the extent possible, rather than rely on Grupo Simec's most recently revised G&A calculations, which mix company-level and plant-level expenses without reason or explanation. Specifically, Grupo Simec calculates the total G&A expenses of the operating entities, but then deducts the indirect selling expenses of the unincorporated production plants rather than those of the operating companies on which the G&A calculation is based.[107]
- Because Grupo Simec's revised G&A calculations are based on the unconsolidated data of the collapsed companies, the Department must also upwardly adjust the G&A expenses to account for missing expenses incurred by the additional companies reported in Grupo Simec's fifth supplemental questionnaire response.[108]

Grupo Simec's Rebuttal Arguments

- Grupo Simec's narrative explanations and the requested reconciliations demonstrate that all costs related to fixed assets, including depreciation, maintenance, and upkeep, were fully reported.[109]
- Grupo Simec reported all data requested by the Department with regard to its affiliated scrap and labor transactions. Furthermore, because all affiliated rebar producers have been collapsed and are treated as a single entity for the purposes of the dumping analysis, it is irrelevant which particular operating company within the collapsed entity purchased scrap from affiliated suppliers. Thus, the affiliated party transactions between the collapsed entity and affiliated suppliers were properly reported and analyzed by the Department, and any transactions between the individual collapsed entities are irrelevant.[110]
- Grupo Simec contends that its G&A ratio calculation is consistent with the Department's instructions and practice. Because its plant costs are recorded by multiple affiliated companies all under the control of Grupo Simec, the company initially reported the G&A

[104] *See* Petitioner's Case Brief at 42-44.
[105] *Id.,* at 45.
[106] *Id.,* at 43-44.
[107] *Id.,* at 28 and 42-43.
[108] *Id.,* at 42-43.
[109] *See* Grupo Simec's Rebuttal Brief at 8-10.
[110] *Id.,* at 11.

expenses based on the consolidated financial results of Grupo Simec. However, the Department then instructed Grupo Simec to report the G&A expenses based on the unconsolidated financial statements of the producing companies; therefore, as requested by the Department, Grupo Simec recalculated the G&A expense ratio based on the unconsolidated results of these companies. The indirect selling expenses in question were reported in the sales databases and are therefore appropriately excluded from G&A expenses. Contrary to the petitioner's assertions, these expenses were recorded by both the plants and the operating companies.[111]

- Grupo Simec states there is no basis to the petitioner's argument that Grupo Simec omitted the G&A expenses that were incurred by the companies that own the production facilities. In accordance with the Department's normal practice and instructions, the reported G&A expenses were based on the expenses incurred by the producing companies. Other than the costs related to the fixed assets (such as depreciation which was captured in the reported fixed overhead costs in the cost database), the expenses of other non-collapsed fixed asset owners are properly not considered in the G&A expense calculation.[112]

Department's Position: We agree with the petitioner, in part. Specifically, for these final results, we have adjusted the fixed overhead expenses to include certain depreciation expenses omitted from the reported costs and adjusted the reported value of transactions with the affiliated, non-collapsed, fixed asset owners in accordance with section 773(f)(2) of the Act. We analyzed the scrap and labor transactions between the collapsed entity and its affiliated suppliers in accordance with sections 773(f)(2) and (3) of the Act and determined no adjustment was necessary. We have not adjusted the reported G&A expenses for the final results.

With regard to the omission of expenses related to fixed assets, we agree with the petitioner that certain depreciation expenses have been inappropriately excluded from the reported costs. Consequently, we have adjusted the reported fixed overhead expense to include these costs. Due to the proprietary nature of this discussion, *see* Grupo Simec Final Calculation Memorandum for additional details.[113]

Although the petitioner surmises that there may be additional unaccounted for factory overhead expenses related to fixed assets, such as maintenance or upkeep of fixed assets, we fail to find record evidence to support these contentions. Rather, at our request, Grupo Simec demonstrated that the reported fixed asset-related expenses for selected plants reconcile to the underlying financial statements of the fixed asset owners. Further, we noted that the maintenance and other indirect expenses related to fixed assets that were incurred at the plant level have been captured in the reported costs.[114]

Finally, regarding affiliated transactions, we analyzed the fixed asset, scrap, and labor transactions between the collapsed entity and its affiliated suppliers, in accordance with sections

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[111] *Id.,* at 6-8.
[112] *Id.*
[113] *See* Memorandum to the File, "Grupo Simec S.A.B. de C.V. Final Results Sales and Cost Analysis Memorandum," dated concurrently with this memorandum (Grupo Simec Final Calculation Memorandum).
[114] *See, e.g.*, Grupo Simec's Mar 21 DQR at 31-32.

773(f)(2) and (3) of the Act. Based on these analyses, we found that it was appropriate to adjust the costs reported by the non-collapsed fixed asset owners to include amounts for G&A and financial expenses. Because the affiliated fixed asset transactions were reported at cost, we then adjusted Grupo Simec's reported fixed overhead costs to reflect the non-collapsed fixed asset owners' costs inclusive of G&A and financial expenses.[115] However, with regard to scrap, we found that based on the comparisons submitted, the POR average affiliated transfer price was higher than either the market price or the affiliates' costs of the scrap; therefore, no adjustment was warranted.[116] For labor, we selected one of Grupo Simec's affiliated labor suppliers to test the arm's-length nature of the transactions. In doing so, we compared the POR affiliated transfer prices to the affiliate's cost of the services, finding that no adjustment was needed.[117]

With regard to G&A expenses, we note that the Department's practice where multiple producers have been collapsed into a single entity is to calculate producer-specific G&A expense ratios, which are then applied to each collapsed producer's individual cost database.[118] Then, the per-unit CONNUM costs from the cost databases reported for each collapsed producer, including the producer-specific G&A expenses, are weight averaged together to calculate the per-unit costs for the collapsed entity.[119] Here, Grupo Simec's complex corporate structure complicates the calculation of the G&A expense ratios under the Department's normal practice since the POR production activities of the collapsed respondent's five production plants were recognized in the financial statements of eight different operating companies.[120] Yet, Grupo Simec's detailed cost accounting and production records are maintained at the plant level; thus, the cost databases were accordingly reported at the plant level. We also note that in the normal course of business, the monthly plant-specific data are summarized and submitted to the corporate offices for incorporation into the financial statements of the eight Grupo Simec entities that act as the operators of the production facilities. Thus, while production expenses, with the exception of depreciation expenses, were accumulated at the plant level, G&A expenses were accumulated at both the plant and operating company levels. Because of this unique fact pattern, Grupo Simec originally reported its G&A expenses based on its 2014 consolidated financial statements, which include the results of all eight operating companies; however using consolidated financial statements is not in accordance with the Department's practice, which is to calculate producer-specific G&A expenses.[121] The Department later requested that Grupo Simec revise its costs to reflect the producer, *i.e.*, operating company, specific G&A expenses based on their separate unconsolidated 2015 financial statements, which is consistent with our previous determinations regarding multiple producers that have been collapsed into a single entity.[122] In doing so, Grupo Simec reported the producer-specific G&A expenses of the eight operating companies and deducted the indirect selling expenses. Grupo Simec then combined the net producer-specific G&A expenses and divided the total by a similarly combined cost of goods sold.[123]

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[115] *See* Grupo Simec Final Calculation Memorandum at Attachment 1.
[116] *See* Grupo Simec's Mar 21 DQR at Exhibit D-4 and Grupo Simec's Nov 22 SQR at Exhibit S5-4.
[117] *See* Grupo Simec's Sept 20 SQR at Exhibit D-35-1 through D-35-3.
[118] *See*, *e.g.*, *Silicomanganese from Brazil* IDM at Comment 11; and, *Wire Rod from Canada* IDM at Comment 26.
[119] *Id.*
[120] *See* Grupo Simec's AQR at 5-6, 13, and 23.
[121] *See* Grupo Simec's DQR at Exhibit D-12 and *e.g.*, *Silicomanganese from Brazil* IDM at Comment 11; and, *Wire Rod from Canada* IDM at Comment 26.
[122] *See* Grupo Simec's Nov 7 SQR at 2 and Exhibit S4-2.
[123] *Id.,* at Exhibit S4-2.

Based on the parties' arguments, we have reexamined the record data with regard to Grupo Simec's G&A expenses and find that in this instance, its reported methodology is reasonable. For the final results, we have relied on the combined G&A expense ratio calculated by Grupo Simec based on its producer-specific 2015 financial statements, as it reflects the results of the individual producers. With regard to the petitioner's contention that G&A expenses related to the fixed asset owners have been improperly excluded, we note that the entities in question have not been found to be part of the collapsed entity. As such, all transactions between the collapsed entity and non-collapsed affiliated parties have been analyzed in accordance with the transactions disregarded or major input rules. Thus, the G&A expenses of the affiliated suppliers have been incorporated, if applicable, in the affiliated suppliers' costs of the inputs and not as part of the collapsed producers' G&A expenses. Regarding indirect selling expenses, we agree with Grupo Simec that these expenses were included in the reported sales databases and are therefore appropriately excluded from the G&A expenses. Further, based on Grupo Simec's reporting structure, *i.e.*, the plants compile their monthly information and forward the information for inclusion in the operating company's results, we disagree with the petitioner that the plant level indirect selling amounts should not be deducted since they cannot be part of the operating company level G&A expenses.

Comment 13: Whether to Revise the Department's Collapsing Analysis

Petitioner's Arguments

- The Department preliminarily determined to collapse nine companies operating under Grupo Simec's larger corporate umbrella, having found that they owned or operated production assets that would not need significant retooling to manipulate the production of subject goods.
- However, Grupo Simec's last questionnaire response indicates that the agency's preliminary analysis was based on incomplete information regarding the companies involved in the production of subject merchandise.
- The Department received new and important information affecting its collapsing analysis, just prior to the *Preliminary Results*, and the new corporate entities should be either incorporated into the Department's collapsing analysis or considered pursuant to the transactions disregarded and major input rules.[124]

Grupo Simec's Rebuttal Arguments

- Revisiting the collapsing analysis or the application of the transaction disregarded/major input rule is not warranted.

Department's Position: The Department disagrees with the petitioner, in part. As discussed in the Department's Collapsing Memorandum, the Department's practice is to collapse producers of subject merchandise and prevent the manipulation of price or production.[125] In the *Preliminary Results*, the Department collapsed the eight legal entities that operated the group's five production facilities of subject merchandise and treated these companies as a single entity. In its

[124] *See* Petitioner's Case Brief at 41.
[125] *See* Collapsing Memorandum at 7.

supplemental questionnaire response, Grupo Simec identified the fixed asset owners, *i.e.*, equipment owners, of the five plants where subject merchandise is produced.[126] Grupo Simec explained that the owners of the fixed assets allow the eight operating companies of subject merchandise to use the fixed assets.[127] Due to the proprietary nature of this discussion, *see* Grupo Simec's Final Results Calculation Memorandum for additional details. The non-collapsed fixed asset owners are not producers of subject merchandise, and the record evidence does not contradict that understanding.[128] Therefore, the non-collapsed fixed asset owners do not meet the requirements for collapsing.[129]

We are treating the operating companies of subject merchandise and the non-collapsed fixed asset owners as affiliated parties. The transactions disregarded rule, *i.e.*, section 773(f)(2) of the Act, provides 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." The major input rule, *i.e.*, section 773(f)(3) of the Act, which applies to transactions involving a significant input of the merchandise between affiliated parties, mandates that in such instances where the Department has "reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, {the Department} may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under {the transaction disregarded rule}." Pursuant to 19 CFR 351.407(b), for any major input purchased from affiliated parties, the Department values the input based on the higher of the transfer price (the price paid by the exporter or producer to the affiliated person for the major input), the market price, or the cost to the affiliated person of producing the major input, and in accordance with section 773(f)(3) of the Act, adjusts the reported costs to reflect the highest of these three amounts.[130] As discussed in *Stainless Wire from Canada*, the intent of sections 773(f)(2) and (3) of the Act "and the related regulations is to account for the possibility of shifting costs to an affiliated party. This possibility arises when an input passes to the responding company through the hands of an affiliated supplier."[131] We determine that it is appropriate to apply the transactions disregarded and major input provisions of the statute to the transactions between the collapsed operating companies and the non-collapsed fixed asset owners. As discussed in Comment 12, based on our analysis of the reported depreciation expenses, G&A, and financial expenses of the non-collapsed fixed assets owners, the Department adjusted fixed overhead,

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[126] *See* Grupo Simec's Nov 22 SQR at Exhibit S5-1.
[127] *Id*., at 2.
[128] *See* Grupo Simec's AQR at A-5 and Exhibit A-2d.
[129] *See Sugar from Mexico: Final Determination of Sales at Less Than Fair Value*, 80 FR 57341 (September 23, 2015) and accompanying IDM at Comment 9 where the Department discusses whether an affiliated supplier of electricity should be collapsed with the producers of subject merchandise.
[130] *See*, *e.g.*, *Chlorinated Iscoyanurates From Japan: Final Determination of Sales at Less Than Fair Value*, 79 FR 56059 (September 18, 2014) and accompanying Issued and Decision Memorandum at Comment 3; *Notice of Final Determination of Sales at Not Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin from Taiwan*, 70 FR 13454 (March 21, 2005) accompanying IDM at Comment 8.
[131] *See Stainless Notice of Final Determination of Sales at Less Than Fair Value: Steel Round Wire from Canada*, 64 FR 17324, 17335 (April 9, 1999); *see also Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 22971 (April 24, 2015) and accompanying IDM at Comment 3.

G&A, and financial expenses of the cost data. *See* Grupo Simec's Final Calculation Memorandum for additional details, which includes business proprietary information.

Comment 14: Clerical Errors

Grupo Simec's Arguments

- The Department should correct a clerical error of deducting peso-denominated expenses from dollar-denominated U.S. price without a currency conversion.
- The Department should edit its customs instructions to include a note and spell out the name of the importer, *i.e.*, Simec USA Corporation.

Petitioner's Rebuttal Arguments

- The Department's preliminary Collapsing Memorandum is based on flawed information; therefore, the Department should not make any revisions pertaining to Grupo Simec.

Department's Position: As explained in the Department's position for Comment 11, 12 and 13, we find a revision of our collapsing analysis is not warranted. We agree with Grupo Simec that certain clerical errors were made to our calculations, and we have corrected those errors in these final results.

VI. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of this review and the final weighted-average dumping margins in the *Federal Register*.

☒ Agree _____ ☐ Disagree _____

6/7/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance