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July 10, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

I. SUMMARY

We analyzed the comments of the interested parties in the less than fair value (LTFV) investigation of emulsion styrene-butadiene rubber (ESB rubber) from Mexico. Based on our analysis and findings at verification, we made changes to the margin calculation for Industrias Negromex S.A. de C.V.—Planta Altamira (Negromex), the mandatory respondent in this investigation. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

- Comment 1: Partial Adverse Fact Available for Negromex’s Financial Expense Rate
- Comment 2: Partial Adverse Facts Available for Negromex’s Domestic Brokerage and Handling Expenses, U.S. Brokerage and Handling Expenses, and U.S. Inland Freight from Warehouse to Customer Expenses
- Comment 3: Partial Adverse Facts Available for Certain Unreported Sales
- Comment 4: Eligibility for a CEP Offset
- Comment 5: Recalculation of Negromex’s G&A Expense Rate



Comment 6: Billing Adjustment

Comment 7: Treatment of Freight Expenses Included in Resirene's SG&A

Comment 8: Apply the Market Price of Styrene to Negromex's COM

Comment 9: Treatment of Technology Expenses in Negromex's G&A Ratio

Comment 10: Short-Term Interest Rate for Negromex's Credit Expenses

II. BACKGROUND

On February 24, 2017, the U.S. Department of Commerce (Department) published the *Preliminary Determination* of sales of ESB rubber from Mexico at LTFV.¹ The period of investigation (POI) is July 1, 2015, through June 30, 2016. In March and April 2017, we conducted verification of the sales and cost of production (COP) data reported by Negromex, pursuant to section 782(i) of the Tariff Act of 1930, as amended (Act).² We invited parties to comment on the *Preliminary Determination*. In May 2017, the petitioners³ and Negromex submitted case and rebuttal briefs.⁴ Based on our analysis of the comments received, as well as our verification findings, we revised the weighted-average dumping margin for Negromex from that calculated in the *Preliminary Determination*.

III. SCOPE COMMENTS

In the *Preliminary Determination*, we did not modify the scope language as it appeared in the *Initiation Notice*.⁵ No interested parties submitted scope comments in case or rebuttal briefs; therefore, the scope of this investigation remains unchanged for this final determination.

¹ See *Emulsion Styrene-Butadiene Rubber from Mexico: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 82 FR 11534 (February 24, 2017) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum from Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, entitled "Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Emulsion Styrene-Butadiene Rubber from Mexico" (Preliminary Decision Memorandum).

² See Memorandum to the File, through Neal Halper, Director, Office of Accounting, from Kalsang Dorjee, Accountant, "Verification of the Cost Response of Negromex in the Antidumping Duty Investigation of Certain Emulsion Styrene Butadiene Rubber (ESBR) from Mexico," dated May 11, 2017 (Negromex's Cost Verification Report); Memorandum to the File, through Paul Walker, Program Manager, Office V, from Julia Hancock, Senior International Trade Analyst, "Verification of U.S. sales of INSA LLC in the Antidumping Duty Investigation of Certain Emulsion Styrene Butadiene Rubber (ESBR) from Mexico," dated May 18, 2017, (INSA CEP Sales Verification Report); Memorandum to the File, through Paul Walker, Program Manager, Office V, from Javier Barrientos, Senior International Trade Analyst, "Verification of Home Market Sales of Negromex in the Antidumping Duty Investigation of Certain Emulsion Styrene Butadiene Rubber (ESBR) from Mexico," dated May 17, 2017 (Negromex's Home Market Sales Verification Report).

³ Lion Elastomers LLC and East West Copolymers (collectively, the petitioners).

⁴ See Letter from the petitioners, "Emulsion Styrene Butadiene Rubber from Mexico: Case Brief," dated May 25, 2017 (the petitioners' Case Brief); Letter from Negromex, "Emulsion Styrene Butadiene Rubber from Mexico: Case Brief," dated May 25, 2017 (Negromex's Case Brief); Letter from the petitioners, "Emulsion Styrene Butadiene Rubber from Mexico: Rebuttal Brief," dated June 1, 2017 (the petitioners' Rebuttal Brief); and Letter from Negromex, "Emulsion Styrene Butadiene Rubber from Mexico: Rebuttal Brief," dated May 30, 2017 (Negromex's Rebuttal Brief).

⁵ See Preliminary Decision Memorandum at "Scope Comments."

IV. SCOPE OF THE INVESTIGATION

For purposes of this investigation, the product covered is cold-polymerized emulsion styrene-butadiene rubber (ESB rubber). The scope of the investigation includes, but is not limited to, ESB rubber in primary forms, bales, granules, crumbs, pellets, powders, plates, sheets, strip, etc. ESB rubber consists of non-pigmented rubbers and oil-extended non-pigmented rubbers, both of which contain at least one percent of organic acids from the emulsion polymerization process.

ESB rubber is produced and sold in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The scope of the investigation covers grades of ESB rubber included in the IISRP 1500 and 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as “Clear” or “White Rubber.” The 1700 grades are oil-extended and thus darker in color, and are often called “Brown Rubber.”

Specifically excluded from the scope of this investigation are products which are manufactured by blending ESB rubber with other polymers, high styrene resin master batch, carbon black master batch (*i.e.*, IISRP 1600 series and 1800 series) and latex (an intermediate product).

The products subject to this investigation are currently classifiable under subheadings 4002.19.0015 and 4002.19.0019 of the Harmonized Tariff Schedule of the United States (HTSUS). ESB rubber is described by Chemical Abstract Services (CAS) Registry No. 9003-55-8. This CAS number also refers to other types of styrene butadiene rubber. Although the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

V. MARGIN CALCULATIONS

We calculated constructed export price (CEP) and normal value (NV) using the same methodology as stated in the *Preliminary Determination*,⁶ except as follows:⁷

- We used the most recently submitted home market and U.S. sales databases, which incorporated the minor corrections we accepted at verification.⁸
- We applied partial adverse facts available (AFA) to Negromex’s financial expense rate. As partial AFA, we used the 2015 financial expense rate of Grupo Kuo S.A.B. de
- C. V. (Grupo Kuo), which is the highest calculated financial expense rate for any of the financial statements on the record.⁹

⁶ See *Preliminary Determination*, and accompanying Preliminary Decision Memorandum, at 8-12.

⁷ See Memorandum to the File from Javier Barrientos, Office V, entitled, “Final Determination Calculations for Negromex,” dated July 10, 2017 (Negromex Final Calculation Memo), and Memorandum to Neal Halper, Director, Office of Accounting, from Kalsang Dorjee, “Cost Calculations for Final Determination of Negromex,” dated July 10, 2017 (Final Cost Calculation Memo).

⁸ See Letter from Negromex, “Emulsion Styrene-Butadiene Rubber from Mexico: Sales and Cost Databases,” dated June 1, 2017, at Exhibits 1-3; Negromex’s Cost Verification Report; Negromex’s Home Market Verification Report; and INSA’s CEP Verification Report. Additionally, please see Comment 3 and Comment 6.

⁹ See Final Cost Calculation Memo, at 1-2. Also, for further discussion, see Comment 1.

- We applied partial AFA to Negromex’s domestic brokerage and handling expenses, U.S. brokerage and handling expenses, and U.S. inland freight from warehouse for sales to a certain customer. As partial AFA for domestic brokerage and handling expenses, and U.S. brokerage and handling expenses, we used the highest reported (estimated) per-unit amount on the record for each of these expenses and applying it to all U.S. sales for the final determination. Additionally, for U.S. inland freight from warehouse for sales to a certain customer, we used the highest reported (estimated) per-unit amount on the record for this expense and applied it to all U.S. sales for this customer.¹⁰
- We are not granting a constructed export price (CEP) offset to Negromex’s U.S. sales for the final determination.¹¹
- We are excluding from the general and administrative (G&A) rate computation the profit associated with Negromex’s sales of services to its affiliate.¹²
- For our transactions disregarded analysis, we relied on the revised affiliated supplier’s verified acquisition cost for styrene for the final determination. Additionally, in conducting our transactions disregarded analysis, we used the Grupo Kuo financial expense rate to calculate the financial expense component of the affiliated reseller’s financial expenses because these financial expenses represent the highest level of consolidation available with respect to the affiliated reseller.¹³
- We agree with Negromex that we will correct the credit expense calculation for home market sales using the correct short-term interest rate it incurred in the home market.¹⁴

VI. DISCUSSION OF THE ISSUES

Comment 1: Partial Adverse Fact Available for Negromex’s Financial Expense Rate

Negromex’s Comments

- The Department should continue to use Negromex’s financial statements for calculating the financial expense rate as it is the highest level of consolidation of Negromex’s financial results and the most adverse financial statements on the record.¹⁵
- Negromex timely filed Dynasol Gestion Mexico’s unconsolidated financial statements and only realized during preparation for verification that the statements were not consolidated.¹⁶ Negromex attempted to submit the consolidated financial statements of Dynasol Gestion Mexico at verification but the Department refused to accept it.¹⁷ Therefore, although the Dynasol Gestion Mexico financial statements would be the appropriate financial statement

¹⁰ See Negromex Final Calculation Memo for further details of our calculation. Also, for further discussion, *see* Comment 2.

¹¹ For further discussion, *see* Comment 4.

¹² See Final Cost Calculation Memo, at 1-2. Also, for further discussion, *see* Comment 5.

¹³ *Id.* Also, for further discussion, *see* Comment 8.

¹⁴ See Negromex Final Calculation Memo for further details of our calculation. Also, for further discussion, *see* Comment 10.

¹⁵ See Negromex’s Rebuttal Brief, at 3, 5; Negromex’s Case Brief, at 7-8.

¹⁶ See Negromex’s Rebuttal Brief, at 3.

¹⁷ *Id.*; Negromex’s Case Brief, at 7.

for use in calculating the interest expense rate, they are not on the record of this investigation.¹⁸

- The parent companies of Dynasol Gestion Mexico, Repsol Quimica and Grupo Kuo, are equal owners and none of them individually control its operations, and therefore the financial statements of these parent companies cannot be considered the highest level of consolidation.¹⁹ Moreover, Negromex's and Dynasol Gestion Mexico's financial results were not consolidated in the operating results of either Grupo Kuo or Repsol Quimica.²⁰
- To the extent that the Department relies on Negromex's financial statements to calculate the financial expense rate, the Department should also exclude the foreign exchange losses as they are not tied to any actual losses from ESB rubber operations. The losses are merely a book entry related to the conversion effect due to the functional currency being different from the presentation currency.²¹ Furthermore, the Department verified how the International Accounting Standard 21 conversion effect was calculated and that the foreign exchange loss was not tied to any actual losses from ESB rubber operations.²²

The petitioners' Comments

- Application of partial AFA is warranted in calculating Negromex's financial expense rate because, as the Department discovered at verification, the respondent provided false information about the nature of the consolidation of Negromex's result at the highest level of consolidation, despite the Department's clear reporting instructions in the initial section D questionnaire.²³ Only seven months later, during verification, Negromex informed the Department that Dynasol Gestion Mexico represented the highest level of consolidation.²⁴
- Consequently, Negromex withheld information requested by the Department, failed to provide such information within deadlines, significantly impeded the proceeding, and failed to act to the best of its ability.²⁵
- Negromex's argument that the Department should ignore the fact that it provided the Department with false information should be rejected, and to follow Negromex's suggestion to continue to rely on Negromex's financial statements to calculate the interest expense rate would reward it for withholding information. There is no valid reason for Negromex to have waited until verification to provide the Department with correct information.²⁶
- As partial AFA, the Department should rely on the highest financial expense rate on the record.²⁷ Alternatively, the Department could rely on information from the petition as AFA.²⁸
- The Department should declare moot Negromex's request to exclude foreign exchange losses from the financial expense rate calculation but, should the Department account for this

¹⁸ See Negromex's Rebuttal Brief, at 3.

¹⁹ See Negromex's Rebuttal Brief, at 4.

²⁰ *Id.*

²¹ See Negromex's Case Brief, at 8.

²² *Id.*, at 9-10.

²³ See the petitioners' Case Brief, at 4-5.

²⁴ *Id.*, at 5-6.

²⁵ *Id.*, at 6.

²⁶ See the petitioners' Rebuttal Brief, at 7-8.

²⁷ See the petitioners' Case Brief, at 6 (citing Negromex's Section D Questionnaire Response, September 23, 2016, at page D-28 and Exhibit D-13); the petitioners' Rebuttal Brief, at 8.

²⁸ See the petitioners' Case Brief, at 6-7; the petitioners' Rebuttal Brief, at 8.

argument, its practice is to include the entire amount of net foreign exchange gain or losses in the calculation.²⁹

Department's Position: The Department agrees with the petitioners that the application of partial AFA to Negromex's financial expense rate is warranted for the final determination.

Negromex was a subsidiary of Grupo Kuo until September 2015, and in October 2015, under a corporate restructuring, Negromex became part of Dynasol Gestion Mexico, a joint venture equally owned by Grupo Kuo and Repsol Quimica.³⁰ In its original section D response, Negromex maintained that for the fiscal year 2015, there was no highest level of consolidated financial statements in which the results of Negromex were included.³¹ Therefore, for purposes of calculating the financial expense ratio, Negromex relied on a simple average of the financial expense rates of Grupo Kuo and Repsol Quimica because these two entities were its ultimate owners.

In our supplemental questionnaire, we requested that Negromex clarify which financial statements represented the highest level of consolidation. Negromex explained in its supplemental response that the highest level with respect to its 2015 financial results was "equally split between Grupo Kuo and Repsol Quimica" and that these two entities "represent the highest level of consolidation."³² Negromex also provided in its supplemental section D response an alternative calculation based on the results on Negromex's own audited 2015 financial statements.³³ The Department relied on this latter calculation for the preliminary determination, stating that Negromex's financial statements "appear{ed} to represent the highest level of consolidation available in the absence of any other higher level consolidated financial statements in which the results of Negromex are included."³⁴ Negromex clarified for the first time at verification that, despite their explanations provided earlier within the context of its section D and supplemental section D responses, Dynasol Gestion Mexico actually represented the highest level of consolidation with respect to Negromex. Negromex offered the Dynasol Gestion Mexico fiscal year 2015 consolidated financial statements as a minor correction during the cost verification, but the Department declined to accept them because it constituted untimely new information.³⁵

Section 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not available on 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 section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, the Department shall,

²⁹ See the petitioners' Rebuttal Brief, at 9.

³⁰ See Negromex's Section A Response, dated August 25, 2016, at A-4 and A-5.

³¹ See Negromex's Section D Response, at D-23 and D-24.

³² See Negromex's Supplemental Section D Response, dated January 3, 2017, at pages D-2 and D-13.

³³ See Negromex's Supplemental Section D Response, at Exhibit D-40.

³⁴ See Memorandum to Neal Halper, Director Office of Accounting from Kalsang Dorjee, Staff Accountant, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Industrias Negromex, S.A. de and INSA LLC, (Prelim. Cost Memo) dated February 16, 2017 at page 2.

³⁵ See Negromex's Cost Verification Report, at page 2.

subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

Further, section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting from the facts otherwise available. The Statement of Administrative Action (SAA) explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”³⁶ The Court of Appeals for the Federal Circuit has explained that “{c}ompliance with the ‘best of its ability’ standard is determined by assessing whether respondent has put forth its maximum effort to provide {the Department} with full and complete answers to all inquiries in an investigation.”³⁷ Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.³⁸ Pursuant to section 776(b) of the Act, an adverse inference may include reliance on information derived from the Petition, the final determination from the less-than-fair-value investigation, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the Petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review conducted under section 751 of the Act concerning the subject merchandise. Pursuant to section 776(c)(2) of the Act, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

In this case, the necessary information that would allow us to calculate the financial expense ratio in accordance with our normal practice (*i.e.*, based on the highest level of consolidation) is not on the record within the meaning of section 776(a)(1) of the Act. As even Negromex acknowledges, “{a}lthough the appropriate financial statement for use in calculating interest expense would be the consolidated financial statement of Negromex’s direct parent, Dynasol

³⁶ See *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. at 870 (1994) (SAA).

³⁷ See *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382 (CAFC 2003) (*Nippon Steel*).

³⁸ See *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997) (*Preamble*); *Nippon Steel*, 337 F. 3d at 1382-83.

Gestion Mexico, S.A.P.I. de C.V. ('Dynasol Gestion Mexico'), that statement is not on the record."³⁹ In addition, we find that Negromex withheld information that was requested by the Department, failed to provide necessary information by the deadlines for submission of that information, and significantly impeded the proceeding, within the meaning of section 776(a)(2)(A)-(C) of the Act, respectively. In particular, our instructions to Negromex clearly stated that we sought the financial statements based on the highest level of consolidation.⁴⁰ Negromex was obligated to file Dynasol Gestion Mexico's consolidated financial statement on the record, not its unconsolidated financial statement on the record.⁴¹ We agree with the petitioners that there is no valid reason for Negromex's failure to provide the consolidated financial statements at the highest level of consolidation in response to our questionnaire. Furthermore, Negromex's late attempt to submit the consolidated Dynasol Gestion Mexico financial statement at verification constituted untimely new factual information and was rejected.⁴² The Department was therefore precluded from verifying Negromex's financial expense ratio, pursuant to section 776(a)(2)(D) of the Act.⁴³ Accordingly, we find that it is necessary to resort to the facts available to calculate Negromex's financial expense ratio.

Further, we find that Negromex failed to act to the best of its ability in complying with our repeated requests for this information. Therefore, we agree with the petitioners that the application of an adverse inference is warranted in selecting from among the facts otherwise available, pursuant to section 776(b) of the Act. Although the "best of its ability" standard under section 776(b) of the Act "does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping."⁴⁴ Negromex's realization during preparation for verification that the Dynasol Gestion Mexico financial statement was unconsolidated amounts to "inattentiveness" or "carelessness" in responding to the Department's questionnaire.

As partial AFA, we have relied on the financial expense rate of Grupo Kuo for the fiscal year 2015, which is the highest calculated financial expense rate for any of the financial statements on the record of this investigation.⁴⁵ Given that this is information obtained during the investigation, the statutory corroboration requirement at section 776(c) of the Act does not apply. Finally, because we are not relying on Negromex's 2015 audited financial statements to calculate the respondent's financial expense ratio, we find Negromex's request to exclude foreign exchange losses from the financial expense rate calculation to be moot.

³⁹ See Negromex's Rebuttal Brief, at 3.

⁴⁰ See Negromex's Supplemental Section D Response, at D-1 and D-2.

⁴¹ See Negromex's Rebuttal Brief, at 3.

⁴² See Negromex's Cost Verification Report at 2.

⁴³ *Id.*, at 2 and 4-5.

⁴⁴ *Nippon Steel*, 337 F.3d at 1382.

⁴⁵ See Final Cost Calculation Memo, at 2 for further details of our calculation.

Comment 2: Partial Adverse Facts Available for Negromex’s Domestic Brokerage and Handling Expenses, U.S. Brokerage and Handling Expenses, and U.S. Inland Freight from Warehouse to Customer Expenses

Negromex’s Comments

- Contrary to the petitioners’ contention, the Department had knowledge prior to verification that Negromex could not trace the merchandise from the plant through the border, through the U.S. warehouse, and to the U.S. customer since the merchandise was commingled in the warehouse.⁴⁶
- Negromex notified the Department of these issues, cooperated, and acted to best of its ability when it attempted to resolve them by providing the Department with the correct information at verification.⁴⁷ However, these efforts were rebuffed by the Department.⁴⁸
- This was particularly the case for U.S. inland freight to a certain customer because the actual freight information could not be traced through to each sale, *i.e.*, warehouse withdrawal.⁴⁹
- Because Negromex cooperated to the best of its ability during verification, the Department cannot apply partial AFA for the final determination. Instead, the Department should apply the weighted-average of all domestic brokerage and handling expenses pertaining to ESB rubber when calculating Negromex’s domestic brokerage and handling charges for the final determination.⁵⁰
- Additionally, the Department should apply the weighted-average of all U.S. brokerage and handling invoices on the record to all U.S. sales that incurred this expense for the final determination. The Department should also apply the weighted-average of all U.S. inland freight expenses originated in Brownsville and shipped on a delivered basis for this certain customer’s U.S. sales.⁵¹

The petitioners’ Comments

- For the first time at the home market sales verification, Negromex informed the Department that the domestic brokerage and handling charges for its home market sales were based on estimates.⁵²
- Additionally, for the first time at the U.S. sales verification, Negromex informed the Department that its U.S. affiliate, INSA, reported U.S. brokerage and handling charges and U.S. inland freight to a certain customer based on estimates and not actual expenses.⁵³
- At no time during the investigation prior to verification did Negromex reveal or even suggest that these expenses were based on estimates. Thus, the Department did not have an opportunity to determine if actual expenses were available, whether the use of estimate was reasonable, or whether the estimates used by Negromex were reasonable.⁵⁴

⁴⁶ See Negromex’s Rebuttal Brief, at 5.

⁴⁷ *Id.* at 6.

⁴⁸ *Id.*, at 5-6.

⁴⁹ *Id.*

⁵⁰ *Id.*, at 6 and Exhibit 1.

⁵¹ *Id.*, at 6-7 and Exhibits 2-3.

⁵² See the petitioners’ Case Brief, at 7.

⁵³ *Id.*, at 8-9.

⁵⁴ *Id.*, at 7-9.

- Based on the verification report, it appears that Negromex is claiming that the actual expenses were available but that they simply did not report them due to an unexplained miscommunication. However, the record establishes that Negromex withheld information requested by the Department and failed to provide such information in the form or manner requested by the Department.⁵⁵
- Accordingly, for the final determination, the Department should apply partial AFA to Negromex for its domestic brokerage and handling expenses in the home market by applying the highest reported charge to all its U.S. sales.⁵⁶
- Additionally, for the final determination, the Department should apply partial AFA to Negromex for its U.S. brokerage and handling expenses, and U.S. inland freight to a certain customer. The application of partial AFA to these expenses should be the highest reported expense to all U.S. sales for these expenses, as applicable.⁵⁷

Department’s Position: The Department agrees with the petitioners that the application of partial AFA to Negromex’s domestic and U.S. brokerage and handling expenses, and select U.S. inland freight expenses, is warranted for the final determination.

In the Department’s original questionnaire for each of these expenses, we requested that Negromex: “Describe how you calculated the unit cost of {each expense} incurred in the country of manufacture {or U.S. market} and include your worksheets as attachments to the narrative response.”⁵⁸ Negromex originally stated that for domestic and U.S. brokerage and handling, it reported the average expenses incurred during the POI, and that for U.S. inland freight, where applicable, it reported per-unit expenses incurred.⁵⁹ Subsequently, the Department asked Negromex to provide more explanation and/or documentation regarding the calculation methodologies of these expenses.⁶⁰ In response, Negromex provided additional documentation/worksheets and explained that for domestic and U.S. brokerage and handling, it calculated POI average expenses/costs incurred as it was not able to provide transaction-specific expenses due to co-mingling of products.⁶¹ With regard to U.S. inland freight, Negromex simply stated that it provided a calculation worksheet and supporting documentation.⁶² Thus, up to this point, Negromex gave no indication that these expenses were incurred on any basis other than what was actually incurred.

However, for the first time at verification, Negromex informed us that it reported all domestic/U.S. brokerage and handling, and U.S. inland freight (to a specific customer) using a methodology based on average estimates and not actual expenses.⁶³ Negromex attempted to present what it claimed were the actually incurred charges, as a minor correction, but we did not verify the information as it constituted untimely new factual information using a completely new

⁵⁵ *Id.*, at 7-8.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See the Department’s original questionnaire, at C-16, C-18, and C-20.

⁵⁹ See Negromex’s October 21, 2016, submission, at C-23, 24, and 26.

⁶⁰ See Negromex’s Supplemental Questionnaire, dated December 19, 2016, at questions 19, 25, and 26.

⁶¹ See Negromex’s January 18, 2017, submission, at 8.

⁶² *Id.*, at 9

⁶³ See Negromex’s Home Market Verification Report, at 9; See also INSA’s CEP Verification Report, at 9-10.

methodology.⁶⁴ Unlike the minor corrections that were accepted for certain additional home market and U.S. sales that only supplemented information already on the record,⁶⁵ this represented a wholesale change in methodology for each of these expenses. As such, the actual costs for domestic and U.S. brokerage and handling expenses, and U.S. inland freight expenses (to a specific customer), are not on the record, within the meaning of section 776(a)(1) of the Act. Accordingly, we are unable to calculate the actual costs of these expenses paid and incurred by Negromex, pursuant to our normal practice.⁶⁶

Furthermore, we find that Negromex withheld this information, failed to provide it by the deadlines for the submission of that information, and significantly impeded the proceeding, pursuant to section 776(a)(2)(A)-(C) of the Act. By presenting a wholesale change in methodology using actual expenses, as a minor correction, which the Department did not accept as it was new information, the Department was precluded from issuing supplemental questionnaires on this issue. Specifically, if Negromex had been clear from the beginning of the investigation about its calculation methodology using estimates for these expenses, the Department would have been afforded the opportunity to gather data from Negromex as to which methodology (*i.e.*, estimated *vis-à-vis* actual expenses) was more appropriate and accurate. As mentioned above, the Department did request Negromex to describe its calculation methodology and provide calculation worksheets for each of these expenses in the original questionnaire but Negromex failed to explain that it was using a methodology based on estimates.⁶⁷ Instead, Negromex only indicated that it was calculating these expenses based on averages. Although Negromex further explained its methodology in supplemental responses, such explanations did not indicate that it used estimated, rather than actual, expenses.⁶⁸ By failing to disclose the fact that the calculation methodology for these expenses was based on estimates and not disclosing this information to the Department until verification, Negromex significantly impeded this investigation with respect to these expenses. Finally, because Negromex failed to provide the actual costs of these expenses paid and incurred until verification – at which point the information was untimely – the actual costs of these expenses paid and incurred could not be verified pursuant to section 776(a)(2)(D) of the Act.

Negromex claims that it was up front with the Department that it could not trace movement expenses on a transaction-specific basis because the merchandise was commingled in the warehouse, resulting in its reporting these expenses on an average basis.⁶⁹ However, the issue is not whether Negromex could report on a transaction-specific or average basis,⁷⁰ instead, the

⁶⁴ *Id.*

⁶⁵ For further discussion, *see* Comment 3.

⁶⁶ *See Large Power Transformers from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 77 FR 40857 (July 11, 2012), and accompanying Issues and Decision Memorandum at Comment 9 (*Large Power Transformers from Korea*) (where the Department discussed its practice of allowing estimates only when the information was not available for sales that had not been shipped but also discussed that for costs/expenses, we preferred to use actual costs when the respondent had that information).

⁶⁷ *See* the Department's original questionnaire, at C-16, C-18, and C-20.

⁶⁸ *See* Negromex's Sections B and C Response, at B-34 and C-36; and Negromex's January 18, 2017, submission, at 8-9.

⁶⁹ *See* Negromex's Sections B and C Response, at B-34 and C-36.

⁷⁰ *Id.*

issue is that Negromex did not disclose until verification that these expenses were calculated on an estimated rather than actual expense basis. The Department's preference is to rely on actual expenses from the respondent in calculating price adjustments, not estimates, which the Department only does when actual information is not readily available.⁷¹ For Negromex to provide actual expense information for the first time at verification indicates that this same information was in its possession prior to verification and Negromex could have relied on it in responding to the Department's questionnaire. Moreover, by attempting to replace its estimate-based data with actual data, Negromex implicitly concedes the greater accuracy afforded by using the actual data. In sum, despite the Department's instructions to Negromex to explain how it calculated each expense, Negromex failed to cooperate to the best of its ability.

Therefore, we agree with the petitioners that the application of facts available with an adverse inference is warranted in determining Negromex's domestic and U.S. brokerage and handling expenses, and U.S. inland freight expenses (to a specific customer). For the final determination, we have used as partial AFA the highest reported (estimated) per-unit amount on the record for each of the applicable expenses and applied them in our margin calculation for the final determination.⁷² Given that this is information obtained during the investigation, the statutory corroboration requirement at section 776(c) of the Act does not apply.

Comment 3: Partial Adverse Facts Available for Certain Unreported Sales

The petitioners' Comments

- At verification, Negromex revealed for the first time that it had not reported certain home market and U.S. sales due to the sales terms during the POI.⁷³
- The original antidumping questionnaire requested that Negromex follow the instructions for how to report export price (EP) and constructed export price (CEP) transactions based on the sales terms during the POI.⁷⁴
- Once again, Negromex failed to follow the questionnaire's instructions, withheld information requested by the Department, and failed to cooperate by not acting to the best of the ability to respond to the Department's requests for information.⁷⁵
- As partial AFA in the final determination, the Department should apply the highest dumping margin for any U.S. sale to the unreported U.S. sales.⁷⁶

Negromex's Comments

- Contrary to the petitioners' contention, Negromex reported the sales at issue to the Department at verification and the Department accepted this sales information as a minor

⁷¹ See *Large Power Transformers from Korea*, 77 FR at 40857, and accompanying Issues and Decision Memorandum at Comment 9.

⁷² See Negromex Final Calculation Memo, at 2-3.

⁷³ See the petitioners' Case Brief, at 9-10.

⁷⁴ *Id.*, at 10.

⁷⁵ *Id.*

⁷⁶ *Id.*

correction, verified quantity and value for both home market and U.S. sales, and reconciled the sales information to the financial statements.⁷⁷

- Additionally, the Department requested that Negromex incorporate all such minor corrections in its sales databases. Since these revised sales databases are on the record and were verified by the Department, the application of partial AFA is unwarranted for the final determination as to these sales.⁷⁸

Department’s Position: The Department disagrees that partial AFA should be applied to Negromex for certain home market and U.S. sales because these sales were not reported to the Department. Specifically, in the verification outlines issued to Negromex and its U.S. affiliate, INSA, the Department requested that each company present “minor corrections ... to the responses resulting from verification preparation.”⁷⁹ Additionally, the verification outlines specified that “{n}ew information will be accepted at verification only when... the information makes minor corrections to information already on the record.”⁸⁰

At the home market and U.S. sales verifications, Negromex and INSA, respectively, presented as a minor correction certain additional home market and U.S. sales information.⁸¹ We accepted these minor corrections because they represented only minor corrections to the total quantity and value of home market or U.S. sales information already on the record.⁸² It is the Department's routine practice to review the corrections presented at the start of any verification and determine whether these changes relate to minor changes to previously-submitted data, or whether they reach the level of significant new factual information. Where the changes are minor, we generally accept the information as part of the administrative record in the form of a verification “exhibit” and we examine that information during the verification.⁸³ In the context of both the home market and U.S. sales verifications, we verified these minor corrections during the applicable quantity and value reconciliation portion of verification through to Negromex’s and INSA’s respective financial statements.⁸⁴

In this case, Negromex and its U.S. affiliate, INSA, reported hundreds of sales transactions in the home market and U.S. sales databases. Thus, a small change for a handful of sales does not represent a wholesale change to the total universe of sales reported in the home market and U.S. sales databases, which would impugn the accuracy and reliability of Negromex’s and INSA’s

⁷⁷ See Negromex’s Rebuttal Brief, at 7.

⁷⁸ *Id.*

⁷⁹ See Letter to Negromex from Paul Walker, Program Manager, Office V, “Re: Emulsion Styrene-Butadiene Rubber from Mexico: Negromex Verification Outline,” dated March 6, 2017 (Negromex Verification Outline); and Letter to INSA from Paul Walker, Program Manager, Office V, “Re: Emulsion Styrene-Butadiene Rubber from Mexico: INSA Verification Outline,” dated April 12, 2017 (INSA Verification Outline).

⁸⁰ See INSA Verification Outline, at 4.

⁸¹ See Negromex’s Home Market Verification Report, at VE-1; and INSA’s CEP Verification Report, at VE-5.

⁸² *Id.*

⁸³ See *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 77 FR 17422 (March 26, 2012) and accompanying Issues and Decision Memorandum at Comment 17 (*Bottom Mount Refrigerator-Freezers from Mexico*).

⁸⁴ See Negromex’s Home Market Verification Report and INSA’s CEP Sales Verification Report.

reported total quantity and value of sales.⁸⁵ Accordingly, the Department does not find there is any basis to apply partial AFA to Negromex for these home market and U.S. sales for the final determination.

Comment 4: Eligibility for a CEP Offset

Negromex's Comments

- Negromex provided information in its questionnaire responses, which was supported at verification, regarding selling activities, customer terms, and distribution channels.⁸⁶
- The Department should continue to grant Negromex a CEP offset for the final determination because Negromex provided sufficient information to demonstrate that the comparison market sales are more advanced than the CEP level of trade.⁸⁷
- Although the Department noted at verification that the documentation quantifying the selling activities was insufficient, Negromex did in fact provide documentation of its selling activities and selling functions in the comparison market.⁸⁸
- Negromex demonstrated that its affiliated U.S. importer, INSA, provided virtually all the selling functions with respect to the end-user customer in the U.S. market and Negromex conducted all selling functions in the home market.⁸⁹ Although the selling activities may not have been quantified, the Department has “found that evidence demonstrating that the U.S. affiliated customer performs significant selling activities in the U.S. market supports the conclusion that the foreign producer’s sales in the comparison market are made at a more advanced level of trade than the CEP level of trade.”⁹⁰
- Here, Negromex provided verified documentation that its involvement in selling activities and sales functions in its U.S. distribution channels ranged from “none” to “low,” whereas, its involvement in selling activities in the comparison market was at a “medium” level. The CIT has affirmed the Department’s practice to grant a CEP offset based on evidence of selling activities alone.⁹¹ Given this, Negromex clearly demonstrated that it is entitled to a CEP offset.⁹²

The petitioners' Comments

⁸⁵ See *Certain Corrosion-Resistant Steel Products from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35320 (June 2, 2016) and accompanying Issues and Decision Memorandum at Comment 1.

⁸⁶ See Negromex’s Rebuttal Brief, at 7.

⁸⁷ *Id.*, at 8.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* (quoting *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 75 FR 56989 (September 17, 2010), and accompanying Issues and Decision Memorandum at Comment 2 (*Magnesium Metal from Russia*)).

⁹¹ See Negromex’s Rebuttal Brief, at 9 (quoting *Certain Frozen Warmwater Shrimp from Thailand: Final Results of the Antidumping Duty Administrative Review*, 74 FR 47551 (September 16, 2009), and accompanying Issues and Decision Memorandum at Comment 8).

⁹² *Id.*, at 8-9.

- The Department’s regulations provide that it will only grant a CEP offset where normal value is determined at a more advanced level of trade of the constructed export price.⁹³
- The burden of establishing the propriety of granting a CEP offset falls squarely on respondents.⁹⁴
- In the *Preliminary Determination*, the Department granted Negromex a CEP offset based on record evidence.⁹⁵ However, since then, at verification, the Department found that Negromex was unable to provide any explanation or record evidence justifying the reported levels of each selling activity in the home and U.S. markets.⁹⁶
- Despite being provided multiple opportunities in supplemental questionnaires and at verification, Negromex failed to provide sufficient information with record evidence to justify a finding that the comparison market sales are at a different level of trade (LOT) and at a more advance LOT than the CEP LOT. Instead, Negromex merely provided a vague and undetailed narrative explanation of its selling activities.⁹⁷
- Given this, the Department should deny Negromex’s U.S. sales a CEP offset for the final determination.⁹⁸

Department’s Position: The Department agrees with the petitioners, and for this final determination, we will not grant a CEP offset for Negromex’s U.S. sales. As an initial matter, Negromex’s references to other cases in which the Department granted a CEP offset to respondents are inapposite.⁹⁹ Given that each segment of an antidumping duty case contains its own independent record and constitutes a separate, distinct proceeding,¹⁰⁰ this same principle is even more true when applied across entirely separate antidumping duty cases, each with a unique factual record. Indeed, a determination of whether to grant a CEP offset is, necessarily, a fact-specific inquiry that must be made based on the record of the antidumping proceeding and based on the selling activities of the respondent in question.

The Department will grant a CEP offset under section 773(a)(7)(B) of the Act if sales in the home market are at a more advanced LOT than CEP sales in the United States and there is no basis for determining whether the differences in levels of trade affects price comparability. In the *Preliminary Determination*,¹⁰¹ we analyzed the various selling functions that Negromex indicated it performed for sales in the home market versus those performed with respect to its U.S. affiliate, INSA, for its CEP sales. Based on the record evidence at the time of the *Preliminary Determination*, we granted Negromex a CEP offset.¹⁰²

⁹³ See the petitioners’ Case Brief, at 10.

⁹⁴ See the petitioners’ Case Brief, at 11 (citing *Ad Hoc Shrimp Trade Action Comm. v. United States*, 616 F. Supp. 2d 1354, 1374 (CIT 2009)).

⁹⁵ See the petitioners’ Case Brief, at 11 (citing Preliminary Decision Memorandum, at 10).

⁹⁶ See the petitioners’ Case Brief, at 11-12.

⁹⁷ *Id.* at 11.

⁹⁸ *Id.*, at 12.

⁹⁹ See *Magnesium Metal from Russia*, 75 FR at 56989, and accompanying Issues and Decision Memorandum at Comment 2.

¹⁰⁰ See *Shandong Huarong Mach. Co. v. United States*, 29 CIT 484, 491 (2005) (*Shandong Huarong*).

¹⁰¹ See *Preliminary Determination* at 8-10.

¹⁰² *Id.*

However, after verifying Negromex’s claimed different LOTs in the home market and in the U.S. market,¹⁰³ we find that Negromex is, in fact, not entitled to a CEP offset. Specifically, beyond the selling function charts that were on the record for both the home market and U.S. market, we found at verification that Negromex could not quantify and document what exactly constituted “low, medium, or high” for each of the selling functions listed on the LOT chart.¹⁰⁴ Additionally, when we reviewed the selling functions in the U.S. market at verification, INSA informed us that the selling function chart illustrated who was responsible for each activity and where they were located. However, when we started reviewing the inventory warehousing cost expenses provided by INSA, INSA officials explained that a Mexican-based employee (inventory supervisor) comes to the US to conduct this activity, and that there was no other supporting documentation for this expense.¹⁰⁵

Negromex argues that we do not require quantitative documentation to demonstrate the intensity of the selling functions in the home market and that the selling function chart submitted is sufficient to document. The Department disagrees. Specifically, the Department requires respondents to demonstrate with record evidence, including documentation, the types of selling activities performed in the home market *vis-à-vis* the U.S. market and demonstrate with record documentation, which can include selling or advertising brochures in each market, the differences in intensity to warrant a LOT adjustment or a CEP offset.¹⁰⁶ Without further evidence beyond the selling function charts to suggest that the selling functions performed by the respondent at the CEP level of trade and the home market level of trade are significantly different to warrant a finding that the home market level of trade is at a more advanced stage of distribution than the CEP level of trade, the Department’s practice is to find no basis for concluding that there are differences in levels of trade between home market sales and U.S. CEP sales, and no CEP offset is warranted.¹⁰⁷

After reviewing the record since verification, we find that Negromex is not entitled to a CEP offset because, beyond the selling function charts that it provided, Negromex/INSA could not document that the selling activities in the home market and the U.S. market were at different LOTs. Contrary to Negromex’s argument, it is the respondent’s burden to build an accurate record to support its position,¹⁰⁸ and Negromex/INSA failed to do so here by solely relying on the selling function charts and acknowledging at verification that it could not quantify/document the differences in its claimed selling functions for the home market and U.S. market.¹⁰⁹ Given the lack of detail on the record, we remain unpersuaded as to meaningful differences in the selling functions in the home market *vis-à-vis* the U.S. market. In sum, Negromex failed to support its

¹⁰³ See Negromex’s Home Market Verification Report, at 4; and INSA’s CEP Verification Report, at 6.

¹⁰⁴ See Negromex’s Home Market Verification Report, at 4.

¹⁰⁵ See INSA’s CEP Verification Report, at 5 and SVE-5.

¹⁰⁶ See *Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 53419 (August 12, 2016), and accompanying Issues and Decision Memorandum at Comment 3.

¹⁰⁷ See *id.*; *Silicomanganese from Australia: Final Determination of Sales at Less Than Fair Value*, 81 FR 8682 (February 22, 2016), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁰⁸ See *QVD Food Co., Ltd. v. United States*, 658 F.3d 1318, 1324 (CAFC 2011) (“the burden of creating an adequate record lies with {interested parties} and not with {the Department}”).

¹⁰⁹ See Negromex’s Home Market Verification Report, at 4; and INSA’s CEP Verification Report, at 5.

assertion that the selling functions performed by the respondent at the CEP level of trade and the home market level of trade are significantly different to warrant a finding that the home market LOT is more advanced than the CEP LOT. Therefore, the record does not support a conclusion that there are differences in levels of trade between home market sales and U.S. CEP sales, and thus, no CEP offset is warranted.¹¹⁰

Comment 5: Recalculation of Negromex's G&A Expense Rate

Negromex's Comments

- It is not the Department's practice to exclude *any* profit from services provided between affiliated companies in the calculation of the G&A expense rate. The inter-company profit is only excluded when the relationship is not at arm's length or where the respondent and its affiliated company are collapsed for reporting purposes or where the transaction is not related to the general operations of the company.¹¹¹
- There is no evidence on the record to show that the price charged by Negromex to its affiliate is not at arm's length, as was also the case in *Pipes and Tubes from Thailand*.¹¹²
- For the purposes of this investigation, Negromex and its affiliates are not collapsed for reporting purposes.¹¹³
- If the Department were to exclude Negromex's mark-ups, it should do the same for the mark-ups that Negromex's affiliates charged to Negromex; otherwise, G&A would be overstated.¹¹⁴

The petitioners' Comments

- Negromex wrongly offset the G&A expenses by using a mark-up on intercompany transactions related to service expenses. It is the Department's practice to exclude any profit from services provided between affiliated companies in the calculation of the G&A expense rate.¹¹⁵
- Negromex did not provide an accurate record to establish that the services were supplied at arms-length prices.¹¹⁶ Negromex confuses the burden of proof; it is Negromex's responsibility to demonstrate that the services were supplied at arms-length prices, but

¹¹⁰ See, e.g., *Silicomanganese from Australia: Final Determination of Sales at Less Than Fair Value*, 81 FR 8682 (February 22, 2016), and accompanying Issues and Decision Memorandum at Comment 2.

¹¹¹ See Negromex's Rebuttal Brief, at 9-10 (citing *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 65272 (October 31, 2013), and accompanying Issues and Decision Memorandum at Comment 12 (*Pipes and Tubes from Thailand*)).

¹¹² See Negromex's Rebuttal Brief, at 9-10; Negromex's Case Brief, at 4 (citing *Pipes and Tubes from Thailand*, 78 FR at 65272, and accompanying Issues and Decision Memorandum at Comment 12).

¹¹³ See Negromex's Rebuttal Brief, at 9-10; Negromex's Case Brief, at 4 (citing *Pipes and Tubes from Thailand*, 78 FR at 65272, and accompanying Issues and Decision Memorandum at Comment 12).

¹¹⁴ See Negromex's Rebuttal Brief, at 9-10.

¹¹⁵ See the petitioners' Case Brief, at 12-13 (citing *Certain Magnesia Carbon Bricks from Mexico: Notice of Final Determination of Sales at Less Than Fair Value*, 75 FR 45097 (August 2, 2010), and accompanying Issues and Decision Memorandum at Comment 3); see also the petitioners' Rebuttal Brief, at 2.

¹¹⁶ See the petitioners' Rebuttal Brief, at 2.

Negromex failed to satisfy this burden.¹¹⁷ In *Pipes and Tubes from Thailand*, record evidence supported that the prices were at arms-length.¹¹⁸

- There is nothing on record to establish that the revenue is related to the general operations of the company, unlike *Pipes and Tubes from Thailand* and *Hot-Rolled Products from Japan*.¹¹⁹

Department's Position: The Department agrees with the petitioners that the mark-up on the sale of services to an affiliate should be excluded from the calculation of the G&A ratio. The Department's established practice is to include in the G&A ratio calculation all revenues and expenses that relate to the general operations of the company.¹²⁰ Consequently, in determining whether it is appropriate to include or exclude from the G&A calculation the particular income or expense items, the Department reviews the nature of the item and its relation to the general operations of the company.¹²¹

In this case, Negromex pays a third-party for labor services, a portion of which relate to services provided to its affiliate. Negromex recovers its costs for the portion of services provided to its affiliate by charging the affiliate for the cost plus a mark-up. Since Negromex is itself not in the business of providing labor services, the sale of the services to its affiliate does not relate to its general operations. Negromex's general operations relates to manufacturing of rubber products. We, therefore, consider it appropriate to exclude the cost of such services from the G&A rate calculation. The G&A ratio, however, should be reduced by the cost of these services, not the revenue (which includes profit) associated with the sale. Therefore, for purposes of calculating the G&A ratio, while we have allowed Negromex to offset its G&A expenses by an amount equal to the costs it incurred on behalf of its affiliate, we have not allowed any further reduction to G&A expenses for the mark-up charged by Negromex. The Department does not agree with Negromex that if the mark-ups were to be excluded, the same should be done for the mark-ups that Negromex's affiliate charges to Negromex. Negromex attempts to blur the lines of distinction between sales revenue transactions and the cost of input purchases. For input purchase transactions, the price paid and recorded in the company's normal books and records for such inputs reflect the cost of the input or service to Negromex. Whether the affiliate sold such services at a profit is not relevant in determining the cost to Negromex. For the service sales transactions, we simply try to eliminate the cost associated with its service sales activity from the G&A rate calculation. Whether such sales occur at a profit or loss should not matter; it

¹¹⁷ *Id.*

¹¹⁸ *Id.* (citing *Pipes and Tubes from Thailand*, 78 FR at 65272, and accompanying Issues and Decision Memorandum at Comment 12).

¹¹⁹ See the petitioners' Rebuttal Brief, at 2-3. (citing *Pipes and Tubes from Thailand*, 78 FR at 65272, and accompanying Issues and Decision Memorandum at Comment 12; *Hot-Rolled Products from Japan*, 67 FR at 2408, and accompanying Issues and Decision Memorandum at Comment 7).

¹²⁰ See, e.g., *Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review*, 69 FR 13813 (March 24, 2004), and accompanying Issues and Decision Memorandum at Comment 10 (*Silicomanganese from Brazil*); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon-Steel Flat Products from Taiwan*, 67 FR 62104 (October 3, 2002), and accompanying Issues and Decision Memorandum at Comment 6; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Taiwan*, 65 FR 34658 (May 31, 2000), and accompanying Issues and Decision Memorandum at Comment 11.

¹²¹ *Silicomanganese from Brazil*, 69 FR at 13813, and accompanying Issues and Decision Memorandum at Comment 10.

is the cost of the service that we want to remove from the total pool of G&A costs. As such, for the final determination, we have excluded from the G&A rate computation the profit associated with Negromex's sales of services to its affiliate.¹²²

Comment 6: Billing Adjustment

The petitioners' Comments

- At the CEP sales verification, INSA submitted as a minor correction that it inadvertently did not report a billing adjustment for a certain sale. The Department should ensure that this correction is made for the final determination.¹²³

Negromex did not comment on this issue.

Department's Position: The Department agrees with the petitioners and will make this minor correction regarding a billing adjustment, which was incorporated to the most recently submitted databases, in calculating Negromex's antidumping duty margin for the final determination.¹²⁴

Comment 7: Treatment of Freight Expenses Included in Resirene's SG&A

Negromex's Comments

- The Department incorrectly included freight out when calculating Resirene S.A. de CV (Resirene)'s SG&A. The freight expenses are for transporting the material to customers and, therefore, should not be included in the Resirene's acquisition cost. The price charged to Negromex by Resirene is on a delivered basis and all freight expenses are captured in the price charged.¹²⁵
- The freight expenses were incorrectly translated as "Depreciation and Amortization" instead of "Freight." The correction was made and is part of the minor correction submitted to the Department at the beginning of the verification.¹²⁶

The petitioners did not comment on this issue.

Department's Position: For the *Preliminary Determination*, we revised the calculation of the SG&A expense ratio for Negromex's affiliated styrene supplier, Resirene, to include freight expenses.¹²⁷ We applied the revised SG&A ratio to Resirene's purchase price for this input to calculate the affiliated supplier's total acquisition cost. For purposes of our transactions disregarded analysis under section 773(f)(2) of the Act, we compared Negromex's reported transfer price for this input to Resirene's acquisition cost plus SG&A (*i.e.*, the market price).

¹²² See Final Cost Calculation Memo at 2-3.

¹²³ See the petitioners' Case Brief, at 13.

¹²⁴ See Letter from Negromex, "Emulsion Styrene-Butadiene Rubber from Mexico: Sales and Cost Databases," dated June 1, 2017, at Exhibits 1-3.

¹²⁵ See Negromex's Case Brief, at 3.

¹²⁶ See Negromex's Case Brief, at 3.

¹²⁷ See Prelim. Cost Memo.

We do not agree with the respondent that freight expenses should be excluded when calculating Resirene's SG&A expenses. When testing the transfer price against a market price for purposes of determining whether affiliated transactions are made on an arm's-length basis, where possible we compare per-unit values that are on the same basis. Here, the record shows that price paid by Negromex to Resirene for this input (*i.e.*, the transfer price) includes an amount for freight charges.¹²⁸ As such, the market value against which the transfer price is tested (*i.e.*, in this case Resirene's SG&A-inclusive acquisition cost) should likewise include freight. Since there is no information on the record to indicate that the price Resirene itself paid to its unaffiliated supplier for the styrene was on a delivered/freight-inclusive basis to Negromex's factory, freight costs incurred by Resirene must be included in the market price computation. Therefore, for the final determination, to ensure consistency between the transfer and market prices for purposes of our transactions disregarded analysis, we continue to include an amount for freight in our calculation of Resirene's SG&A expense ratio.

Comment 8: Apply the Market Price of Styrene to Negromex's COM

Negromex's Comments

- The Department should use the verified price of styrene gathered at the verification for the final determination.¹²⁹

The petitioners' Comments

- The Department should use the financial expense rate from Grupo Kuo's financial statements when calculating the acquisition cost of styrene from its affiliate, Resirene.¹³⁰

Department's Position: Negromex obtains styrene from both an affiliated reseller and from an unaffiliated supplier. At verification, when testing the reported acquisition cost of the affiliated reseller (*i.e.*, the price the reseller itself paid to obtain this input), we found that there were some additional purchases by the affiliated reseller that had not been included in the reported POI average acquisition cost for styrene. Incorporating these additional purchases results in a small change to the POI average acquisition cost for the reseller.¹³¹ We agree with Negromex that we should rely on the revised affiliated supplier's acquisition cost for styrene as verified for purposes of our transactions disregarded analysis for the final determination.

We also agree with the petitioners that in conducting our transactions disregarded analysis, the Grupo Kuo financial expense rate should be used to calculate the financial expense component of the affiliated reseller's financial expenses, because these financial expenses represent the highest level of consolidation available with respect to the affiliated reseller. For purposes of the final determination, in conducting our transactions disregarded analysis pursuant to section 773(f)(2) of the Act, we compared the reported transfer price for styrene to a market price which represents the weighted average of the price paid to unaffiliated suppliers and the affiliated supplier's SG&A inclusive acquisition cost. Our analysis for the final determination

¹²⁸ See Negromex's Supplemental Section A submission, dated January 3, 2017, at exhibit A-32 (contract between Negromex and Resirene).

¹²⁹ See Negromex's Case Brief, at 5.

¹³⁰ See the petitioners' Rebuttal Brief, at 3.

¹³¹ See Negromex's Cost Verification Report, at page 22.

incorporates the above-noted revisions to the acquisition cost of the affiliated supplier. Based on the results of our analysis, we have adjusted Negromex's costs to reflect the market price for this input.

Comment 9: Treatment of Technology Expenses in Negromex's G&A Ratio

Negromex's Comments

- The Technology Expenses are selling expenses and are related to research and development, patent application, consulting, purchase and maintenance of equipment for non-subject products and therefore should not be included in the G&A expenses.¹³²
- All ESB rubber produced and sold by Negromex is a commodity product and, therefore, the company does not make technological investments for this product group; rather, these investments are directed at non-subject merchandise.¹³³

The petitioners' Comments

- There is no reference to the nature of the expenses covered under Technology Expenses anywhere on the record and therefore, it should continue to be included in the G&A expenses.¹³⁴ Negromex's references to the nature of its activities at pages 5-6 of its case brief are not on the record, are untimely new factual information, and Negromex's case brief therefore should be rejected.¹³⁵ Furthermore, in Negromex's financial statements and its chart of accounts, the Technology Expenses are identified separate from selling expenses.¹³⁶

Department's Position: The Department disagrees with Negromex that these expenses should be excluded from the G&A expense rate calculation. In Negromex's normal books and records, the technology expenses at issue are included in selling, general and administrative expenses on the income statement. Negromex excluded these expenses from its reported G&A expenses, and at the *Preliminary Determination*, the Department revised the company's G&A expenses to include these items. As noted above, Negromex contends that these expenses relate solely to non-subject products and concludes that they should be excluded from the G&A calculation for the final determination. We have examined the information on the record related to Negromex's technology expenses. Our review of the invoices and other documentation provided by Negromex does not support Negromex's assertion that all the technology expenses are related only to non-subject merchandise. For example, there is a copy of an invoice for legal services which lists hourly charges for various consulting services.¹³⁷ The invoice does not specify to what product or product group the consultation relates. Similarly, a list of legal consultations

¹³² See Negromex's Case Brief, at 6.

¹³³ *Id.*

¹³⁴ See Petitioners' Rebuttal Brief, at 5-6.

¹³⁵ *Id.*

¹³⁶ *Id.* at 5.

¹³⁷ See Negromex's Cost Verification Report, at Exhibit CVE-17, page 13.

does not bear reference to any specific product or product group.¹³⁸ In addition, the documentation provided by Negromex also includes a list of expenses without any reference to a product or product group.¹³⁹

General and administrative expenses relate to the general operations of the company and not to specific products and processes.¹⁴⁰ Here, the record evidence is not sufficient to establish that the expenses at issue are in fact related only to non-subject products. Instead, the descriptions of the charges that are included on the invoices and other documentation provided by Negromex indicate that these items are typical of those expenses the Department normally includes in the G&A expense calculation, such as legal and consulting fees. Moreover, as noted above, these expenses are recorded in Negromex's normal books and records as SG&A expenses. Therefore, for the final determination, we have continued to include technology expenses in Negromex's G&A expenses.

The Department disagrees with the petitioners that the broad nature of expenses under "Technology Expenses" as described by Negromex's in its brief is new information. As stated above, these expenses are recorded in the Negromex's normal books and records under the heading "Technology Expenses."¹⁴¹ Negromex is simply putting in narrative form what is already contained in the exhibits provided to us at verification.

Comment 10: Short-Term Interest Rate for Negromex's Credit Expenses

Negromex's Comments

- As verified by the Department, Negromex inadvertently used INSA's U.S. dollar denominated short-term borrowing rate in the calculation of home market credit expenses (CREDITH) for Negromex's sales denominated in U.S. dollars.¹⁴²
- However, because the Department verified that Negromex had short-term loans denominated in U.S. dollars during the POI, the Department should recalculate home market credit expenses using this interest rate for the final determination.¹⁴³

The petitioners' Comments:

- The petitioners do not object to the proposed correction to use Negromex's short-term borrowing rate for U.S. dollar loans in the calculation of the home market credit expense.¹⁴⁴ However, it should also use the same short-term borrowing rate in the calculation of the U.S. credit expense for INSA's U.S. sales.¹⁴⁵

¹³⁸ *Id.*, at page 17.

¹³⁹ *Id.*, at page 66.

¹⁴⁰ See *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52055 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 6 (*Shrimp from India*)

¹⁴¹ See *Negromex's Supplemental Section A submission, dated September 23, 2016, at exhibit A-14.*

¹⁴² See *Negromex's Case Brief*, at 10.

¹⁴³ *Id.*

¹⁴⁴ See the petitioners' *Rebuttal Brief*, at 10.

¹⁴⁵ *Id.*

- For its U.S. sales, Negromex stated that its U.S. affiliate, INSA, did not have any short-term borrowings during the POI.¹⁴⁶ As a result, Negromex used the short-term commercial lending rate published by the Federal Reserve Board to calculate the U.S. credit expense in field CREDITU in the U.S. sales file.¹⁴⁷
- In this case, in the absence of actual short-term borrowing rates from INSA, the Department should use Negromex’s actual short-term borrowing rate to calculate the U.S. credit expense in field CREDITU in the U.S. sales file.¹⁴⁸

Department’s Position: In its original Section B response, Negromex reported that for its home market credit expense (CREDITH) for sales denominated in U.S. Dollars, it used the weighted-average interest rate of its short-term debt denominated in U.S. Dollars and provided the calculation of this interest rate in Exhibit B-9.¹⁴⁹ However, during the course of verification, we discovered that Negromex had inadvertently used INSA’s U.S. Dollar-denominated short-term borrowing rate in the calculation for this variable. Nonetheless, because the actual information pertaining to Negromex’s borrowings was already on the record, we verified Negromex’s interest rate.¹⁵⁰ As such, we agree with Negromex that for its home market sales denominated in U.S. Dollars, we will use Negromex’s weighted-average interest rate of its short-term debt denominated in U.S. Dollars for the final determination.

Regarding the petitioners’ argument to use the interest rate for Negromex’s U.S. dollar-denominated short-term borrowings incurred in Mexico for INSA’s CREDITU calculation, we note that we verified INSA’s CREDITU calculation and found no discrepancy.¹⁵¹ Additionally, we disagree with the petitioners that an interest rate from a foreign country should be used to calculate a credit expense for sales made by INSA in the United States. Therefore, we will make no changes to the CREDITU calculation for this final determination.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*, at 11.

¹⁴⁹ See Negromex’s October 21, 2016, submission at B-27-28

¹⁵⁰ See Negromex’s Home Market Verification Report, at Exhibit 20.

¹⁵¹ See INSA’s CEP Verification Report, at 10 and SVE-7.

VII. RECOMMENDATION

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

Agree

Disagree

7/10/2017

X 

Signed by: GARY TAVERMAN