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Administrative Review
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November 30, 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

RE: Decision Memorandum for the Preliminary Results of
Anti-dumping Duty Administrative Review: Steel Concrete Rein-
forcing Bar from Mexico and Preliminary Determination of No
Shipments; 2015-2016

I. SUMMARY

In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on steel concrete reinforcing bar (rebar) from Mexico for the period of review (POR) of November 1, 2015, through October 31, 2016. The review covers one mandatory respondent, Deacero S.A.P.I de C.V. (Deacero), and 12 non-selected companies. The Department preliminarily determines that Deacero did not make any sales of subject merchandise at less than normal value (NV) during the POR.

We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act). Once we issue the final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise during the POR.

II. BACKGROUND

On November 6, 2014, the Department published in the *Federal Register* the *AD Order*¹ on rebar

¹ See *Steel Concrete Reinforcing Bar from Mexico: Antidumping Duty Order*, 79 FR 65925 (November 6, 2014). (*AD Order*).



from Mexico. On November 4, 2016, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on rebar from Mexico.² Pursuant to section 751(a)(1)(B) and (2) of the Act and 19 CFR 351.213(b), and in response to the Department's notice of opportunity to request an administrative review, the petitioner,³ Deacero, and Grupo Acerero S.A. de C.V. (Grupo Acerero) requested an administrative review of the antidumping duty (AD) order on rebar from Mexico on November 30, 2016. Accordingly, on January 13, 2017, the Department published in the *Federal Register* the *Initiation Notice*,⁴ listing the following firms for which timely requests for an administrative review of the applicable antidumping duty order were submitted: Deacero; Grupo Acerero; Grupo Simec Orge S.A. de C.V. (Grupo Simec); Industrias CH; Ternium Mexico, S.A. de C.V.; ArcelorMittal Lazaro Cardenas S.A. de C.V.; Cia Siderurgica De California S.A. de C.V.; Siderurgica Tultitlan S.A. de C.V.; Talleres y Aceros, S.A. de C.V.; Grupo Villacero S.A. de C.V.; AceroMex S.A.; ArcelorMittal Celaya, S.A. de C.V.; and ArcelorMittal Cordoba S.A. de C.V.

On January 17, 2017, the Department placed on the record and subsequently released to interested parties under administrative protective order a memorandum and attached proprietary CBP data to be used for selection of companies for individual examination in this administrative review of rebar from Mexico.⁵

On January 19, 2017, Grupo Simec stated that it had no exports or sales, and no entries for consumption of subject merchandise into the United States during the POR. Therefore, Grupo Simec requested that the Department rescind the administrative review with respect to Grupo Simec.⁶ To date, we have received no information from CBP to contradict the non-shipment claim submitted by Grupo Simec.

On February 12, 2017, ArcelorMittal Lazaro Cardenas, SA. de CV. (which became Arcelor-Mittal Mexico, S.A. de CV. on March 31, 2014), ArcelorMittal Celaya, SA. de CV., and ArcelorMittal Cordoba, SA. de CV. (collectively, ArcelorMittal) submitted a no shipment letter certification in response to the Department's initiation of the administrative review.⁷ To date, we have received no information from CBP in contradiction to the non-shipment claim submitted by Arcelor Mittal.

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 81 FR 76920 (November 4, 2016).

³ The petitioner is Rebar Trade Action Coalition (RTAC), and its individual Members. The individual members are Nucor Corporation, Gerdau Ameristeel US Inc., Commercial Metals Company, Cascade Steel Rolling Mills, Inc., Byer Steel Group, Inc., Bayou Steel Group, and Steel Dynamics, Inc.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 294 (January 13, 2017) (*Initiation Notice*).

⁵ The CBP data query for the POR is based on CBP's Automated Commercial Environment (ACE) module, company case identification numbers (where applicable) for the companies for which a review was requested, and the names of companies for which a review was requested (in instances where no CBP company case number currently exists in the CBP's ACE module). See Memorandum to the File, "Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from Mexico; 2015-2016: Release of Customs and Border Protection Query Results."

⁶ See Grupo Simec's letter titled "Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from Mexico – Certification of No Sales," dated January 19, 2017.

⁷ See Arcelor Mittal's letter regarding no shipment certification, dated February 12, 2017.

On January 23, 2017, in response to the CBP data on the record, Grupo Acerero stated that it made shipments of subject merchandise that entered the United States during the POR and provided documentation of its shipments, despite contradictory information from CBP.⁸ Further, the company argued that it had the right to continue as a selected respondent in this proceeding.⁹ On March 1, 2017, the Department disagreed with Grupo Acerero that, at the time of the respondent selection phase of the review, that Grupo Acerero had reviewable entries during the POR.¹⁰ Accordingly, the Department did not find it appropriate to consider Grupo Acerero eligible to be selected as a mandatory respondent at that time.¹¹

The Department determined that it was not practicable to individually examine all exporters or producers because of the large number of exporters or producers for which a review had been requested. Therefore, the Department limited its respondent selection to Deacero, the only company subject to review that had reviewable entries of subject merchandise during the POR.¹²

In response to the Department's initial questionnaire issued on March 2, 2017, Deacero submitted its section A questionnaire response on April 3, 2017.¹³ Deacero submitted its questionnaire response sections B and C on April 27, 2017, and section D on May 9, 2017.¹⁴

Between April 17, 2017 and October 23, 2017, the petitioner submitted deficiency comments on Deacero's questionnaire responses. The Department issued supplemental questionnaires to Deacero between June 15, 2017, and November 1, 2017, to which Deacero responded between July 13, 2017, and November 13, 2017.¹⁵

On July 3, 2017, Grupo Acerero submitted revised customs documentation that it stated showed that the importer and its broker correctly reclassified an entry of merchandise from Grupo Acerero to reflect that it was subject to antidumping duties. Therefore, Grupo Acerero contends that it must be included in this review as a non-individually examined respondent, and that it be assigned the antidumping rate that arises in this administrative review from the individual

⁸ See Grupo Acerero's letter titled, "Concrete Steel Reinforcing Bar from Mexico: Comments on Import Quantity of Grupo Acerero S.A. de C.V.," dated January 23, 2017.

⁹ *Id.*

¹⁰ See Memorandum titled, 2015-2016 Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from Mexico: Selection of Respondent for Individual Examination," dated March 1, 2017, at 6. (Respondent Selection Memo).

¹¹ *Id.*

¹² *Id.* at 5.

¹³ See Deacero's Initial Questionnaire Response (IQR) section A (Deacero's AQR), dated April 3, 2017.

¹⁴ See Deacero's IQR at sections B and C (Deacero's BQR/CQR), dated April 27, 2017, and section D, dated May 9, 2017 (DQR).

¹⁵ See Deacero's First Supplemental Questionnaire Response (1SQR) for sections A through C, dated July 12, 2017 and sections A through C – Errata, dated July 13, 2017; First Supplemental Questionnaire Response (1SDQR) for section D, dated July 27, 2017; Second Supplemental Questionnaire Response (2SQR) for sections A and C, dated October 6, 2017; Second Supplemental Questionnaire Response (2SDQR) for section D, dated October 13, 2017; and Third Supplemental Questionnaire Response (3SQR), dated November 13, 2017.

examination of Deacero.¹⁶ Because the evidence on the record demonstrates that Grupo Acerero has a suspended entry during the POR, we are considering Grupo Acerero as a non-selected company for this administrative review and assigning to it the rate calculated for the reviewed mandatory respondent.

On September 15, 2017, the petitioner requested that the Department issue a supplemental questionnaire to Deacero to assess whether a particular market situation exists with respect to Deacero's purchase of electricity from the Mexican government. The petitioner alleged that it appeared that the cost of the electricity that Deacero purchases from the Mexican government is distorted and does not accurately reflect costs in the ordinary course of trade. The petitioner further alleged that a particular market situation under the Trade Preferences Extension Act of 2015 (TPEA) likely exists in Mexico with respect to Deacero's cost of production for rebar, and warrants an adjustment of Deacero's reported electricity costs.¹⁷ On September 22, 2017, Deacero filed comments in response to the petitioner's September 15, 2017, particular market situation allegation.

Subsequently, on October 31, 2017, the petitioner submitted new factual information relating to its request that the Department issue a supplemental questionnaire to Deacero to clarify information on its electricity purchases and to assess whether a particular market situation exists in Mexico.

On November 7, 2017, Deacero requested that the Department reject the petitioner's October 31, 2017 submission as untimely. Deacero also requested that if the Department did not reject the petitioner's submission, then Deacero should be provided an opportunity to rebut, clarify or correct such information.

On November 14, 2017, the petitioner responded to Deacero's November 7, 2017, submission and stated that the petitioner's submission was timely filed. The petitioner also stated that the Department should disregard Deacero's request to reject the petitioner's October 31, 2017, submission, as well as reject Deacero's request to submit additional untimely information.

On November 21, 2017, we held a telephone conference call with counsel to the petitioner. The petitioner's counsel reiterated its request that the Department pursue its particular market allegation.¹⁸ On November 28, 2017, we held a telephone conference call with the counsel for Deacero. Counsel for Deacero reiterated its statements filed in its November 6, 2017 submission that the Department should not initiate an inquiry into petitioner's requested particular market situation allegation.

¹⁶ See letter from Grupo Acerero titled, "Concrete Steel Reinforcing Bar from Mexico: Additional Comments on Import Quantity of Grupo Acerero S.A. de C.V.," dated July 3, 2017.

¹⁷ See Petitioner's letter, titled "Additional Deficiency Comments and Particular Market Situation Allegation Relating to Deacero's Electricity Response, dated September 15, 2017.

¹⁸ See *Ex-parte* memorandum, dated November 24, 2017.

III. EXTENSION OF PRELIMINARY RESULTS

On July 11, 2017, the Department issued a memorandum extending the time period for issuing the preliminary results of the instant administrative review from August 2, 2017 to October 2, 2017.¹⁹ On September 25, 2017, the Department fully extended the deadline to November 30, 2017.²⁰

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, 7221.00.0017, 7221.00.0018, 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. DUTY ABSORPTION

On February 13, 2017, the petitioner requested that the Department conduct a duty absorption review with respect to all producers/exporters subject to this review.²¹ On September 14, 2017, the Department informed Deacero, the sole mandatory respondent subject to individual examination, that if it wished to submit information regarding duty absorption on the record of this review to prove that Deacero's unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the above-referenced review period, such information needed to be placed on the record no later than September 28, 2017. The Department did not receive a response from Deacero on this issue.

Section 751(a)(4) of the Act provides that, if requested during an administrative review initiated two or four years after the publication of the order, the Department will determine whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Because this review was initiated two years after the publication of the order,²² we are making a duty absorption determination in this segment of the proceeding within the meaning of 19 CFR 351.213(j).

¹⁹ See Memorandum, titled "Steel Concrete Reinforcing Bar from Mexico: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review, 2015-2016," dated July 11, 2017.

²⁰ See Memorandum, titled "Steel Concrete Reinforcing Bar from Mexico: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review, 2015-2016," dated September 25, 2017.

²¹ See the Petitioner's Request for Duty Absorption Review, letter dated February 13, 2017.

²² See *Initiation Notice and Order*.

Because Deacero failed to timely respond to the Department's letter regarding this issue, as facts available, the Department has applied an adverse inference to preliminarily find that duty absorption exists on all U.S. sales of the subject merchandise exported by Deacero.

VI. ALLEGATION OF PARTICULAR MARKET SITUATION

On September 18, 2017, the petitioner submitted a "particular market situation" allegation with respect to Deacero's purchase of electricity, a major input, from an affiliate at a higher rate than its purchase of electricity from a government-owned Mexican public utility (CFE).²³ The petitioner also alleged that the cost of electricity that Deacero purchases from CFE is distorted and does not accurately reflect costs in the ordinary course of trade.²⁴ Further, on October 31, 2017, the petitioner submitted factual information in support of its allegation.²⁵ Based on this information, the petitioner claimed that Deacero's cost of electricity from CFE is lower than the average cost for industrial users.

On November 7, 2017, Deacero requested that the Department reject the petitioner's October 31, 2017 submission as untimely filed new factual information.²⁶

Legal Framework

Section 19 CFR 351.301(c) of the Department's regulations sets forth time limits for the submission of factual information. Section 19 CFR 351.301(c)(2)(i) governs the submission of factual information relating to market viability under certain circumstances and the basis for determining normal value. Section 19 CFR 351.301(c)(2)(i) states that "allegations regarding market viability in an antidumping investigation or administrative review, including the exceptions in 19 CFR 351.404(c)(2), are due, with all supporting factual information, 10 days after the respondent interested party files the response to the relevant section of the questionnaire, unless the Secretary alters this time limit."

Section 19 CFR 351.301(c)(2)(iii) establishes the deadline for allegations concerning purchases of major inputs from an affiliated party at prices below the affiliated party's cost of production. Section 19 CFR 351.301(c)(2)(iii) states that such allegations are due "within 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limits."

Additionally, Section 19 CFR 351.301(c)(2)(v) governs the submission of factual information relating to "other allegations." Section 19 CFR 351.301(c)(2)(v) states that "an interested party may submit factual information in support of other allegations not specified in paragraphs (c)(2)(i)-(iv) of this section. Upon receipt of factual information under this subsection, the Secretary will issue a memorandum accepting or rejecting the new factual information. If the

²³ See Petitioner's letter titled, "Additional Deficiency Comment and Particular Market Situation Allegation Relating to Deacero's Electricity Response," dated September 15, 2017.

²⁴ *Id.*

²⁵ See Petitioner's letter, titled "Other Factual Information," dated October 31, 2017.

²⁶ See Deacero's letter, titled "Request to Reject New Factual Information Submitted by RTAC."

Secretary rejects the information, then, to the extent practicable, the Secretary will provide written notice stating the reasons for rejection. If the Secretary accepts the information, then the Secretary will issue a schedule providing deadlines for submission of factual information to rebut, clarify or correct the factual information.”

Analysis

The Department has reviewed the allegations and factual information submitted in support of the petitioner’s particular market situation claim. We find that the deadline for submission of such information is governed by 19 CFR 351.301(c)(2)(v). Accordingly, we find that the petitioner’s new factual information was timely filed.

The petitioner claims that the factual information in its October 31, 2017, submission is not directly responsive to or relating to 19 C.F.R. 351.301(c)(1) - (4); it is not factual information submitted in response to questionnaires, submitted in support of allegations, submitted to value factors of production, or placed on the record of this proceeding by the Department.²⁷ The information in this submission is factual information under 19 C.F.R. 351.102(b)(21)(v).²⁸ Thus, the submission is timely filed pursuant to 19 C.F.R. 351.301(c)(5).²⁹

Deacero contends that contrary to the petitioner’s claims, the information submitted by the petitioner constitutes factual information under 19 C.F.R. 351.102(b)(21)(i), information submitted to rebut, clarify or correct questionnaire responses and/or 19 C.F.R. 351.102(b)(21)(iv). Deacero further states that it recognizes that 19 C.F.R. 351.102(b)(21)(iv) does not specify a deadline for the submission of factual information in support of a particular market situation allegation and that the Department has the discretion to accept new factual information under section 19 C.F.R. 351.301(c)(2)(v) of its regulations.

The Department finds that the petitioner’s allegation concerns price distortions in the costs of production for Deacero’s purchase of electricity. Therefore, we find that the deadline for new factual information submitted in support of this allegation is established by 19 CFR 351.301(c)(2)(v), which is the provision relating to the submission of factual information in support of “other allegations.” Given that 19 CFR 351.301(c)(2)(v) does not specify a deadline for the submission of factual information in support of other allegations, we find that the information submitted in support of the petitioner’s particular market situation allegation was timely submitted.

Pursuant to 19 CFR 351.301(c)(2)(v), when the Department accepts factual information under that provision, the Department will issue a memorandum providing deadlines for the submission of factual information to rebut, clarify or correct such new factual information. However, as discussed below, we recommend preliminarily finding that the petitioner’s allegation on its face does not warrant further investigation into whether a particular market situation exists here. Accordingly, we preliminarily recommend that it is unnecessary to solicit rebuttal factual information or comments from the parties.

²⁷ See Petitioner’s Other Factual Information letter.

²⁸ *Id.*

²⁹ *Id.*

Sufficiency of Particular Market Situation Allegation

The petitioner alleged that it appears that the cost of the electricity that Deacero purchases from the Mexican government is distorted and does not accurately reflect costs in the ordinary course of trade. The petitioner also argues that because electricity is a significant input of rebar production, the Department should request additional information from Deacero to determine whether distortive government control in Mexico over electricity supports a finding of a particular market situation.

The petitioner further alleged that a particular market situation under the TPEA likely exists in Mexico with respect to Deacero's cost of production for rebar, and warrants an adjustment of Deacero's reported electricity costs.

Deacero countered that the fact that higher prices may be paid to an affiliate than to a government-owned public utility is not unusual. There are various valid business reasons why the purchase price paid to affiliates may be higher than that paid to unaffiliated parties, such as differences in inputs, logistics, internal transfer pricing policies and management objectives.

Legal Framework and Recent Administrative Determination

Section 504 of the TPEA added language to sections 771(15) and 773(e) of the Act that expressly incorporated the concept of a particular market situation into the statutory provisions concerning ordinary course of trade and constructed value, respectively. The TPEA further amended section 773(e) of the Act to expressly permit the Department to use an alternative calculation methodology when a particular market situation exists such that the cost of materials does not "accurately reflect the cost of production in the ordinary course of trade."³⁰

Section 771(15) of the Act now states, in relevant part:

The administering authority shall consider the following sales and transactions, among others, to be outside the ordinary course of trade:

(C) Situations in which the administering authority determines that the particular market situation prevents a proper comparison with the export price or constructed export price.

Section 773(e) of the Act now states, in relevant part:

For purposes of paragraph (1), if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.

³⁰ See also section 773(e) of the Act.

The statute does not define the term “particular market situation.”

The Department has reviewed the record evidence underlying the petitioner’s particular market situation allegation, and we preliminarily determine that the petitioner’s allegation and supporting factual information are insufficient to warrant further investigation. Specifically, we find that the petitioner’s allegation of the existence of a particular market situation that is based solely on the alleged price differences between the electricity prices that Deacero paid to the state-owned utility at issue and Deacero’s affiliated electricity supplier is insufficient. We further find that a particular market situation allegation that is based solely on claims that the state-owned utility charges electricity prices to Deacero at rates that are lower than electricity rates it charges to other industrial users is similarly insufficient. The petitioner also cites *OCTG from Korea* as an example of where the Department made an affirmative particular market situation finding. However, we note that, in *OCTG from Korea*, four intertwined market conditions led us to find a particular market situation.³¹ Here, as discussed above, the petitioner’s particular market situation allegation is based solely on alleged price differences, which we find is not sufficient.

VII. MARGIN FOR COMPANIES NOT SELECTED FOR INDIVIDUAL EXAMINATION

In this review, there are 12 companies not selected for individual review. The statute and the Department’s regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department’s practice in calculating a rate for non-examined companies in cases involving limited selection based on exporters or producers accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an administrative review.³² Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, *de minimis*, or based entirely on facts available, we may use “any reasonable method” for assigning the rate to all other respondents.

Consistent with the Court of Appeals for the Federal Circuit’s decision in *Albemarle Corp. v. United States*, in this review, we have preliminarily determined that a reasonable method for determining the margin for the non-selected companies is to use the margin applied to the mandatory respondent (*i.e.*, Deacero) in this administrative review.³³ The *de minimis* margin of zero percent calculated for Deacero is the only margin calculated in this review for an individual respondent and, thus, has been applied to the 12 non-selected companies under section 735(c)(5)(B) of the Act. Accordingly, we preliminarily assign to the non-selected companies a dumping margin of zero percent.

³¹ See *Certain Oil Country Tubular Goods from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2014 -2015*, 81 FR 71074 (October 14, 2016), and *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014 – 2015*, 82 FR 18105 (April 17, 2017) (*OCTG from Korea*) and accompanying Issues and Decision Memorandum at Comment 3.

³² See, *e.g.*, *Longkou Haimeng Mach. Co. v. United States*, 581 F.Supp.2d 1344, 1357-60 (CIT 2008).

³³ See *Albemarle Corp. v. United States*, 821 F.3d 1345 (Fed. Cir. 2016).

VIII. PRELIMINARY DETERMINATION OF NO SHIPMENTS

In the *Initiation Notice*, we instructed producers or exporters named in the notice that had no exports, sales, or entries during the POR to notify the Department within 30 days of publication of the notice of this fact.³⁴ As noted above, on January 19, 2017, and on February 12, 2017, Grupo Simec and Arcelor Mittal, respectively, stated that they made no sales of subject merchandise to the United States during the POR.³⁵ To confirm Grupo Simec's and Arcelor Mittal's no shipment claims, the Department issued a no-shipment inquiry to CBP requesting that it review Grupo Simec's and Arcelor Mittal's no-shipment claims. CBP did not report that it had any information to contradict Grupo Simec's and Arcelor Mittal's claims of no shipments during the POR.

Given that Grupo Simec and Arcelor Mittal certified that they made no shipments of subject merchandise to the United States during the POR, and there is no information calling their claims into question, we preliminarily determine that Grupo Simec and Arcelor Mittal did not have any reviewable transactions during the POR. Consistent with the Department's practice, we will not rescind the review, in part, with respect to Grupo Simec and Arcelor Mittal but, rather, will complete the review and issue instructions to CBP based on the final results.³⁶ Should evidence contrary to these companies' no shipments claims arise, we will revisit this issue in the final results.

IX. DISCUSSION OF METHODOLOGY

Date of Sale

As stated at 19 CFR 351.401(i), in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. Additionally, under that regulation, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.³⁷ In addition, the Department's long-standing practice is to rely on shipment date where it precedes invoice date as the date of sale.³⁸

³⁴ See *Initiation Notice*.

³⁵ See Grupo Simec's No Shipment Letter and Arcelor Mittal's No Shipment Letter.

³⁶ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments*; 2012-2013, 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review*; 2012-2013, 79 FR 51306, 51307 (August 28, 2014).

³⁷ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) (*Allied Tube & Conduit Corp.*) ("As elaborated by Department practice, a date other than invoice date 'better reflects' the date when 'material terms of sale' are established if the party shows that the 'material terms of sale' undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date").

³⁸ See, e.g., *Seamless Refined Copper Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review*; 2012-2013, 80 FR 33482 (June 12, 2015) ("*Copper Pipe and Tube from Mexico*"), and

For its home market sales, Deacero reported the date of sale as the invoice date or the shipment date, whichever is earlier.³⁹ In the home market, the invoice is issued on the date merchandise is shipped from the plant or warehouse. For U.S. channel 1 and 2 sales (shipped directly from Mexico), Deacero USA issues the invoice to the customer on the date the merchandise crosses the border.⁴⁰ Accordingly, for these preliminary results, we have used the invoice date as the date of sale for Deacero's home market and U.S. market sales during the POR because sales are confirmed and finalized with the issuance of the invoice. For Deacero's home market sales where the invoice is issued after the shipment date but where the record shows no change in the terms of sale between the shipment and invoice date, the shipment date constitutes the earlier of the shipment and invoice date and is thus, in line with Department practice, the appropriate date to select.

Thus, for these preliminary results we have used the dates of sale reported by Deacero in our margin calculations because we found, based on record evidence, that the material terms of the sale did not change after the reported dates.

Comparisons to Normal Value

Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.414(c)(1) and (d), we compared constructed exported price (CEP) to NV, as described in the "Constructed Export Price," and "Normal Value" sections of this decision memorandum, to determine whether sales of subject merchandise to the United States were made at less than NV.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Deacero that are covered by the description contained in the "Scope of the Order" section above and were sold in the home market during the POR, to be foreign like product for purposes of determining the appropriate product on which to base NVs for comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product on the basis of the hierarchy of reported physical characteristics: (1) type of steel, (2) minimum specified yield strength, (3) size designation, and (4) form.

Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average normal values to weighted-average export prices (or constructed export prices) (*i.e.*, the average-to-average method) unless the Secretary determines

accompanying Issues and Decision Memorandum at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

³⁹ See Deacero's AQR at A-23 and A-27.

⁴⁰ *Id.*, at A-27.

that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average normal values with the export prices (or constructed export prices) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.⁴¹

In antidumping investigations, the Department applies a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁴² The Department finds that the differential pricing analysis used in those investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department continues to develop its approach in this area based on comments received in this and other proceedings and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise.

Purchasers for this review and this methodology are based on the reported consolidated customer codes for Deacero.⁴³ Regions are defined using the reported destination codes (*i.e.*, zip codes) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between CEP and NV for the individual dumping margins.

⁴¹ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012) and accompanying Issues and Decision Memorandum at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1291 (CIT 2014).

⁴² See, *e.g.*, *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013) and accompanying Issues and Decision Memorandum at Comment 3; *Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 27233 (June 14, 2017), and accompanying Issues and Decision Memorandum at Comments 9 and 10, or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015) and accompanying Issues and Decision Memorandum at Comment 8.

⁴³ See Deacero's CQR at C-14.

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

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

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the A-to-A method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-to-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-to-A method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: 1) there is a 25 percent relative change in the weighted-average dumping margin between the A-to-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

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

Results of the Differential Pricing Analysis

Based on the results of the differential pricing analysis, the Department preliminarily finds that 56.16 percent of Deacero's U.S. sales passed the Cohen's *d* test. However, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Accordingly, the Department preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Deacero.

Constructed Export Price

Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation . . . by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter." In accordance with section 772(b) of the Act, we used the CEP methodology for Deacero because the subject merchandise was sold in the United States by U.S. sellers affiliated with the producer.⁴⁴ We calculated CEP based on the delivered price to unaffiliated purchasers in the United States. We made adjustments, where appropriate, from the starting price for billing adjustments, early payments, other discounts, rebates, and miscellaneous revenue. We also made deductions for any movement expenses (*e.g.*, foreign inland freight, port charges, export processing fees, testing expenses (courier fees to deliver test samples), U.S. brokerage and handling, international freight, marine insurance, U.S. inland freight, and U.S. duty), in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we further adjusted the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct and indirect selling expenses. We allowed a CEP offset adjustment. Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

Normal Value

A. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Deacero's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.404(b), because Deacero's aggregate volume of home market sales of the foreign like product was

⁴⁴ See Deacero's CQR at C-15.

greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.⁴⁵ Moreover, as discussed above, there is no evidence on the record supporting a particular market situation in the exporting company's country that would not permit a proper comparison of home market and U.S. prices.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the export price (EP) or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁴⁶ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁴⁷ In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (*i.e.*, customer category), and the level of selling expenses for each type of sale.

Pursuant to 19 CFR 351.412(c)(1), in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third-country prices), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act.⁴⁸

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁴⁹

In this administrative review, we obtained information from Deacero regarding the marketing stages involved in making the reported home market and U.S. market sales, including a description of the selling activities performed for each channel of distribution.⁵⁰

In the home market, Deacero reported that it sold rebar through two channels of distribution. In channel 1, Deacero made direct shipments to unaffiliated customers from the company's rebar plants in Mexico. In each case, the sale was either made directly by Deacero or indirectly

⁴⁵ See Deacero's AQR at A-4 and Exhibit A-1.

⁴⁶ See 19 CFR 351.412(c)(2).

⁴⁷ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*).

⁴⁸ See *Micron Technology Inc. v. United States*, 243 F.3d 1301, 1314-1315 (Fed. Cir. 2001).

⁴⁹ See *Plate from South Africa*, 62 FR at 61732-33.

⁵⁰ See Deacero's AQR at A-15 through A-21, and Exhibit A-8.

through its affiliate Aceros Nacionales, S.A. de C.V. (ANSA). In channel 2, Deacero made sales from inventory stored in warehouses, distribution centers, and non-rebar plants. Such sales were also made either directly by Deacero or indirectly through ANSA.⁵¹ The selling activities performed were the same for Channels 1 and 2 in the home market.⁵² Since the level of selling activity was the same in the home market, we preliminarily find that the home market channels of distribution constitute one LOT.

In the U.S. market, Deacero reported that it had two channels of distribution for U.S. sales of rebar during the POR. For channel 1, Deacero shipped rebar directly to unaffiliated U.S. customers from its Mexican plants (including non-rebar plants) by truck or railcar. For channel 2, Deacero shipped rebar to Deacero USA's warehouse in Laredo, Texas, by truck. There, Deacero USA unloaded the product and had it delivered by truck to unaffiliated U.S. customers.⁵³

Based on our review of the selling functions that are related to CEP and home market sales, the Department has preliminarily determined that Deacero's home market sales are made at a different, and more advanced, stage of marketing than the LOT of the CEP sales. Nonetheless, we are unable to make a LOT adjustment. This is due to the fact that there is only one LOT for home market sales. Deacero did not sell subject merchandise in the home market at the same LOT as that of the CEP, and there are no other data on the record that would allow the Department to establish whether there is a pattern of consistent price differences between sales at a different LOT in the home market.

Accordingly, while we preliminarily determine that a LOT adjustment may be appropriate for CEP sales, for the reasons stated above, we are unable to make such an adjustment. As a result, we preliminarily determine the LOT of CEP sales were the same as the LOT of home market sales. Therefore, we matched CEP sales at the same LOT in the comparison market and made no LOT adjustment. Thus, we have made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act. This offset is equal to the amount of indirect expenses incurred in the comparison market not exceeding the amount of the deductions made from the U.S. price in accordance with 772(d)(1)(D) of the Act.

Deacero requested a CEP offset, stating that sales in the home market are made at a more advanced LOT than the LOT of sales in the United States.⁵⁴ The Department's normal practice is that for CEP sales, if the NV level is more remote from the factory than the CEP level, and that there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). Based on information on the record, as noted above, we have preliminarily granted a CEP offset for Deacero.

⁵¹ See AQR at A-15 and A-16, and Exhibit A-7.

⁵² *Id.* at A-17.

⁵³ *Id.* at A-15.

⁵⁴ *Id.* at A-22.

C. Sales to Affiliated Customers

We excluded comparison market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because we considered them to be outside the ordinary course of trade.⁵⁵ Consistent with 19 CFR 351.403(c) and our practice, “the Department may calculate normal value based on sales to affiliates if satisfied that the transactions were made at arm's length.”⁵⁶ To test if sales to affiliates were made at arm's-length prices, we compare, on a model-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all direct selling expenses, billing adjustments, discounts, rebates, movement charges, and packing (arm's-length test). Where prices to the affiliated party are, on average, within a range of 98-to-102 percent of the price of identical or comparable merchandise to the unaffiliated parties, we determine that the sales made to the affiliated party are at arm's length.⁵⁷

We preliminarily find that certain of the sales Deacero made to its affiliated customers during the POR passed the arm's-length test. Accordingly, we included these certain sales in our preliminary margin analysis and did not have to request downstream sales by the company's affiliates.

D. Cost of Production Analysis

Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015.⁵⁸ It requires the Department to request constructed value (CV) and cost of production (COP) information from respondent companies in all antidumping proceedings.⁵⁹ Because these amendments apply to this review, the Department requested this information from Deacero.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses and interest expenses.⁶⁰ We relied on the COP data submitted by Deacero. We examined the cost data and determined that our quarterly cost methodology is not warranted in this review. Therefore, we have applied our standard methodology of using annual costs based on the reported data of Deacero.⁶¹

⁵⁵ See 19 CFR 351.403(c).

⁵⁶ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1367 (CIT 2003).

⁵⁷ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69194 (November 15, 2002).

⁵⁸ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

⁵⁹ *Id.*, 80 FR at 46794-95.

⁶⁰ See “Test of Comparison Market Sales Prices” section below for treatment of comparison market selling expenses.

⁶¹ See Deacero Preliminary Results Sales and Cost Analysis Memorandum.

2. Test of Home Market Prices

As required under 773(b)(2) of the Act, we compared the weighted average of the COP for the POR to the per-unit price of the home market sales of the foreign like product, to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net home market prices for the below cost test by subtracting from the gross unit price all applicable movement charges, direct and indirect selling expenses, and packing expenses, where appropriate.⁶²

3. Results of COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(1)(A) and (b)(2)(C)(i) of the Act, where less than 20 percent of respondent's comparison market sales of a given product are at prices less than the COP, we did not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made in "substantial quantities" within an extended period of time. Where 20 percent or more of a respondent's comparison market sales of a given product are at prices below the COP, we disregard the below-cost sales when: 1) they are made within an extended period of time in substantial quantities, in accordance with sections 773(b)(2)(B) and (C)(i) of the Act, and 2) they are at prices which would not permit the recovery of all costs within a reasonable period of time based on our comparison of prices to the weighted-average COPs for the POR, in accordance with sections 773(b)(1)(B) and (b)(2)(D) of the Act.

We relied on Deacero's submitted COP database, except we made adjustments to scrap, and variable overhead expenses. We also recalculated G&A.⁶³

Our cost tests indicate that Deacero had certain home market sales that were sold at prices below the COP within an extended period of time in substantial quantities and were at prices which would not permit the recovery of all costs within a reasonable period of time.⁶⁴ Thus, in accordance with section 773(b)(1) of the Act, we disregarded certain below-cost sales and used the remaining above-cost sales to determine NV.

E. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on the reported packed, ex-factory, or delivered prices to comparison market customers. We made deductions from the starting price, where appropriate, for billing adjustments, discounts, rebates, and inland freight, pursuant to 19 CFR 351.401(c) and section

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

773(a)(6)(B)(ii) of the Act.⁶⁵

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(b), we made, where appropriate, circumstance-of-sale adjustments (*i.e.*, credit and commissions). We added U.S. packing costs and deducted comparison market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign-like product and subject merchandise.⁶⁶ For detailed information on the calculation of NV, *see* Deacero Preliminary Sales and Cost Analysis Memoranda.

F. Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank.⁶⁷

X. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

11/30/2017

X



Signed by: GARY TAVERMAN