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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: Certain Circular Welded Non-Alloy Steel Pipe from Mexico:
Preliminary Decision Memorandum

I. SUMMARY

In response to requests by interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain circular welded non-alloy steel pipe from Mexico. The period of review (POR) is November 1, 2015, through October 31, 2016.

II. BACKGROUND

On November 2, 1992, the Department published the antidumping duty order on certain circular welded non-alloy steel pipe from Mexico.¹ On November 4, 2016, the Department published a notice of opportunity to request an administrative review of the order.² On November 30, 2016, petitioner Wheatland Tube Company (the petitioner) requested an administrative review of ten companies:³ (1) Abastecedora y Perfiles y Tubos, S.A. de C.V. (Abastecedora); (2) Conduit, S.A. de C.V. (Conduit); (3) Lamina y Placa Comercial, S.A. de C.V. (Lamina y Placa); (4) Regiomontana de Perfiles y Tubos S.A. de C.V. (Regiopytsa); (5) Maquilacero S.A. de C.V. (Maquilacero); (6) Mueller Comercial de Mexico, S. de R.L. de C.V. (Mueller); (7) Productos Laminados de Monterrey S.A. de C.V. (Prolamsa); (8) Pytco, S.A. de C.V. (Pytco); (9) Ternium

¹ See *Notice of Antidumping Duty Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Welded Non-Alloy Steel Pipe from Korea*, 57 FR 49453 (November 2, 1992) (Antidumping Duty Order).

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

³ See Letter from Petitioner, "Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Request for Administrative Review," dated November 30, 2016 (Petitioner Review Request).



Mexico, S.A. de C.V. (Ternium); and (10) “Villacero (formerly Tuberia Nacional, S.A. de C.V.)”. The petitioner clarified on December 27, 2016, that this request of a review of Villacero was intended to constitute a request of a review of Villacero and its affiliates Lamina y Placa Comercial, S.A. de C.V. and Tuberia Nacional, S.A. de C.V.⁴ On November 30, 2016, Maquilacero requested an administrative review of itself.⁵

On January 13, 2017, the Department published in the *Federal Register* its notice of initiation of administrative review of certain circular welded non-alloy steel pipe from Mexico, which included the exporters or producers for which we received timely requests, but initiated reviews of, individually, Villacero and Tuberia Nacional, S.A. de C.V. (Tuberia).⁶ On January 25, 2017, Lamina y Placa reported, on behalf of itself and Tuberia, that those two companies made no sales of subject merchandise during the POR.⁷ On February 3, 2017, Lamina y Placa clarified its no-shipment certification to report that “Villacero” also made no sales of subject merchandise during the POR.⁸ On February 13, 2017, Mueller and Regiopytsa (on behalf of itself and Pytco) reported that they made no sales of subject merchandise during the POR.⁹

The *Initiation Notice* stated that, in the event the Department limited the number of respondents for individual examination for administrative reviews, the Department intended to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. On February 7, 2017, the Department issued to all parties with Administrative Protective Order (APO) access entry data from CBP and invited interested parties to comment on these data.¹⁰ On February 17, 2017, Prolamsa and the petitioner submitted comments on the data contained in the CBP Information Memorandum.¹¹

⁴ See Letter from Petitioner, “Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Clarification of Request for Administrative Review,” dated December 27, 2016.

⁵ See Letter from Maquilacero, “Certain Circular Welded Non-Alloy Steel Pipe from Mexico; Request for Administrative Review of Maquilacero S.A. de C.V.,” dated November 30, 2016.

⁶ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 4294 (January 13, 2017) (*Initiation Notice*).

⁷ See Letter from Lamina y Placa, “Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Notice of No Sales,” dated January 25, 2017.

⁸ See Letter from Villacero, “Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Notice of No Sales,” dated February 3, 2017.

⁹ See Letter from Mueller, “Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Certification of No Shipments,” dated February 13, 2017; Letter from Regiopytsa, “Circular Welded Non-Alloy Steel Pipe from Mexico: No Shipment Notification,” dated February 13, 2017.

¹⁰ See Memorandum, “Certain Circular Welded Non-Alloy Steel Pipe from Mexico, 2015-2016 Administrative Review: Placement of Customs and Border Protection (CBP) Information on the Record of this Administrative Review,” dated February 7, 2017 (CBP Information Memorandum); see also Letter to All Interested Parties, dated February 14, 2017.

¹¹ See Letter from Prolamsa, “Certain Circular Welded Non-Alloy Steel Pipe from Mexico – Comments on CBP Data,” dated February 17, 2017; Letter from Petitioner, “Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Comments on CBP Data,” dated February 17, 2017.

On April 12, 2017, Maquilacero withdrew its request for an administrative review of itself.¹² On April 13, 2017, the petitioner withdrew its request for a review of Mueller.¹³

For the purpose of potential respondent selection, we made a data inquiry to CBP and placed certain documents from this data query on the record.¹⁴ The Department selected Maquilacero and Prolamsa as the mandatory respondents¹⁵ and issued both companies the standard antidumping questionnaire on June 5, 2017.¹⁶ Prolamsa responded to the Department's initial questionnaire and subsequent supplemental questionnaires, as identified in the Preliminary Analysis Memorandum.¹⁷ On June 22, 2017, Maquilacero submitted a letter to the Department stating that it did not intend to file a response to the questionnaire.¹⁸

On July 10, 2017, the Department extended the deadline for the preliminary results of this review, until November 7, 2017.¹⁹ On November 6, 2017, the Department extended the deadline until November 30, 2017.²⁰

III. SCOPE OF THE ORDER

The products covered by the order are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A-53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of the order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or

¹² See Letter from Maquilacero, "Certain Circular Welded Non-Alloy Steel Pipe and Tube from Mexico; Withdrawal of Request for Review for Maquilacero S.A. de C.V.," dated April 12, 2017 (Maquilacero Withdrawal Request).

¹³ See Letter from Petitioner, "Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Partial Withdrawal of Request for Administrative Review," dated April 13, 2017 (Petitioner Withdrawal Request).

¹⁴ See CBP Information Memorandum.

¹⁵ See Memorandum, "Respondent Selection for the Administrative Review of Circular Welded Non-Alloy Steel Pipe from Mexico, 2015-2016," dated May 24, 2017 (Respondent Selection Memorandum).

¹⁶ See Letter to Maquilacero, dated June 5, 2017; *see also* Letter to Prolamsa, dated June 5, 2017.

¹⁷ See Memorandum, "Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Analysis of Data Submitted by Productos Laminados de Monterrey S.A. de C.V. (Prolamsa) for Preliminary Results of Antidumping Duty Administrative Review; 2015-2016," (Prolamsa Preliminary Analysis Memorandum).

¹⁸ See Letter from Maquilacero, "Certain Circular Welded Non-Alloy Steel Pipe and Tube from Mexico; Maquilacero S.A. de C.V.'s Response to Questionnaire," dated June 22, 2017.

¹⁹ See Memorandum, "Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review," dated July 10, 2017.

²⁰ See Memorandum, "Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review," dated November 6, 2017.

triple certified/stenciled that enters the U.S. as line pipe of a kind used for oil or gas pipelines is also not included in the order.

The merchandise covered by the order and subject to this review are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

IV. PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

In accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), the Department initiated a review of eleven companies for which a request for review was received in this proceeding.²¹ Included in these requests for review was the petitioner's request for a review of Mueller, which was the only request covering Mueller.²² In response to the petitioner's timely filed withdrawal of its request for a review of Mueller,²³ we are rescinding this administrative review with respect to Mueller, pursuant to 19 CFR 351.213(d)(1).²⁴

Although Maquilacero withdrew its request for an administrative review of itself,²⁵ petitioner also requested a review of Maquilacero²⁶ that was not withdrawn. Accordingly, we are not rescinding the review with respect to Maquilacero.

V. PRELIMINARY DETERMINATION OF NO SHIPMENTS

Lamina y Placa, Pytco, Regiopytsa, Villacero, and Tuberia, reported that they made no sales of subject merchandise during the POR.²⁷ On April 28, 2017, we issued no-shipment inquiries to CBP to confirm the claims of no shipments by Lamina y Placa, Pytco, Regiopytsa, Villacero, and Tuberia. We received no response to our inquiry from CBP. Therefore, based on the claims of no shipments by Lamina y Placa, Pytco, Regiopytsa, Villacero, and Tuberia, because the record currently contains no information to the contrary, we preliminarily determine that Lamina y Placa, Regiopytsa, Pytco, Villacero, and Tuberia had no shipments of subject merchandise and, therefore, no reviewable transactions during the POR.

However, consistent with our practice, we are not preliminarily rescinding the review with respect to Lamina y Placa, Pytco, Regiopytsa, Villacero, and Tuberia, but, rather, we will complete the review with respect to these companies and issue appropriate instructions to CBP based on the final results of this review.²⁸ Following our long-standing practice, we shall

²¹ See *Initiation Notice*.

²² See *Petitioner Review Request*.

²³ See *Petitioner Withdrawal Request*.

²⁴ See the accompanying *Federal Register* notice at the section entitled, "Partial Rescission."

²⁵ See *Maquilacero Withdrawal Request*.

²⁶ See *Petitioner Review Request*.

²⁷ See Letter from Lamina y Placa to the Secretary of Commerce entitled, "Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Notice of No Sales," dated January 25, 2017; Letter from Villacero, "Circular Welded Non-Alloy Steel Pipe and Tube from Mexico: Notice of No Sales," dated February 3, 2017; Letter from Regiopytsa, "Circular Welded Non-Alloy Steel Pipe from Mexico: No Shipment Notification," dated February 13, 2017.

²⁸ See, e.g., *Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty*

instruct CBP to liquidate any existing entries of merchandise produced by Lamina y Placa, Pytco, Regiopyta, Villacero, and Tuberia, and exported by other parties at the all-others rate should we continue to find in our final results that they had no shipments of subject merchandise from Mexico.²⁹ See the “Assessment Rates” section of the accompanying *Federal Register* notice for additional detail.

VI. NON-SELECTED RESPONDENTS

Administrative reviews of Abastecedora, Conduit, and Ternium were requested by the petitioner.³⁰ None of these three companies (1) was selected as a mandatory respondent;³¹ (2) was the subject of a withdrawal of request for review; (3) requested to participate as a voluntary respondent; or (4) submitted a claim of no shipments. As such, these three companies remain as unexamined respondents. The statute and the Department’s regulations do not address the establishment of a rate to be applied to companies not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally “an amount equal to the weighted- average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.” In this review, we have preliminarily calculated a weighted-average dumping margin for Prolamsa that is not zero, *de minimis*, or determined entirely on the basis of facts available. Accordingly, we assigned to the companies not individually examined the weighted-average dumping margin calculated for Prolamsa.

VII. USE OF FACTS AVAILABLE AND ADVERSE INFERENCES

For the reasons discussed below, we determine that the use of facts available with an adverse inference (AFA) is appropriate for these preliminary results with respect to Maquilacero.

A. Use of Facts Available

Section 776(a) of the Act provides that the Department shall use “facts otherwise available” if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to

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 at 51306 (August 28, 2014).

²⁹ See, e.g., *Certain Frozen Warmwater Shrimp from India: Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 77610, 77612 (December 19, 2008).

³⁰ See Petitioner Review Request.

³¹ See Respondent Selection Memorandum.

subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

On June 5, 2017, the Department issued the antidumping questionnaire to Maquilacero.³² On June 22, 2017, Maquilacero stated that it did not intend to respond to the questionnaire.³³ Without information from Maquilacero, the Department is unable to calculate a dumping margin for Maquilacero. Thus, in accordance with section 776(a)(1) of the Act, necessary information to calculate a weighted-average dumping margin for Maquilacero's exports of subject merchandise to the United States during the POR is not on the record. Moreover, in accordance with section 776(a)(2) of the Act, we preliminarily determine that because Maquilacero did not respond to the questionnaire, it withheld information that had been requested by the Department, failed to provide information to the Department by the deadline for submission of that information, and significantly impeded the conduct of this proceeding. Therefore, we are using facts otherwise available in reaching an antidumping duty determination for Maquilacero in this review.

B. Application of Facts Available with an Adverse Inference

Section 776(b) of the Act provides that, if the Department finds that an interested party fails 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 the facts otherwise available.³⁴ In addition, the SAA³⁵ provides that the Department may employ an adverse inference when selecting among facts otherwise available "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."³⁶ The "best of its ability" standard requires a party to "do the maximum it is able to do."³⁷ Evidence of "bad faith, or willfulness" on the part of the respondent is not required for the Department to make an adverse inference.³⁸

Because Maquilacero received the Department's questionnaire but did not respond to the Department's request for information, we preliminarily determine that Maquilacero has failed to cooperate by not acting to the best of its ability to provide the Department with the necessary information for it to calculate a weighted-average dumping margin for Maquilacero's exports of subject merchandise to the United States during this POR. Accordingly, we preliminarily find that the application of facts available with an adverse inference, pursuant to section 776(b) of the Act, is warranted for the weighted-average dumping margin for Maquilacero for the preliminary results of this administrative review.

³² See Letter to Maquilacero, dated June 5, 2017.

³³ See Letter from Maquilacero, "Certain Circular Welded Non-Ally Steel Pipe and Tube from Mexico; Maquilacero S.A. de C.V.'s Response to Questionnaire," dated June 22, 2017.

³⁴ See *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 36891, 36891 (June 8, 2016).

³⁵ See *Uruguay Round Agreements Act Statement of Administrative Action*, attached to H.R. Rep. No. 103-316 Vol. I (1994), reprinted in 1994 U.S.C.C.A.N 3773, 4163 (SAA).

³⁶ See SAA at 870; see also e.g., *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007).

³⁷ See SAA at 870.

³⁸ See *Nippon Steel Corporation v. United States*, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003).

C. Selection and Corroboration of Information Used as Facts Available

When employing an adverse inference in selecting among facts available, the Department's practice is to select an AFA rate that is sufficiently adverse to induce respondents to provide the Department with complete and accurate information in a timely manner and that ensures that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. Specifically, the Department's practice in reviews, when selecting a rate as total AFA, is to use the highest rate on the record of the proceeding, which, to the extent practicable, can be corroborated.

Under the Trade Preferences Extension Act of 2015 (TPEA), numerous amendments to the AD and CVD laws were made,³⁹ including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act. The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this review.⁴⁰

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In so doing, under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party complied with the request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or other information placed on the record.⁴¹

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. However, pursuant to section 776(c)(2), the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Finally, under section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.

As AFA, we preliminarily assign Maquilacero a weighted-average dumping margin of 73.70 percent. This rate was calculated for cooperative respondent Prolamsa in the course of this

³⁹ See *Trade Preferences Extension Act of 2015* (TPEA), Pub. L. No. 114-27, 129 Stat. 362 (2015).

⁴⁰ 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).

⁴¹ See also 19 CFR 351.308(c) and SAA at 868-70.

administrative review, and is the highest rate calculated, or otherwise applied to a respondent, in any segment in this proceeding. Applying this rate achieves the purpose of applying an adverse inference, *i.e.*, it is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. According to 776(c)(2) of the Act, this rate does not require corroboration.

When a respondent is not cooperative, such as Maquilacero in this review, the Department has the discretion to presume that the highest prior dumping margin is the most probative evidence of the current weighted-average dumping margin.⁴² If this were not the case, the party would have produced current information showing its rate to be less.⁴³ Therefore, we preliminarily determine that the AFA rate is appropriate for purposes of this administrative review.

VIII. METHODOLOGY

As discussed above, Prolamsa responded to our questionnaires, and we have calculated a weighted-average dumping margin for Prolamsa as described below.

A. Fair Value Comparisons

Pursuant to section 773(a)(1)(B)(ii) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether sales of certain circular welded non-alloy steel pipe from Mexico were made in the United States at less than normal value, we compared the constructed export price (CEP) to the normal value as described in the “Export Price” and “Normal Value” sections of this memorandum. In this POR, Prolamsa made only CEP sales to the United States.⁴⁴

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average constructed export prices (CEPs) or EPs (the average-to-average method (A-to-A)) unless the Secretary determines that another method is appropriate in a particular situation. In recent antidumping (AD) proceedings, the Department examines whether to use the average-to-transaction (A-to-T) method as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. In order to determine which comparison method to apply, in recent proceedings, the Department applied a “differential pricing” (DP) analysis for determining whether application of A-to-T comparisons is appropriate pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.⁴⁵ The Department finds the DP analysis used in recent proceedings may be instructive for purposes of examining whether to apply an alternative comparison method in this AD

⁴² See *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1339 (Fed. Cir. 2002) (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990)).

⁴³ See *Rhone Poulenc*, 899 F.2d at 1190.

⁴⁴ See Prolamsa’s July 11, 2017 Section A Questionnaire Response (Prolamsa July 11, 2017 AQR) at 2.

⁴⁵ See, e.g., *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 69371 (November 19, 2013), and accompanying Preliminary Decision Memorandum.

review.⁴⁶ The Department intends to continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the A-to-A method in calculating weighted-average dumping margins.

The DP analysis used in this preliminary determination requires a finding of a pattern of CEPs (or EPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods.⁴⁷ If such a pattern is found, then the DP analysis evaluates whether such differences can be taken into account when using the A-to-A method to calculate the weighted-average dumping margin. The DP analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the customer codes as reported. Regions are defined using the reported destination code (*i.e.*, zip codes), which 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.

In the first stage of the DP 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

⁴⁶ See, *e.g.*, *Hardwood and Decorative Plywood from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013), and accompanying Issues and Decision Memorandum at Comment 5; see also *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2011-2012*, 78 FR 40692 (July 8, 2013); *Certain Activated Carbon from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 26748 (May 8, 2013); *Certain Steel Threaded Rod from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 21101 (April 9, 2013) (*Steel Threaded Rod*); *Polyester Staple Fiber from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 17637 (March 22, 2013) (*Polyester Staple Fiber*).

⁴⁷ As noted above, the DP analysis has been utilized in recent AD investigations and several recent AD administrative reviews to determine the appropriate comparison methodology. See, *e.g.*, *Steel Threaded Rod; Circular Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 21105 (April 9, 2013); *Polyvinyl Alcohol from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2010-2012*, 78 FR 20890 (April 8, 2013); and *Polyester Staple Fiber*.

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 were found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for 66 percent or more of the value of total sales, then the identified pattern of EPs 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 EPs (or CEPs) that differ significantly such that an alternative comparison method should be considered, then in the second stage of the DP 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 and justifications in relation to the above-described DP approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.⁴⁸

⁴⁸ The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F.3d 1322 (Fed. Cir. July 12, 2017) recently affirmed much of the Department's differential pricing methodology. We ask interested parties present only arguments on issues which have not already been decided by the CAFC.

2. Results of the DP Analysis

For Prolamsa, based on the results of the DP analysis, the Department preliminarily finds that 63.75 percent of its CEP sales by value pass the Cohen's *d* test, and confirms the existence of a pattern of CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the average-to-average method cannot appropriately account for such differences because the weighted-average dumping margins calculated using the average-to-average method and the appropriate alternative method move across the *de minimis* threshold. Accordingly, the Department has preliminarily determined to use the average-to-transaction method for those sales passing the Cohen's *d* test and the average-to-average method for those sales not passing the Cohen's *d* test.

B. Product Comparisons

In accordance with section 771(16) of the Act, we compared products produced and sold in the U.S. and home market by Prolamsa and its affiliate, Aceros Cuatro Caminos S.A. de C.V. (A4C),⁴⁹ on the basis of the home market product, which was either identical or most similar in term of the physical characteristics to the product sold in the United States. In the order of importance, the physical characteristics were grade, nominal pipe size, wall thickness, coating, and end finish.

C. Date of Sale

Section 351.401(i) of the Department's regulations states that, normally, the Department will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale.

Prolamsa reported the earlier of the invoice date or the shipping date as the sale date in both markets.⁵⁰ For purposes of this administrative review, the Department has on Prolamsa's reported sale date as the date of sale.

D. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP.⁵¹ The LOT for NV is based on the starting prices of sales in the home market or, when NV is based on CV, those of the sales from which we derived selling, general, and administrative expenses and profit.⁵² In this administrative review, Prolamsa made only CEP sales to the United States.

⁴⁹ Aceros Cuatro Caminos S.A. de C.V. is a home market producer of subject merchandise affiliated with Prolamsa. See Prolamsa July 7, 2017 AQR at 2. See also Affiliation and Collapsing Memorandum.

⁵⁰ See Prolamsa's July 27, 2017 Section B Questionnaire Response (Prolamsa July 27, 2017 BQR) at B-31; see also Prolamsa's July 27, 2017 Section C Questionnaire Response (Prolamsa July 27, 2017 CQR) at C-24.

⁵¹ See also section 773(a)(7)(A) of the Act.

⁵² See 19 CFR 351.412(c)(1)(iii).

To determine if the home market sales are made at a different LOT than CEP sales, we examined stages in the marketing process and the selling functions performed along the chain of distribution between the producer and the unaffiliated customer.⁵³ If home market sales are at a different LOT, as manifested in a pattern of consistent price differences between the sales on which NV is based and home market sales made at the LOT of the export transaction, and the difference affects price comparability, then we make a LOT adjustment to NV under section 773(a)(7)(A) of the Act and 19 CFR 351.412.⁵⁴

In implementing these principles in this review, we examined information obtained from Prolamsa regarding the marketing stages involved in its home market and U.S. sales, including a description of the selling activities performed for each channel of distribution. Prolamsa reported four channels of distribution in its home market,⁵⁵ and two channels of distribution in its U.S. market.⁵⁶ Based on our review of the reported selling activities for each home market channel of distribution, we preliminarily determine that channels 1-3 in that market all constitute a single LOT. However, we preliminarily determine that Prolamsa's reported channel 4 in that market constitutes a different LOT because additional services are performed, including technical assistance and providing just-in-time inventory services.⁵⁷ Accordingly, we preliminarily determine that two LOTs exist in the home market.⁵⁸

As stated above, in this administrative review, Prolamsa reported only CEP sales to the United States, and two channels of distribution for those CEP sales in the U.S. market. Upon our review of the activities between the two channels, we find few differences between them, and that the differences that do exist do not rise to the level of a "substantial difference in selling activities," a necessary, but not sufficient, condition to finding different levels of trade.⁵⁹ Therefore, we determine that a single LOT exists in the U.S. market.

Finally, we compared the U.S. LOT to the two home market LOTs, and found that the types of selling functions Prolamsa performed for its home market customers are not significantly different from those performed for its sales to its U.S. affiliate, Prolamsa Inc., such that they would constitute a different marketing stage.⁶⁰ Therefore, we preliminarily determine that sales to the home market during the POR were not made at a different LOT than sales to the United States. Because Prolamsa's home market LOTs are not at a more advanced stage of distribution than Prolamsa's U.S. LOT, a CEP offset is not warranted.

⁵³ See 19 CFR 351.412(c)(2).

⁵⁴ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61733 (November 19, 1997).

⁵⁵ See Prolamsa July 11, 2017 AQR at 19.

⁵⁶ *Id.*

⁵⁷ See Prolamsa July 27, 2017 BQR at B-43.

⁵⁸ *Id.* at B-42 (reporting two LOTs exist in the home market).

⁵⁹ This discussion involves business proprietary information. For further discussion, see the Prolamsa Calculation Memorandum, dated concurrently with this memorandum.

⁶⁰ Because this discussion involves business proprietary information, see Prolamsa Calculation Memorandum.

E. Constructed Export Price

The Department based the price of U.S. sales of subject merchandise by Prolamsa on CEP, as defined in section 772(b) of the Act, because the first sale to an unaffiliated purchaser occurred after importation of subject merchandise into the United States, or the U.S. affiliate made the U.S. sale to the first unaffiliated purchaser. We calculated CEP based on prices to unaffiliated purchasers in the United States. We made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct selling expenses and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act. There was no cost associated with further manufacturing within the meaning of section 772(d)(2) of the Act, and therefore we made no such adjustment.

F. Normal Value

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

1. Home Market Viability as Comparison Market

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (*i.e.*, the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of home market sales of foreign like product by Prolamsa to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that Prolamsa had a viable home market during the POR.

2. Affiliation and Single Entity

Section 771(33) of the Act, in pertinent part, identifies persons that shall be considered "affiliated" or "affiliated persons" as: (1) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person (section 771(33)(F) of the Act); or (2) any person who controls any other person and such other person (section 771(33)(G) of the Act). Section 771(33) further stipulates that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person, and the Statement of Administrative Action notes that control may be found to exist within corporate groupings.⁶¹ The Department's regulations at 19 CFR 351.102(b)(3) state that in determining whether control over another person exists within the meaning of section 771(33) of the Act, the Department will not find that control exists unless the relationship has the

⁶¹ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc 103-316, Vol. 1, 103d Cong. (1994) (SAA) at 838 (stating that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings, (2) franchises or joint ventures, (3) debt financing, and (4) close supplier relationships in which either party becomes reliant upon the other).

potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.

We examined record evidence to determine whether and the extent to which Prolamsa was affiliated with A4C in accordance with section 771(33) of the Act. In questionnaire responses submitted to the Department, Prolamsa specified that A4C is an affiliated producer of subject and non-subject merchandise, and that both Prolamsa and A4C manufactured and sold steel pipe in the comparison market.⁶² Prolamsa provided additional information regarding its relationship with A4C that speaks to the nature of affiliation based on the level of common ownership and control, of which certain information is business proprietary in nature.⁶³

We preliminarily find that both companies engaged in the production and sales of the subject merchandise are under common control. Thus, in accordance with sections 771(33)(F) and (G) of the Act, we preliminarily find that there is evidence on the record that Prolamsa and A4C are affiliated because of operational control or direction and that this control or direction has the potential to impact decisions concerning the production, pricing, and cost of the subject merchandise. For the full analysis of this determination, *see* the Affiliation and Collapsing Memorandum.

Having found that Prolamsa and A4C are affiliated, we next examined whether those two companies should be considered a single entity for purposes of calculating a dumping margin. Section 19 CFR 351.401(f) of the Department's regulations states that the Department will treat affiliated producers as a single entity, *i.e.*, collapse them, where they have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and the Department concludes that there is a significant potential for the manipulation of price or production. Section 351.401(f) of the regulations further states that in identifying a significant potential for manipulation, the Department may consider factors including: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (3) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. The *Preamble* to the final regulations clarifies how the Department should apply this section in its collapsing analysis, explaining that this list of factors is "non-exhaustive."⁶⁴ The *Preamble* states, however, that the Department must still find that the potential for manipulation of price and production is significant.⁶⁵ The Department has also previously explained its practice of collapsing affiliated companies:

Because the Department calculates margins on a company-by-company basis, it must ensure that it reviews the entire producer or reseller, not merely part of it. The Department reviews the entire entity due to its concerns regarding price and cost manipulation. Because of this concern, the Department normally examines

⁶² See Prolamsa July 11, 2017 AQR at 2.

⁶³ *Id.* at 12-15.

⁶⁴ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27345 (May 19, 1997) (*Preamble*).

⁶⁵ *Preamble*, 62 FR at 27345-6.

the question of whether reviewed companies “constitute separate manufacturers or exporters for purposes of the dumping law.”⁶⁶

As explained above, we have preliminarily determined that Prolamsa and A4C are affiliated; consequently, the first collapsing criterion has been satisfied. As to whether the companies have similar production facilities that would not require substantial retooling in order to restructure manufacturing priorities, Prolamsa and A4C reported that A4C also produces merchandise under review, leading us to preliminarily conclude that it would not require substantial retooling of A4C’s manufacturing facility in order to restructure manufacturing priorities.⁶⁷ Finally, as to whether there is a significant potential for the manipulation of price or production, we preliminarily find the following. First, Prolamsa and A4C are wholly owned subsidiaries of a common parent company, reflecting their common ownership.⁶⁸ Second, board members of Prolamsa sit on the board of directors of A4C.⁶⁹ Third, the operations of Prolamsa and A4C are intertwined. Specifically, the record indicates that Prolamsa and A4C share employees, including their Supply and Purchasing Manager, Comptroller, Administration Director, Human Resources Director, Director of Information Technology, Collections Manager, and Human Resources Manager.⁷⁰ Accordingly, the Department determines, pursuant to 19 CFR 351.402(f)(2), that there is a significant potential for the manipulation of price or production as between Prolamsa and A4C. Thus, the two companies should be treated as a single entity.

G. Cost of Production

Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request CV and COP information from respondent companies in all AD proceedings.⁷¹ Accordingly, the Department requested this information from Prolamsa in this review. We examined its cost data and determined that our quarterly cost methodology is not warranted, and, therefore, we applied our standard methodology of using annual costs based on the reported data.

⁶⁶ See *Certain Fresh Cut Flowers from Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42853 (Aug. 19, 1996), citing *Final Determination of Sales at Less than Fair Value; Certain Granite Products from Spain*, 53 FR 24335, 24337 (June 28, 1988).

⁶⁷ See Prolamsa July 11, 2017 AQR, at 2; see *Stainless Steel Butt-Weld Pipe Fittings from Italy: Preliminary Results of Antidumping Duty Administrative Review and Preliminary No Shipment Determination*, 76 FR 79651, 79652 (December 22, 2011) (finding that “the ownership, management, and operations of a producer and an affiliated exporter were so intertwined that management could switch the role of producer and seller between the two companies without substantial retooling of either company”), unchanged in *Stainless Steel Butt-Weld Pipe Fittings from Italy: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 24459 (April 24, 2012).

⁶⁸ See Prolamsa’s July 11, 2017 AQR at 14.

⁶⁹ *Id.* at Exhibit A-9.

⁷⁰ See Prolamsa’s November 14, 2017 Supplemental Questionnaire Response at 4.

⁷¹ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46794-95 (August 6, 2015) (*Applicability Notice*).

1. Calculation of COP

We calculated the COP on a product-specific basis, based on the sum of the respondents' costs of materials and fabrication for the foreign like product plus amounts for selling, general, and administrative expenses, financial expenses, and the costs of all expenses incidental to preparing the foreign like product for shipment in accordance with section 773(b)(3) of the Act.

2. Test of Comparison Market Sales Prices

With respect to each company, on a product-specific basis, pursuant to section 773(a)(1)(B)(i) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sale prices were below COP. For purposes of this comparison, we used COPs exclusive of selling and packing expenses. The prices for each respondent were net of billing adjustments, movement charges, direct and indirect selling expenses and packing expenses, where appropriate.⁷²

3. Results of the COP Test

Section 773(b)(1) provides that where sales made at less than the COP "have been made within an extended period of time in substantial quantities" and "were not at prices which permit recovery of all costs within a reasonable period of time" the Department may disregard such sales when calculating NV. Pursuant to section 773(b)(2)(C)(i) of the Act, we did not disregard below-cost sales that were not made in "substantial quantities," *i.e.*, where less than 20 percent of sales of a given product were at prices less than COP. We disregarded below-cost sales when they were made in substantial quantities, *i.e.*, where 20 percent or more of a respondent's sales of a given product were at prices less than the COP and where "the weighted average per unit price of the sales . . . is less than the weighted average per unit cost of production for such sales."⁷³ Finally, based on our comparison of prices to the weighted-average COPs for the POR, we considered whether the prices would permit the recovery of all costs within a reasonable period of time.⁷⁴ Therefore, for Prolamsa/A4C, we disregarded below-cost sales of a given CONNUM of 20 percent or more and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.⁷⁵

H. Calculation of Normal Value Based on Comparison Market Prices

We based NV on the starting prices of Prolamsa/A4C to unaffiliated home market customers. We made adjustments for differences in packing and for inland freight expenses in accordance with sections 773(a)(6)(A) and (B) 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. *See* Preliminary Analysis Memorandum for further details.

⁷² *See* Preliminary Analysis Memorandum.

⁷³ *See* section 773(b)(2)(C)(ii) of the Act.

⁷⁴ *See* section 773(b)(2)(D) of the Act.

⁷⁵ *See* Preliminary Analysis Memorandum.

I. Currency Conversion

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

IX. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree



Disagree

11/30/2017

X 

Signed by: GARY TAVERMAN

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