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April 15, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Administrative Review of the Antidumping Duty Order on Light-
Walled Rectangular Pipe and Tube from Mexico; 2016-2017

I. SUMMARY

The Department of Commerce (Commerce) analyzed the comments submitted by interested parties in the 2016-2017 administrative review of the antidumping duty order (*Order*) on light-walled rectangular pipe and tube (LWRPT) from Mexico.¹ The review covers four producers/exporters of the subject merchandise: Maquilacero S.A. de C.V. (Maquilacero), Perfiles y Herrajes LM, S.A. de C.V. (Perfiles), Regiomontana de Perfiles y Tubos S.A. de C.V. (Regiopytsa), and Productos Laminados de Monterrey S.A. de C.V. (Prolamsa). Maquilacero and Regiopytsa were selected as mandatory respondents. Following the *Preliminary Results*,² and based on the analysis of the comments received, we made changes to the home market and margin calculation programs for Maquilacero and the home market program for Regiopytsa. We recommend that you approve the positions described below in the “Discussion of the Issues” section of this memorandum. Below is a list of the issues in this administrative review for which we received comments from interested parties:

¹ See *Light-Walled Rectangular Pipe and Tube from Mexico, the People’s Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value*, 73 FR 45403 (August 5, 2008).

² See *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 45211 (September 6, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

II. LIST OF ISSUES

A. General Issues

Comment 1: Rate for Non-Examined Respondents

B. Maquilacero-Specific Issues

Comment 2: Non-Subject Merchandise

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Comment 5: Transactions Disregarded Rule

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III. BACKGROUND

On September 6, 2018, Commerce published the *Preliminary Results* of the administrative review of the *Order* for the period August 1, 2016, through July 31, 2017. On October 9, 2018, Maquilacero and Independence Tube Corporation and Southland Tube Incorporated (Independence Tube and Southland Tube) requested a hearing,³ and one was held on March 6, 2019.

We invited interested parties to comment on the *Preliminary Results*.⁴ On October 9, 2018, Maquilacero, Regiopytsa, Perfiles, Independence Tube and Southland Tube, and Atlas Tube and Searing Industries timely submitted case briefs commenting on the *Preliminary Results*.⁵ On

³ See Maquilacero's Request for a Hearing, "Light-Walled Rectangular Pipe and Tube from Mexico; Maquilacero S.A. de C.V.'s Request for a Hearing," dated October 9, 2018; see also Independence Tube and Southland Tube's Case Brief and Request for Hearing, "Light-Walled Rectangular Pipe and Tube from Mexico: Case Brief and Request to Participate in Hearing," dated October 9, 2018.

⁴ See *Preliminary Results*, 83 FR at 45211.

⁵ See Maquilacero's Case Brief, "Light-Walled Rectangular Pipe and Tube from Mexico; Maquilacero S.A. de C.V.'s Case Brief," dated October 9, 2018 (Maquilacero's Case Brief); see also Regiopytsa's Case Brief, "Light-Walled Rectangular Pipe and Tube from Mexico, Case Brief," dated October 9, 2018 (Regiopytsa's Case Brief); Perfiles' Case Brief, "Light-Walled Rectangular Pipe and Tube from Mexico for the 2016-17 Review Period — Case Brief of Perfiles LM," dated October 9, 2018 (Perfiles' Case Brief); Independence and Southland Tube's Case Brief, "Light-Walled Rectangular Pipe and Tube from Mexico: Case Brief and Request to Participate in Hearing," dated October 9, 2018 (Independence and Southland Tube's Case Brief).

October 17, 2018, Maquilacero, Regiopytsa, Independence Tube and Southland Tube, and Atlas Tube and Searing Industries timely submitted rebuttal briefs.⁶

On December 17, 2018, Commerce extended the final results deadline until March 5, 2019.⁷ In addition, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.⁸ Accordingly, the revised deadline for the final results is April 15, 2019.

IV. SCOPE OF THE ORDER

The scope of this *Order* covers certain welded carbon-quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.

The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated; 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded-carbon quality rectangular pipe and tube subject to the *Order* is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. This tariff classification is provided for convenience and Customs purposes; however, the written description of the scope of the *Order* is dispositive.

V. CHANGES SINCE THE PRELIMINARY RESULTS

Based on our analysis of the comments received from interested parties, we made certain changes to our margin calculations for Maquilacero and Regiopytsa.

⁶ See Maquilacero's Rebuttal Brief, "Light-Walled Rectangular Pipe and Tube from Mexico; Maquilacero S.A. de C.V.'s Rebuttal Case Brief," dated October 17, 2018 (Maquilacero's Rebuttal Brief); see also Regiopytsa's Rebuttal Brief, "Light-Walled Rectangular Pipe and Tube from Mexico, Rebuttal Brief," dated October 17, 2018 (Regiopytsa's Rebuttal Brief); Independence and Southland Tube's Rebuttal Brief, "Light-Walled Rectangular Pipe and Tube From Mexico: Rebuttal Brief," dated October 17, 2018 (Independence and Southland Tube's Rebuttal Brief); Atlas Tube and Searing Industries' Rebuttal Brief, "Light-Walled Rectangular Pipe and Tube from Mexico: Rebuttal Brief," dated October 17, 2018 (Atlas Tube and Searing Industries' Rebuttal Brief).

⁷ See Memorandum, "Light-Walled Rectangular Pipe and Tube from Mexico: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated December 17, 2018.

⁸ See Memorandum to the Record from 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, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

Maquilacero:

- We applied an adjustment to scrap revenue.⁹
- We calculated and applied a transaction disregarded adjustment to total cost of manufacturing (TOTCOM) for purchases of hot-rolled coil from its affiliate.¹⁰
- We revised the calculation of general and administrative (G&A) expenses used in the calculation of TOTCOM.¹¹
- We revised the home market program to calculate a downstream home market net price and apply currencies due to inadvertent errors in the *Preliminary Results*.¹²

Regiopytsa:

- We revised the home market programming language to correct ministerial errors related to the calculation of discounts.¹³
- We revised cost, based on information reported in Regiopytsa's cost reconciliation.¹⁴
- We revised calculations pertaining to scrap and scrap offsets.¹⁵

VI. DISCUSSION OF THE ISSUES

A. General Issues

Comment 1: Non-Selected Dumping Margin for Perfiles

Perfiles' Comments:

- Perfiles argues that Commerce has an obligation to establish the dumping margins for each respondent "as accurately as possible" and "in a way that is fair and equitable."¹⁶
- Given that Commerce determined in the 2013-2014 administrative review of the *Order* that Perfiles' dumping margin was zero percent, it is accurate to conclude that Perfiles would have received the same dumping margin in the current review.¹⁷
- If Commerce decides to assign Perfiles a dumping margin based on the average of the dumping margins assigned to the mandatory respondent in this review, then Commerce

⁹ See Memorandum, "Analysis Memorandum for Maquilacero S.A. de C.V. in the Final Results of the 2016/2017 Administrative Review of the Antidumping Duty Order on Light-Walled Rectangular Pipe and Tube from Mexico," dated concurrently with this memorandum (Maquilacero Final Analysis Memorandum) at 6.

¹⁰ *Id.*

¹¹ *Id.* at 7.

¹² *Id.* at 5-6.

¹³ See Memorandum, "Analysis of Data Submitted by Regiomontana de Perfiles y Tubos, S.A. de C.V. in the Final Results of the 2016/2017 Administrative Review of the Antidumping Duty Order on Light-Walled Rectangular Pipe and Tube from Mexico," dated concurrently with this memorandum (Regiopytsa Final Analysis Memorandum) at 2.

¹⁴ *Id.* at 2-3.

¹⁵ *Id.* at 3.

¹⁶ See Perfiles Case Brief at 2.

¹⁷ *Id.* at 2-3.

should reduce the mandatory respondent's assigned rates, thereby reducing the dumping margin assigned to Perfiles.¹⁸

Independence Tube and Southland Tube's Rebuttal Comments:

- A review was specifically requested on Perfiles, initiated on Perfiles, and Commerce found that it imported subject merchandise during the POR. As such, this review properly covers Perfiles, among other companies. The fact that Perfiles was not selected as a mandatory respondent in this review does not in any way exclude it from this proceeding.¹⁹
- Commerce calculated a margin for non-selected respondents in accordance with its practice, and reasonably assigned Perfiles a rate for non-selected respondents in this review. Perfiles does not dispute any aspect of Commerce's calculation of the non-examined companies' rate.²⁰

Commerce's Position:

We disagree with Perfiles that we should assign to it a margin based on its margin from the 2013-2014 administrative review. In addressing this issue, the CAFC stated the following:

There is no basis to simply assume that the underlying facts or calculated dumping margins remain the same from period to period. “[I]f the facts remained the same from period to period, there would be no need for administrative reviews.” Thus, Commerce itself has explained that “it is well established and upheld practice that Commerce must base its decisions on the record of the administrative proceeding before it in each review.” In short, as we have previously recognized, “there is a clear congressional intent” that administrative reviews ‘be as accurate and current as possible.’ The legislative history “emphasized the importance of using current information with respect to making determinations. ‘The Committee intends that the Authority and the ITC should always use the most up-to-date information available.’”

In light of this established doctrine, it is not open to Commerce to argue that prior review data is reliable simply because it is “temporally proximate.” The government’s rationale contravenes this fundamental premise of periodic administrative reviews that each “administrative review is a separate exercise of Commerce’s authority that allows for different conclusions based on different facts in the record.”²¹

Therefore, we are unable to assume that Perfiles is not dumping during the POR based on the fact that it obtained a zero percent margin in the 2013-2014 administrative review.

¹⁸ *Id.*

¹⁹ See Independence and Southland Tube’s Rebuttal Brief at 8-9.

²⁰ *Id.* at 9-10.

²¹ *Albemarle Corp. & Subsidiaries v. United States*, 821 F.3d 1345, 1356 (Fed. Cir. 2016) (internal citations omitted).

Additionally, we disagree with Perfiles that we should abandon our standard methodology for calculating the rate for non-examined respondents. The statute and Commerce’s regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Tariff Act of 1930, as amended (the Act). Generally, Commerce 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}.”

For the final results, we continue to use our standard methodology for calculating the rate for non-examined respondents. In this review, we calculated a weighted-average dumping margin for non-examined respondents using the calculated rates of the mandatory respondents for these final results, which are not zero, *de minimis*, or determined entirely on the basis of facts available.

B. Maquilacero-Specific Issues

Comment 2: Non-Subject Merchandise

Maquilacero’s Comments:

- Maquilacero argues that its parts, made from processed LWRPT, are further manufactured through several operations, including saw-cutting, laser cutting-to-length, drilling, perforation and/or bending to be sold as automotive parts and are, therefore, not subject to the scope of this review.²²
- These parts do not have a uniform cross section, as defined in the scope, because they have been bent, pressed, or holes were drilled into them. Additionally, the *Order* does not include automotive parts, ornamental fencing, etc.²³
- Although the International Trade Commission (ITC) found in the less-than-fair-value investigation that “steel pipes and tubes are generally produced according to industry standards and specifications,” the parts, reported in Maquilacero’s downstream sales response, cannot be described based on pipe size, length, or specification, typical of LWRPT.²⁴
- The parts at issue are not the same class or kind as subject merchandise, because they are no longer LWRPT, but automotive parts. Shaping LWRPT into custom designed parts constitutes a substantial transformation. Specifically, one U.S. Customs and Border Protection (CBP) ruling found that steel assemblies which were bent and drilled should be classified as motor vehicle parts, and, in another ruling, CBP determined that tubing

²² See Maquilacero’s Case Brief at 3-5.

²³ *Id.* at 5-7.

²⁴ *Id.* at 5.

processed into connectors in brake lines were no longer classifiable under the HTSUS subheading for pipe and tube.²⁵

Independence Tube and Southland Tube's Comments:

- Commerce should revise Maquilacero's programming language to calculate properly the home market net prices for downstream sales.²⁶

Maquilacero's Rebuttal Comments:

- Maquilacero disagrees with Independence Tube and Southland Tube's arguments that Commerce should use downstream sales of the affiliated company in Mexico to calculate the margin for Maquilacero. The downstream products are not subject merchandise and should not be used to compare to U.S. sales of commercial LWRPT; therefore, the correction requested is moot.
- During the investigation phase, the ITC determined that "LWR pipe and tube is an intermediate product with many end use applications, including fences, gates, hand rails, furniture, sports equipment, and automotive equipment."²⁷
- Additionally, in a recent scope ruling, Commerce determined that "preconfigured and standardized precision parts with pre-drilled holes and fittings for mold bases used in plastic injection molding machines, were outside of the scope of the *CTL Plate Orders*."²⁸
- If Commerce decides to make the correction suggested by the Independence Tube and Southland Tube, Commerce must recognize that sales of machine parts sold by Maquilacero's affiliate are made at a different level of trade (LOT) than Maquilacero's home market sales of LWRPT.²⁹

Atlas Tube and Searing Industries' Rebuttal Comments:

- The scope contains "no exception for LWRPT that has been bent, cut, or had a hole drilled in it, or some combination thereof. Maquilacero's products are thus covered by the scope of the order, and the company's preference for calling the products 'parts' is of no moment."³⁰
- Commerce rejected Maquilacero's same argument in other proceedings on related products, including the administrative review of circular welded non-alloy steel pipe from

²⁵ *Id.* at 7-8.

²⁶ See Independence Tube and Southland Tube's Case Brief at 3-5.

²⁷ See Maquilacero's Rebuttal Brief at 6 (citing ITC Publication 4024 (July 2008), entitled Light-Walled Rectangular Pipe and Tube from China, Korea, and Mexico: Investigations Nos. 701-TA-449 and 1120 (Final) (China, Korea, and Mexico ITC Report) and ITC Publication 4001 (May 2008), entitled Light-Walled Rectangular Pipe and Tube from Turkey: Investigations Nos. 731-TA-1121 (Final) (Turkey ITC Report)).

²⁸ See Maquilacero's Rebuttal Brief at 6.

²⁹ *Id.* at 7-8.

³⁰ See Atlas Tube and Searing Industries' Rebuttal Brief at 1.

Mexico³¹ and in the investigation of heavy walled rectangular pipe and tube from Mexico.³² Commerce should not depart from its prior treatment of this issue.³³

Independence Tube and Southland Tube's Rebuttal Comments

- Commerce's practice is to calculate the price of unprocessed subject merchandise by deducting the full cost of further processing.³⁴
- By deducting the cost of further processing, Commerce is relying on the price of unprocessed LWRPT as sold by Maquilacero's affiliate, not the price of further processed LWRPT.³⁵
- Once Commerce corrects the clerical error in its home market program, the program will rely on prices of unprocessed LWRPT, and will render Maquilacero's argument moot.³⁶

Commerce's Position:

We agree with Independence Tube and Southland Tube and have corrected the programming language to calculate the home market net prices for downstream sales and properly apply currencies.³⁷

We disagree with Maquilacero that its further-processed pipe and tube are not subject merchandise. Maquilacero argues that shaping LWRPT into custom-designed parts constitutes substantial transformation. However, Commerce analyzes substantial transformation to carry out a country-of-origin examination. In the present case, we are not examining the country-of-origin; both Maquilacero and its further processing affiliate produce or further process the subject merchandise in Mexico. Therefore, the question before Commerce is not whether further processed pipe and tube has been substantially transformed, but whether it is subject to the scope of *Order*.³⁸

In making this determination, we examined the scope language of the *Order* and the description of the further processed parts in Maquilacero's questionnaire responses. Additionally, in accordance with Commerce's regulations,³⁹ we examined the description of the merchandise contained in the petition, the records from the investigations, and prior scope determinations

³¹ *Id.* at 2 citing *Certain Circular Welded Non-Alloy Steel Pipe from Mexico; Final Results of Antidumping Duty Administrative Review of No Shipments; 2015-2016*, 83 FR 23886 (May 23, 2018) and accompanying Issues and Decision Memorandum at Comment 3.

³² *Id.* at 2 citing *Heavy Walled Carbon Steel Pipes and Tubes from Mexico; Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final*, 81 FR 10587 (March 1, 2016) and accompanying Issues and Decision Memorandum at Scope Comments (unchanged in final).

³³ *Id.*

³⁴ See Independence Tube and Southland Tube's Rebuttal Comments at 3-4.

³⁵ *Id.*

³⁶ *Id.*

³⁷ See Maquilacero's Final Analysis Memorandum at 5-6.

³⁸ See *Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value*, 73 FR 45403 (August 5, 2008).

³⁹ See 19 CFR 351.225(k)(1).

made for the same product.⁴⁰ The language of the scope and above-mentioned sources are dispositive with respect to Maquilacero's further-processed pipe and tube products.

An as initial matter, the scope of the *Order* covers “carbon quality light-walled rectangular pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.” The specifications of the subject merchandise that the downstream affiliate sold during the POR do not exceed the quantity, by weight, of the elements listed in the scope language regarding carbon quality (*e.g.*, 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent of vanadium, or 0.15 percent of zirconium).⁴¹ Additionally, the wall thickness of downstream sales is less than 4 mm.⁴² Therefore, Maquilacero further-processed pipe and tube possess the physical characteristics of the subject merchandise described in the scope.

Additionally, the product description of LWRPT in the petition states that subject merchandise is used in a variety of applications and that its primary uses include “fencing, window guards, and railing for the construction industry.”⁴³ The petition states that LWRPT is also used as parts of “furniture, athletic equipment, store shelving, towel racks, agricultural equipment frames and other similar items.”⁴⁴ The petition further states that any product that meets physical characteristics of the scope is covered regardless of whether it is produced to “an ASTM, proprietary or other industry specification.”⁴⁵ Similarly, the ITC Report states that LWRPT is an intermediate product with “many end-use applications,” including “fences, gates, hand rails, furniture, sports equipment, and *automotive equipment*.”⁴⁶

During the investigation phase of this proceeding, Commerce received a request to exclude pre-primed subject merchandise. Commerce found, based on the language of the scope, that it was “clear that there {wa}s no intention to make exceptions for products whose use may be restricted due to *further processing*.”⁴⁷ As recognized by the U.S. Court of Appeals for the Federal Circuit, “the plain language . . . is paramount” in scope analyses.⁴⁸ Thus, any exclusion for Maquilacero's further-processed pipe and tube products would have to be clearly articulated.

⁴⁰ See letter from the petitioners, “Antidumping Duty Petition on Light-Walled Rectangular Pipe and Tube from Korea, Mexico, and the People's Republic of China and Turkey and Countervailing Duty Petition on Light-Walled Rectangular Pipe and Tube from the People's Republic of China,” dated June 27, 2007 (Petition).

⁴¹ See Maquilacero's Letter, “Light-Walled Pipe and Tube from Mexico; Maquilacero S.A. de C.V.'s Section B Downstream Sales Response,” dated February 1, 2018 (Maquilacero's Section B Downstream Response) at 16-17.

⁴² See Downstream Home Market Database, affhm02.sas7bdat, dated June 26, 2017 (ACCESS barcode 3724597-05).

⁴³ See Petition at 5.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See Turkey ITC Report at 13; see also China, Korea and Mexico ITC Report.

⁴⁷ See *Light-Walled Rectangular Pipe and Tube from Mexico: Notice of Final Determination of Sales at Less Than Fair Value*, 69 FR 53677 (September 2, 2004) and accompanying Issues and Decision Memorandum at Comment 5. (emphasis added).

⁴⁸ See *King Supply Co. v. United States*, 674 F.3d 1343, 1345 (Fed. Cir. 2012) (*King Supply*).

However, the scope of *Order* does not limit coverage based on whether the products have undergone certain further processing. Therefore, despite Maquilacero's claims, the scope does not contain any exclusions for merchandise that has been bent, cut, or had a hole drilled in it, or some combination thereof. As such, Maquilacero's further processing of the subject merchandise does not place it outside the scope of the *Order*.

Moreover, as stated in Commerce's regulations, "the descriptions of subject merchandise contained in Commerce's determinations must be written in general terms"⁴⁹ and cannot necessarily delineate every scenario that could be faced. Hence, it is not reasonable to conclude that simply because a particular type of LWRPT is not specifically mentioned in the scope, that product is not covered. The scope of the *Order* only identifies the requirements that must be met in order to be considered of carbon-quality. As noted above, Maquilacero's further-processed pipe and tube products meet the carbon-quality requirement and other requirements of the scope.

We also disagree that Maquilacero's further processed pipe and tube products are outside of the scope of the *Order* because they are automotive parts. The CAFC has held that the end-use of a product is normally relevant where there is clear exclusionary language in the Orders, stating "end-use restrictions do not apply to AD Orders unless the AD order at issue includes clear exclusionary language."⁵⁰ "The requisite clear exclusionary language must leave no reasonable doubt that certain products were intended to be outside the scope of the AD order based solely on the end use of those products."⁵¹ In this case, the scope does not include any language excluding LWRPT pipe and tube based on end use.

We also believe that Maquilacero's reliance on the PCS Scope Ruling is misplaced. That scope ruling interpreted different scope language under different AD orders than the *Order* at issue here. The scope of the *Order* in the instant case does not contain any exclusionary language regarding processing that removes merchandise from the scope.

Finally, Maquilacero argues that CBP has issued rulings recognizing such further processed pipe and tube products as parts for automotive and industrial assemblies and classified them accordingly.⁵² However, Commerce has consistently found that CBP rulings are not binding.⁵³

Accordingly, based on the information above, we find that Maquilacero's further processed pipe and tube products meet the description in the scope, and have continued to include sales of these products in Maquilacero's final margin calculation.

⁴⁹ See 19 CFR 351.225(a).

⁵⁰ *King Supply*, 674 F.3d. at 1349.

⁵¹ *Id.*

⁵² See Maquilacero's Case Brief at 2.

⁵³ See, e.g., *Notice of Final Determination of Sales at Not Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbon from the Republic of Korea*, 69 FR 17645, 17648 (April 5, 2004); see also Final Scope Ruling on Green Tubes Manufactured in the People's Republic of China and Finished in Countries Other than the United States and the People's Republic of China (A-570-943, C-570-944) (February 7, 2014) at 4.

Comment 3: Level of Trade

Maquilacero's Comments:

- If Commerce continues to include the merchandise described in Comment 2 in its margin calculation, Commerce should find that: (1) there are significant differences between home market channel 3 sales (*i.e.*, sales made by affiliated resellers that are further processed); and (2) they are at a different and higher LOT than Maquilacero's home market sales in other channels of distribution.⁵⁴
- Commerce's decision is inconsistent with the *Preliminary Results* issued in the 2016-2017 heavy-walled rectangular pipe and tube from Mexico administrative review, where Commerce found further processed parts sold in the home market were made at a different LOT than other home market or U.S. sales.⁵⁵

Independence Tube and Southland Tube's Rebuttal Comments:

- Evidence on the record does not support a finding that home market channel 3 sales were any different from those for distributors and end users in the home market or for U.S. sales.⁵⁶
- Additionally, there is no evidence demonstrating that certain activities were performed exclusively for home market channel 3 sales. Where Maquilacero asserts that certain selling activities were performed at a higher intensity, it relies almost entirely on narrative descriptions, and has failed to provide documentation to confirm the claimed differences in levels of intensity.⁵⁷

Commerce's Position:

We re-evaluated the evidence on the record regarding the marketing process and selling functions of Maquilacero's home market sales, including the level of intensity of each selling function, and continue to conclude that all of Maquilacero's home market sales constitute a single LOT.

In accordance with 19 CFR 351.412(c)(2), to determine whether comparison market sales are at a different LOT than sales to the United States, Commerce examines stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's length) customers. Section 773(a)(1)(B)(i) of the Act, states that, "to the extent practicable," Commerce will calculate normal value (NV) based on sales "at the same level of trade as the export price or the constructed export price." Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁵⁸ In

⁵⁴ See Maquilacero's Case Brief at 12-25.

⁵⁵ *Id.* at 25-26 citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 50888 (October 10, 2018) and accompanying Preliminary Decision Memorandum (*HWR from Mexico*).

⁵⁶ See Independence and Southland Tube's Case Brief at 2.

⁵⁷ *Id.* at 6-7.

⁵⁸ See 19 CFR 351.412(c)(2).

promulgating its regulation, Commerce clarified that for sales to occur at a different LOT, each more remote level must be characterized by an additional layer of selling activities, amounting in the aggregate to a substantially different selling function.⁵⁹

The record does not support Maquilacero's differentiation of selling activities based on its channels of distribution.⁶⁰ After re-evaluating the levels of intensity for Maquilacero's selling functions based on the evidence on the record,⁶¹ we find no significant variation across the broader categories of sales and marketing, freight and delivery, inventory and warehousing. We continue to find that the differences in Maquilacero's selling activities among its home market sales are not so substantial as to warrant a finding of separate LOTs. Although certain selling activities may have occurred at different levels of intensity for each home market sales channel, Commerce finds that these differences do not constitute "an additional layer of selling activities, amounting in the aggregate to a substantially different selling function."⁶² Due to the proprietary nature of this information, these groupings and activities are discussed in detail in Maquilacero's Final Analysis Memorandum.

We noted that no interested parties commented on our LOT analysis regarding whether comparison market sales were made at a different LOT than sales to the United States. Therefore, Commerce maintains its position from the *Preliminary Results* that Maquilacero had only one home market LOT and one U.S. LOT, and both were made at the same LOT.⁶³

Comment 4: Scrap Offset

Independence and Southerland Tube's Comments:

- Commerce should limit Maquilacero's scrap offset to its quantity of scrap generated, not the amount of scrap revenue received during the POR.⁶⁴

Maquilacero's Rebuttal Comments:

- To the extent Commerce performs an adjustment to the scrap offset included in Maquilacero's cost of manufacture (COM), Commerce should also make a corresponding adjustment to the scrap offset included in the denominator of the G&A ratio calculation.⁶⁵

⁵⁹ *Id.*

⁶⁰ See Maquilacero's Final Analysis Memorandum at 1-5.

⁶¹ *Id.*

⁶² See *Antidumping Duties: Countervailing Duties, Part II*, 62 FR 27296, 27371 (May 19, 1997); see also 19 CFR 351.412(c)(2). See Maquilacero's Final Analysis Memorandum at 1-6.

⁶³ See Preliminary Decision Memorandum at 9-10.

⁶⁴ See Independence and Southland Tube's Case Brief at 7-8.

⁶⁵ See Maquilacero's Rebuttal Brief at 16-17.

Commerce's Position:

We agree with Independence Tube and Southland Tube that the scrap offset, for purposes of calculating reported COM, should be based on the scrap quantity generated in the POR, not the scrap quantity sold during the POR.⁶⁶ Therefore, the scrap offset should be adjusted.⁶⁷

As for Maquilacero's claim that there should be a corresponding adjustment to the cost of sales (COS) denominator for purposes of calculation the G&A rate, we disagree. Maquilacero's fiscal year (January to December) is different than the POR (July to August). Because the two time periods for measurement of scrap quantity sold and scrap quantity produced are different, it would not be appropriate to assume the difference between scrap sales quantity and scrap produced quantity would bare the same relationship for the two different time periods. It is possible that scrap quantity produced in the POR is less than the sales quantity for the fiscal year. There is no information on the record to show that the two time periods bare the same relationship between scrap quantity sold and scrap quantity produced. As a result, we have not made a corresponding adjustment between the scrap produced in the POR to COS denominator.

Comment 5: Transactions Disregarded Rule

Independence Tube and Southland Tube's Comments:

- Commerce should apply a transactions disregarded adjustment to Maquilacero's cost of hot-rolled coils purchased from its affiliate.⁶⁸

Maquilacero's Rebuttal Comments:

- Commerce should apply a "transactions disregarded" adjustment; however, Independence Tube and Southland Tube's transaction disregarded calculation is overstated and, therefore, flawed.⁶⁹
- Commerce has the necessary information on the record to determine market prices for hot-rolled coil using its "preferred" method, *i.e.*, to rely on purchases from unaffiliated parties. Any adjustment to Maquilacero's costs should be limited to the difference between the transfer prices and the market prices, based on Maquilacero's POR purchase from unaffiliated parties.⁷⁰
- Further, according to {Commerce's} practice, it should apply the G&A ratio and the financial expense ratio to the total cost of manufacturing exclusive of the adjustment to hot-rolled coil."⁷¹

⁶⁶ See *Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2014-2016*, 82 FR 31555 (July 7, 2017) and accompanying Issues and Decision Memorandum at Comment 17 ("{Commerce's} practice with respect to by-product offsets is to allow such offsets based on the amount of by-product generated.")

⁶⁷ See Maquilacero's Analysis Memo at 6.

⁶⁸ See Independence and Southland Tube's Case Brief at 6-7.

⁶⁹ See Maquilacero's Rebuttal Brief at 11-15.

⁷⁰ *Id.* at 15.

⁷¹ *Id.*

Commerce's Position:

For the final results, Commerce finds that an adjustment of Maquilacero's reported costs is necessary to reflect the market price of steel coils that Maquilacero purchased from its affiliate. As such, section 773(f)(2) of the Act (the transactions disregarded rule) applies to these transactions. For purposes of the transactions disregarded rule, when the respondent purchases inputs from an affiliated supplier, we test the transfer price between the affiliated supplier and the respondent with the available market prices for the input.⁷² Available market prices may relate to a respondent's purchases of the same input directly from unaffiliated suppliers, and/or an affiliated reseller's average acquisition price plus the affiliated reseller's selling, general, and administrative (SG&A) expenses.

In this case we have two available sources for a market price. We have the price Maquilacero's affiliated supplier paid to its unaffiliated suppliers for the inputs, plus the affiliated supplier's SG&A, and also have the prices paid by Maquilacero directly to unaffiliated suppliers. Given that both market price options are a reasonable representative of market prices, for the final results, we calculated a weighted-average market price between the two.⁷³

Comment 6: General and Administrative Expense Adjustment

Independence Tube and Southland Tube's Comments:

- Commerce should revise Maquilacero's G&A expenses by increasing the charges from its affiliate.⁷⁴

Maquilacero's Rebuttal Comments:

- Independence Tube and Southland Tube do not provide any legal authority for making an adjustment to Maquilacero's G&A expenses and Commerce is not required to make the adjustment proposed.⁷⁵
- Alternatively, Commerce should reject the proposed calculation because it overstates the adjustment. The record does not support an adjustment.⁷⁶

Commerce's Position:

We agree with Independence Tube and Southland Tube, in part. Maquilacero's affiliate invoices Maquilacero for administrative services and is also a reseller of hot-rolled coil.⁷⁷ Maquilacero's affiliate does not provide the same services to a third party and, therefore, there is not a market price. Section 773(f)(2) of the Act states that:

⁷² See *Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 82 FR 16378 (April 4, 2017) and accompanying Issues and Decision Memorandum at Comment 6 (*CTL Plate from Belgium*).

⁷³ *Id.* See also Maquilacero's Final Analysis Memorandum at 6 and Attachment I.

⁷⁴ See Independence and Southland Tube's Case Brief at 8-9.

⁷⁵ See Maquilacero's Rebuttal Brief at 17-20.

⁷⁶ *Id.* at 17-20.

⁷⁷ See Maquilacero's Letter, "Light-Walled Pipe and Tube from Mexico; Maquilacero S.A. de C.V.'s Section D Response," dated January 29, 2018 at 9.

{a} transaction directly or indirectly between affiliated persons may be disregarded, if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.

While we do not have a market price for the administrative services provided by the affiliated party, we performed an analysis based on the transactions disregarded rule for Maquilacero's purchases of hot-rolled coil from this same affiliate. Consequently, based on that testing, we have extrapolated the results of the transaction disregarded analysis of hot-rolled coil purchases from the same affiliate to the fees for administrative services provided to Maquilacero by the same affiliate.⁷⁸

Comment 7: Amended Draft Liquidation Instructions

Maquilacero's Comments:

- As Maquilacero was the importer of record during the POR, the draft liquidation instructions should be revised to calculate an importer-specific rate for Maquilacero.

No other party commented on this issue.

Commerce's Position:

We agree with Maquilacero and have calculated an importer-specific *ad valorem* assessment rate for Maquilacero for these final results.⁷⁹ Additionally, we will revise the liquidation instructions for Maquilacero following the publishing of these final results.

C. Regiopytsa-Specific Issues

Comment 8: Ministerial Error Allegation

Regiopytsa's Comments:

- Regiopytsa alleged that Commerce committed a ministerial error in the preliminary results by adding discount fields OTHDIS1H, OTHDIS2H, and QTYDISH to the home price instead of subtracting these fields.

No other party commented on this issue.

⁷⁸ See Maquilacero's Final Analysis Memorandum at 7 and Attachment II.

⁷⁹ See Maquilacero's Final Analysis Memorandum at 5-6.

Commerce's Position:

We agree with Regiopytsa and have revised the home market program for the final results. Specifically, we inadvertently added discount fields OTHDIS1H, OTHDIS2H, and QTYDISH to the home price instead of subtracting these fields. *See* Regiopytsa Final Analysis Memorandum for further information regarding this ministerial error.⁸⁰

Comment 9: Cost Reconciliation Adjustment

Independence Tube and Southland Tube's Comments:

- Regiopytsa underreported its costs, and this underreporting was not accounted for in Commerce's *Preliminary Results*.
- Commerce should adjust Regiopytsa's costs to account for a difference between Regiopytsa's COM reported in its financial statement and its COM as reported in its response to section D of the questionnaire.⁸¹

Regiopytsa's Rebuttal Comments:

- Commerce has recognized differences may arise between costs reflected in the financial statements and those reported by a respondent in the cost database.⁸²
- The original cost reconciliation information was submitted as part of Regiopytsa's questionnaire response, and although Commerce issued a number of supplemental questionnaires, Commerce never asked about the difference.
- Independence Tube and Southland Tube is requesting an adjustment that is tantamount to partial adverse facts available (AFA), which is unwarranted as Regiopytsa has cooperated fully with Commerce.⁸³

Commerce's Position:

We disagree with Regiopytsa's assertion that Commerce should not make an adjustment to Regiopytsa's COM for the final results. Commerce requests, in its section D questionnaire, that the respondent prepare a reconciliation between the cost of goods sold in its financial statements and the extended TOTCOM submitted to Commerce in its cost database. The objective of this reconciliation is to tie the reported costs in an overall manner to what the company reports in its financial statements. When a respondent cannot account for some un-reconciled amount, our general practice is to include the amount if the difference indicates a possible under-reporting of costs.⁸⁴

⁸⁰ *See* Memorandum, "Regiomontana de Perfiles y Tubos S.A. de C.V. – Analysis Memorandum for the Final Results of the 2016/2017 Administrative Review of Light-Walled Rectangular Pipe and Tube," (Regiopytsa Final Analysis Memorandum) at 2 dated concurrently with this memorandum.

⁸¹ *See* Independence Tube and Southland Tube's Case Brief at 12-13.

⁸² *See* Regiopytsa's Rebuttal Brief at 1.

⁸³ *Id.*

⁸⁴ *See Certain Pasta from Turkey; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 78 FR 9672 (February 11, 2013) and accompanying Issues and Decision Memorandum at Comment 5; *see also Certain Pasta from Italy: Notice of Final Results of the Twelfth Administrative Review*, 75 FR 6352 (February 9, 2010), and accompanying Issues and Decision Memorandum at Comment 11 and *Notice of Final Determination of Sales at*

Our general practice is reasonable, because it recognizes that the respondent is the sole party who has full knowledge of its reporting methodology, has knowledge of its normal records, and has access to the documents that are necessary to explain or clarify the un-reconciled difference. Through the course of an investigation or review, a respondent is encouraged to identify and explain all of its costs.

If a respondent has not identified the nature of the under-reported costs, the unidentified costs could relate to subject merchandise. Therefore, for the final results, we have made an upward adjustment to Regiopytsa's reported costs to account for the unreconciled difference between the extended TOTCOM and the COM as reported in Regiopytsa's financial statements. *See* Regiopytsa Final Analysis Memorandum for further information.⁸⁵

Comment 10: Revised Scrap Adjustment

Independence Tube and Southland Tube's Comments:

- Regiopytsa calculated its scrap cost and scrap offsets incorrectly.⁸⁶
- Regiopytsa's scrap cost calculation in its questionnaire response provides a total POR scrap produced quantity that differs from other information reported in the same questionnaire response. Therefore, Commerce should correct Regiopytsa's scrap cost ratio in the final results.⁸⁷
- Regiopytsa's scrap offset ratio used in the *Preliminary Results* is incorrect. Under Commerce's well-established policy, a scrap offset is allowed only up to the amount of scrap generated. As such, for the final results, Commerce should reduce Regiopytsa's scrap offset to reflect the quantity of scrap generated.⁸⁸

Regiopytsa's Rebuttal Comments:

- The alleged discrepancies have been on the record since Regiopytsa submitted its original response to Commerce's questionnaire and domestic interested parties never sought information on the record to rebut, clarify, or correct it.⁸⁹
- Commerce never sought additional information from Regiopytsa concerning the above-mentioned issues and should not make any adjustments for the final results.⁹⁰

Less Than Fair Value: Light- Walled Rectangular Pipe and Tube from Mexico, 73 FR 35649 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 8; *Preliminary Determination in the Less-Than-Fair Value Investigation of Fine Denier Polyester Staple Fiber from the Republic of Korea*, 83 FR 660 (January 5, 2018) and accompanying Preliminary Decision Memorandum at 20.

⁸⁵ See Regiopytsa Final Analysis Memorandum at 2-3.

⁸⁶ See Independence Tube and Southland Tube's Case Brief at 13-14.

⁸⁷ *Id.* at 11-12.

⁸⁸ *Id.* at 12-13.

⁸⁹ See Regiopytsa's Rebuttal Comments at 2.

⁹⁰ *Id.*

Commerce's Position:

We agree with Independence Tube and Southland Tube that Commerce should make adjustments for Regiopytsa's reported scrap cost and scrap offsets for the final results.

Regiopytsa reported scrap costs that contradict other information contemporaneously reported in Regiopytsa's questionnaire response. Specifically, Regiopytsa incorrectly aggregated scrap costs over the POR. Consequently, we have adjusted Regiopytsa's scrap costs for the final results. Due to the proprietary nature of this issue, please *see* Regiopytsa's Final Analysis Memorandum at 3 for additional information.

It is our practice to allow for a scrap offset related to the quantity of scrap generated during the POR.⁹¹ Thus, when the quantity sold exceeds the quantity generated, we limit the scrap offset to the quantity generated during the POR, because it would be unreasonable to offset the POR costs for scrap produced outside the POR.⁹² Therefore, we are adjusting Regiopytsa's scrap offset in the final results to reflect scrap generated instead of scrap sold. Due to the proprietary nature of this issue, please *see* Regiopytsa's Final Analysis Memorandum at 3 for additional information.

Comment 11: Interest Expense Ratio

Independence Tube and Southland Tube's Comments:

- In accordance with its practice, Commerce should make certain revisions to Regiopytsa's interest expense ratio in the final results due to certain discrepancies.⁹³

Regiopytsa's Rebuttal Comments:

- The alleged discrepancies have been on the record since Regiopytsa submitted its original response to Commerce's questionnaire and domestic interested parties never sought information on the record to rebut, clarify, or correct it.⁹⁴
- Commerce never sought additional information from Regiopytsa concerning the above-mentioned issues and should not make any adjustments for the final results.⁹⁵

⁹¹ *See, e.g., Certain Steel Nails From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 4770 (February 19, 2019) and accompanying Issues and Decision Memorandum at Comment 1; *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 65272 (October 31, 2013) and accompanying Issues and Decision Memorandum at Comment 11 (*CWP from Thailand*); *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Thirteenth Administrative Review*, 73 FR 14220 (March 17, 2008) and accompanying Issues and Decision Memorandum at Comment 5; and *Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Final Determination of Sale at Less Than Fair Value*, 77 FR 64480 (October 22, 2012) and accompanying Issues and Decision Memorandum at Comment 3 (*CWP from Oman*); *see also Mid Continent Nail Corp. v. United States*, 34 C.I.T. 498, 510-12 (CIT 2010) (affirming Commerce's practice concerning the scrap offset).

⁹² *Certain Steel Nails from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 4770 (February 19, 2019) and accompanying Issues and Decision Memorandum at Comment 1; *see also CWP from Oman* Issues and Decision Memorandum at Comment 3.

⁹³ *See* Independence Tube and Southland Tube's Case Brief at 13-14.

⁹⁴ *See* Regiopytsa's Rebuttal Comments at 2.

⁹⁵ *Id.*

Commerce's Position:

We have reviewed the arguments presented by parties, as well as the record evidence, and disagree that Commerce should revise Regiopytsa's interest expense ratio in the final results. Due to the proprietary nature of this issue, please *see* Regiopytsa's Final Analysis Memorandum at 4 for additional information.

VII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the positions set forth above. If this recommendation is accepted, we will publish the final results in the *Federal Register*.

Agree

Disagree

4/15/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance