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DATE: May 20, 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 Antidumping Duty Administrative Review: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico; 2016-2017

I. SUMMARY

We analyzed the comments of interested parties in the 2016-2017 administrative review of the antidumping duty (AD) order covering heavy walled rectangular welded carbon steel pipes and tubes (HWR) from Mexico. As a result of our analysis, we made changes to the margin calculations from the *Preliminary Results*[1] for the two mandatory respondents in this review, Maquilacero S.A. de C.V. (Maquilacero) and Productos Laminados de Monterrey S.A. de C.V. (Prolamsa), and consequently for the non-examined companies under review. We continue to find that Maquilacero and Prolamsa made sales at prices below normal value (NV), and we are applying the weighted average of the cash deposit rates for these two companies to the eight companies not selected for individual examination.[2] Further, we continue to find that Tuberia Nacional S.A. de C.V. had no shipments during the period of review (POR).

We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues in this administrative review for which we received comments from the interested parties.

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[1] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Mexico: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016–2017*, 83 FR 50888 (October 10, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

[2] These companies are: 1) Arco Metal S.A. de C.V.; 2) Forza Steel S.A. de C.V.; 3) Industrias Monterrey, S.A. de C.V.; 4) Perfiles y Herrajes LM S.A. de C.V. (Perfiles); 5) PYTCO S.A. de C.V.; 6) Regiomontana de Perfiles y Tubos S.A. de C.V.; 7) Ternium S.A. de C.V.; and 8) Tuberia Procarsa S.A. de C.V.

General Issues

Comment 1: Ministerial Errors

Maquilacero-Specific Issues

Comment 2: Use of Adverse Facts Available (AFA)
Comment 3: Further-Manufactured Products in the Home Market

Prolamsa-Specific Issues

Comment 4: Theoretical Weights
Comment 5: U.S. Indirect Selling Expenses (ISE)
Comment 6: Home Market Level of Trade (LOT)
Comment 7: U.S. Sales of Subject Merchandise Further Manufactured By an Unaffiliated Mexican Company

Non-Examined Companies Issues

Comment 8: Whether Commerce Correctly Determined the Dumping Margin for Perfiles

II. BACKGROUND

On October 10, 2018, the Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review. This review covers 11 producers or exporters. The POR is March 1, 2016, through August 31, 2017.[3]

We invited parties to comment on the *Preliminary Results*.[4] On November 16, 2018, we received case briefs from domestic parties,[5] Maquilacero, Perfiles, and Prolamsa.[6] On November 29, 2018, we received rebuttal briefs from the domestic parties, Maquilacero, and Prolamsa.[7]

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[3] *See* 19 CFR 351.213(e)(1)(i).
[4] *See Preliminary Results*, 83 FR at 50888.
[5] These companies are Independence Tube Corporation and Southland Tube, Incorporated, both Nucor companies; and Atlas Tube, a division of Zekelman Industries; and Searing Industries (collectively, domestic parties).
[6] *See* Domestic Parties' Case Brief, "Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Petitioners' Case Brief," dated November 16, 2018 (Domestic Parties' Case Brief); Maquilacero's Case Brief, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico; Maquilacero S.A. de C.V.'s Case Brief," dated November 17, 2018 (Maquilacero's Case Brief); Perfiles' Case Brief, "Heavy Walled Rectangular Welded Carbon Pipes and Tubes from Mexico for the 2016-17 Review Period – Case Brief of Perfiles LM," dated November 16, 2018 (Perfiles' Case Brief); and Prolamsa's Case Brief, "Heavy Walled Rectangular Carbon Steel Pipes and Tubes from Mexico – Case Brief," dated November 16, 2018 (Prolamsa's Case Brief).
[7] *See* Maquilacero's Rebuttal Brief, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico; Maquilacero S.A. de C.V.'s Rebuttal Brief," dated November 29, 2018 (Maquilacero's Rebuttal Brief); Prolamsa's Rebuttal Brief, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Rebuttal Brief," dated November 29, 2018 (Prolamsa's Rebuttal Brief); and Domestic Parties' Rebuttal Brief, "Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Petitioners' Rebuttal Brief," dated November 29, 2018 (Domestic Parties' Rebuttal Brief).

After analyzing the comments received, we changed the calculations of the weighted-average dumping margins for Maquilacero, Prolamsa, and the companies not selected for individual examination as mandatory respondents (the "non-selected" companies) from the *Preliminary Results*.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through January 29, 2019.[8] On February 28, 2019, Commerce extended the deadline for the final results of this administrative review, until May 20, 2019.[9]

III. MARGIN CALCULATIONS

For Maquilacero and Prolamsa we calculated export price, constructed export price (CEP), and normal value (NV) using the same methodology stated in the *Preliminary Results*, except as follows:[10]

- We corrected certain ministerial errors in our preliminary margin calculations for Maquilacero and Prolamsa. *See* Comment 1.

- We revised our calculations for Prolamsa to rely on its costs, prices, and expenses stated on a theoretical weight basis, determined using Commerce's standard formula. *See* Comment 4.

- We revised Prolamsa's indirect selling expenses to include an allocated portion of its U.S. general and administrative (G&A) expenses. *See* Comment 5.

IV. DISCUSSION OF ISSUES

Comment 1: Ministerial Errors

Domestic Parties' Arguments

- Commerce made two ministerial errors in its preliminary margin calculations, one for Maquilacero and another for Prolamsa. In particular, Commerce failed to perform all necessary currency conversions in Maquilacero's calculations,[11] and it misapplied the SAS programming language required to exclude certain of Prolamsa's U.S. sales from the company's sales listing.[12] Commerce should correct these errors in the final results.

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[8] *See* Memorandum, "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.
[9] *See* Memorandum, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated February 28, 2019.
[10] *See* Memorandum, "Final Results Calculation for Maquilacero, S.A. de C.V.," dated concurrently with this memorandum (Maquilacero Final Calculation Memo).
[11] *See* Domestic Parties' Case Brief at 3.
[12] *Id*. at 4.

Maquilacero's and Prolamsa's Arguments

- Maquilacero does not dispute the domestic parties' allegation with respect to its calculations. Prolamsa did not comment on this issue.

Commerce's Position:

We reviewed Maquilacero's and Prolamsa's preliminary margin calculations and agree with the domestic parties that we made the alleged ministerial errors. We have corrected these errors for purposes of the final results.[13]

Comment 2: Use of AFA

Domestic Parties' Arguments

- In the contemporaneous final determinations on HWR from Korea and Turkey, Commerce used theoretical weight for all respondents, rejecting respondents' arguments in those proceedings that actual weight or "theoretical actual" weights should be used.[14] Likewise, in this case, Commerce should use the standard formula for theoretical weight as used in other proceedings.[15] Furthermore, Commerce has found in the LTFV investigation that theoretical weight is the more appropriate basis for price comparisons than actual weight.[16]

- Commerce should base Maquilacero's final weighted-average dumping margin on total AFA because Maquilacero's reported U.S. and home market sales data are based on inaccurate theoretical weights. Because theoretical weight forms the denominator for all per-unit calculations, the inaccuracies prevent Commerce from fulfilling its mandate of computing Maquilacero's dumping margin as accurately as possible.[17]

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[13] *See* Maquilacero Final Calculation Memo; and Memorandum, "Final Results Calculation for Productos Laminados de Monterrey S.A. de C.V." (Prolamsa Final Calculation Memo), both dated May 20, 2019.
[14] *See* Domestic Parties' Case Brief at 6 (citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 47347 (July 21, 2016) (*HWR from Korea*) and accompanying Issues and Decision Memorandum (IDM) at Comment 2; and *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 47355 (July 21, 2016) (*HWR from Turkey*) and accompanying IDM at Comment 2).
[15] *Id.* at 6 (citing *Welded Stainless Pressure Pipe from India: Final Determination of Sales at Less Than Fair Value*, 81 FR 66921 (September 29, 2016) (*WSPP from India*) and accompanying IDM at Comment 2; *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 81 FR 75030 (October 28, 2016) (*CWP from the UAE*) and accompanying IDM at Comment 2; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 26910 (June 12, 2017) (*CWP from Korea*) and accompanying IDM at Comment 1; *Certain Circular Welded Non-Alloy Steel Pipe from Mexico; Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 27039 (June 13, 2017) (*CWP from Mexico*) and accompanying IDM at Comment 3; and *Light-Walled Rectangular Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 10664 (March 12, 2018) (*LWR from Mexico*) and accompanying IDM at Comment 2).
[16] *Id.* at 6.
[17] *See* Domestic Parties' Case Brief at 11.

- A comparison of Maquilacero's reported theoretical weights and the "correct" theoretical weight (which the domestic parties derived using a standard formula) shows that the inaccuracies are pervasive, affecting most sales for which Maquilacero placed sample documentation on the record.[18] Further, some of the differences also are significant, ranging from 22 percent below the expected value to almost 900 percent above.[19]

- Similarly, a comparison of Maquilacero's reported theoretical weights and the reported corresponding actual weights also shows significant differences, ranging from -24 percent to almost 28 percent above. These differences raise a red flag, given that the specifications provide for wall thickness tolerances of only +/- 10 percent.[20]

- The differences seem to be attributable to mistakes in determining the piece counts, wall thicknesses, and lengths for some or all home and U.S. market sales. With respect to piece counts, Maquilacero derived the number of pieces used in its calculations using the actual and theoretical weights contained in its data system. This calculation yielded piece counts in fractions of whole numbers, a result that is both inaccurate and counter-intuitive.[21]

- Maquilacero had no reason to resort to derived piece count numbers, given that: 1) U.S. sales are made on either a piece or length basis, and, thus, it had the actual number of pieces for almost 40 percent of its reported transactions; and 2) Maquilacero maintained at least seven categories of source documents that showed the number of pieces for each home market or U.S. sale.[22]

- With respect to wall thickness, the record shows that Maquilacero reported incorrect values for theoretical weight for all pipe having a nominal wall thickness of 3/16", as well as some pipe with a nominal wall thickness of 1/4". Maquilacero appears to have relied on inaccurate gauge information contained in certain product codes (related to input coil thickness, rather than nominal wall thickness of the finished pipe[23]), creating a systemic error.

- With respect to length, some of the figures used in Maquilacero's calculations cannot be tied to source documentation.[24]

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[18] *Id.* at 12-14.
[19] *Id*. at 14.
[20] *Id*. at 13.
[21] *Id*. at 15-18.
[22] *Id*. at 16-17.
[23] *Id.* at 18-22 (citing *HWR from Korea* and accompanying IDM at Comment 2, where Commerce rejected the identical methodology).
[24] *Id*. at 22-23.

- Maquilacero was on notice that it may have to report its sales and cost data on a theoretical weight basis, which would require length.[25] Commerce should not reward Maquilacero's inaccurate reporting and withholding of required information by reverting to calculations based on actual weight, which has been rejected consistently as less accurate than theoretical weight. Further, Maquilacero did not report actual weight for all home market sales, so Commerce would be unable to rely on actual weight, even if it found this appropriate.[26]

- Commerce has previously applied AFA where the respondent failed to accurately report conversion factors, including data required to convert between actual and theoretical weight, as is the situation here.[27]

- Commerce has no alternative but to determine a final dumping margin to Maquilacero based on facts available. The Act directs Commerce to use facts available where necessary information is not on the record, an interested party has failed to provide requested information, or a party has significantly impeded a proceeding. Maquilacero has meet all of these conditions.[28]

- Given that Maquilacero possessed accurate information, but failed to provide it, Maquilacero has failed to act to the best of its ability in this review. Commerce should therefore apply an adverse inference when determining Maquilacero's dumping margin, consistent with the Court of Appeals for the Federal Circuit's (CAFC's) ruling in *Nippon*.[29] Commerce has issued numerous questionnaires to Maquilacero, and "the burden of creating an accurate record rests with the respondent," not Commerce.[30]

- As AFA, Commerce should assign a dumping margin to Maquilacero based on the higher of the highest transaction-specific dumping margin calculated for Prolamsa or the highest rate alleged in the petition.[31]

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[25] *Id.* at 11 (citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Final Determination of Sales at Less Than Fair Value*, 81 FR 47352 (July 21, 2016) (*HWR LTFV Final*) and accompanying IDM at Comment 1) and 26.
[26] *Id.* at 23-24.
[27] *Id*. at 25-26 (citing *Circular Welded Carbon-Quality Steel Pipe from Pakistan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures*, 81 FR 36867 (June 8, 2016) (*CWP from Pakistan*) and accompanying IDM at Section VI; and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Japan*, 64 FR 8291, 8298 (February 19, 1999) (*HR Steel from Japan*), upheld in *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382 (Fed Cir 2003) (*Nippon*)).
[28] *Id*. at 24 (citing section 776 of the Act).
[29] *Id*. at 25 (citing *Nippon*, 337 F.3d at 1382).
[30] *Id*. at 25 (citing *Ta Chen Stainless Steel Pipe v. United States*, 24 CIT 841, 843-844 (CIT 2000) (*Ta Chen*)).
[31] *Id*. at 27.

Maquilacero's Rebuttal Arguments

- The domestic parties mischaracterize the information on the record, as well as the level of Maquilacero's cooperation in this review. Maquilacero complied with each of Commerce's data requests, reporting no fewer than 11 separate databases in response to Commerce's initial and supplemental questionnaires.[32]

- Commerce has complete sales and cost databases for Maquilacero using both actual and theoretical weight. Actual weight is used by the company in its normal course of business and is the only weight basis that is tracked in the company's information / accounting system. Further, actual weight is in many respects more accurate than the theoretical weight information, a fact which Commerce itself recognized in the less-than-fair-value (LTFV) investigation. Therefore, Commerce should rely on Maquilacero's actual weights for the final results in this review, as it did in the underlying LTFV investigation.[33]

- Maquilacero does not track piece counts for U.S. sales, direct home market sales, or certain home market sales made by one of its affiliated resellers. Where Maquilacero had actual piece counts available, it used these figures in its theoretical weight calculations; otherwise, it derived these counts using alternative sources (such as theoretical weight information in domestic sales catalogs or length information shown on its invoices).[34]

- Maquilacero acknowledges that other source documentation may contain the number of pieces in a given transaction. However, this information is often unreliable and could only have been collected via a manual review. Further, most of the invoices cited by the domestic parties are for sales by affiliated resellers (who, as noted above, do maintain piece counts), while a final one merely contains a handwritten notation (and, thus, does not establish that Maquilacero tracks such information in its normal course of business).

- The piece counts on some of the source documents cited by the domestic parties conflict with the piece counts on other documents prepared for the same sale, calling their accuracy into question. Further, the information from the warehouse slips was entered by hand and are more susceptible to clerical errors; and the warehouse entry slips or purchase orders do not establish the final quantities of a given sale. Because Commerce routinely rejects data that it views as incomplete or inaccurate, it should disregard the domestic parties' argument here.[35]

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[32] *See* Maquilacero's Rebuttal Brief at 1-6.
[33] *Id*. at 5-6 (citing *HWR LTFV Final* and accompanying IDM at Comment 1, which states "{w}ith regard to Maquilacero, this company does not maintain its sales or cost records on a theoretical weight basis, and therefore, it reported all sales and cost information using actual weight. Accordingly, we are basing our calculation on actual weight. We continue to use this methodology in the final determination because it is based on Maquilacero's books and records maintained in the ordinary course of business, and we verified that its information is accurate" (footnotes omitted)).
[34] *Id*. at 7-9.
[35] *Id*. at 11-15.

- Maquilacero attempted to report theoretical weights using piece counts taken from handwritten notes in another proceeding which it was involved. Because Commerce ultimately did not rely on that information for reasons like those set forth above, it would make no sense for Maquilacero to undertake a similarly fruitless exercise without being asked to do so by Commerce.[36]

- More than 93 percent of the reported theoretical weights are within 10 percent of the actual recorded weight.[37] Further, Maquilacero's responses clearly showed that, like in the LTFV investigation, Maquilacero reported wall thicknesses using the "gauge groups" in its product catalog, and Commerce did not question this methodology.[38] Finally, the length "errors" alleged by the domestic parties are not errors at all, because the products at issue are automotive parts not sold in straight lengths.[39]

- Maquilacero's methodology is reasonable. Respondents regularly report expenses using allocations which reasonably approximate the true expense, as did Maquilacero here. The domestic parties did not comment on Maquilacero's methodology prior to submitting their case briefs, and Commerce did not ask Maquilacero to do anything differently than it had in the prior proceedings.[40]

- Maquilacero was not "on notice" that Commerce would require theoretical weight reporting in this review. While Commerce indicated in *HWR LTFV Final* that it would continue to explore this issue,[41] Commerce did not request that Maquilacero report theoretical weight data in either the original questionnaire or the first two supplemental cost questionnaires. Further, when Commerce did request such data, it was logical for Maquilacero to report its theoretical weights using the methodology that Commerce had already accepted for it in other proceedings.[42]

- Maquilacero's responses meet none of the facts available criteria in section 776(a) of the Act. Further, Commerce's ability to use AFA is subject to section 782 of the Act, which requires that Commerce must inform respondents of any deficiencies in their submissions and provide them an opportunity to remedy such deficiencies. Commerce's refusal to apply AFA in such situations has been upheld by the Courts.[43]

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[36] *Id.* at 12-13 (citing *CWP from Mexico* and accompanying IDM at Comment 3). Although Maquilacero also cites *LWR from Mexico*, it was not one of the individually-examined companies in that segment of the proceeding.
[37] *Id*. at 15-16.
[38] *Id.* at 17-22 (and stating that, even so, if Commerce believes that the format of certain physical dimensions reported should be changed, Commerce has the necessary information on the record to make adjustments).
[39] *Id.* at 22-23.
[40] *Id.* at 13-16 (citing *Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 83 FR 33205 (July 17, 2018) and accompanying IDM at Comment 10).
[41] *Id.* at 15 (citing *HWR LTFV Final* and accompanying IDM at Comment 1).
[42] *Id.* at 15-16 (citing *CWP from Mexico*; and *LWR from Mexico* and noting that, to ensure the accuracy of its theoretical rate calculations in future segments of this proceeding, Maquilacero now systematically tracks piece counts).
[43] *Id.* at 5-6 (citing *Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 55332 (September 15, 2015) and accompanying IDM at Comment 1; *Changzhou Trina Solar Energy*

Commerce's Position:

According to section 776(a) of the Act, Commerce shall use the facts otherwise available in reaching a determination if:

1) necessary information is not available on the record, or

2) an interested party or any other person –

A) withholds information that has been requested by the administering authority or the Commission under this title,

B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782,

C) significantly impedes a proceeding under this title, or

D) provides such information but the information cannot be verified as provided in section 782(i).

Further, section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, it may use an inference that is adverse to the interest of that party in selecting from the facts otherwise available.

In this review, we disagree with the domestic parties that either facts available under section 776(a) of the Act, or AFA under section 776(b) of the Act, is warranted. Specifically, we find that Maquilacero has not withheld information, failed to provide timely information, significantly impeded this proceeding, or provided information that cannot be verified. Throughout the course of this investigation, Maquilacero has demonstrated its willingness to cooperate with Commerce's requests for information, and it has answered each request for information to the best of its ability. Therefore, we find no basis to apply facts available in this case, much less facts available with an adverse inference.

In this review, consistent with Commerce's instructions, Maquilacero reported its data on a theoretical weight basis, following Commerce's standard formula for rectangular products. Maquilacero determined the reported theoretical weights using source documentation maintained by the company in its ordinary course of business, and it clearly disclosed the methodology underlying its calculations in response to a supplemental questionnaire. Specifically, with respect to pieces, Maquilacero stated:

Co. v. United States, 255 F.Supp.3d 1312, 1319 (CIT 2017); and *Husteel Co. v. United States*, 98 F.Supp.3d 1315, 1356 (CIT 2015)).

> In the normal course of business, Maquilacero and {an affiliate} only track the number of pieces for sales that were invoiced in pieces. For these sales, Maquilacero has relied upon this information for the variable PIECEH. For the other sales, Maquilacero had to derive the number of pieces by dividing the originally reported QTYH by the theoretical weight per piece according to Maquilacero's records (the theoretical weight for {an affiliate}'s sales were based on the Maquilacero-sold product code).[44]

And in response to a later questionnaire, Maquilacero explained in more detail:

> {Maquilacero} has provided worksheets demonstrating the calculation of the reported theoretical weights for U.S. sales and for home market sales. During the normal course of business, most sales to Maquilacero's customers in the home market are made on an actual weight basis, in metric tons. For these sales, Maquilacero does not track the number of pieces sold in the normal course of business. Therefore, to derive the theoretical weight, Maquilacero has calculated the number of pieces for each sale. The next steps of the calculation are demonstrated at Exhibit 1.[45]

In Exhibit 1 of this submission, Maquilacero demonstrates, using sample observations in each sales listing how it calculated the number of pieces and the subsequent steps by which it calculated theoretical weights. For example, in the home market sales listing, the number of pieces equals NETQTY_MT divided by "Theoretical Weight Per Piece (Loaded in Maquilacero's System)."[46]

Maquilacero's methodology for determining wall thickness was fully disclosed as well. For example, in response to Commerce's question regarding "the correspondence between gauge and thickness," Maquilacero provided the following information:

> This column shows the gauge of each product code. The following gauges are reported, along with their thickness codes and their thickness in inches:[47]

PROD3-GAUGE	THICKH	Thickness in Inches	Source
C-04	02	0.2242	Maquilacero Brochure

[44] *See* Maquilacero's August 27, 2018 Section B Supplemental Questionnaire Response at 19 (Maquilacero's August 27, 2018 BSQR).
[45] *See* Maquilacero's September 7, 2018 Sections B,C, and D Supplemental Questionnaire Response at 1 (Maquilacero's September 7, 2018 BCDSQR).
[46] *Id.* at Exhibit 1. Maquilacero stated that "For sales on a piece basis {such as certain affiliate downstream sales and certain sales to affiliates}, where the number of pieces was known, PIECH_INV was used." *See, e.g.*, Maquilacero's September 7, 2018 BCDSQR at 1.
[47] *See* Maquilacero's August 27, 2018 BSQR at 9.

C-05	02	0.2092	Maquilacero Brochure
C-07	01	0.1793	Maquilacero Brochure
C-1/4	03	0.2500	Calculated from Gauge
C-3/16	02	0.188	Calculated from Gauge
C-5/16	04	0.313	Calculated from Gauge

Although we acknowledge that Maquilacero's methodology may have yielded figures which differed from the domestic parties' own calculations, we disagree with the domestic parties that these results are inherently unreliable. With respect to pieces, as noted above, Maquilacero used the piece counts shown on its invoices, where this information was available, and it derived these figures using data in its accounting system, where the invoice was stated on a different basis. Although Maquilacero's sales documentation may indeed have reflected the expected number of pieces in some instances, these piece counts did not provide a more reliable alternative to Maquilacero's method, given that some of the figures were handwritten[48] and others were contradicted by additional documentation for the same sale. [49,50]

Similarly, Maquilacero based its reported wall thicknesses on information maintained in its ordinary course of business, either in its product catalogs or in its product codes themselves.[51] Although we do not disagree that Maquilacero should report the same nominal wall thickness for HWR sold in particular sizes (such as 1/4"), it is unclear that Maquilacero failed to do so. We note that the domestic parties raised this issue for the first time in their case brief, and we ourselves did not ask any questions related to it in our supplemental questionnaires. Therefore, we find no basis to reject Maquilacero's reported figures in this review. We intend to examine more closely Maquilacero's reported wall thicknesses in the ongoing 2017-2018 review.

Finally, with respect to length, we note that the differences cited by the domestic parties all relate to sales of parts made by one of Maquilacero's home market affiliates.[52] Because these parts

[48] *See*, *e.g.*, Maquilacero's September 7, 2018 BCDSQR at Exhibit 5, where the number of pieces is handwritten next to the typed weights on the Salida de Producto Terminado.
[49] *See*, *e.g.*, Maquilacero's February 22, 2018 Section A Questionnaire Response at Exhibit A-12A (Maquilacero's February 22, 2018 AQR), where the piece counts on the invoice differ from those on the Loading Summary form.
[50] We acknowledge the domestic parties' concerns related to Maquilacero's derivation of the piece counts used in its calculations. As noted above, in light of Maquilacero's source data limitations, we have accepted its methodology for this segment of the proceeding. However, we intend to require Maquilacero to use actual piece count information in its calculations in subsequent segments of this proceeding, given its statement that it is now tracking such information for all U.S. and home market sales.
[51] *See* Maquilacero's March 16, 2018 BQR at B-14.
[52] See Maquilacero's Rebuttal Brief at 22-23; *see also* Maquilacero's February 22, 2018 AQR at Exhibit A-6 and A-12; and Maquilacero's August 16, 2018 Section A Supplemental Questionnaire Response at Exhibit 15.

have been further processed into non-standard-sizes and shapes, it is not surprising that the standard theoretical weights computed by the domestic parties differ from the weights reported by Maquilacero.

On balance, we find that Maquilacero's weight data are usable for purposes of calculating a final weighted-average dumping margin in this review. Although the domestic parties did point out a number of differences between Maquilacero's theoretical weight and their own computations, the vast majority of these differences were within the expected tolerance range for the product.[53] Further, contrary to the domestic parties' assertions, the number of transactions tested by the domestic parties was quite small, representing by the domestic parties' own admission just over one percent of Maquilacero's sales during the POR.[54]

Given the above facts, we find that AFA is not appropriate in this review. Because Commerce has accepted Maquilacero's data for purposes of these final results, the domestic parties' reliance on *Ta Chen*, *Nippon*, and *CWP from Pakistan* is misplaced. In those cases, AFA was appropriate because the parties had not complied with Commerce's requests and Commerce did not use their data.

With regard to Maquilacero's argument that Commerce should base Maquilacero's weighted-average dumping margin on actual weight, we shall continue to use theoretical weight as reported in Maquilacero's September 7, 2018 submission, for the final results.[55] In other proceedings involving steel pipe products, Commerce has based price comparisons on either theoretical or actual weight, depending on the particular facts of each case. However, in recent proceedings, Commerce has expressed a preference for theoretical weight, stating that "theoretical weight is generally the preferable basis for the comparison methodology, given the potential inaccuracies of scale weight and the theoretical sales basis upon which products are sold in the United States."[56]

In this review, Maquilacero sells all HWR to customers in the United States on a one-hundred linear foot (CFT) basis.[57] Maquilacero states that the weights which it records in its system and on U.S. sales invoices are based either on actual scale weight leaving the warehouse and then "trued up" at the time of invoicing using a variance, or on weights determined using weights in Maquilacero's product catalog when the scale is not functioning.[58] Thus, the weight

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[53] *See* Maquilacero's February 22, 2018 AQR at Exhibit A-23 at 11.2 Wall Thickness (stating "{t}he minimum wall thickness at any point of measurement on the tubing shall be not more than 10% less than the specified wall thickness. The maximum wall thickness, excluding the weld seam of welded tubing shall be not more than 10% greater than the specified wall thickness. For square and rectangular tubing, the wall thickness requirements shall apply only to the centers of the flats."). We compared actual and theoretical weights reported in the databases provided by Maquilacero and found that, in each case, over 90 percent of the theoretical weights were within expected tolerances. *See* Maquilacero Final Calculation Memo.
[54] *See* Domestic Parties' Case Brief at 12.
[55] Specifically, we relied on the following: home market database MAQHM03_TW (September 10, 2018), COP database MAQCOP03_TW (September 10, 2018), US database MAQUS02_TW (September 10, 2018), and downstream home market sales AFF2HM02 (September 10, 2018).
[56] *See, e.g., CWP from Mexico* and accompanying IDM at Comment 3.
[57] *See* Maquilacero's March 16, 2018 Section C Questionnaire Response at C-18.
[58] *Id.*

measurements maintained in Maquilacero's system are not determined on a consistent basis, nor are they used as the basis for U.S. sales. Further, Maquilacero made certain downstream sales in the home market only on a theoretical weight basis.[59] Therefore, consistent with our practice, we find that theoretical weight is a more consistent basis for the comparison of U.S. price and NV, based on the lack of a consistent basis for the weight measurements in Maquilacero's system, the potential inaccuracies of Maquilacero's scale weights during the POR, the fact that no actual weight was reported for the affiliate downstream sales, and that the U.S. sales basis is CFT and not weight. For these reasons, our methodology remains unchanged from the *Preliminary Results*.

Comment 3: Further-Manufactured Products in the Home Market

During the POR, Maquilacero sold HWR to an affiliated party in the home market; the affiliated party "further worked" these products and then resold them to unaffiliated parties. In the *Preliminary Results*, we excluded Maquilacero's sales to the affiliate from our analysis because these sales failed the arm's-length test, and we instead relied on the downstream sale of the foreign like product between the affiliated party and its own unaffiliated customers.[60]

Maquilacero's Arguments

- Commerce should exclude the downstream sales from its analysis as well because the "further worked" products are parts for automotive and industrial applications which are outside the scope of the *Order*.[61]

- The parts at issue have been substantially transformed from HWR into custom-designed downstream products which are fundamentally different from the commercial HWR that Maquilacero produces.[62] Because the products no longer have a "rectangular cross section" across the length of the part, they do not meet the description of subject merchandise under the *Order*.[63]

- In particular, the input HWR undergoes several additional operations by which it transforms the HWR into a different product, with different physical characteristics and customer uses than the HWR sold by Maquilacero; further, the affiliate sells these parts to a different customer.[64]

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[59] See Maquilacero's September 7, 2018 BCDSQR at 2.
[60] *See Preliminary Results* and accompanying PDM at 10-11.
[61] *See* Maquilacero's Case Brief at 2-4 (citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey: Antidumping Duty Orders*, 81 FR 62865 (September 13, 2016) (*Order*)).
[62] *Id.* at 4-8 (citing *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, 17647 (April 5, 2004) (*Transfer Ribbon from Korea*)).
[63] *Id.* at 5.
[64] *Id.* at 4-7.

- The further processing of the parts changes their tariff classification, such that they are not likely classifiable under HTS subheading 7306 (like other products in the scope of the *Order*).[65] Commerce has found that a change in tariff treatment relevant when making scope determinations.[66]

Domestic Parties' Rebuttal Arguments

- Maquilacero fails to identify language in the scope that would justify excluding these products. Commerce has already considered this issue in the LTFV investigation and found these products to be within the scope of the proceeding, and Maquilacero presented no new facts that would warrant a different result.[67]

- The plain language of the scope encompasses all HWR irrespective of whether it is further processed, how it is cut, or whether it is perforated or drilled.[68] Indeed, the domestic parties deliberately eliminated proposed scope language that would have excluded further advanced HWR prior to the initiation of the LTFV investigation.[69]

- The scope does not require that subject merchandise have a rectangular cross section across the length of the pipe. The scope merely covers "pipes and tubes of rectangular (including square) cross section." The language of the scope itself is dispositive.[70]

- It is irrelevant that the further-processed HWR is custom-designed for specific customers with specific uses, and that it is not sold based on standard weights, lengths, or sizes. The scope language is unambiguous, and, thus, Commerce has no need to examine the factors listed under 19 CFR 351.225(k)(2) to resolve this issue.[71]

- Maquilacero's substantial transformation argument is equally without merit. Maquilacero provided no substantial transformation analysis regarding its own further-processed HWR, and Maquilacero recognized that Commerce is not bound by Customs rulings in the context of a scope determination.[72] In any event, Commerce may find that a product that has been substantially transformed is still within the same class or kind of merchandise.[73]

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[65] *Id*. at 8-9.
[66] *Id.* at 9-10 (citing Memorandum, "Antidumping and Countervailing Duty Orders on Certain Carbon and Alloy Steel Cut-to-Length Plate from Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Scope Ruling Request," dated October 11, 2017 (CTL Plate Scope Memorandum)).
[67] *See* Domestic Parties' Rebuttal Brief at 2-4 (citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 10587 (March 1, 2016) (*HWR LTFV Prelim*) and accompanying PDM at 4-6).
[68] *Id.* at 3-4 (citing the *Order*).
[69] *Id.* at 4 (citing *HWR LTFV Prelim* and accompanying PDM at 5).
[70] *Id*. at 4.
[71] *Id*. at 5.
[72] *Id*. (citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37065 (July 9, 1993)).
[73] *Id*. (citing *Final Determination of Sales at Less Than Fair Value: 3.5" Microdisks and Coated Media Thereof from Japan*, 54 FR 6433, 6434 (February 10, 1989)).

- An item's tariff classification does not determine whether the item is within the scope of the order. Even so, Maquilacero offers no evidence that its further-processed HWR has been classified outside of HTS subheading 7306.[74]

- The scope ruling cited by Maquilacero is inapposite because, unlike here, the record in that scope ruling discussed the exclusion of downstream products and suggested that a certain amount of processing could remove the merchandise from the scope; further, the petitioner in that proceeding did not object to that scope ruling request.[75]

Commerce's Position:

We disagree with Maquilacero. The scope of the *Order* states:

> The merchandise covered by these orders is certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm. The merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A-500, grade B specifications, or comparable domestic or foreign specifications.
>
> Included products are those in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements {listed in the scope} exceeds {a specific} quantity, by weight . . .
>
> The subject merchandise is currently provided for in item 7306.61.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under HTSUS 7306.61.3000. While the HTSUS subheadings and ASTM specification are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.[76]

Because the products at issue are "rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm" and have the other qualities found in the scope, they fall within the plain language of the scope.

This finding is consistent with Commerce's finding in the LTFV investigation with respect to an almost identical issue.[77] In that segment of the proceeding, both Maquilacero and Prolamsa questioned whether further-processed HWR was within the scope of the order.[78] After considering their comments, Commerce stated:

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[74] *Id*. at 6 (citing the *Order*, 81 FR at 62866).
[75] *Id.* at 6-7 (citing CTL Plate Scope Memorandum).
[76] *See* the *Order*, 81 FR at 62865 (emphasis added).
[77] *See HWR LTFV Prelim* and accompanying PDM at 5-6, unchanged in *HWR LTFV Final*.
[78] *Id*.

> Consequently, we made no change to the scope with respect to cut-to-length products, as well as HWR sold as "parts" because: 1) these products are clearly within the scope; and 2) the petitioners intended that these products be covered. We further note that this determination is consistent with the definition of the domestic like product for the HWR pipe and tubes industry, which includes "all HWR within the scope of the investigation."[79]

In making the above finding, we found relevant that the petitioners had deleted language from the scope that would have excluded HWR which were "threaded or further advanced" prior to the initiation of the investigation. Specifically, we stated:

> While {Commerce} does have the authority to define or clarify the scope of an investigation, {Commerce} must exercise this authority in a manner which reflects the intent of the petition, and {Commerce} generally should not use its authority to define the scope of an investigation in a manner that would thwart the statutory mandate to provide the relief requested in the petition. Thus, absent an overarching reason to modify the scope in the petition, {Commerce} accepts the scope as it is currently written.[80]

Maquilacero has presented no new information that would warrant a departure from this finding. While Maquilacero now argues that Commerce must interpret the term "rectangular (including square) cross-section" as rectangular across the entire length of the pipe, the scope itself contains no such limitation. Rather, the scope merely requires that in-scope HWR have a rectangular cross-section. Therefore, the fact that the HWR at issue is drilled or perforated (and thus not have a seamless rectangular cross section across the entire length of the pipe) does not remove these products from the scope. For this reason, Maquilacero's reliance on *Transfer Ribbon from Korea*[81] and CTL Plate Scope Memorandum[82] is misplaced.

No party disputes that the HWR "parts" at issue are custom-designed products which are sold to a particular type of customer. However, the scope, as written, does not exclude custom-designed parts, nor does it contain an end-use limitation. Therefore, while the parts at issue may differ from other types of HWR sold by Maquilacero, this difference does not place them outside the scope.

Finally, we disagree with Maquilacero that the tariff classification of its HWR parts is germane. As noted above, the HTSUS subheadings in the scope are merely provided for "convenience and customs purposes." It is the written description of the scope which is dispositive.

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[79] *Id.*

[80] *Id.* at 5 (footnotes omitted).

[81] Indeed, *Transfer Ribbon from Korea* seems to support our finding here; in that case, Commerce determined that slitting did not substantially transform subject merchandise into a non-subject product. *See Transfer Ribbon from Korea*, 69 FR at 17648. In this case, we similarly find that perforating or drilling does not transform HWR into a different product.

[82] In the CTL Plate Scope Memorandum, the plain language of the scope was not dispositive. Further, all parties in the CTL Place Scope Memorandum were in agreement that certain products at issue there were outside the scope. *See* CTL Plate Memorandum at 6.

For the above reasons, we have continued to find that Maquilacero's HWR parts are covered by the scope of this proceeding. Therefore, we have included Maquilacero's downstream sales of HWR parts in our final analysis.

Issues Related to Prolamsa

Comment 4: Theoretical Weights

For the *Preliminary Results*, we computed Prolamsa's weighted-average dumping margin using sales, expense, and cost data stated in terms of the company's reported theoretical weight.

Domestic Parties' Arguments

- Commerce should recalculate all prices, price adjustments, and costs to be consistent with its previously established standard theoretical weight formula in use across pipe and tube proceedings.[83]

- Commerce, in the past, has rejected theoretical weight calculations similar to those reported by Prolamsa. In fact, Commerce has rejected Prolamsa's own theoretical weight formula in other situations in favor of the theoretical weight derived from the standard formula.[84]

- When certain of Prolamsa's reported quantities are compared to those calculated from Commerce's standard theoretical weight formula, "extreme" weight differences arise for a substantial number of observations.[85] Therefore, Commerce should reject Prolamsa's calculated weights in favor of Commerce's standard theoretical weight formula.

Prolamsa's Rebuttal Arguments

- Commerce appropriately calculated Prolamsa's reported theoretical weight data for both sales and costs in the *Preliminary Results*, consistent with the methodology used in the LTFV investigation.[86]

- The theoretical weight formula proposed by the domestic parties is less accurate than Prolamsa's reported theoretical weight formula because the Prolamsa's theoretical weight formula accounts for the curved corners of the tube.[87]

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[83] *See* Domestic Parties' Case Brief at 6-9 (citing, *e.g.*, *HWR from Korea* and accompanying IDM at Comment 2; *HWR from Turkey* and accompanying IDM at Comment 2; and *WSPP from India* and accompanying IDM at Comment 2).
[84] *Id.* at 9 (citing *LWR from Mexico* and accompanying IDM at Comment 2; and *CWP from Mexico* and accompanying IDM at Comment 3).
[85] *Id.* at 9-10 and Exhibit 1.
[86] *See* Prolamsa's Rebuttal Brief at 5 (citing *HWR LTFV Final* and accompanying IDM at Comment 1).
[87] *Id.*

- Should Commerce decide to use the "standard" theoretical weight formula, it must consistently apply this formula to both Prolamsa's sales and cost data to ensure an apples-to-apples basis for its dumping analysis.[88] Because Commerce does not have the requisite information to recalculate Prolamsa's reported cost data using a different theoretical weight formula, Prolamsa has offered to provide a revised cost database.

Commerce's Position:

We agree with the domestic parties and will base Prolamsa's calculations on Commerce's previously-established standard theoretical weight formula for these final results. As practice, Commerce has relied upon using a standard weight formula to calculate theoretical weight in an effort to apply a consistent analysis across various pipe and tube cases.[89] In fact, Commerce's treatment of Prolamsa's data in *LWR from Mexico* relied on this same standard formula.[90]

Prolamsa, in its initial responses to Commerce, reported its sales and cost data according to its own proprietary theoretical weight formula. Commerce requested additional information regarding the specifics of the formulaic inputs in supplemental questionnaires, after which Prolamsa reported additional fields to give Commerce flexibility in its use of weight methodology.[91] While Prolamsa does not directly discount the use of the standard formula, it maintains that its own formula is more accurate, explaining the following:

> Prolamsa's formula is highly accurate because it takes into account the curved corners of the tube. According to ASTM standards for tubes, the radius of each outside corner for square and rectangular tubing cannot exceed three times the specified wall thickness. As a result, the corner is calculated as (3 * thickness) * (3.14159)). Also, Prolamsa's products include parts made from HWR{T}, which can be produced from multiple pieces of tube. {Prolamsa's reported theoretical weight} formula accounts for the number of pieces used to produce the part.[92]

We recognize that the standard formula does not take into account the curved edges of the HWR. However, Commerce considered an identical argument in *LWR from Mexico* and found that the difference in theoretical weight derived from this formula and one that accounts for a slightly curved inside edge is trivial.[93] Moreover, Prolamsa fails to demonstrate that its proprietary formula is a reasonable alternative to the standard formula used across pipe and tube cases. There is no explanation why this formula for wall thicknesses greater to or equal to a proprietary amount is different than those products with a wall thickness less than the same proprietary amount. Additionally, according to this rationale, the wall thickness amount that determines which formula

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[88] *Id*. at 6.
[89] *See, e.g., WSPP from India* and accompanying IDM at Comment 2; *CWP from the UAE* and accompanying IDM at Comment 2; *CWP from Korea* and accompanying IDM at Comment 1; *CWP from Mexico* and accompanying IDM at Comment 3; and *LWR from Mexico* and accompanying IDM at Comment 2.
[90] *See LWR from Mexico* and accompanying IDM at Comment 2.
[91] *See, e.g.*, Commerce's Letter, "Administrative Review of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico," dated September 10, 2018 at Attachment I at 3.
[92] *See* Prolamsa's Rebuttal Brief at 5 (citing Prolamsa's September 4, 2018 Supplemental Section D Response at 2).
[93] *See LWR from Mexico* and accompanying IDM at Comment 2.

to use is proprietary, which leads us to believe that this is not a standard being applied consistently by the industry, and would not, in fact, be in an ASTM specification.[94]

For the reasons explained above, we find that the record does not support the continued use of Prolamsa's theoretical weight using its proprietary formula. Therefore, for these final results, we find it appropriate to base Prolamsa's calculations on the standard formula, in accordance with past practice used in recent pipe and tube cases.[95]

Comment 5: U.S. ISE

During the POR, Prolamsa's U.S. affiliate, Prolamsa, Inc. (Prolamsa USA), sold subject merchandise in the United States, and it also manufactured and sold non-subject merchandise here. When calculating Prolamsa USA's U.S. ISE, Prolamsa excluded the G&A expenses incurred by Prolamsa USA.[96] We accepted Prolamsa's U.S. ISE methodology in the *Preliminary Results*.

Domestic Parties' Arguments

- Commerce should include a portion of Prolamsa USA's G&A expenses in its U.S. ISE, consistent with the methodology used in the LTFV investigation.[97]

Prolamsa's Rebuttal Arguments

- Prolamsa USA's U.S. ISE calculation correctly excluded G&A expenses.[98] Prolamsa USA performs significant production activities at its U.S. plant with respect to U.S. tube, and, thus, its G&A expenses incurred relate primarily to production activities of non-subject merchandise.[99] Any adjustment would erroneously overinflate the U.S. ISE factor.

- The inclusion of expenses in ISE which are unrelated to sales of subject merchandise is inconsistent with Commerce's practice.[100]

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[94] *See, e.g.*, *LWR from Mexico* and accompanying IDM at Comment 2.
[95] *See CWP from Mexico* and accompanying IDM at Comment 3; and *LWR from Mexico* and accompanying IDM at Comment 2. We note that, at our request, Prolamsa provided its cost information on this basis, and we have relied on this information for purposes of the final results. *See* Memorandum, "Request for Revised Cost Database for Productos Laminados de Monterrey S.A. de C.V. in the Antidumping Duty Administrative Review of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico," dated May 2, 2019.
[96] *See* Prolamsa's March 19, 2018 Sections B and C Questionnaire Response (Prolamsa's March 19, 2018 BCQR) at Exhibit C-18.
[97] *See* Domestic Parties' Case Brief at 5-6 (citing *HWR LTFV Final* and accompanying IDM at Comment 13).
[98] *See* Prolamsa's Rebuttal Brief at 6-7.
[99] *Id*.; *see also* Prolamsa's February 22, 2018 Section A Questionnaire Response (Prolamsa's February 22, 2018 AQR) at A-9 and Exhibit A-28.
[100] *See* Prolamsa's Rebuttal Brief at 6-7 (citing *Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 75 FR 70901 (November 19, 2010) (*PET Film from Korea*) and accompanying IDM at Comment 5, where Commerce found it "appropriate to exclude" {} the expenses not incurred on subject merchandise from the ISE calculation).

Commerce's Position:

Section 772(d)(1)(D) of the Act directs Commerce to reduce CEP by the amount of "any selling expenses not deducted under subparagraph (A), (B), or (C)." Consistent with this section of the Act, it is our general practice to include G&A expenses related to selling operations in the calculation of ISE, and to deduct these expenses from U.S. price.[101] Where a U.S. affiliate is both a manufacturer and a seller, our practice is to require respondents to allocate these expenses between manufacturing and selling operations by calculating a G&A ratio.[102]

Similar to the record of the LTFV investigation, the record here shows that Prolamsa's affiliated reseller (*i.e.*, Prolamsa USA) manufactures non-subject merchandise.[103] Thus, Prolamsa USA's employees are responsible for overseeing and coordinating both sales and manufacturing activities of the company. As Commerce explained in *HWR LTFV Final*, as a general rule, when faced with such facts, Commerce calculates separate ISE and G&A expense ratios and applies the "G&A ratio to the total cost of further manufactured products . . . as well as to the cost of all non-manufactured products."[104] We did this for these final results.

We therefore calculated a G&A expense ratio for Prolamsa USA.[105] Because Prolamsa USA's G&A activities support the general activities of the company as a whole, including its sales and manufacturing functions, following our methodology used in *HWR LTFV Final*, we applied the G&A expense ratio to the cost of all subject merchandise sold by the affiliate.[106]

We recognize that under this method there is a theoretical difference between how the G&A expense ratio is calculated (*i.e.*, based on the affiliated reseller's cost of goods sold that represents Prolamsa USA's transfer price for the pipe), and how it is applied (*i.e.*, to the cost of producing the pipe). However, we consider such approach reasonable, as it avoids the double counting of costs, allocates all of the company's G&A expenses and, given the size of the G&A expense ratio, any difference resulting from the theoretical difference noted above is negligible.[107]

We disagree with Prolamsa that the above methodology is inconsistent with Commerce's practice. Commerce has followed the identical approach in numerous cases, including the LTFV

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[101] *See, e.g., Citric Acid and Certain Citrate Salts from Canada: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 37286 (July 1, 2014) and accompanying IDM at Comment 3 (stating that it is our normal practice to include administrative expenses in the ISE total because these expenses support the selling functions of the respondent); *see also HWR LTFV Final* and accompanying IDM at Comment 13.
[102] *See, e.g., Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*WLP from Korea*) and accompanying IDM at Comment 20.
[103] *See* Prolamsa's February 22, 2018 AQR at page A-9, A-36, and Exhibit A-28.
[104] *See HWR LTFV Final* and accompanying IDM at Comment 12; *see also WLP from Korea* and accompanying IDM at Comment 20; although *WLP from Korea* related to a case involving further manufacturing, the same principle applies.
[105] *See* Prolamsa Final Calculation Memo.
[106] *Id*.
[107] *See HWR LTFV Final* and accompanying IDM at Comment 12; and *WLP from Korea* and accompanying IDM at Comment 20.

investigation in this case.[108] While Prolamsa has cited *PET Film from Korea* as contrary precedent, we disagree that *PET Film from Korea* applies because it does not relate to G&A expenses.

For the reasons stated above, we modified Prolamsa's margin calculation to deduct a portion of Prolamsa USA's administrative expenses from U.S. price for purposes of these final results.

Comment 6: Home Market LOT

Prolamsa reported that it sold HWR through four channels of trade, which resulted in two LOTs in the home market during the POR: one for sales of custom-designed HWR parts to original equipment manufacturers (OEMs) (Channel 4) and another for all other sales (Channels 1, 2, and 3).[109] We preliminarily determined that Prolamsa did not provide sufficient, contemporaneous support to establish two home market LOTs.[110]

Prolamsa's Arguments

- Prolamsa adequately substantiated its LOT claims. Therefore, Commerce should find that Prolamsa sold at two LOTs in its home market during the POR.

- In making its preliminary finding, Commerce overlooked key evidence directly relevant to this review. While this evidence was first presented during the LTFV investigation, it continues to be germane.[111]

- A chart showing the selling activities performed and the information used to support these functions is contained on pages 3 through 5 of Prolamsa's case brief. This chart shows that Prolamsa provided a variety of source documentation related to each function, both from the POR and related to the LTFV investigation. It also shows that Prolamsa performed these functions when selling HWR to OEMs at a higher intensity level.[112]

- Findings from the LTFV investigation should be given significant weight because none of the facts have changed since then.[113] Identical facts should result in identical conclusions; where certain documents from the LTFV investigation required updating (*e.g.*, parts-specific sales team organization chart), Prolamsa appropriately provided updated information.[114]

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[108] Indeed, in *HWR LTFV Final*, we found that Prolamsa itself recorded numerous expenses which related to the sale of subject HWR as G&A expenses. If we were to agree with Prolamsa, we would not capture all of the company's expenses related to the sale of subject merchandise in our calculation, a result clearly contrary to the requirement of section 772(d) of the Act. *See HWR LTFV Final* and accompanying IDM at Comment 12.
[109] *See* Prolamsa's February 22, 2018 AQR at A-17 – A-18 and Exhibit A-9.
[110] *See Preliminary Results* and accompanying PDM at 16.
[111] *See* Prolamsa's Case Brief at 2.
[112] *Id*. at 3-5.
[113] *Id*. at 6.
[114] *Id*.

- In *LWR from Mexico* and *CWP from Mexico 15-16*, Commerce found that Prolamsa made sales to OEMs at a more advanced LOT using virtually identical conditions as those presented here.[115]

- Maquilacero, like Prolamsa, performs highly similar sales process of specially designed HWR parts sales made to the specifications of a home market OEM customer.[116] Commerce found that Maquilacero sold at two LOTs in the home market, despite the fact that Prolamsa provided supporting documentation at either the same level as or more than that submitted by Maquilacero.[117]

Domestic Parties' Rebuttal Arguments

- Commerce should continue to find that Prolamsa sold at a single LOT in the home market because Prolamsa failed to establish that "substantial differences in selling activities" existed between home market selling channels, as required by Commerce's regulations.[118]

- To qualify for an LOT adjustment, the Court of International Trade (CIT) holds that "a party has the burden to show that the following two conditions have been satisfied: 1) the difference in LOT involves the performance of different selling activities; and 2) the difference affects price comparability."[119] Similarly, Commerce's regulations state that the "interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment."[120]

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[115] *Id*. at 6-7 (citing *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 42076 (September 6, 2017) and accompanying PDM at 4-5, unchanged in *LWR from Mexico*, where Commerce found two home market LOTs for Prolamsa; and *Certain Circular Welded Non-Alloy Steel Pipe from Mexico; Preliminary Results of Review, Preliminary Determination of No Shipments, and Partial Rescission of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 57579 (December 6, 2017) and accompanying PDM at 11-12, unchanged in *Certain Circular Welded Non-Alloy Steel Pipe from Mexico; Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 23886 (May 23, 2018) (*CWP from Mexico 15-16*), where Commerce found two home market LOTs based on information related to the same OEM customers and selling activity intensity levels as those presented here).

[116] *Id*. at 8 (citing to A*ntidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27371 (May 19, 1997), where the type of customer, while not sufficient on its own, is an "important indicator in identifying differences in levels of trade.).

[117] *Id.* at 8-12.

[118] *See* Domestic Parties' Case Brief at 10 (citing 19 CFR 351.412(c)(2)).

[119] *Id*. at 10 and 23 (citing *Corus Staal BV v. United States*, 259 F.Supp.2d 1253, 1270 (CIT 2003), aff'd, *Corus Staal BV v. United States*, 395 F.3d 1343 (Fed. Cir. 2005); *Koyo Seiko Co., Ltd. v. United States*, 186 F. Supp.2d 1332, 1356-57 (CIT 2002), where the CIT concluded that the respondent's inability to provide Commerce with obligatory sufficient information in support of its claim for a LOT adjustment was reasonable enough for Commerce to deny it; *Sanyo Elec. Co., Ltd. v. United States*, 86 F.Supp.2d 1232, 1244-47 (CIT 1999), aff'd, *Sanyo Elec. Co., Ltd. v. United States* 243 F.3d 566 (Fed. Cir. 2000), where "Commerce cannot adjust prices for level of trade differences in the absence of quantifying evidence to substantiate the request{.}"; and *Hoogovens Staal BV v. United States*, 138 F.Supp.2d 1352, 1359-60 (CIT 2001)).

[120] *Id*. at 10 (citing 19 CFR 351.401(b)(1)).

- Instead of providing source documentation as instructed by Commerce in supplemental questionnaires, Prolamsa relied on the verification report from the LTFV investigation, other "incidental" evidence, and its narrative responses to Commerce's questionnaires.[121] Thus, it failed to meet its burden of providing evidentiary proof to warrant a LOT adjustment.[122]

- The documentation submitted by Prolamsa in support of its claim do not demonstrate that differences exist at all in many cases, and in others the documents fail to demonstrate that the selling activities were performed at a higher level of intensity for OEM sales.[123] For example, while Prolamsa's Production Part Approval Process (PPAP) documentation supports the existence of qualification requirements, technical assistance, and engineering services for sales made to OEM customers, it does not sufficiently describe the levels of intensity at which Prolamsa performs these functions.[124]

- Prolamsa inappropriately compares itself to other respondents and proceedings where Commerce granted a LOT adjustment. Instead, each proceeding is distinct and has its own record.[125] Moreover, a comparison between Prolamsa's evidence and that provided by another respondent in a similar proceeding could only occur if Prolamsa provided POR-specific evidentiary support.[126]

Commerce's Position:

Upon reexamination of Prolamsa's evidence on the record, we continue to find that Prolamsa sold HWR at a single LOT in the home market during the POR. Section 351.412(c)(2) of Commerce's regulations provides that:

> The Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing.

In the *Preliminary Results*, we analyzed Prolamsa's 14 reported home market selling activities, under the following four categories: 1) sales and marketing;[127] 2) freight and delivery;[128] 3)

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[121] *Id*. at 9.
[122] *Id*. at 10.
[123] *Id*. at 11-17 (citing Prolamsa's ASQR at 8-9; and Prolamsa's BCQR at Exhibit B-1 and B-9).
[124] *Id*. at 18-21 (citing Prolamsa's September 5, 2018 Supplemental Section A Response (Prolamsa's September 5, 2018 ASQR) at 10-11).
[125] *Id*. at 22.
[126] *Id*. at 24.
[127] These selling activities include advertising, sales promotion, market research, personnel training/exchange, direct external sales personnel/agents, engineering services, meet qualification requirements, and perform order input/processing. *See* Prolamsa's September 24, 2018 BSQR at Exhibit Supp B-2.
[128] These selling activities include inventory maintenance and post-sale warehousing. *Id.*

inventory maintenance and warehousing;[129] and 4) warranty and technical support.[130] We preliminarily found that Prolamsa performed selling activities related to sales and marketing, inventory maintenance and warehousing, and warranty and technical support for all home market sales channels and freight and delivery for home market channels 1, 2, and 4.[131] In its responses to Commerce, Prolamsa stated that its home market selling functions have not changed since the LTFV investigation; however, when asked to provide POR-specific examples for eight of its reported 14 selling activities, we initially found that Prolamsa only provided adequate support for two (*i.e.*, qualification process and order/input processing).[132] For purposes of our LOT analysis we disregarded the remaining six selling functions (*i.e.*, inventory maintenance, provision of freight and delivery, engineering services, provision of just-in-time delivery, technical assistance, and provision of after-sales service) and, thus, found only one LOT in the home market.[133]

In its case brief, Prolamsa argues that Commerce inadvertently overlooked certain documents, and we failed to accord adequate weight to others. Specifically, Prolamsa contends that it adequately supported its claim that it performed the six disregarded selling functions either exclusively, or not-exclusively but at a higher level of intensity, for sales to OEM customers in the home market. After reexamining the information on the record, we agree with Prolamsa in part. In particular, we now find that Prolamsa provided sufficient support for its claim that it performed various engineering services at the OEM level, given that the PPAP that Prolamsa signed during the POR included detailed engineering drawings, which were clearly required to develop and manufacture specific parts during the POR.[134] Given that Prolamsa did not sell HWR to non-OEM customers via PPAPs, we find that performance of this selling function weighs in favor of Prolamsa's position.

However, we disagree with Prolamsa that it adequately supported its claim with respect to the remaining five selling functions. Prolamsa provided little in the way of substantive support for these functions, and the PPAP itself does not reference any of the functions or speak to the level of intensity at which they are performed.

In a supplemental questionnaire, we requested that Prolamsa provide the following information with respect to inventory maintenance, and freight and delivery:

> the chart shows that Productos Laminados provided {these activities} at varying degrees of intensity among home market channels 1, 2, 3, and 4. Provide specific examples of these activities at each intensity level and state how often Productos Laminados performed these services during the POR in each of these home market channels. Provide source documentation to support your answer.[135]

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[129] These selling activities include the provision of freight and delivery and just-in-time delivery. *Id*.
[130] These selling activities include technical assistance and the provision of after-sale services. *Id*.
[131] *See Preliminary Results* and accompanying PDM at 14-16.
[132] *Id*. at 15.
[133] *Id*. at 14-16.
[134] *See* Prolamsa's February 22, 2018 AQR at Exhibit A-5 and A-13.
[135] *See* Commerce's Letter, "Administrative Review of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico," dated August 15, 2018, at Attachment I at 3.

We also asked Prolamsa to provide the following information with respect to just-in-time delivery, technical assistance, and after-sales service for quality:

> The chart shows that for home market channel 4, Productos Laminados performed {these selling activities} at a "heavy" level of intensity. Provide evidence demonstrating that you performed these activities at the reported level of intensity. In your answer, include any agreements/contracts, source documentation, or correspondence supporting the "intensity" level of these selling activities.[136]

In response to these requests, Prolamsa provided the following information:

- inventory maintenance: Prolamsa reported that its inventory maintenance activities related to sales to OEMs were extremely heavy during the POR, while its inventory maintenance activities for all other customers were only moderate. To support this response, Prolamsa provided a narrative description of these activities with no supporting documentation.[137] In its narrative description, Prolamsa provided no specific examples of its activities, nor did it indicate the frequency at which it performed any individual activity.[138]

- provision of freight and delivery: Prolamsa reported that it "coordinates delivery or pick-up for sales to OEM customers, which requires an extremely heavy level of selling activity because of the nature of the products and OEM customers."[139] It also reported that it only performs this function for some sales made to non-OEM customers, and its affiliated reseller arranges for delivery for other sales. Prolamsa relied on a previously-submitted freight invoice to demonstrate that its freight activities were performed at a high intensity level for OEM customers; however, it did not describe the selling activities involved in freight coordination or how the nature of the products sold to OEM customers increased the intensity of the activities.[140]

- provision of just-in-time delivery: In its initial questionnaire response, Prolamsa stated that it performed just-in-time delivery only for sales to OEM customers, and it included Commerce's verification report completed in the LTFV investigation as support.[141] In its supplemental questionnaire response, Prolamsa provided an additional two-sentence narrative, offering no cites or additional documentation.[142] Related to this selling

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[136] *Id*.
[137] For OEM sales, Prolamsa merely stated that "inventory maintenance is provided with an eye toward monitoring the supply needs of the customer to ensure that sufficient inventory by quantity and product-type is available upon demand. Unlike sales in HM Channels 1, 2, and 3, Prolamsa provides just-in-time delivery for sales in HM Channel 4 of customized parts, which requires additional and more frequent coordination and correspondence with customers." *See* Prolamsa's September 5, 2018 ASQR at 8.
[138] *Id*. at 8.
[139] *Id*.
[140] *Id*. at 8-9.
[141] *See* Prolamsa's February 22, 2018 AQR at A-18, A-21 and Exhibit A-5.
[142] Specifically, Prolamsa stated that it "provided just-in-time delivery services only for sales in HM Channel 4.

activity, Prolamsa stated that it maintains HWR parts inventory at a different plant;[143] however, we noted that it did not provide a separate location-based inventory carrying cost related to these parts, nor did it provide documentation demonstrating how delivery or storage of these parts were different from those of standard HWR.

- technical assistance: Prolamsa reported that it performed technical assistance at an extremely heavy level of intensity for sales to OEM customers and at only a light level for sales to non-OEM customers.[144] In addition to a sentence provided in its initial questionnaire response, Prolamsa provided a small narrative, in which it defined technical assistance as "collaboration on technical issues" and "work with customer to maximize the efficient design and use of the product in its application and on its machinery."[145] It did not describe specific activities performed during the POR, nor did it provide any source documentation to demonstrate how often or how intensely it performed this service. Rather, Prolamsa merely cited to the verification report and IDM related to the LTFV investigation.[146]

- provision of after-sales service: Prolamsa provided only a narrative, consisting of three sentences, as well as an updated organizational chart showing Prolamsa's parts-specific sales team.[147] Prolamsa provided no documentation to demonstrate how often (if at all) or how intensely it performed this service during the POR.[148]

As noted above, Prolamsa based the majority of its claim on affirmative statements, some of which were accompanied by only loosely-related documentation. In sum, apart from an updated sales process chart, Prolamsa provided no additional source documentation to substantiate a high level of performance of any of these selling activities for HWR parts sales made to OEM customers.

Consequently, when Prolamsa's selling activities are viewed as a whole, we find that the differences between those activities performed for sales to OEM and non-OEM customers do not rise to the level of a "substantial difference in selling activities," or that Prolamsa's OEM and non-OEM home market sales were at different stages of marketing (or their equivalent). As

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These services required Prolamsa to monitor the supply needs of OEM customers, ensure that it had a sufficient inventory on hand to rapidly ship the product when requested by the customer, and to arrange for and ship small lots of products." *See* Prolamsa's September 5, 2018 ASQR at 11.

[143] *Id*. at 7-8 and 11.

[144] *See* Prolamsa's September 24, 2018 Supplemental Section B Response (Prolamsa's September 24, 2018 BSQR) at Exhibit Supp B-2.

[145] *See* Prolamsa's February 22, 2018 AQR at A-21; Prolamsa's September 5, 2018 ASQR at 11; and Prolamsa's September 24, 2018 BSQR at Exhibit Supp B-2.

[146] *See* Prolamsa's February 22, 2018 AQR at A-21; and Prolamsa's September 5, 2018 ASQR at 11.

[147] Specifically, Prolamsa stated that it "must respond immediately if the OEM believes parts do not meet specifications by providing parts that do meet specifications. When parts do not meet specifications, Productos Laminados' quality control team must conduct an investigation and report the results to the OEM regarding the cause of any problem and how it will be resolved. Failure to quickly and adequately demonstrate that the problem has been resolved can cause Productos Laminados to lose its qualification." *See* Prolamsa's September 5, 2018 ASQR at 11-12; and Prolamsa's Case Brief at 5.

[148] *See* Prolamsa's September 5, 2018 ASQR at 11-12.

noted above, Commerce examines the extent of the activities performed and their significance to the company's selling operations. The record shows that Prolamsa's additional home market selling functions for OEM customers did not result in sales at a different marketing stage, as required by Commerce's regulations.[149] Although Prolamsa performed qualification activities (which included some engineering services) only for OEM sales, as well as order input/processing at a higher level of intensity for those sales, we find that these activities, in and of themselves, do not place OEM sales at a marketing stage which is distinct from the stage at which Prolamsa's other sales are made.

The fact pattern in this review stands in marked contrast to the facts in the LTFV investigation. In the investigation, Prolamsa demonstrated that it provided custom-produced sample merchandise and conducted pre- and post-production on-site visits to address customer concerns, maintained sufficient inventory of custom-designed parts to permit just-in-time delivery, provided a high level of technical assistance to the customer, and performed extensive post-sale quality assurance services, all of which were either performed sparingly or not at all for other customers.[150] Because Prolamsa did not demonstrate that it performed these same activities at the same level of intensity in this review, we do not find that Prolamsa sold in the home market at two LOTs.

We disagree with Prolamsa that we made different LOT findings for Prolamsa and Maquilacero based on equivalent facts. While Prolamsa did submit generally similar documents as Maquilacero with respect to these selling functions, drawing any comparison to Maquilacero with respect to selling activities performed to OEM customers is irrelevant because Maquilacero's affiliates performs the manufacturing and selling activities related to these HWR parts sales (and, thus, Maquilacero had substantial additional selling activity related to OEM sales).[151] Further, no party has questioned the LOT finding for Maquilacero.

Finally, we disagree with Prolamsa that Commerce should find two LOTs based on decisions made in *LWR from Mexico* and *CWP from Mexico*, separate proceedings with separate facts concerning different products. Our decision here is based on specific evidence on this record, and, as noted above, that evidence shows that Prolamsa has not met the standard required to find two LOTs in the home market.

Comment 7: U.S. Sales of Subject Merchandise Further Manufactured by an Unaffiliated Mexican Company

In its U.S. sales listing, Prolamsa reported sales made to an unaffiliated customer in Mexico who performed additional manufacturing activities (*e.g.*, cutting, bending, and perforating) on these products before exporting them to the United States. In the *Preliminary Results*, we accepted these sales as part of Prolamsa's universe of U.S. sales of subject merchandise.

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[149] *See* 19 CFR 351.412(c)(2).
[150] *See HWR LTFV Final* and accompanying IDM at Comment 8.
[151] We note that the physical differences related to the further processing activities are captured in Prolamsa's control numbers because these activities are performed as part of Prolamsa's manufacturing process. However, because Maquilacero does not perform any further processing activities itself, physical differences related to these processes are not part of the control number; rather, they are treated as selling expenses and deducted from home market price.

Domestic Parties' Arguments

- Commerce should reclassify these sales as home market sales, consistent with its practice. In particular, when subject merchandise is sold to a home market customer with knowledge that it will be further processed prior to exportation, Commerce deems it "consumed" in the home market and treats it a home market sale.[152]

- Whether the HWR remained subject merchandise after further processing is irrelevant because, at the time of sale to Prolamsa's customer in the home market, the HWR was considered foreign like product.[153]

Prolamsa's Rebuttal Arguments

- Commerce correctly classified these sales as U.S. sales of subject merchandise. Contrary to the domestic parties' claim, Commerce's practice is to consider exported merchandise to be consumed in the home market only if it is transformed into a product outside the scope of the investigation before export.[154] This practice has been upheld by the CIT.[155]

- Commerce implicitly referenced this standard when it required Prolamsa to demonstrate that it knew at the time of sale that not only was the merchandise destined for the United States, but it was also subject merchandise when it entered U.S. customs territory. Prolamsa met these requirements by providing: 1) a written statement from one of its salesmen; 2) documentation showing a United States billing location; 2) the customer's plant's proximity to the U.S. border; and 4) email correspondence with the customer confirming that the parts were exported to the United States. Prolamsa also established that the products at issue were subject to the same processes of cutting, bending, and perforating that Prolamsa also performs for its "parts" customers.[156]

- The domestic parties' reliance on *WLP from Korea* is inappropriate because, there, Commerce determined that the respondent did not know, at the time of the sale, that the products were destined for the United States and would remain subject merchandise.[157]

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[152] *See* Domestic Parties' Case Brief at 4-5 (citing *WLP from Korea* and accompanying IDM at Comment 6).
[153] *Id*. at 5.
[154] *See* Prolamsa's Rebuttal Brief at 2 (citing *e.g.*, *Stainless Steel Sheet and Strip in Coils from Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 7519 (February 13, 2006) (*SSSSC from Taiwan*), and accompanying IDM at Comment 13, where Commerce defined "consumption" as further processing into non-subject merchandise; and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Taiwan*, 64 FR 15493, 15498 (March 31, 1999), where the respondent "knew or had reason to know that its sale of subject merchandise to a certain customer was not for export to the United States because it would be further manufactured in Taiwan into non-subject merchandise…").
[155] *Id*. at 2-3 (citing *Tung Mung Dev. Co. v. United States*, 25 CIT 752, 783 (2001) (*Tung Mung*); and *Allegheny Ludlum Corp. v. United States*, 215 F.Supp.2d 1322, 1331 (CIT 2000) (*Allegheny Ludlum*), where "{m}erchandise sold in the home market, even if ultimately destined for export, is 'consumed' in the home market if it is used there to produce non-subject merchandise prior to exportation.").
[156] *Id*. at 3-4 (citing Prolamsa's September 27, 2018 Supplemental Section C Response at Exhibit Supp. C-2, Tab 2).
[157] *Id*. at 4-5.

In contrast, Prolamsa provided abundant information to demonstrate that its HWR was ultimately destined for the United States.

Commerce's Position:

After considering the facts in this instant review, we agree with Prolamsa that the sales at issue are properly classified as reportable U.S. sales. Evidence on the record demonstrates that: 1) Prolamsa knew at the time of the sale that the merchandise was destined for the United States; and 2) when it entered U.S. customs territory, the HWR was subject to the AD order on HWR from Mexico.[158]

The domestic parties do not dispute the above facts. Rather, their argument is that, because Prolamsa's customer further processed the HWR before exporting it to the United States, Commerce must consider this merchandise as "consumed" in the home market (and, thus, the sale is a home market sale for Prolamsa, instead of a U.S. one). We disagree.

Under section 751(a)(2)(A) of the Act, Commerce is charged with determining the "export price . . . of each entry of the subject merchandise" and "the dumping margin for each such entry." To carry out this mandate, Commerce requires respondents to report as all U.S. sales made during the POR; where the respondent is a producer (like Prolamsa), Commerce collects data on sales of subject merchandise which the respondent exported to the United States directly, as well as any indirect sales where the seller "knew or should have known at the time of the sale that the merchandise was being exported to the United States."[159] In either scenario, Commerce considers the potential price discriminator for dumping purposes to be the first company in the U.S. chain of distribution; this company is the one that makes the "relevant" (*i.e.*, reviewable) sale to the United States.[160] Because Prolamsa was the first company in the chain of distribution with knowledge that the subject HWR was destined for the United States, and because the HWR was not further processed into non-subject merchandise before exportation to the United States, Prolamsa was the potential price discriminator for that merchandise.

We disagree with the domestic parties that Commerce's practice is to deem all sales of in-scope products which are further manufactured in the home market as home market sales. Rather, whether Commerce treats such sales as home market sales, sales to third countries, or sales to the United States will depend on the facts and circumstances of each case.[161]

Comment 8: Whether Commerce Correctly Determined the Dumping Margin for Perfiles

In the *Preliminary Results*, we determined a dumping margin of 6.34 percent for the non-examined companies subject to this review, which included Perfiles. This dumping margin was

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[158] *See* Prolamsa's March 19, 2018 BCQR at B-20; *see also* Prolamsa's Rebuttal Brief at 2-5.
[159] *See, e.g., Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation*, 66 FR 49347 (September 27, 2001) and accompanying IDM at Comment 3.
[160] *Id*.
[161] *See, e.g., SSSSC from Taiwan* and accompanying IDM at Comment 3; *see also Tung Mung*; and *Allegheny Ludlum*. The domestic parties rely on *WLP from Korea*; however, that determination was recently remanded by the CIT. *See Stupp Corporation, et al., v. United States*, 359 F. Supp. 3d 1293 (CIT 2019).

based on Prolamsa's calculated weighted-average dumping margin, because we preliminarily computed a *de minimis* weighted-average dumping margin for Maquilacero.[162]

Perfiles' Arguments

- It is well-established that Commerce has an obligation in each proceeding to establish the weighted-average dumping margin for each respondent "as accurately as possible," [163] and in a way that is "fair and equitable."[164]

- Commerce should assign Perfiles Maquilacero's *de minimis* weighted-average dumping margin, instead of Prolamsa's positive rate because Commerce has never found that Perfiles itself has engaged in dumping the subject merchandise.[165]

- If Commerce is unwilling to base the final results for Perfiles on the rate computed for a single respondent, it should use the weighted average of the rates calculated for both mandatory respondents.[166]

Domestic Parties' Rebuttal Arguments

- Commerce should continue its long-held practice of excluding zero and *de minimis* weighted-average dumping margins from the rate for non-examined companies that are under review, consistent with section 735(c)(5)(A) of the Act.[167] Further, Commerce's practice has been upheld by both the Court of International Trade (CIT) and CAFC.[168]

- Perfiles has not challenged Commerce's selection of mandatory respondents in this review. Moreover, the only reason that Commerce does not know the extent of Perfiles' own dumping is that Perfiles has never been selected as a mandatory respondent. For all Commerce knows, Perfiles could have been dumping at rates far higher than those of the mandatory respondents (and it likely has been, given that the largest companies know that they will be selected for examination and, thus, have an incentive to keep their rates low).[169]

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[162] *See Preliminary Results* and accompanying PDM at 4.
[163] *See* Perfiles' Case Brief at 2 (citing *Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F.3d 1370, 1379 (Fed. Cir. 2013); *Shakeproof Assembly Components, Div. of Illinois Tool Works, Inc. v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001); *Lasko Metal Products, Inc. v. United States*, 43 F.3d 1442, 1446 (Fed. Cir. 1994); and *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990)).
[164] *Id.* at 2 (citing *Koyo Seiko Co., Ltd. v. United States*, 36 F.3d 1565, 1573 (Fed. Cir. 1994)).
[165] *Id*.
[166] *Id.* at 2-3.
[167] *See* Domestic Parties' Rebuttal Brief at 25.
[168] *Id*. at 25-26 (citing *Amanda Foods (Vietnam) Ltd. v. United States*, 714 F.Supp.2d 1282, 1291 (CIT 2010); *Mid Continent Steel & Wire, Inc. v. United States*, 321 F.Supp.3d 1313, 1321 (CIT 2018); and *Albemarle Corp. v. United States*, 821 F.3d 1345, 1353 (Fed. Cir. 2016)).
[169] *Id.* at 26-27.

Commerce's Position:

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 Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate, for guidance when calculating the rate for companies which were not selected for individual examination 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}."

Consistent with our practice, for these final results we determined a weighted-average dumping margin for non-examined companies, including Perfiles, based on the actual dumping experience of the two mandatory respondents. We note that, unlike in the *Preliminary Results*, Maquilacero's final margin is no longer *de minimis* and the rate determined for non-examined companies is based on the calculated results for both Maquilacero and Prolamsa.[170]

V. RECOMMENDATION

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

☒ ☐

Agree Disagree

5/20/2019

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[170] *See* Memorandum, "Calculation of the Cash Deposit Rate for Non-Reviewed Companies," dated May 20, 2019.