



A-201-836  
Administrative Review  
POR: 8/1/2017-7/31/2018  
**Public Document**  
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October 10, 2019

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

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for the Preliminary Results of  
Antidumping Duty Administrative Review: Light-Walled  
Rectangular Pipe and Tube from Mexico; 2017-2018

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## I. Summary

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on light-walled rectangular pipe and tube (LWRPT) from Mexico, in accordance with section 751(a) of the Tariff Act of 1930 (the Act), as amended. The review covers 19 producers or exporters of the subject merchandise, of which we selected Maquilacero S.A. de C.V. (Maquilacero) and Regiomontana de Perfiles y Tubos S.A. de C.V. (Regiopytsa) as the mandatory respondents. The period of review (POR) is August 1, 2017 through July 31, 2018. We preliminarily determine that Maquilacero and Regiopytsa sold subject merchandise at less than normal value (NV) during the POR.

## II. Background

On August 5, 2008, Commerce published the *Order* in the *Federal Register*.<sup>1</sup> On August 7, 2018, we published in the *Federal Register* a notice of opportunity to request an administrative review of the *Order* for the POR.<sup>2</sup>

Pursuant to section 751(a)(1) of the Act, and 19 CFR 351.213(b), on August 31, 2018, Maquilacero, Perfiles LM, S.A. de C.V. (Perfiles), Productos Laminados de Monterrey S.A. de

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

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 38682 (August 7, 2018).

C.V. (Prolamsa), and Regiopytsa each filed requests for administrative review of themselves.<sup>3</sup> On August 31, 2018, Independence Tube Corporation and Southland Tube Incorporated, (collectively, the petitioners), filed a request for review of the following 19 producers/exporters of LWPRT from Mexico: Aceros Cuatro Caminos S.A. de C.V., Arco Metal S.A. de C.V., Fabricaciones y Servicios de Mexico (FASEMEX), Galvak, S.A. de C.V., Grupo Estructuras y Perfiles, Hylsa S.A. de C.V., Industrias Monterrey S.A. de C.V., Internacional de Aceros, S.A. de C.V., Maquilacero, Nacional de Acero S.A. de C.V., PEASA-Productos Especializados de Acero, Perfiles, Prolamsa, Regiopytsa, Talleres Acero Rey S.A. de C.V., Ternium Mexico S.A. de C.V., Tuberias Aspe, Tuberia Laguna, S.A. de C.V., and Tuberias y Derivados S.A. de C.V.<sup>4</sup> On October 4, 2018, in accordance with 19 CFR 351.221(c)(1)(i), we published in the *Federal Register* a notice of initiation for this administrative review.<sup>5</sup>

In the *Initiation Notice*, we stated our intention that, in the event we limit the number of respondents for individual examination, to select respondents based on U.S. Customs and Border Protection (CBP) data.<sup>6</sup> Based on a consideration of the data, the number of potential producers/exporters involved in this review, and the resources available to Commerce, we determined that we could reasonably examine individually two producers/exporters in the current review.<sup>7</sup> Thus, we selected Maquilacero and Regiopytsa, the producers and exporters accounting for the largest volume of the subject merchandise that could reasonably be examined, pursuant to section 777A(c)(2)(B) of the Act.<sup>8</sup>

On November 5, 2018, FASEMEX timely submitted a certification that it had no exports, sales, or entries of subject merchandise to the United States during the POR.<sup>9</sup> Consistent with our practice, we issued a “No Shipment Inquiry” to CBP and received no information that contradicted FASEMEX’s claims of no shipments.<sup>10</sup>

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<sup>3</sup> See Maquilacero’s Letter, “Light-Walled Rectangular Pipe and Tube from Mexico; Maquilacero S.A. de C.V.’s Request for Administrative Review,” dated August 31, 2019; see also Perfiles LM, S.A. de C.V.’s Letter, “Light-Walled Rectangular Pipe and Tube from Mexico – Request for Administrative Review,” dated August 31, 2019; Productos Laminados de Monterrey S.A. de C.V.’s Letter, “Light-Walled Rectangular Pipe and Tube from Mexico: Request for Administrative Review,” dated August 31, 2019; and Regiopytsa’s Letter, “Light-Walled Rectangular Pipe and Tube from Mexico, Request for Review,” dated August 31, 2019.

<sup>4</sup> See Petitioners’ Letter, “Light-Walled Rectangular Pipe and Tube from Mexico: Request for Administrative Review,” dated August 31, 2018.

<sup>5</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 50077 (October 4, 2018) (*Initiation Notice*).

<sup>6</sup> See *Initiation Notice*, 83 FR at 50077.

<sup>7</sup> See Memorandum, “2017-2018 Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from Mexico: Respondent Selection,” dated October 24, 2018 (Respondent Selection Memorandum) at 2-3.

<sup>8</sup> *Id.* at 3-4.

<sup>9</sup> See FASEMEX’s Letter, “Case No.: A-201-836 - Light-Walled Rectangular Pipe and Tube,” dated November 5, 2018.

<sup>10</sup> See Memorandum, “Light-walled rectangular pipe and tube from Mexico (A-201-836),” dated November 9, 2018.

On October 24, 2018, Commerce issued the standard antidumping questionnaire to Maquilacero and Regiopytsa.<sup>11</sup> Maquilacero submitted its section A response on November 26, 2018,<sup>12</sup> and its sections B, C, and D response on December 12, 2018.<sup>13</sup> Regiopytsa submitted its section A response on November 21, 2018,<sup>14</sup> and its sections B, C, and D response on December 12, 2018.<sup>15</sup> Commerce issued supplemental questionnaires to Maquilacero and Regiopytsa, to which they responded from February 2019 through August 2019.<sup>16</sup>

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.<sup>17</sup> If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. On April 10, 2019, Commerce further extended the time limit for completion of the preliminary results of the review to no later than October 10, 2019.<sup>18</sup>

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<sup>11</sup> See Letter to Maquilacero, dated October 24, 2018 (Maquilacero Initial Questionnaire); see also Letter to Regiopytsa, dated October 24, 2018 (Regiopytsa Initial Questionnaire).

<sup>12</sup> See Maquilacero's Letter, "Light-Walled Rectangular Pipe and Tube from Mexico; Maquilacero S.A. de C.V.'s Section A Questionnaire Response," dated November 26, 2018 (Maquilacero AQR).

<sup>13</sup> See Maquilacero's Letters, "Light-Walled Rectangular Pipe and Tube from Mexico; Maquilacero S.A. de C.V.'s Section B Questionnaire Response," dated December 12, 2018 (Maquilacero BQR); "Light-Walled Rectangular Pipe and Tube from Mexico; Maquilacero S.A. de C.V.'s Section C Questionnaire Response," dated December 12, 2018 (Maquilacero CQR); "Light-Walled Rectangular Pipe and Tube from Mexico; Maquilacero S.A. de C.V.'s Section D Questionnaire Response," dated December 12, 2018 (Maquilacero DQR); and "Light-Walled Rectangular Pipe and Tube from Mexico; Maquilacero S.A. de C.V.'s Section B Downstream Sales Questionnaire Response," dated December 21, 2018 (Maquilacero Downstream Sales BQR).

<sup>14</sup> See Regiopytsa's Letters, "Light-Walled Rectangular Pipe and Tube from Mexico, Response to Section A of the Questionnaire," dated November 21, 2018 (Regiopytsa AQR); "Light-Walled Rectangular Pipe and Tube from Mexico, 2018 Audited Financial Statements," (Regiopytsa AQR Financial Statements Part 1) dated June 21, 2019; and "Light-Walled Rectangular Pipe and Tube from Mexico, 2018 Audited Financial Statements," (Regiopytsa AQR Financial Statements Part 2) dated July 26, 2019.

<sup>15</sup> See Regiopytsa's Letter, "Light-Walled Rectangular Pipe and Tube from Mexico, Response to Sections B-D of the Questionnaire," dated December 11, 2018 (Regiopytsa BCDQR).

<sup>16</sup> See Maquilacero's Letters, "Light-Walled Rectangular Pipe and Tube from Mexico; Maquilacero S.A. de C.V.'s Supplemental Section A Questionnaire Response," dated February 19, 2019 (Maquilacero SQR1); "Light-Walled Rectangular Pipe and Tube from Mexico; Maquilacero S.A. de C.V.'s Supplemental Sections A-C Questionnaire Response," dated March 18, 2019 (Maquilacero SQR2); "Light-Walled Rectangular Pipe and Tube from Mexico; Maquilacero S.A. de C.V.'s First Supplemental Section D Questionnaire Response," dated May 1, 2019 (Maquilacero SQR3); "Light-Walled Rectangular Pipe and Tube from Mexico; Maquilacero S.A. de C.V.'s Second Supplemental Section D Questionnaire Response," dated May 1, 2019 (Maquilacero SQR4); and "Light-Walled Rectangular Pipe and Tube from Mexico; Maquilacero S.A. de C.V.'s Third Supplemental Sections A-D Questionnaire Response," dated June 12, 2019 (Maquilacero SQR5); see also Regiopytsa's Letters, "Light-Walled Rectangular Pipe and Tube from Mexico, Response to Supplemental Section A of the Questionnaire," dated June 5, 2019; "Light-Walled Rectangular Pipe and Tube from Mexico, Response to Supplemental Sections B-C of the Questionnaire," dated June 12, 2019; "Light-Walled Rectangular Pipe and Tube from Mexico, Response to Supplemental Section D of the Questionnaire," dated June 17, 2019; and "Light-Walled Rectangular Pipe and Tube from Mexico, Response to Second Supplemental Section D of the Questionnaire," dated August 16, 2019.

<sup>17</sup> See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

<sup>18</sup> See Memorandum, "Light-Walled Rectangular Pipe and Tube from Mexico: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review; 2017-2018," dated April 10, 2019.

The petitioners submitted comments on Maquilacero's and Regiopytsa's questionnaire responses from December 2018 through April 2019.<sup>19</sup> On April 4, 2019, Maquilacero submitted rebuttal comments regarding the petitioner's comments on downstream sales.<sup>20</sup>

On August 26, 2019, the petitioners filed pre-verification comments concerning Maquilacero and Regiopytsa.<sup>21</sup> We verified the sales and costs responses of Regiopytsa from August 19 through August 30, 2019, in Monterrey, Mexico.<sup>22</sup> We also verified the sales and cost responses of Maquilacero from August 20 through August 30, 2019, in Monterrey, Mexico.<sup>23</sup>

On October 2, 2019, the petitioners filed comments regarding Maquilacero and Regiopytsa in advance of the preliminary results.<sup>24</sup> On October 3, 2019, Maquilacero filed comments in advance of the preliminary results.<sup>25</sup> Also on October 3, 2019, Regiopytsa filed comments in response to the petitioners' Pre-Preliminary Results Comments.<sup>26</sup>

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<sup>19</sup> See Petitioners' Letters, "Light-Walled Rectangular Pipe and Tube from Mexico: Deficiency Comments on Maquilacero's Section A Initial Questionnaire Response," dated December 14, 2018; Petitioners' Letter, "Light-Walled Rectangular Pipe and Tube from Mexico: Deficiency Comments on Regiopytsa's Section A Initial Questionnaire Response," dated December 14, 2018; "Light-Walled Rectangular Pipe and Tube from Mexico: Deficiency Comments on Regiopytsa's Sections B-D Initial Questionnaire Responses," dated February 8, 2019; "Light-Walled Rectangular Pipe and Tube from Mexico: Deficiency Comments on Maquilacero's Section B Downstream Sales Questionnaire Response," dated February 12, 2019; "Light-Walled Rectangular Pipe and Tube from Mexico: Deficiency Comments on Maquilacero's Sections A-D Initial Questionnaire Response," dated February 12, 2019; "Light-Walled Rectangular Pipe and Tube from Mexico: Comments on Adjustment for Section 232 Duties," dated February 12, 2019; "Light-Walled Rectangular Pipe and Tube from Mexico: Deficiency Comments on Maquilacero's Supplemental Section A Questionnaire Response," dated March 1, 2019; "Light-Walled Rectangular Pipe and Tube from Mexico: Deficiency Comments on Maquilacero's Sections A-C Supplemental Questionnaire Responses," dated March 28, 2019; and "Light-Walled Rectangular Pipe and Tube from Mexico: Comments on Maquilacero's April 4, 2019 Factual Information Regarding Downstream Sales," dated April 10, 2019.

<sup>20</sup> See Maquilacero's Letter, "Light-Walled Rectangular Pipe and Tube from Mexico; Maquilacero S.A. de C.V.'s Factual Information regarding Downstream Sales," dated April 4, 2019 (Maquilacero's Downstream Sales Rebuttal).

<sup>21</sup> See Petitioners' Letter, "Light-Walled Rectangular Pipe and Tube from Mexico: Pre-Verification Comments," dated August 26, 2019.

<sup>22</sup> See Memorandum, "Verification of the Sales Response of Regiomontana de Perfiles y Tubos S. de R.L. de C.V. (Regiopytsa) in the Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from Mexico," dated September 16, 2019 (Regiopytsa Sales Verification Report); see also Memorandum, "Verification of Regiomontana de Perfiles y Tubos S. de R.L. de C.V. (Regiopytsa)," dated concurrently with this memorandum (Regiopytsa Cost Verification Report).

<sup>23</sup> See Memorandum, "Verification of the Sales Response of Maquilacero S.A. de C.V. in the Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from Mexico," dated September 18, 2019 (Maquilacero Sales Verification Report); see also Memorandum, "Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from Mexico, 2017-2018: Verification of the Cost Response of Maquilacero S.A. de C.V.," dated concurrently with this memorandum (Maquilacero Cost Verification Report).

<sup>24</sup> See Petitioners' Letter, "*Light-Walled Rectangular Pipe and Tubes from Mexico*: Pre-Preliminary Comments," dated October 2, 2019 (Petitioners' Pre-Preliminary Results Comments).

<sup>25</sup> See Maquilacero's Letter, "*Light-Walled Rectangular Pipe and Tube from Mexico*; Maquilacero S.A. de C.V.'s Pre-Preliminary Comments," dated October 3, 2019 (Maquilacero's Pre-Preliminary Results Comments).

<sup>26</sup> See Regiopytsa's Letter, "*Light-Walled Rectangular Pipe and Tube from Mexico*, Response to Domestic Interested Parties Pre-Preliminary Comments," dated October 3, 2019 (Regiopytsa's Rebuttal to Petitioner's Pre-Preliminary Results Comments).

### **III. Scope of the Order**

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

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

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

### **IV. Preliminary Determination of No Shipments**

On November 5, 2018, FASEMEX reported that it had no exports, sales, or entries of subject merchandise to the United States during the POR.<sup>27</sup> In response, we issued a “No Shipment Inquiry” to CBP and received no information that contradicted FASEMEX’s claims of no shipments.<sup>28</sup>

Given that FASEMEX reported that it made no shipments of subject merchandise to the United States during the POR, and there is no information calling its claim into question, we preliminarily determine that FASEMEX did not have any shipments of subject merchandise during the POR. Consistent with Commerce’s practice, we will not rescind the review with respect to FASEMEX but rather, will complete the review and issue instructions to CBP based on the final results.<sup>29</sup>

### **V. Companies Not Selected for Individual Examination**

Commerce did not select Aceros Cuatro Caminos S.A. de C.V.; Arco Metal S.A. de C.V.; Galvak, S.A. de C.V.; Grupo Estructuras y Perfiles, Hylsa S.A. de C.V.; Industrias Monterrey S.A. de C.V.; Internacional de Aceros, S.A. de C.V.; Nacional de Acero S.A. de C.V.; PEASA-Productos Especializados de Acero; Perfiles; Prolamsa; Talleres Acero Rey S.A. de C.V.;

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<sup>27</sup> See FASEMEX’s Letter, “Case No.: A-201-836 - Light-Walled Rectangular Pipe and Tube,” dated November 5, 2018.

<sup>28</sup> See Memorandum, “Light-walled rectangular pipe and tube from Mexico (A-201-836),” dated November 9, 2018.

<sup>29</sup> See, e.g., *Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012-2013*, 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012-2013*, 79 FR 51306, 51307 (August 28, 2014).

Ternium Mexico S.A. de C.V.; Tuberias Aspe; Tuberia Laguna, S.A. de C.V.; and Tuberias y Derivados S.A. de C.V for individual examination. None of these companies: (1) was selected as a mandatory respondent; (2) was the subject of a withdrawal of request for review; (3) requested to participate as a voluntary respondent; or (4) submitted a claim of no shipments. As such, these companies remain non-selected respondents.

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for 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 in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}."

In this review, we have preliminarily calculated a weighted-average dumping margin for these 16 companies using the calculated rates of the mandatory respondents, which are not zero, *de minimis*, or determined entirely on the basis of facts available. With two respondents, we normally calculate: (A) a weighted average of the dumping margins calculated for the mandatory respondents; (B) a simple average of the dumping margins calculated for the mandatory respondents; and (C) a weighted average of the dumping margins calculated for the mandatory respondents using each company's publicly ranged values for the merchandise under consideration. We compare (B) and (C) to (A) and select the rate closest to (A) as the most appropriate rate for all other companies.<sup>30</sup> We have applied that practice here.<sup>31</sup>

## **VI. Discussion of the Methodology**

### **A. Date of Sale**

Section 351.401(i) of Commerce's regulations states that, "in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business." The regulation provides further that Commerce may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>32</sup> Commerce has a long-standing practice of

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<sup>30</sup> See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010) and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

<sup>31</sup> See Memorandum, "Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from Mexico: Calculation of Margin for Respondents Not Selected for Individual Examination," dated concurrently with this memorandum.

<sup>32</sup> See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (*Allied Tube*) (quoting 19 CFR 351.401(i)).

finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.<sup>33</sup>

For its home-market sales, Maquilacero reported that it used the invoice date as its date of sale because it is the point in time at which all material terms, such as price, quantity, and delivery terms of sale have been agreed upon.<sup>34</sup> We reviewed the sales and shipment documentation submitted by Maquilacero (*e.g.*, customer purchase orders, order acknowledgements, invoices, mill test certificates, exit slips from warehouse, and proof of payment), including an example of a home market sale where the price changed between the date the purchase order was issued and the date the invoice was issued, and we have confirmed that the material terms of sale are set at the invoice date.<sup>35</sup> For U.S. market sales, Maquilacero also reported the invoice date as the date of sale because the invoice date is the point in time at which all material terms of the sale have been agreed upon.<sup>36</sup> We reviewed sales and shipment documentation for U.S. sales, including an example of a sale where the price changed between the date of the purchase order was issued and the date the invoice was issued, and have confirmed that the material terms of sale are set at the invoice date.<sup>37</sup> Based on this information, we preliminarily find that the invoice date is the most appropriate date of sale for Maquilacero's home market and U.S. sales.

Regiopytsa reported the sales invoice date, as maintained in its sales accounting system, as the date of sale for all home market sales.<sup>38</sup> Regiopytsa issues invoices on the date that the merchandise is shipped from the plant for both home market and U.S. sales.<sup>39</sup> The invoice contains the terms of the sale, including the price and quantity.<sup>40</sup> We reviewed sales and shipment documentation submitted by Regiopytsa (*e.g.*, a purchase order, scale ticket, trucking invoice, and Regiopytsa's invoice to the customer) and have confirmed that the material terms of sale for home market sales are set at the invoice date.<sup>41</sup> Therefore, we preliminarily determine to use Regiopytsa's invoice date as the date of sale for all home market sales. For U.S. market sales, Regiopytsa also reported the sales invoice date, as maintained in its sales accounting system, as the date of sale.<sup>42</sup> We reviewed sales and shipment documentation for Regiopytsa's U.S. sales and have confirmed that the material terms of sale are set at the invoice date.<sup>43</sup> Thus, we preliminarily find that the date of sale is, most appropriately, the sales invoice date for Regiopytsa's home market and U.S. sales.

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<sup>33</sup> See, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying IDM at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

<sup>34</sup> See Maquilacero AQR at 23; see also Maquilacero BQR at 26-27; and Maquilacero SQR1 at 8, 16-17.

<sup>35</sup> See Maquilacero Sales Verification Report at 9 and Sales Verification Exhibit 5.

<sup>36</sup> See Maquilacero CQR at 19-20; see also SQR1 at 17 and Exhibit SA-19.

<sup>37</sup> See Maquilacero Sales Verification Report at 16-17.

<sup>38</sup> See Regiopytsa's BCDQR at B-17 and CQR at C-15.

<sup>39</sup> See Regiopytsa's BCDQR at B-17 and CQR at C-15; see also Regiopytsa's Sales Verification Report at 9.

<sup>40</sup> See Regiopytsa's BCDQR Response at B-17-20 and C-15-23.

<sup>41</sup> See Regiopytsa's BCDQR at B-17.

<sup>42</sup> *Id.* at C-16.

<sup>43</sup> See Regiopytsa's Sales Verification Report at 9.

## B. Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Maquilacero and Regiopytsa's sales of the subject merchandise from Mexico to the United States were made at less than normal value, we compared the export price to the normal value as described in the "Export Price" and "Normal Value" sections of this memorandum.

### 1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates a weighted-average dumping margin by comparing weighted-average NVs to weighted-average export prices (EPs) or constructed export prices (CEPs) (*i.e.*, the average-to-average (A-A) method) unless the Secretary determines that another method is appropriate. In a less-than-fair-value (LTFV) investigation, Commerce examines whether to compare weighted-average normal values with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction (A-T) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of an administrative review, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in a LTFV investigation.<sup>44</sup>

In numerous investigations, Commerce has applied a "differential pricing" analysis for determining whether application of the A-T method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>45</sup> Commerce finds that the differential pricing analysis used in certain investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the A-A method in calculating a respondent's weighted-average dumping margin.

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

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<sup>44</sup> See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012) and accompanying IDM at comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014), *aff'd* 862 F. 3d 1322 (Fed. Cir. 2017).

<sup>45</sup> See, *e.g.*, *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); see also *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that Commerce uses in making comparisons between EP or CEP and normal value for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, then Commerce examines whether using only the A-A method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method,

based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-A method only. If the difference between the two calculations is meaningful, then this demonstrates that the A-A method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: 1) there is a 25 percent relative change in the weighted-average dumping margins between the A-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the A-A method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.<sup>46</sup>

## 2. Results of the Differential Pricing Analysis

For Maquilacero, based on the results of the differential pricing analysis, Commerce preliminarily finds that 88.61 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>47</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for the preliminary results, Commerce is applying the A-T method for all U.S. sales to calculate the weighted-average dumping margin for Maquilacero.

For Regiopytsa, based on the results of the differential pricing analysis, Commerce preliminarily finds that 68.93 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>48</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that the average-to-average method cannot account for such differences because the weighted-average dumping margin crosses the *de minimis* threshold when calculated using the average-to-average method and when calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, Commerce is applying the A-T method for all U.S. sales to calculate the weighted-average dumping margin for Regiopytsa.

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<sup>46</sup> The Court of Appeals for the Federal Circuit (CAFC) in *Apex Frozen Foods v. United States*, 862 F. 3d 1322 (Fed. Cir. July 12, 2017) affirmed much of Commerce's differential pricing methodology. We ask that interested parties present only arguments on issues which have not already been decided by the CAFC.

<sup>47</sup> See Memorandum, "Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results Margin Calculation for Maquilacero S.A. de C.V. (Maquilacero)," dated concurrently with this memorandum (Maquilacero Calculation Memorandum) at section "Differential Pricing Analysis."

<sup>48</sup> See Memorandum, "Regiopytsa's Preliminary Calculation Memorandum at section "Results of Differential Pricing Analysis," dated concurrently with this decision memorandum (Regiopytsa Calculation Memorandum).

### 3. Treatment of Duties Under Section 232 of the Trade Expansion Act of 1962

In March 2018, the President exercised his authority under Section 232 of the Trade Expansion Act of 1962, as amended, and issued Proclamation 9705 that mandated, to address national security concerns, imposition of a global tariff of 25 percent on imports of steel articles in order to reduce imports to a level that the Secretary assessed would enable domestic steel producers to use approximately 80 percent of existing domestic production capacity and thereby achieve long-term economic viability through increased production. In considering whether U.S. price should be adjusted for section 232 duties, we look to section 772 of the Act. In particular, section 772(c)(2)(A) of the Act directs Commerce to adjust EP and CEP for “the amount, if any, included in such price, attributable to any additional cost, charges, or expenses, and United States import duties...” Therefore, we find that the analysis here depends on whether section 232 duties constitute “United States import duties,” and whether the duties are “included in such price.”

The CAFC has previously considered whether certain types of duties constitute “United States import duties” for purposes of section 772(c)(2)(A) of the Act. In *Wheatland*, the CAFC sustained Commerce’s determination not to adjust U.S. price in antidumping proceedings for section 201 safeguard duties under that statutory provision.<sup>49</sup> Having acknowledged Commerce’s analysis of the legislative history to the Antidumping Act of 1921, which “referred to ‘United States import duties’ as normal customs duties and referred to antidumping duties as ‘special dumping duties’ and that ‘special dumping duties’ were distinguished and treated differently from normal customs duties,” the CAFC in *Wheatland* agreed that “Congress did not intend all duties to be considered ‘United States import duties.’”<sup>50</sup>

The CAFC then found reasonable Commerce’s analysis that section 201 duties were more akin to antidumping duties than “ordinary customs duties.”<sup>51</sup> In comparing section 201 duties with antidumping duties, the CAFC found that: (1) “{l}ike antidumping duties, {section}201 duties are remedial duties that provide relief from the adverse effects of imports,” (2) “{n}ormal customs duties, in contrast, have no remedial purpose,” (3) “antidumping and {section} 201 duties, unlike normal customs duties, are imposed based upon almost identical findings that the domestic industry is being injured or threatened with injury due to the imported merchandise;” and (4) “{section} 201 duties are like antidumping duties... because they provide only temporary relief from the injurious effects of imports,” whereas normal customs duties “have no termination provision, and are permanent unless modified by Congress.”<sup>52</sup> In sustaining Commerce’s decision regarding section 201 duties in *Wheatland*, the CAFC also held that “{t}o access both a safeguard duty and an antidumping duty on the same imports with regard to the safeguard duty, would be to remedy substantially overlapping injuries twice.”<sup>53</sup>

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<sup>49</sup> See *Wheatland Tube Co. v. United States*, 495 F. 3d 1355, 1363 (Fed. Cir. 2007) (*Wheatland*).

<sup>50</sup> *Id.* at 1361.

<sup>51</sup> *Id.* at 1362.

<sup>52</sup> *Id.* at 1362-63.

<sup>53</sup> *Id.* at 1365.

Section 232 duties are not akin to antidumping or section 201 duties. Proclamation 9705 states that it “is necessary and appropriate to adjust imports of steel articles so that such imports will not threaten to impair the *national security*...”<sup>54</sup> The text of section 232 of the Trade Expansion Act of 1962 also clearly concerns itself with “the effects on the *national security* of imports of the article.”<sup>55</sup> The particular national security risk spelled out in proclamation 9705 is that the “industry will continue to decline, leaving the United States at risk of becoming reliant on foreign producers of steel to meet our national security needs – a situation that is fundamentally inconsistent with the safety and security of the American people.”<sup>56</sup> In other words, section 232 duties are focused on addressing national security prerogatives, separate and apart from any function performed by antidumping and 201 safeguard duties to remedy injury to a domestic industry.

Even more critical to this point is that the Presidential Proclamation states that section 232 duties are to be imposed in addition to other duties unless expressly provided for in the proclamations.<sup>57</sup> The Annex to Proclamation 9740 refers to section 232 duties as “ordinary” customs duties, and it also states that “{a}ll anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein.” Notably, there is no express exception in the HTSUS revision in the Annex. In other words, section 232 duties are intended to be treated as any other duties for purposes of the trade remedy laws. Had the President intended that antidumping duties would be reduced by the amount of section 232 duties imposed, the Presidential Proclamation would have expressed that intent.

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<sup>54</sup> See Proclamation 9705, 83 FR at 11627 (emphasis added); see also Proclamation 9711 of March 22, 2018, 83 FR 13361, 13363 (March 28, 2018) (Proclamation 9711) (“In proclaiming this tariff, I recognized that our Nation has important security relationships with some countries whose exports of steel articles to the United States weaken our national economy and thereby threaten to impair the national security”); Proclamation 9740 of April 30, 2018, 83 FR 20683 (May 7, 2018) (Proclamation 9740) (similar); Proclamation 9759 of May 31, 2018, 83 FR 25857 (June 5, 2018) (Proclamation 9759) (similar); Proclamation 9772 of August 10, 2018, 83 FR 40429 (August 15, 2018) (Proclamation 9772) (similar); and Proclamation 9777 of August 29, 2018, 83 FR 45025 (September 4, 2018) (Proclamation 9777) (similar).

<sup>55</sup> See section 232(b)(1)(A) of the Trade Expansion Act of 1962 (emphasis added); see also section 232(a) of the Trade Expansion Act of 1962 (explaining that “{n}o action shall be taken . . . to decrease or eliminate the duty or other import restrictions on any article if the President determines that such reduction or elimination would threaten to impair the national security”).

<sup>56</sup> See Proclamation 9705, 83 FR at 11627.

<sup>57</sup> See Proclamation 9705, 83 FR at 11627; see also Proclamation 9711, 83 FR at 13363; Proclamation 9740, 83 FR at 20685-87 (“All anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein.”); Proclamation 9759, 83 FR at 25857; Proclamation 9772, 83 FR at 40430-31; and Proclamation 9777, 83 FR at 45025. The proclamations do not expressly provide that 232 duties receive different treatment.

For the reasons noted, and consistent with our treatment of 232 duties in *OCTG from Ukraine*<sup>58</sup> and *Circular Welded Pipe and Tube From Turkey*,<sup>59</sup> we have determined that section 232 duties should be treated as “United States import duties” for purposes of section 772(c)(2)(A) of the Act – and thereby “U.S. Customs duties,” which are deducted from U.S. price.

### C. Product Comparisons

For the purposes of determining an appropriate NV based on home market prices for comparison to the U.S. sale prices, in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the scope of the *Order* (i.e., the foreign like product) that were in the ordinary course of trade. To identify identical or similar merchandise, we matched foreign like products to the products sold in the United States based on the physical characteristics. In order of importance, these physical characteristics are: (1) steel input type; (2) metallic coating; (3) painting; (4) nominal perimeter; (5) nominal wall thickness; and (6) shape.

### D. Export Price

According to section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. Pursuant to section 772(b) of the Act, CEP is “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under {sections 772(c) and (d) of the Act}.”

### Maquilacero

For Maquilacero, in accordance with section 772(c)(2)(A) of the Act, and where appropriate, we made adjustments to the starting price for billing adjustments, early payment discounts, rebates, and deductions for certain movement expenses for domestic inland freight, domestic brokerage and handling, U.S. brokerage and handling, U.S. inland freight, U.S. customs duties, and section 232 duties. We made additional adjustments to export price for commissions, warranty expenses, credit expenses, and indirect selling expenses.

With respect to section 232 duties, Maquilacero confirmed that it paid section 232 duties on certain of its EP sales with entries made on or after June 1, 2018, the effective date of section

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<sup>58</sup> See Memorandum, “Issues and Decision Memorandum for the Final Normal Value Calculations to be Effective from the Release of the Final Normal Values through June 30, 2019, under the Agreement Suspending the Antidumping Duty Investigation on Certain Oil Country Tubular Goods from Ukraine,” dated February 15, 2019, at Comment 1 (*OCTG from Ukraine*); see also Memorandum, “Additional Information on Section 232 Duties,” dated concurrently with this Memorandum at Attachment I.

<sup>59</sup> See *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 34345 (July 18, 2019), and accompanying Preliminary Decision Memorandum at 11-13.

232 duties.<sup>60</sup> Moreover, we note that, given the terms of delivery for such sales, the price charged to unaffiliated U.S. customers during the POR included section 232 duties.<sup>61</sup>

## Regiopytsa

For Regiopytsa, in accordance with section 772(c)(2)(A) of the Act, and where appropriate, we made deductions from the starting price for certain movement expenses (*e.g.*, U.S. and domestic freight, U.S. and domestic brokerage and handling, insurance). We also made adjustments for commissions, billing adjustments, and inventory carrying costs. We made additional adjustments to export price for warranty expenses, credit expenses and indirect selling expenses.

Regiopytsa also reported that section 232 duties were included in its reported U.S. prices after the effective date of the section 232 duties, *i.e.*, June 1, 2018.<sup>62</sup>

### E. Normal Value

#### 1. Home Market Viability and Comparison Market Selection

To determine whether there was a sufficient volume of sales of LWRPT in the home market to serve as a viable basis for calculating normal value (*i.e.*, the aggregate volume of home-market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of Maquilacero and Regiopytsa's respective home-market sales of the foreign like product to the volume their respective U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.<sup>63</sup> Based on this comparison, we determine that both companies had a viable home market during the period of review. Consequently, we based normal value on home-market sales to unaffiliated purchasers made in the usual quantities in the ordinary course of trade, described in detail below.

#### 2. Level of Trade

In accordance with section 773(a)(1)(B) of the Act and to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the export price or CEP.<sup>64</sup> Pursuant to 19 CFR 351.412(c)(1)(iii), the level of trade for normal value is based on the starting price of the sales in the comparison market or, when normal value is based on constructed value, the starting price of the sales from which we derive selling, general and administrative expenses (SG&A), and profit.

To determine if normal value sales are at a different level of trade than export price sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.<sup>65</sup> If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern

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<sup>60</sup> See Maquilacero SQR2 at 19; *see also* Maquilacero Sales Verification Report at 1.

<sup>61</sup> See Maquilacero SQR2 at Exhibit 2SQ-16.

<sup>62</sup> See Regiopytsa BCDQR at C-30; *see also* Regiopytsa Sales Verification Report at 14.

<sup>63</sup> See Maquilacero AQR at 2 and Exhibit A-1; *see also* Regiopytsa's AQR at 2 and Exhibit A-1.

<sup>64</sup> See section 773(a)(7) of the Act.

<sup>65</sup> See 19 CFR 351.412(c)(2).

of consistent price differences between the sales on which normal value is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment to normal value under section 773(a)(7)(A) of the Act.

Maquilacero identified four channels of distribution in the home market: (1) sales by Maquilacero to distributors and end-users from Maquilacero's plant; (2) sales by Maquilacero to distributors and end-users from a warehouse; (3) sales by Maquilacero to an affiliated company who made sales to unaffiliated customers; and (4) sales by Maquilacero to an affiliated company who used LWRPT to produce parts for unaffiliated customers in the automotive industry.<sup>66</sup> Based on the sales process and selling function information provided by Maquilacero, we conclude that its home-market sales were made at one level of trade during the period of review. With respect to the U.S. market, Maquilacero reported that it made sales through one channel of distribution, *i.e.*, sales to unaffiliated distributors and end-users (channel 1).<sup>67</sup> After analyzing the sales process and selling function information, we concluded that its U.S. sales were made at one level of trade.<sup>68</sup>

Regiopytsa identified one channel of distribution in the home market which were sales made by Regiopytsa to distributors. Regiopytsa also reported a small number of sales to an affiliated company distributor.<sup>69</sup> Based on the sales process and selling function information provided by Regiopytsa, we conclude that its home-market sales were made at one level of trade during the period of review. With respect to the U.S. market, Regiopytsa also identified one channel of distribution in the U.S. market which were sales made by Regiopytsa to distributors. Regiopytsa notes that it had no sales of subject merchandise to affiliated U.S. importers.<sup>70</sup> After analyzing the sales process and selling function information, we concluded that its U.S. sales were made at one level of trade.

We preliminarily determine that for both Maquilacero and Regiopytsa there are no significant differences in selling and marketing practices between their respective home and U.S. markets, that a single level of trade exists in each market for both Maquilacero and Regiopytsa, and that sales to the United States and the home market during the POR were made at the same level of trade. Consequently, no level-of-trade adjustment is warranted.

#### F. Sales to Affiliates

We exclude comparison market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because we consider them to be outside the ordinary course of trade.<sup>71</sup> To test whether the respondents' comparison market sales are made at arm's-length

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<sup>66</sup> See Maquilacero AQR at 17-21 and Exhibits A-8A, A-8B, and A-8C. For a complete analysis, see Maquilacero Calculation Memorandum at section "Level of Trade."

<sup>67</sup> *Id.* at 17.

<sup>68</sup> *Id.*

<sup>69</sup> See Regiopytsa's AQR at 13-14 and Exhibit A-4, which shows the selling function that Regiopytsa performed for its two channels of distribution; see also Regiopytsa's Second Supplemental Questionnaire Response at Exhibit SSABCD-1. For a complete analysis, see Regiopytsa Calculation Memorandum at section "Level of Trade."

<sup>70</sup> See Regiopytsa's AQR at 14.

<sup>71</sup> See 19 CFR 351.403(c).

prices, we compare the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates, movement charges, and direct selling expenses. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated party are, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determine that the sales to the affiliated party are at arm's-length prices.<sup>72</sup> Because Maquilacero and Regiopytsa reported sales to affiliates in the comparison market, we tested to see if those sales were made at arm's-length prices for our preliminary results. In the event they were not, we disregarded these sales for purposes of calculating weighted-average monthly normal values.<sup>73</sup>

## G. Cost of Production Analysis

Pursuant to section 773(b)(2) of the Act,<sup>74</sup> Commerce required that both respondents provide constructed value (CV) and cost of production (COP) information to determine if there were reasonable grounds to believe or suspect that sales of foreign like product had been made at prices that represented less than the COP of the product.

### 1. Cost Averaging Methodology

Commerce's normal practice is to calculate an annual weighted-average cost for the POR. However, we recognize that possible distortions may result if we use our normal annual-average cost method during a time of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, we evaluate the case-specific record evidence by examining two primary criteria: (1) the change in the cost of manufacturing (COM) incurred by the respondent during the POR must be deemed significant; and (2) the record evidence must indicate that sales during the shorter cost-averaging periods could be reasonably linked with the COP or CV during the same shorter cost-averaging periods.<sup>75</sup>

As discussed below, we examined Maquilacero's and Regiopytsa's cost data and preliminarily determined that both of the above criteria were met and that the application of our quarterly cost methodology is appropriate.

#### a. Significance of Cost Changes

In prior cases, we established 25 percent as the threshold (between the high- and low-quarter COM) for determining that the changes in COM are significant enough to warrant a departure

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<sup>72</sup> See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002).

<sup>73</sup> See Maquilacero Calculation Memorandum and Regiopytsa Calculation Memorandum.

<sup>74</sup> See section 773(b)(2)(A)(ii) of the Act.

<sup>75</sup> See *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010) (*SSSSC Mexico Final*) and accompanying IDM at Comment 6; see also *Stainless-Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008) (*SSPC Belgium Final*) and accompanying IDM at Comment 4.

from our standard annual-average cost approach.<sup>76</sup> In the instant case, record evidence shows that Maquilacero and Regiopytsa experienced significant cost changes (*i.e.*, changes that exceeded 25 percent) between the high and low quarterly COM during the POR.<sup>77</sup>

b. Linkage Between Sales and Cost Information

Consistent with past precedent, because we found the changes in costs to be significant, we evaluated whether there is evidence of a linkage between the cost changes and the sales prices during the POR.<sup>78</sup> Absent a surcharge or other pricing mechanism, Commerce may alternatively look for evidence of a pattern showing that changes in selling prices reasonably correlate to changes in unit costs.<sup>79</sup> To determine whether a reasonable correlation existed between the sales prices and underlying costs during the POR, we compared weighted-average quarterly prices to the corresponding quarterly COM for high volume control numbers. Our comparison revealed that sales and costs for Maquilacero and Regiopytsa showed reasonable correlation.<sup>80</sup>

After reviewing this information and determining that changes in selling prices correlate reasonably to changes in unit costs, we preliminarily determine that there is linkage between Maquilacero's and Regiopytsa's changing sales prices and costs during the POR.<sup>81</sup> Thus, we preliminarily determine that a shorter cost-averaging period approach, based on a quarterly-average COP, is appropriate for Maquilacero and Regiopytsa because we found significant cost changes in COM, as well as a reasonable linkage between costs and sales prices.

2. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculate COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and interest expenses.<sup>82</sup> For Maquilacero and Regiopytsa, we calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative and financial expenses, in accordance with section 773(b)(3) of the Act. For both Maquilacero and Regiopytsa, we based the COP on a quarterly-average COP rather than an annual-average COP. *See* the "Cost Averaging Methodology" section, for further discussion.

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<sup>76</sup> *See* *SSPC Belgium Final IDM* at Comment 4.

<sup>77</sup> *See* Maquilacero SQR4.; *see also* Regiopytsa Response to Second Supplemental Section D, dated August 16, 2019; Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA). The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>; *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46794-95 (August 6, 2015); *SSSSC Mexico Final IDM* at Comment 6; and *SSPC Belgium Final IDM* at Comment 4.

<sup>78</sup> *See* *SSSSC Mexico Final IDM* at Comment 6; *see also* *SSPC Belgium Final IDM* at Comment 4.

<sup>79</sup> *See* *SSPC Belgium Final IDM* at Comment 4.

<sup>80</sup> *See* Maquilacero SQR4.; *see also* Regiopytsa Response to Second Supplemental Section D, dated August 16, 2019.

<sup>81</sup> *See* Maquilacero SQR4.; *see also* Regiopytsa Response to Second Supplemental Section D, dated August 16, 2019; and *SSSSC Mexico Final IDM* at Comment 6; and *SSPC Belgium Final IDM* at Comment 4.

<sup>82</sup> *See* "Test of Comparison Market Sales Prices" section, *infra*, for treatment of home market selling expenses.

### 3. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COP to the per-unit price of the comparison-market sales of the foreign like product to determine whether these sales had been made at prices below the COP. In particular, in determining whether to disregard home-market sales made at prices below the COP, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(2)(B), (C), and (D) of the Act. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices were net of billing adjustments, discounts, movement expenses, direct and indirect selling expenses, and packing expenses, where appropriate.

### 4. Results of the COP Test

Section 773(b)(1) of the Act provides that, where sales made at less than the COP “have been made within an extended period of time in substantial quantities” and “were not at prices which permit recovery of all costs within a reasonable period of time,” Commerce may disregard such sales when calculating normal value. Pursuant to section 773(b)(2)(C)(i) of the Act, we did not disregard below-cost sales that were not made in “substantial quantities,” *i.e.*, where less than 20 percent of sales of a given product were made at prices less than the COP. We disregarded below-cost sales when they were made in substantial quantities, *i.e.*, where 20 percent or more of a respondent’s sales of a given product were at prices less than the COP and where “the weighted average per unit price of the sales . . . is less than the weighted average per unit cost of production for such sales.”<sup>83</sup> Finally, based on our comparison of prices to the weighted-average COPs, we considered whether the prices would permit the recovery of all costs within a reasonable period of time.<sup>84</sup>

For Maquilacero and Regiopytsa, the cost test indicated that, for home market sales of certain products, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time.<sup>85</sup> Thus, in accordance with section 773(b)(1) of the Act, we disregarded these below-cost sales as outside of the ordinary course of trade in our analysis of the companies’ home-market sales data and used the remaining sales to determine normal value.

### H. Calculation of Normal Value Based on Comparison Market Prices

We calculated normal value for Maquilacero and Regiopytsa based on the reported packed, ex-factory, or delivered prices to comparison-market customers.

With respect to Maquilacero, we made adjustments, where appropriate, to normal value for certain billing adjustments, early payment discounts, late payment fees, and freight revenue. We

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<sup>83</sup> See section 773(b)(2)(C)(ii) of the Act.

<sup>84</sup> See section 773(b)(2)(D) of the Act.

<sup>85</sup> See Maquilacero Calculation Memorandum; see also Regiopytsa Calculation Memorandum.

also made deductions from the starting price, where appropriate, for certain movement expenses (*i.e.*, inland freight and warehousing expenses) and for certain direct selling expenses (*e.g.*, commissions and credit expenses), pursuant to section 773(a)(6)(B)(ii) of the Act.<sup>86</sup> In accordance with Commerce practice, we capped the amount of inland freight revenues permitted to offset gross unit price at no greater than the amount of the corresponding inland freight expenses incurred by Maquilacero.<sup>87</sup>

For Regiopytsa, we made adjustments, where appropriate, to normal value for certain billing adjustments, early payment discounts, quantity discounts, and certain transaction-specific discounts.<sup>88</sup> Additionally, we made deductions from the starting price, where appropriate, for certain movement expenses (*i.e.*, inland freight and inland insurance) and for certain direct selling expenses (*i.e.*, charges related to warranty, late payment fees, credit expenses, and commissions), pursuant to section 773(a)(6)(B)(ii) of the Act. For both companies, we added U.S. packing costs and deducted home-market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing of the foreign-like product and that of the subject merchandise.<sup>89</sup>

## **VII. Currency Conversion**

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the date of the U.S. sales as certified by the Federal Reserve Bank.<sup>90</sup>

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<sup>86</sup> See Maquilacero Calculation Memorandum.

<sup>87</sup> See *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 40167 (Aug. 11, 2009), and accompanying IDM at Comment 3; see also *Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 46584 (Aug. 11, 2008), and accompanying IDM at Comment 7; and *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 6857 (Feb. 11, 2009), and accompanying IDM at Comment 6.

<sup>88</sup> See Regiopytsa Calculation Memorandum.

<sup>89</sup> See 19 CFR 351.411(b).

<sup>90</sup> The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange/index.html>.

**VIII. Recommendation**

We recommend applying the above methodology for these preliminary results.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

10/10/2019

**X**



Signed by: JEFFREY KESSLER  
Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance