



A-201-844
Administrative Review
POR: 11/1/17 – 10/31/2018
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January 9, 2020

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

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

RE: Decision Memorandum for the Preliminary Results of
Antidumping Duty Administrative Review: Steel Concrete
Reinforcing Bar from Mexico; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on steel concrete reinforcing bar (rebar) from Mexico, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).¹ The review covers two firms identified as mandatory respondents, Deacero S.A.P.I de C.V. and Grupo Simec,² as well as 16 companies for which reviews were requested. As discussed below, we find that the following companies for which a review was requested should be collapsed with Grupo Simec and that these nine firms should be treated as a single entity, Grupo Simec, in this administrative review: Simec International 6 S.A. de C.V., Orge S.A. de C.V., Aceros Especiales Simec Tlaxcala, S.A. de C.V., Fundiciones de Acero Estructurales, S.A. de C.V., Operadora de Perfiles Sigosa, S.A. de C.V., Simec International, S.A. de C.V., Simec International 7, S.A. de C.V., Grupo Chant, S.A.P.I. de C.V., and Siderúrgicos Noroeste, S.A. de

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 2159, 2161 (February 6, 2019) (*Initiation Notice*).

² See Grupo Simec's Letters, "Request for Administrative Review," dated November 30, 2018, which includes Grupo Simec, Aceros Especiales Simec Tlaxcala, S.A. de C.V., Simec International 6 S.A. de C.V., Orge, S.A. de C.V. (collectively, Simec) and Simec USA Corp. (Simec USA); and "Section A Questionnaire Response," dated April 5, 2019 at A-1 and A-9, where Grupo Simec also included Operadora de Perfiles Sigosa, S.A. de C.V. (Sigosa) and Industrias CH, S.A.B. de C.V. (Industrias CH) as part of its initial questionnaire response.

C.V.³ Furthermore, the petitioner⁴ requested a review of Deacero S.A. de C.V. and Deacero S.A.P.I. de C.V. However, in the investigation, Commerce found that Deacero S.A. de C.V. changed its name to Deacero S.A.P.I. de C.V.⁵ Therefore, consistent with *Rebar from Mexico*, we are treating the predecessor company name and Deacero S.A.P.I. de C.V. (hereinafter referred to as Deacero) as one and the same. Thus, these preliminary results cover 11 firms not selected for individual examination.⁶ The period of review (POR) is November 1, 2017 through October 31, 2018. We preliminarily find that Deacero and Grupo Simec made sales of subject merchandise at less than normal value (NV). We have used the margins calculated for Deacero and Grupo Simec as the basis of the margin assigned to the firms that were not subject to individual review.⁷

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

II. BACKGROUND

On November 6, 2014, Commerce published in the *Federal Register* the *AD Order* on rebar from Mexico.⁸ On November 14, 2018, Commerce published a notice of opportunity to request an administrative review of the *AD Order* on rebar from Mexico.⁹ On November 30, 2018, several interested parties submitted timely requests for an administrative review of the *Order*, pursuant

³ See *Steel Concrete Reinforcing Bar from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 63622 (December 11, 2018) (*2016-2017 Preliminary Results*) and Preliminary Decision Memorandum (PDM) at 5, unchanged in *Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2016–2017*, 84 FR 35599 (July 24, 2019) (*2016-2017 Review*), and accompanying Issues and Decision Memorandum (IDM) at Comment 5. Industrias CH is affiliated with Grupo Simec; however, consistent with the *2016-2017 Review*, we are not collapsing Industrias CH with Grupo Simec because it is not involved in the production or sale of subject merchandise. See *2016-2017 Review*, 84 FR at 35600; see also Memorandum, “Affiliation and Collapsing Memorandum for the Grupo Simec,” dated concurrently with this memorandum Grupo (Simec Affiliation and Collapsing Memorandum).

⁴ The petitioner is the Rebar Trade Action Coalition (its members include Nucor Corporation, Gerdau Ameristeel US Inc., Commercial Metals Company, Cascade Steel Rolling Mills, Inc. and Byer Steel Corporation).

⁵ See *Steel Concrete Reinforcing Bar from Mexico: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 79 FR 22802 (April 24, 2014), unchanged in *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) (*Rebar from Mexico*), and accompanying IDM.

⁶ The 11 firms include: AceroMex S.A., Arcelor Mittal, ArcelorMittal Celaya, ArcelorMittal Cordoba S.A. de C.V., ArcelorMittal Lazaro Cardenas S.A. de C.V., Cia Siderurgica De California, S.A. de C.V., Compania Siderurgica de California, S.A. de C.V., Grupo Villacero S.A. de C.V., Siderurgica Tultitlan S.A. de C.V., Talleres y Aceros, S.A. de C.V., and Ternium Mexico, S.A. de C.V.

⁷ See section titled, “Margins for Companies Not Selected for Individual Examination,” for additional details.

⁸ See *Steel Concrete Reinforcing Bar from Mexico: Antidumping Duty Order*, 79 FR 65925 (November 6, 2014) (*Order*).

⁹ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 54912 (November 1, 2018); see also *Correction to Notice of Opportunity to Request Administrative Review*, 83 FR 55819 (November 14, 2018).

to section 751(a)(1) of the Act, and 19 CFR 351.213(b).¹⁰ On February 6, 2019, in accordance with 19 CFR 351.221(c)(1)(i), Commerce published the *Initiation Notice* in the *Federal Register*.¹¹ Commerce initiated the administrative review covering the following 18 companies: AceroMex S.A., Aceros Especiales Simec Tlaxcala, S.A. de C.V., Arcelor Mittal, ArcelorMittal Celaya, ArcelorMittal Cordoba S.A. de C.V., ArcelorMittal Lazaro Cardenas S.A. de C.V., Cia Siderurgica De California, S.A. de C.V., Compania Siderurgica de California, S.A. de C.V., Deacero S.A. de C.V., Deacero, Grupo Simec, Grupo Villacero S.A. de C.V., Industrias CH, Orge S.A. de C.V., Siderurgica Tultitlan S.A. de C.V., Simec International 6 S.A. de C.V., Talleres y Aceros, S.A. de C.V., and Ternium Mexico, S.A. de C.V.¹²

On February 15, 2019, we released the CBP data to interested parties for comment.¹³ Grupo Simec encompasses numerous companies affiliated with Grupo Simec S.A.B. de C.V. (Simec), including Aceros Especiales Simec Tlaxcala, S.A. de C.V. (AEST) and Fundiciones de Acero Estructurales, S.A. de C.V. (FUNACE). AEST and FUNACE were the exporter and producer, respectively, of Grupo Simec's rebar exported to the United States during the POR.

On March 1, 2019, we limited the number of respondents selected for individual examination in this administrative review to two of the companies for which a review had been requested. Specifically, pursuant to section 777A(c)(2)(B) of the Act, we selected Deacero and Grupo Simec as mandatory respondents for individual examination.¹⁴ On March 5, 2019, Commerce issued the standard antidumping questionnaire to Deacero and Grupo Simec.¹⁵

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 28, 2019.¹⁶ On July 16, 2019, Commerce further extended the time limit for completion of the preliminary results of the review by 120 days from September 11, 2019 to January 9, 2020.¹⁷

¹⁰ See Deacero's Letter, "Steel Concrete Reinforcing Bar from Mexico - Request for Administrative Review," dated November 30, 2018; see also Petitioner's Letter, "Steel Concrete Reinforcing Bar from Mexico: Request for Administrative," November 30, 2018; and Grupo Simec's Letter, "Steel Concrete Reinforcing Bar from Mexico - Request for Administrative Review," dated November 30, 2018.

¹¹ See *Initiation Notice*, 84 FR at 2161.

¹² *Id.*

¹³ See Memorandum, "Release of Customs and Border Protection (CBP) Data," dated February 15, 2019.

¹⁴ See Memorandum, "Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from Mexico; 2017-2018, Selection of Respondents for Individual Examination," dated March 1, 2019.

¹⁵ See Commerce's Letter, "Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bar from Mexico; 2017-2018: Issuance of Initial Questionnaire to Simec and Deacero," dated March 5, 2019 (Initial Questionnaire).

¹⁶ See Memorandum, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding affected by the partial federal government closure have been extended by 40 days.

¹⁷ See Memorandum, "Steel Concrete Reinforcing Bar from Mexico: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2017-2018," dated July 16, 2019.

Deacero

Deacero submitted its response to section A of the Initial Questionnaire on April 5, 2019,¹⁸ to sections B and C on April 29, 2019,¹⁹ and to section D on May 2, 2019.²⁰ On May 6 and 23, 2019, the petitioner submitted comments on Deacero's responses to the Initial Questionnaire.²¹ On May 13 and 30, 2019, Deacero submitted its responses to the petitioner's comments.²² Commerce issued a section A-C supplemental questionnaire to Deacero on July 17, 2019,²³ to which Deacero responded on August 8, 2019.²⁴ We issued a section D supplemental questionnaire to Deacero on July 24, 2019,²⁵ to which Deacero responded on August 22, 2019.²⁶ On August 19 and September 19, 2019, the petitioner submitted comments on Deacero's responses to Commerce's supplemental questionnaires.²⁷ On August 26 and October 17, 2019, Deacero submitted its responses to the petitioner's comments.²⁸ We issued a second supplemental questionnaire to Deacero on November 6, 2019,²⁹ to which it responded on November 18, 2019.³⁰

¹⁸ See Deacero's Letter, "Steel Concrete Reinforcing Bar from Mexico – Section A Questionnaire Response," dated April 5, 2019.

¹⁹ See Deacero's Letter, "Steel Concrete Reinforcing Bar from Mexico - Sections B and C Questionnaire Response," dated April 29, 2019.

²⁰ See Deacero's Letter, "Steel Concrete Reinforcing Bar from Mexico - Section D Questionnaire Response," dated May 2, 2019.

²¹ See Petitioner's Letters, "Steel Concrete Reinforcing Bar from Mexico: Deficiency Comments on Deacero's Section A Initial Questionnaire Response," dated May 6, 2019; and "Steel Concrete Reinforcing Bar from Mexico: Deficiency Comments on Deacero's Sections B-D Initial Questionnaire Responses," dated May 23, 2019.

²² See Deacero's Letters, "Steel Concrete Reinforcing Bar from Mexico – Response to RTAC's Comments dated May 6, 2019," dated May 13, 2019; and "Steel Concrete Reinforcing Bar from Mexico – Response to RTAC's Comments dated May 23, 2019," dated May 30, 2019.

²³ See Commerce's Letter, "Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bar from Mexico - Sections A – C First Supplemental Questionnaire 2017-2018," dated July 17, 2019.

²⁴ See Deacero's Letter, "Steel Concrete Reinforcing Bar from Mexico – Sections A – C First Supplemental Questionnaire Response," dated August 8, 2019.

²⁵ See Commerce's Letter, "Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bar from Mexico - Section D First Supplemental Questionnaire 2017-2018," dated July 24, 2019.

²⁶ See Deacero's Letter, "Steel Concrete Reinforcing Bar from Mexico – Section D First Supplemental Questionnaire Response," dated August 22, 2019.

²⁷ See Petitioner's Letters, "Steel Concrete Reinforcing Bar from Mexico: Deficiency Comments on Deacero's Sections A-C First Supplemental Questionnaire Response," dated August 19, 2019; and "Steel Concrete Reinforcing Bar from Mexico: Deficiency Comments on Deacero's Section D First Supplemental Questionnaire Response," dated September 19, 2019.

²⁸ See Deacero's Letters, "Steel Concrete Reinforcing Bar from Mexico - Response to RTAC's Comments dated August 19, 2019," dated August 26, 2019; and "Steel Concrete Reinforcing Bar from Mexico – Response to RTAC's Comments dated September 19, 2019," dated October 17, 2019.

²⁹ See Commerce's Letter, "Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bar from Mexico – Second Supplemental Questionnaire 2017-2018," dated November 6, 2019.

³⁰ See Deacero's Letter, "Steel Concrete Reinforcing Bar from Mexico – Second Supplemental Questionnaire 2017-2018 Response," dated November 18, 2019.

Grupo Simec

Grupo Simec submitted its response to section A of the Initial Questionnaire on April 5, 2019,³¹ to sections B and C on April 29, 2019,³² and to section D on May 2, 2019.³³ On April 19 and May 21, 2019, the petitioner submitted comments on Grupo Simec's response to the Initial Questionnaire.³⁴ Commerce issued a sections A-C supplemental questionnaire to Grupo Simec on August 13, 2019,³⁵ to which Grupo Simec responded on September 9, 2019.³⁶ We issued a section D supplemental questionnaire to Grupo Simec on September 3, 2019,³⁷ to which Grupo Simec responded on October 1, 2019.³⁸ On November 8, 2019, the petitioner submitted comments on Grupo Simec's responses to Commerce's supplemental questionnaires.³⁹ Commerce issued a sections A-D supplemental questionnaire to Grupo Simec on November 19, 2019,⁴⁰ to which Grupo Simec responded on December 5, 2019.⁴¹ Commerce issued an additional sections A-D supplemental questionnaire to Grupo Simec on December 11, 2019,⁴² to which Grupo Simec responded on December 18, 2019.⁴³

III. SCOPE OF THE ORDER

The merchandise subject to this order is steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade. The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010.

The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0017, 7221.00.0018, 7221.00.0030, 7221.00.0045, 7222.11.0001,

³¹ See Grupo Simec's Letter, "Steel Concrete Reinforcing Bar from Mexico – Section A Questionnaire Response," dated April 5, 2019 (Grupo Simec AQR).

³² See Grupo Simec's Letter, "Steel Concrete Reinforcing Bar from Mexico - Sections B and C Questionnaire Response," dated April 29, 2019 (Grupo Simec BCQR).

³³ See Grupo Simec's Letter, "Steel Concrete Reinforcing Bar from Mexico - Section D Questionnaire Response," dated May 2, 2019.

³⁴ See Petitioner's Letters, "Steel Concrete Reinforcing Bar from Mexico: Deficiency Comments on Grupo Simec's Section A Initial Questionnaire Response," dated April 19, 2019; and "Steel Concrete Reinforcing Bar from Mexico: Deficiency Comments on Grupo Simec's Sections B-D Initial Questionnaire Responses," dated May 21, 2019.

³⁵ See Commerce's Letter, "Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bar from Mexico - Sections A – C First Supplemental Questionnaire 2017-2018," dated August 13, 2019.

³⁶ See Grupo Simec's Letter, "Steel Concrete Reinforcing Bar from Mexico – Sections A – C First Supplemental Questionnaire Response," dated September 9, 2019 (Grupo Simec First Supp. Section ABCQR).

³⁷ See Commerce's Letter to Grupo Simec, "Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bar from Mexico - Section D First Supplemental Questionnaire 2017-2018," dated September 3, 2019.

³⁸ See Grupo Simec's Letter, "Steel Concrete Reinforcing Bar from Mexico – Sections A-D Supplemental Questionnaire Response," dated October 1, 2019.

³⁹ See Petitioner's Letter, "Steel Concrete Reinforcing Bar from Mexico: Deficiency Comments on Grupo Simec's Sections A-D Supplemental Questionnaire Responses," dated November 8, 2019.

⁴⁰ See Commerce's Letter, "Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bar from Mexico – Sections A-D Supplemental Questionnaire 2017-2018," dated November 19, 2019.

⁴¹ See Grupo Simec's Letter, "Steel Concrete Reinforcing Bar from Mexico – Sections A-D Supplemental Questionnaire Response," dated December 5, 2019.

⁴² See Commerce's Letter, "Antidumping Duty Administrative Review: Steel Concrete Reinforcing Bar from Mexico – Sections A-D Supplemental Questionnaire 2017-2018," dated December 11, 2019.

⁴³ See Grupo Simec's Letter, "Steel Concrete Reinforcing Bar from Mexico – Sections A-D Supplemental Questionnaire Response," dated December 18, 2019.

7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth rebar). Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.*, mill mark, size or grade) and without being subject to an elongation test. HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains dispositive.

IV. MARGIN FOR COMPANIES NOT SELECTED FOR INDIVIDUAL EXAMINATION

In this review, there are companies for which a review was requested but which we did not select as mandatory respondents. These non-selected companies are: AceroMex S.A., Arcelor Mittal, ArcelorMittal Celaya, ArcelorMittal Cordoba S.A. de C.V., ArcelorMittal Lazaro Cardenas S.A. de C.V., Cia Siderurgica De California, S.A. de C.V., Compania Siderurgica de California, S.A. de C.V., Grupo Villacero S.A. de C.V., Siderurgica Tultitlan S.A. de C.V., Talleres y Aceros, S.A. de C.V., and Ternium Mexico, S.A. de C.V. The statute and Commerce's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination when the Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act.

Generally, when calculating margins for non-selected respondents, Commerce looks to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others margin in an investigation. Section 735(c)(5)(A) of the Act states that the all-others rate should be calculated by averaging the weighted-average dumping margins for individually-examined respondents, excluding rates that are zero, *de minimis*, or based entirely on facts available. Accordingly, Commerce's usual practice has been to average the margins for selected respondents, excluding margins that are zero, *de minimis*, or based entirely on facts available.

In this review, we calculated a weighted-average dumping margin of 7.25 percent for Deacero and 6.75 percent for Grupo Simec. Therefore, in accordance with section 735(c)(5)(A) of the Act, Commerce assigned the weighted-average of these two calculated weighted-average dumping margins, 7.11 percent, to the 11 non-selected companies in these preliminary results: AceroMex S.A., Arcelor Mittal, ArcelorMittal Celaya, ArcelorMittal Cordoba S.A. de C.V., ArcelorMittal Lazaro Cardenas S.A. de C.V., Cia Siderurgica De California, S.A. de C.V., Compania Siderurgica de California, S.A. de C.V., Grupo Villacero S.A. de C.V., Siderurgica Tultitlan S.A. de C.V., Talleres y Aceros, S.A. de C.V., and Ternium Mexico, S.A. de C.V. The rate calculated for the 11 non-selected companies is a weighted-average percentage margin which is calculated based on the publicly ranged U.S. value of the two reviewed companies with an affirmative antidumping duty margin.⁴⁴

⁴⁴ See Memorandum, "Steel Concrete Reinforcing Bar from Mexico: Margin for Respondents Not Selected for Individual Examination," dated concurrently with this memorandum.

V. AFFILIATION AND COLLAPSING

Deacero

In this review, Deacero reported selling subject merchandise to a home market affiliate.⁴⁵ Deacero reported owning a certain percentage of this affiliate.⁴⁶ Based on this information, we find that Deacero and this company are affiliated under section 771(33)(E) of the Act. Under 19 CFR 351.401(f), Commerce will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and Commerce concludes that there is a significant potential for the manipulation of price or production. We preliminarily find there is insufficient basis to find that this company constitutes an affiliated producer as described under 19 CFR 351.401(f) that would necessitate collapsing it with Deacero. However, we will continue to examine in this review whether this company meets the collapsing criteria described under 19 CFR 351.401(f).

Grupo Simec

Commerce has long recognized that it is appropriate to treat certain groups of companies as a single entity and to determine a single weighted-average margin for that entity to determine margins accurately and to prevent manipulation that would undermine the effectiveness of the antidumping law.⁴⁷ In the prior review, we found that the following companies are directly or indirectly controlled by their parent company, Industrias CH, pursuant to section 771(33)(F) of the Act: AEST, FUNACE, and Perfiles Comerciales Sigosa, S.A. de C.V. (Perfiles), and Operadora de Perfiles Sigosa, S.A. de C.V. (Operadora) (Perfiles and Operadora, collectively known as Sigosa).⁴⁸ Additionally, in the *2016-2017 Review*, we found pursuant to 19 CFR 351.401(f) that AEST, FUNACE, Perfiles, and Operadora should be collapsed with Grupo Simec and that these firms should be treated as a single entity.⁴⁹ We find that the facts of the *2016-2017 Review* regarding collapsing remain unchanged with respect to the aforementioned companies⁵⁰ and, thus, we preliminarily determine to continue to treat AEST, FUNACE, Operadora, Simec 6, and Orge as a single entity. In addition, based on the evidence provided in Grupo Simec's questionnaire responses and 19 CFR 351.401(f), we also preliminarily determine that Simec International 7, S.A. de C.V. (Simec 7), Grupo Chant, S.A.P.I. de C.V. (Chant), Simec International, S.A. de C.V. (Simec International), and Siderúrgicos Noroeste, S.A. de C.V. (Siderúrgicos) should also be collapsed and treated as the single entity, "Grupo Simec," in this

⁴⁵ See Deacero's AQR at A-2.

⁴⁶ *Id.* at A-11.

⁴⁷ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004), and accompanying IDM at Comment 5.

⁴⁸ See *2016-2017 Preliminary Results PDM* at 5, unchanged in *2016-2017 Review IDM* at Comment 5.

⁴⁹ See *2016-2017 Review IDM* at Comment 5.

⁵⁰ In the *2016-17 Review*, Commerce collapsed Perfiles in the single entity, "Grupo Simec." Based on the facts of the instant review, which include business proprietary information, we are preliminarily not collapsing this company. See *Grupo Simec Affiliation and Collapsing Memorandum* dated concurrently with this memorandum for further details.

administrative review.⁵¹ This finding is based on the determination that those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and that the level of common ownership, management overlap, and interparty transactions between the companies presents a significant potential for manipulation of price or production of subject merchandise, pursuant to 19 CFR 351.401(f)(2).

VI. DISCUSSION OF THE METHODOLOGY

A. Comparisons to Normal Value

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

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average export prices (EPs) (or CEPs) (*i.e.*, the average-to-average method) unless Commerce determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce’s examination of this question in the context of administrative reviews, 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 less-than-fair-value investigations.⁵²

In numerous investigations, Commerce has applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁵³ 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

⁵¹ See Grupo Simec’s AQR at A-6 to A-7 and Exhibit A-7; see also Memorandum, “Grupo Simec Affiliation and Collapsing Memorandum,” dated concurrently with this memorandum.

⁵² 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).

⁵³ 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); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region, and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes. Regions are defined using the reported destination code (*i.e.*, zip codes) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the 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 CEPs) and NV 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 average-to-transaction method to all sales as an alternative to the average-to-average 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 average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average 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 do not support consideration of an alternative to the average-to-average 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, Commerce examines whether using only the average-to-average 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 average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average 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 average-to-average 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 average-to-average 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.⁵⁴

2. Results of Differential Pricing Analysis

For Deacero, based on the results of the differential pricing analysis, Commerce preliminarily finds that 58.40 percent of Deacero's U.S. sales passed the Cohen's *d* test, and confirms the existence of a pattern of prices that differ significantly by purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Deacero.

For Grupo Simec, based on the results of the differential pricing analysis, Commerce finds that 96.92 percent of Grupo Simec's U.S. sales passed the Cohen's *d* test, and confirms the existence of a pattern of prices that differ significantly by purchasers, regions, or time periods. Further, we preliminarily determine that the average-to-average method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping calculated

⁵⁴ 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.

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 average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Grupo Simec.

B. Product Comparisons

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

C. Date of Sale

Under 19 CFR 351.401(i), Commerce normally will use the date of invoice, as recorded in the producer’s or exporter’s records kept in the ordinary course of business, as the date of sale. The regulation provides further that Commerce may use a date other than the date of the invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁵⁵ Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.⁵⁶

Deacero reported the earlier of the commercial invoice date or the shipment date as the date of sale for both its home market and U.S. market sales.⁵⁷ We preliminarily find that the material terms of sale did not change after the dates of sale reported in the company’s respective databases.⁵⁸ Accordingly, for Deacero, we relied on the company’s reported dates, *i.e.*, the earlier of the shipment date or invoice date, as the date of sale for both the U.S. and the home market. Similarly, Grupo Simec reported commercial invoice date for the date of sale for both U.S. and home market sales, and we preliminarily find that the material terms of sale did not change after the dates of sale.⁵⁹

⁵⁵ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) (“As elaborated by Department practice, a date other than invoice date ‘better reflects’ the date when ‘material terms of sale’ are established if the party shows that the ‘material terms of sale’ undergo no meaningful change (and are not subject to meaningful change) between the proposed date and the invoice date.”).

⁵⁶ See, e.g., *Seamless Refined Copper Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 33482 (June 12, 2015), and accompanying IDM at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying IDM at Comment 10.

⁵⁷ See Deacero’s AQR at A-27.

⁵⁸ *Id.* at A-27 – A-30.

⁵⁹ See Grupo Simec AQR at A-24; see also Grupo Simec BCQR at B-22 and C-15 .

D. 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,⁶⁰ 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 Commerce 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 costs, 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.⁶¹ 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.’”⁶²

The CAFC then found reasonable Commerce’s analysis that section 201 duties were more akin to antidumping duties than “ordinary customs duties.”⁶³ 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) “[s]ection 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.”⁶⁴ In sustaining Commerce’s decision regarding section 201 duties in *Wheatland*, the CAFC also held that “[t]o assess both a safeguard duty and an antidumping duty on the same imports without regard to the safeguard duty, would be to remedy substantially overlapping injuries twice.”⁶⁵

⁶⁰ See 19 U.S.C. §1862.

⁶¹ See *Wheatland Tube Co. v. United States*, 495 F. 3d 1355 (Fed. Cir. 2007) (*Wheatland*).

⁶² *Id.* at 1361.

⁶³ *Id.* at 1362.

⁶⁴ *Id.* at 1362-63.

⁶⁵ *Id.* at 1365.

Section 232 duties are not akin to antidumping or 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* . . .”⁶⁶ 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.”⁶⁷ 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.”⁶⁸ 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.⁶⁹ 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 AD duties would be reduced by the amount of section 232 duties imposed, the Presidential Proclamation would have expressed that intent. For the reasons noted, and consistent with our treatment of 232 duties in *OCTG Ukraine*,⁷⁰ 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 as “U.S. Customs duties,” which are deducted from U.S. price.

⁶⁶ See *Proclamation 9705 of March 8, 2018 Adjusting Imports of Steel Into the United States*, 83 FR 11625, 11627 (March 15, 2018) (*Proclamation 9705*) (emphasis added); *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); *Proclamation 9777 of August 29, 2018*, 83 FR 45025 (September 4, 2018) (*Proclamation 9777*)(similar).

⁶⁷ 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”).

⁶⁸ See *Proclamation 9705*, 83 FR at 11627.

⁶⁹ See *Proclamations 9705*, 83 FR at 11627; *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.

⁷⁰ 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.

On May 19, 2019, the President of the United States issued a proclamation that states, in part, “[i]n light of these agreements, I have determined that, under the framework in the agreements, imports of steel articles from Canada and Mexico will no longer threaten to impair the national security, and thus I have decided to exclude Canada and Mexico from the tariff proclaimed in Proclamation 9705, as amended.”⁷¹ In its submissions, Deacero argues that because of the President’s proclamation, Commerce should refrain from deducting section 232 duties from the U.S. price.⁷² However, we preliminarily determine that, because the proclamation took effect after the end of the POR of the instant review and contains no retroactive clause, it is appropriate to continue to deduct the 232 duties paid on Deacero’s entries of subject merchandise during the POR from the U.S. price.

Grupo Simec had no U.S. entries subject to the section 232 duties.

E. Constructed Export Price

Section 772(b) of the Act defines CEP as “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation . . . by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.” In accordance with section 772(b) of the Act, we used the CEP methodology for Deacero and Grupo Simec because the subject merchandise was sold in the United States by U.S. sellers affiliated with the producers.⁷³ We calculated CEP based on the delivered price to unaffiliated purchasers in the United States. With respect to section 232 duties, Deacero stated that it paid these duties and reported the duties in its U.S. sales database.⁷⁴ Grupo Simec reported that it did not have any sales that entered the United States on or after June 1, 2018, and thus, did not pay any section 232 duties.⁷⁵

We made adjustments, where appropriate, to the starting price for billing adjustments, and other discounts. We also made deductions for any movement expenses (*e.g.*, foreign inland freight, U.S. inland freight, export processing fees, and U.S. brokerage and handling), in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we further adjusted the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes direct and indirect selling expenses. For Deacero, we allowed a CEP offset adjustment.⁷⁶ Grupo Simec did not request nor provide the required information necessary to determine whether a CEP offset is warranted; thus Commerce did not make a CEP offset adjustment. Finally, we made an adjustment for profit allocated to these expenses in accordance with sections 772(d)(3) and 772(f) of the Act.⁷⁷

⁷¹ See *Proclamation 9894 of May 19, 2019 Adjusting Imports of Steel Into the United States By the President of the United States of America*, 84 FR 23987 (May 23, 2019).

⁷² See Deacero’s Letter, “Steel Concrete Reinforcing Bar from Mexico - Pre-Preliminary Comments Regarding the Treatment of Section 232 Duties,” dated December 10, 2019.

⁷³ See Deacero’s AQR at A-2 and BCQR at C-1; *see also* Grupo Simec AQR at A-17 and BCQR at C-10.

⁷⁴ See Deacero’s BCQR at Exhibit V-1; *see also* ABCQR at 19.

⁷⁵ See Grupo Simec First Supp. Section ABCQR at 14.

⁷⁶ See Deacero’s Preliminary Results Sales and Cost Analysis Memorandum, dated concurrently with this Decision Memorandum.

⁷⁷ See 1-F of the CM Program.

F. Normal Value

1. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Deacero and Grupo Simec's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B) of the Act and 19 CFR 351.404(b), because Deacero and Grupo Simec's aggregate volume of home market sales of the foreign like product was greater than five percent of their aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.⁷⁸ Moreover, there is no evidence on the record supporting a particular market situation in the exporting companies' country that would not permit a proper comparison of home market and U.S. prices.

2. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).⁷⁹ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁸⁰ In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (*i.e.*, customer category), and the level of selling expenses for each type of sale.

Pursuant to 19 CFR 351.412(c)(1), in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third-country prices), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act.⁸¹ When Commerce is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), Commerce shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.⁸²

⁷⁸ See Deacero's AQR at A-4 and Exhibit A-1; see also Grupo Simec AQR at A-3 and Exhibit A-1.

⁷⁹ See 19 CFR 351.412(c)(2).

⁸⁰ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*).

⁸¹ See *Micron Technology Inc. v. United States*, 243 F. 3d 1301, 1314-1315 (Fed. Cir. 2001).

⁸² See *Plate from South Africa*, 62 FR at 61732-33.

Deacero

In this administrative review, we obtained information from Deacero regarding the marketing stages involved in making the reported home market and U.S. market sales, including a description of the selling activities performed for each channel of distribution.⁸³ In the home market, Deacero reported that it sold rebar through two channels of distribution. In channel 1, Deacero made direct shipments to unaffiliated customers from the company's rebar plants in Mexico. In channel 2, Deacero made sales from inventory stored in warehouses, distribution centers, and non-rebar plants. Such sales were also made either directly by Deacero or indirectly through an affiliated company, Aceros Nacionales, S.A. de C.V. (ANSA).⁸⁴ The selling activities performed were the same for Channels 1 and 2 in the home market.⁸⁵ Since the level of selling activity was the same in the home market, we preliminarily find that the home market channels of distribution constitute one LOT.

In the U.S. market, Deacero reported that it had one channel of distribution for U.S. sales of rebar during the POR. Deacero shipped rebar directly to unaffiliated U.S. customers from its Mexican plants (including non-rebar plants) by truck or railcar. Sales were made through "back-to-back" transactions: Deacero issued an invoice to Deacero USA, its U.S. affiliate, which, in turn, issued an invoice to the unaffiliated U.S. customer.⁸⁶

We find that there were significant differences between the selling activities associated with the CEP level of trade and those associated with the home market level of trade. For example, the CEP level of trade involved little or no inventory maintenance, packing, or freight and delivery service, whereas the home market level of trade involved these selling activities. Therefore, we conclude that CEP sales constitute a different level of trade from the level of trade in the home market and that the home market level of trade is at a more advanced stage of distribution than the CEP level of trade. Nonetheless, we are unable to make an LOT adjustment because there is only one LOT for home market sales. Deacero did not sell subject merchandise in the home market at the same LOT as that of the CEP, and there are no other data on the record that would allow Commerce to establish whether there is a pattern of consistent price differences between sales at a different LOT in the home market.

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

⁸³ See Deacero's AQR at A-17 through A-24, and Exhibit A-8a.

⁸⁴ *Id.* at A-17 and A-18.

⁸⁵ *Id.* at A-20.

⁸⁶ *Id.* at A-17.

Deacero requested a CEP offset, stating that sales in the home market are made at a more advanced LOT than the LOT of sales in the United States.⁸⁷ Commerce's normal practice is that for CEP sales, if the NV level is more remote from the factory than the CEP level, and that there is no basis for determining whether the difference in levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). Based on information on the record, as noted above, we have preliminarily granted a CEP offset for Deacero.

Grupo Simec

We obtained information from Grupo Simec regarding the marketing stages involved in making the reported home market and U.S. market sales, including a description of the selling activities performed by each respondent for each channel of distribution.⁸⁸ Grupo Simec did not claim an LOT or CEP adjustment.⁸⁹ After examining the record evidence, we find that Grupo Simec's home market and U.S. market constitute the same, single LOT.⁹⁰ Grupo Simec reported no differences in the selling activities and functions between Grupo Simec's different channels of sales in the home market or in the U.S. market.⁹¹ We, therefore, made no LOT adjustment or CEP offset for Grupo Simec because we preliminarily find that there was only one home market LOT and one U.S. LOT, and both levels are identical.

3. Sales to Affiliated Customers

Under section 771(33)(E) of the Act, if one party owns, directly or indirectly, five percent or more of another party, such parties are considered to be affiliated for purposes of the AD law. Furthermore, pursuant to 19 CFR 351.403, Commerce may require a respondent to report the downstream sales of its affiliated customer to the first unaffiliated customer if: (1) the respondent's sales to affiliated customers account for five percent or more of the respondent's total sales of foreign-like product in the comparison market, and (2) those sales to the affiliated customer are determined to have not been made at arm's-length.

Deacero

During the POR, Deacero sold the foreign like product directly to affiliated and unaffiliated parties. In its initial questionnaire response, Deacero stated that its sales to affiliated parties surpassed five percent of total domestic market sales during the POR.⁹² Deacero also states that ANSA surpassed five percent of domestic market sales during the POR and ANSA did not consume the foreign like product. Therefore, Deacero reported ANSA's sales to unaffiliated customers in Mexico.⁹³ In addition, Deacero reported home market sales to another affiliated

⁸⁷ *Id.* at A-19.

⁸⁸ *See* Grupo Simec AQR at A-18 through A-23 and Exhibits A-8 and A-9.

⁸⁹ *Id.* at A-23 through A-24.

⁹⁰ *Id.*

⁹¹ *See* Grupo Simec AQR at Exhibit A-8.

⁹² *See* Deacero's AQR at A-4 and Exhibit A.

⁹³ *Id.* at A-3.

company.⁹⁴ For the preliminary results of review, we calculated NV based on sales to unaffiliated and affiliated parties, as well as downstream sales.

Grupo Simec

During the POR, Grupo Simec sold the foreign like product to affiliated and unaffiliated parties. In its questionnaire response, Grupo Simec stated that its sales to affiliated parties surpassed five percent of total domestic market sales during the POR.⁹⁵ Grupo Simec reported certain sales to affiliated parties, but those sales to the affiliated customer are determined to have not been made at arm's-length. Thus, Grupo Simec reported the downstream sales of its affiliated customer to the first unaffiliated customer.⁹⁶

For the preliminary results of review, pursuant to 19 CFR 351.403(d), we calculated NV based on sales to unaffiliated parties as well as the downstream sales reported by Deacero and Grupo Simec. We excluded comparison market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because we considered them to be outside the ordinary course of trade.⁹⁷ Consistent with 19 CFR 351.403(c) and our practice, "Commerce may calculate NV based on sales to affiliates if satisfied that the transactions were made at arm's length."⁹⁸ To test if sales to affiliates were made at arm's-length prices, we compare, on a model-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all direct selling expenses, billing adjustments, discounts, rebates, movement charges, and packing (arm's-length test). Where prices to the affiliated party are, on average, within a range of 98-to-102 percent of the price of identical or comparable merchandise to the unaffiliated parties, we determine that the sales made to the affiliated party are at arm's length.⁹⁹

4. Cost of Production (COP)

In accordance with section 773(b)(2)(A)(ii) of the Act, we requested cost information from Deacero and Grupo Simec in this review to determine if there were reasonable grounds to believe or suspect that sales of foreign like product had been made at prices less than the cost of production (COP) of the product.

a. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses and interest expenses.¹⁰⁰ We relied on the COP data

⁹⁴ *Id.* at A-2. The name of this affiliate is business proprietary and cannot be disclosed on the public record.

⁹⁵ See Grupo Simec AQR at Exhibit A-1; Grupo Simec BCQR at B-4; and Sigosa ABQR at B-3.

⁹⁶ See Grupo Simec First Supp. Section ABCQR at 13-14.

⁹⁷ See 19 CFR 351.403(c).

⁹⁸ See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1367 (CIT 2003).

⁹⁹ See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69194 (November 15, 2002).

¹⁰⁰ See "Test of Comparison Market Sales Prices" section below for treatment of comparison market selling expenses.

submitted by Deacero and Grupo Simec, except for adjustments made in the cost calculations.¹⁰¹ We examined the cost data and determined that our quarterly cost methodology is not warranted in this review. Therefore, we have applied our standard methodology of using annual costs based on the reported data of Deacero and Grupo Simec.¹⁰²

In accordance with section 773(f)(2) of the Act, we adjusted the reported costs to reflect the higher of transfer price or market value where inputs or services were obtained from affiliated parties. For Grupo Simec, we adjusted the reported fixed overhead costs for one plant to include the depreciation expenses incurred during a shutdown for maintenance.¹⁰³ For Deacero, we made adjustments for affiliated scrap purchases and differences between the reported costs and the respondent's books and records.¹⁰⁴

b. Test of Comparison Market Prices

As required under 773(b)(2) of the Act, we compared the company-specific weighted average COP to the company-specific comparison market sales prices of the foreign like product to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, normally a period of one year) in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net home market prices for the below cost test by subtracting from the gross unit price all applicable movement charges, direct and indirect selling expenses, and packing expenses, where appropriate.¹⁰⁵

c. Results of COP Test

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

¹⁰¹ See Deacero's Preliminary Results Sales and Cost Analysis Memorandum, dated concurrently with this memorandum; see also Grupo Simec's Preliminary Results Sales and Cost Analysis Memorandum, dated concurrently with this memorandum.

¹⁰² See Deacero's Preliminary Results Sales and Cost Analysis Memorandum; see also Grupo Simec's Preliminary Results Sales and Cost Analysis Memorandum.

¹⁰³ See Grupo Simec's Preliminary Results Sales and Cost Analysis Memorandum.

¹⁰⁴ See Deacero's Preliminary Results Sales and Cost Analysis Memorandum.

¹⁰⁵ *Id.*

comparison of prices to the weighted-average COPs for the POR, in accordance with sections 773(b)(1)(B) and (b)(2)(D) of the Act.

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

5. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on the reported packed, ex-factory, or delivered prices to comparison market customers. We made deductions from the starting price, where appropriate, for billing adjustments, discounts, rebates, and inland freight, pursuant to 19 CFR 351.401(c) and section 773(a)(6)(B)(ii) of the Act.¹⁰⁶

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

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign-like product and subject merchandise.¹⁰⁷ For detailed information on the calculation of NV, *see* the Deacero Preliminary Results Sales and Cost Analysis Memorandum and Grupo Simec Preliminary Results Sales and Cost Analysis Memorandum.

G. Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.¹⁰⁸

¹⁰⁶ *See* Deacero's Preliminary Results Sales and Cost Analysis Memorandum; *see also* Grupo Simec's Preliminary Results Sales and Cost Analysis Memorandum.

¹⁰⁷ *See* 19 CFR 351.411(b).

¹⁰⁸ The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange/index.html>.

VI. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

Agree

Disagree

1/9/2020



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