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Administrative Review
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July 6, 2020

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

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

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Administrative Review: Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico; 2017-2018

I. SUMMARY

We analyzed the comments of interested parties in the 2017-2018 administrative review of the antidumping duty (AD) order covering heavy walled rectangular welded carbon steel pipes and tubes (HWR pipe and tube) from Mexico. As a result of our analysis, we made changes to the margin calculations from the *Preliminary Results*[1] for the two mandatory respondents in this review, Maquilacero S.A. de C.V. (Maquilacero) and Productos Laminados de Monterrey S.A. de C.V. (Prolamsa), and consequently for the non-examined companies under review. We continue to find that Maquilacero and Prolamsa made sales at prices below normal value (NV), and we are applying the weighted average of the cash deposit rates for these two companies to the seven companies not selected for individual examination.[2] Further, we continue to find that Tuberia Nacional S.A. de C.V. had no shipments during the period of review (POR).

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

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[1] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 63610 (November 18, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).
[2] These companies are: (1) Arco Metal S.A. de C.V.; (2) Forza Steel S.A. de C.V.; (3) Industrias Monterrey, S.A. de C.V.; (4) Perfiles y Herrajes LM S.A. de C.V.; (5) PYTCO S.A. de C.V.; (6) Regiomontana de Perfiles y Tubos S.A. de C.V.; and (7) Tuberia Procarsa S.A. de C.V.

Maquilacero-Specific Issues

Comment 1: Ministerial Errors
Comment 2: Cost Calculation Methodology
Comment 3: Section 232 Duties
Comment 4: Affiliated Reseller Purchases
Comment 5: Non-Prime Merchandise
Comment 6: Scrap Offset

Prolamsa-Specific Issues

Comment 7: Home Market Level of Trade (LOT) and Constructed Export Price (CEP) Offset
Comment 8: Non-Prime Merchandise
Comment 9: Overrun Sales

II. BACKGROUND

On November 18, 2019, the Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review. This review covers nine producers or exporters. The POR is September 1, 2017 through August 31, 2018.[3]

We invited parties to comment on the *Preliminary Results*.[4] On December 18, 2019, we received case briefs from the domestic parties[5] and Maquilacero.[6] On December 23, 2019, we received rebuttal briefs from the domestic parties, Maquilacero, and Prolamsa.[7] After analyzing the comments received, we changed the calculations of the weighted-average dumping margins for Maquilacero, Prolamsa, and the companies not selected for individual examination as mandatory respondents (the "non-selected" companies) from the *Preliminary Results*.

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018 through January 29, 2019.[8] On February 28, 2019, Commerce

[3] *See* 19 CFR 351.213(e)(1)(i).
[4] *See Preliminary Results*, 84 FR at 63611.
[5] These companies are: Independence Tube Corporation and Southland Tube, Incorporated, both Nucor companies (collectively, domestic parties).
[6] *See* Domestic Parties' Case Brief, "Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Case Brief and Request to Participate in Hearing if Held," dated December 18, 2019 (Domestic Parties' Case Brief); and Maquilacero's Case Brief, "Heavy Walled Rectangular Welded Carbon Steel Pipes from Mexico: Case Brief of Maquilacero S.A. de C.V.," dated December 18, 2019 (Maquilacero's Case Brief).
[7] *See* Maquilacero's Rebuttal Brief, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Rebuttal Brief," dated December 23, 2020 (Maquilacero's Rebuttal Brief); Prolamsa's Rebuttal Brief, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Rebuttal Brief and Request to Participate in Hearing, if Held," dated December 23, 2019 (Prolamsa's Rebuttal Brief); and Domestic Parties' Rebuttal Brief, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Rebuttal Brief," dated December 23, 2019 (Domestic Parties' Rebuttal Brief).
[8] *See* Memorandum, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019.

extended the deadline for the final results of this administrative review, until May 15, 2020.[9] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until July 6, 2020.[10]

III. MARGIN CALCULATIONS

For Maquilacero and Prolamsa, we calculated export price (EP), CEP, and NV using the same methodology stated in the *Preliminary Results*, except as follows:[11]

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

- We revised our calculations and reversed Maquilacero's reported allocation of the cost of non-prime merchandise to reflect Maquilacero's normal books and records. Because a market price for Maquilacero's non-prime sales is not on the record, we adjusted costs using the value of non-prime merchandise used by Maquilacero in its normal books. *See* Comment 5.

- We revised our calculations to disallow the scrap offset for Maquilacero and excluded scrap revenue from the denominator of the general and administrative expenses (G&A) ratio calculation as the record evidence provided was inconsistent and tainted with sales of non-prime merchandise. *See* Comment 6.

- We revised Commerce's preliminary treatment of Prolamsa's LOT and find that Prolamsa made home market sales at one LOT. We continue to deny Prolamsa's request for a CEP offset. *See* Comment 7.

- We relied on Prolamsa's costs that separately identify prime and non-prime merchandise for purposes of the sales-below-cost test, matching comparison and U.S. sales and the calculation of the difference-in-merchandise adjustment. *See* Comment 8.

- For purposes of Prolamsa's final calculations, we excluded its reported "overrun" sales. *See* Comment 9.

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[9] *See* Memorandum, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated February 28, 2019.
[10] *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020.
[11] *See* Memorandum, "Final Results Calculation for Maquilacero, S.A. de C.V.," dated concurrently with this memorandum (Maquilacero Final Calculation Memo); and Memorandum, "Final Results Sales Calculations for Productos Laminados de Monterrey S.A. de C.V.," dated concurrently with this memorandum (Prolamsa Final Calculation Memo).

IV. DISCUSSION OF ISSUES

Issues Related to Maquilacero

Comment 1: Ministerial Errors

Maquilacero's Arguments

- Commerce made a ministerial error in its preliminary margin calculations for Maquilacero. In particular, Commerce inadvertently subtracted Maquilacero's credit expense (*i.e.*, in the field, "CREDITH") instead of its indirect selling expenses (*i.e.*, in the field, "INDIRSH") from its calculation of the home market net price and home market cost of production (COP). Commerce should correct this error in the final results.[12]

Domestic Parties did not comment on this issue.

Commerce's Position

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

Comment 2: Cost Calculation Methodology

Domestic Parties' Arguments

- Commerce's normal practice is to calculate an annual weighted-average cost for the POR.[14]
- In its preliminary results, Commerce deviated from its normal practice and applied its quarterly cost methodology to Maquilacero because we found that Maquilacero experienced significant cost changes which were found to be correlated to Maquilacero's sales of HWR pipe and tube. However, Commerce's finding was misled by Maquilacero's materially inaccurate calculation.[15]
- Maquilacero's reported product control number (CONNUM)-specific hot-rolled steel costs consist of two components: (1) the standard cost; and (2) an allocated variance.[16] Maquilacero calculated the adjustment ratios for the variance based on the entire POR, rather than on quarterly costs.[17]

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[12] *See* Maquilacero's Case Brief at 2-3.
[13] *See* Maquilacero Final Calculation Memo, dated concurrently with this memorandum.
[14] *See* Domestic Parties' Case Brief at 35 (citing *Steel Concrete Reinforcing Bar from Taiwan: Final Determination of Sales at Less Than Fair Value*, 82 FR 34925 (July 27, 2017) (*Rebar from Taiwan*), and accompanying Issues and Decision Memorandum (IDM)).
[15] *Id.* at 35.
[16] *Id.*
[17] *Id.* at 36.

- Based on the POR monthly trial balance submitted by Maquilacero, the domestic parties recalculated the variances and adjusted quarterly weighted-average costs for each of the ten CONNUMs used in Commerce's analysis.[18]
- The domestic parties' recalculation demonstrated that Maquilacero's quarterly cost data do not meet the significant cost change threshold.[19]
- The domestic parties' recalculation also demonstrated that Maquilacero's quarterly cost data do not show a reasonable correlation between the cost and price for the majority of the CONNUMs.[20]
- Therefore, Commerce should follow its normal practice to calculate annual weighted-average costs for Maquilacero for the final results.[21]

Maquilacero's Rebuttal Arguments

- Commerce properly applied its quarterly cost methodology to determine Maquilacero's COP in this review and should continue to do so for the final results because Maquilacero experienced significant cost changes which were found to be correlated to Maquilacero's sales of HWR pipe and tube.[22]
- Because the "majority of CONNUMs examined experienced a cost change in excess of 25 percent," consistent with its past precedent, Commerce must continue to apply an alternate quarterly cost methodology in the final results.[23]
- The domestic parties do not dispute Commerce's findings that changes in Maquilacero's costs met the 25 percent threshold, or that there was a correlation between costs and prices.[24] Instead, the domestic parties attempt to present a new analysis, which revises Maquilacero's CONNUM-specific costs.[25]
- The domestic parties' proposed allocation reveals that the methodology yields unreliable results.[26] In fact, their proposed adjustment methodology continues to demonstrate that the CONNUMs accounting for a majority of the volume sold in the POR still pass the 25 percent test.[27]
- Maquilacero expands upon the domestic parties' analysis and adds the quantities provided in its Section D Response to Attachment 1-4 of the domestic parties' Case Brief to derive the per unit cost and purchase price in each quarter. This more complete analysis demonstrates that the domestic parties' proposed adjustment is unsound and results in inconsistencies.[28]

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[18] *Id*. at 37.
[19] *Id*. at 34.
[20] *Id*. at 39.
[21] *Id*.
[22] *See* Maquilacero's Rebuttal Brief at 2-3.
[23] *Id*. at 7 (citing Domestic Parties' Case Brief at 35, and *Rebar from Taiwan* IDM at Comment 2).
[24] *Id*. at 6 (citing to Domestic Parties' Case Brief at 35 and Attachment 1).
[25] *Id*.
[26] *Id*. at 6 and Exhibit 1.
[27] *Id*.
[28] *Id*.

- Finally, Maquilacero argues that, as shown in Exhibit 2 of their rebuttal brief, a corrected analysis which adds the quantity associated with the CONNUMs examined the CONNUMs accounting for a majority of the total quantity pass Commerce's 25 percent threshold.[29]

Commerce's Position

In the preliminary results, we relied on the quarterly cost methodology in calculating the dumping margin for Maquilacero, finding significant changes in the cost of manufacturing (COM) as well as reasonable linkage between costs and sales prices. For the final results, we have continued to use the quarterly cost methodology for Maquilacero.

In the preliminary results, we evaluated the case-specific record evidence by examining two primary criteria: (1) whether the change in the COM incurred by the respondent during the POR was deemed significant; and (2) whether the record evidence indicated that sales during the shorter cost-averaging periods could be reasonably linked with the COP during the same shorter cost-averaging periods.[30] Our evaluation revealed that the CONNUM-specific quarterly costs submitted by Maquilacero met our two primary criteria. Therefore, we determined to use our alternative quarterly cost methodology.

The domestic parties contend that the reported evidence (*i.e.*, the CONNUM-specific quarterly costs submitted by Maquilacero) that we used in our analysis were incorrectly calculated by Maquilacero. Consequently, domestic parties argue that Commerce's preliminary analysis was distorted.

We disagree with the domestic parties that the reported quarterly cost information is unreliable. The domestic parties recalculated CONNUM-specific quarterly costs, which used the POR monthly trial balances submitted by Maquilacero, are incomplete. The trial balances used by the domestic parties to derive the quarterly costs contain only aggregate monthly purchase price data, but do not contain associated monthly quantities, and therefore are not weighted properly.[31] However, Maquilacero's revision to this analysis takes into consideration the associated quantities.[32] Based on our review of the record, we find that Maquilacero's reported quarterly costs are reasonable and have continued to use the quarterly methodology for the final results.

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[29] *Id*. at 7 and Exhibit 2.
[30] *See Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010), and accompanying IDM at Comment 6; and *Stainless-Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008), and accompanying IDM at Comment 4.
[31] *See* Domestic Parties' Case Brief at 37-39 and Attachment 1.
[32] *See* Maquilacero's Rebuttal Brief at 6-7 and Exhibit 1.

Comment 3: Section 232 Duties

For the *Preliminary Results*, we determined that, in accordance with section 772(c)(2)(A) of the Tariff Act of 1930, as amended (the Act), it was appropriate to deduct Section 232 duties from U.S. price when such duties are included in the U.S. price.[33]

Maquilacero's Arguments

- Since Section 232 duties are "special" duties and not ordinary customs duties, Commerce should not deduct them from U.S. net price. Commerce's deduction of Section 232 duties in the *Preliminary Results* contradicts Commerce's long-standing policy of excluding adjustments for "special duties," such as safeguard and antidumping duties.[34]
- The statute outlines the methodology for calculating EP and CEP prices by adjusting certain expenses that are incident to bringing subject merchandise into the United States, but it does not contemplate adjustments made for "special duties." In fact, the U.S. Court of International Trade (CIT) has found there is a distinction between "special" dumping duties and ordinary customs duties, and the Senate report regarding the Antidumping Act of 1921, refers to antidumping duties as "special dumping duties," and ordinary customs duties as "United States import duties."[35]
- Court of Appeals for the Federal Circuit (CAFC) has found that the deduction of special duties from U.S. price in the calculation of dumping margins results in double-counting. For instance, in *Wheatland Tube*, the CAFC confirmed that, because safeguard duties "may reduce or eliminate the injury that is required for an antidumping duty to continue and because deducting . . . safeguard duties from the EP may create an artificial dumping margin," deducting them from the calculation of dumping margins would result in the punitive collection of an additional duties in contravention of the statute.[36]
- The record demonstrates that Section 232 duties are "special duties" that Commerce and the current Administration contemplated as an alternate means to remedy injury to a domestic industry, consistent with "special" duties like antidumping and countervailing duties, rather than ordinary customs duties. Consistent with its precedent, Commerce should therefore not deduct the Section 232 duties from its calculation of EP in this case.[37]

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[33] *See Preliminary Results* PDM at 8.
[34] *See* Maquilacero's Case Brief at 4.
[35] *Id*. at 5-6 (citing *Hoogovens Staal v. United States*, 4 F. Supp. 2d 1213, 1220 (CIT 1998); *Bethlehem Steel v. United States*, 27 F. Supp. 2d 201, 208 (CIT 1998); *U.S. Steel Group v. United States*, 15 F. Supp. 2d 892, 898–900 (CIT 1998); *AK Steel Corp. v. United States*, 988 F .Supp. 594 (CIT 1997); *Federal Mogul Corp. v. United States*, 813 F. Supp. 856, 872 (CIT 1993); *PQ Corp. v. United States*, 652 F. Supp. 724, 737 (CIT 1987); and S. Rep. No. 16, 67th Cong., 1st Sess., at 4 (1921)).
[36] *Id*. at 6 (citing *Wheatland Tube Co. v. United States*, 495 F.3d 1355 (Fed. Cir. 2007) (*Wheatland Tube*)).
[37] *Id*. at 6-9 (citing *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 19153, 19160 (April 12, 2004) (*SSWR from Korea*).

Domestic Parties' Rebuttal Arguments

- Section 232 duties are not "special duties" like antidumping duties; thus, there is no basis to treat them as anything other than import duties. Therefore, Commerce should continue to deduct these duties from EP in the final results.[38]
- Section 232 are distinct from 201 duties because they are: (1) imposed for an indefinite period of time, and, thus, they are not remedial duties for a limited duration; (2) independent of antidumping duties; (3) not meant to substitute antidumping duties; (4) not used to remedy dumping or ensure fair EPs; and (4) not designed to remedy increases in imports that injure a domestic injury. Moreover, the statutory provision that imposes Section 232 duties and the President's Proclamation imposing Section 232 duties make it clear that the agency should treat Section 232 duties as ordinary import duties.[39]
- In *OCTG Ukraine*, Commerce confirmed that 232 duties are ordinary duties by including them in its final calculation of NV as U.S. customs duties. In its analysis, Commerce: (1) acknowledged the equivalence between an adjustment to NV in as suspension agreement and an adjustment to U.S. price in antidumping proceedings; (2) rejected the argument that Section 232 duties are similar to "special duties" such as antidumping or Section 201 safeguard duties; (3) explained that the purpose of the 232 duties is vastly different than Section 201 duties (*i.e.*, national security concerns versus injury remedies); (4) explained how the Presidential proclamations for the Section 232 duties confirmed treatment of these duties as ordinary customs duties; and (5) rejected the argument that treating Section 232 as U.S. import duties led to double-counting.[40]
- In *CWP from Turkey 2017-2018*, Commerce came to a similar conclusion on the same arguments raised by Maquilacero finding that Section 232 duties should be treated as United States import duties and deducted from U.S. price.[41]
- Finally, since Maquilacero paid Section 232 duties during the POR and reported these duties in the field "USDUTY2U" of its home market database, in accordance with the statute, these expenses should be deducted from U.S. price in calculating the margin.[42]

<u>Commerce's Position</u>

We disagree with Maquilacero's argument that Section 232 duties are special duties similar to Section 201 safeguard or antidumping duties and continue to find in these final results that Section 232 duties are analogous to U.S. import duties and, thus, properly deducted from EP pursuant to section 772(c)(2)(A) of the Act. The president implemented Section 232 duties

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[38] *See* Domestic Parties' Rebuttal Brief at 2.
[39] *Id*. at 2-3 (citing *OCTG from the Ukraine*, which discusses Proclamation 9705).
[40] *Id*. at 3-5 (citing Memorandum, "Issues and Decision Memorandum for the Final Normal Value Calculations to be Effective from Release of the Final Normal Values through June 30, 2019, under the Agreement Suspending the Antidumping Duty Investigation on Certain Oil Company Tubular Goods from Ukraine, dated February 15, 2019 (*OCTG Ukraine*) at 9, provided in Domestic Parties' Comments on B-D IQR at Exhibit 2).
[41] *Id*. at 5-6 (citing *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) (*CWP from Turkey*), and accompanying PDM at 12-13).
[42] *Id*. at 6-7.

covering the steel products at issue in this case to address national security concerns.[43] According to Proclamation 9705, the particular national security risk 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."[44]

In *Wheatland Tube*, the CAFC sustained Commerce's determination in *SSWR from Korea* not to adjust U.S. price in antidumping proceedings for Section 201 duties under the statutory provision.[45] The CAFC in *Wheatland Tube* acknowledged that Commerce's analysis of the legislative history of 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."[46] The CAFC further agreed that "Congress did not intend all duties to be considered 'Untied States import duties.'"[47] The CAFC then found that Commerce's analysis that Section 201 duties were more akin to antidumping duties than to "ordinary customs duties" was reasonable.[48]

The CAFC compared Section 201 duties with antidumping and 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."[49] In sustaining Commerce's decision regarding Section 201 duties in *Wheatland Tube*, 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."[50]

In this case, however, we find that Section 232 duties are not akin to antidumping or Section 201 duties. In particular, we find that Section 232 duties are not focused on remedying injury to a domestic industry. Underpinning section 201 and antidumping duties is that antidumping duties "remedy sales by a foreign exporter in the U.S. market at less than fair value" and Section 201 duties "remedy the injurious effect on the U.S. industry of significant surge in imports."[51] As we

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[43] *See, e.g., Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 3616 (January 22, 2020) (*CWP from Turkey 2017-2018*), and accompanying IDM at Comment 3.
[44] *See* Proclamation 9705, 83 FR 11627, 11627 (March 8, 2018).
[45] *See Wheatland Tube*, 495 F.3d at 1363.
[46] *Id*., 495 F.3d at 1361.
[47] *Id*.
[48] *Id*., 495 F.3d at 1362.
[49] *Id*., 495 F.3d at 1362-63.
[50] *Id*., 495 F.3d at 1365.
[51] *Id*., 495 F.3d at 1362; *see also* section 201 of the Trade Act of 1974; and section 731(1) of the Act; and *CWP from Turkey 2017-2018* IDM at Comment 3.

discussed in *OCTG Ukraine*, we continue to reject the argument that Section 232 duties are similar to "special duties" such as antidumping or Section 201 safeguard duties and we continue to find that the purpose of the 232 duties is vastly different than Section 201 duties (*i.e.*, national security concerns versus injury remedies). We note in this regard that Section 232 are distinct from Section 201 duties because Section 232 duties are: (1) imposed for an indefinite period of time, and, thus, they are not remedial duties for a limited duration; (2) independent of antidumping duties; (3) not meant to substitute antidumping duties; (4) not used to remedy dumping or ensure fair EPs; and (4) not designed to remedy increases in imports that injure a domestic injury. Further, in accord with *OCTG Ukraine*, we find that the Presidential proclamations for the Section 232 duties confirm the treatment of these duties as ordinary customs duties and we continue to reject the argument that treating Section 232 as U.S. import duties led to double-counting.[52] Further, "{c}ountervailing duties remedy unfair competitive advantages that foreign exporters have over domestic producers as a result of foreign countervailable subsidies."[53] Thus, these types of duties "are all directed at the same overarching purposes—protecting the bottom line of domestic producers."[54] By contrast, we find that section 232 duties are not focused on remedying injury to a domestic industry.[55] As Commerce has noted, the text of the President's various proclamations is telling.[56] Proclamation 9705, for example, 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*. . . ."[57] We further note, as we have previously, that 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."[58] Accordingly, consistent with our decision in *OCTG Ukraine*, we find it appropriate to deduct Maquilacero's and Prolamsa's 232 expenses from our calculation of U.S. price.

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[52] *See OCTG Ukraine* IDM at 9.
[53] *See Wheatland Tube*, 495 F.3d at 1363.
[54] *Id*., 495 F.3d at 1364.
[55] *See, e.g., CWP from Turkey 2017-2018* IDM at Comment 3.
[56] *Id*.
[57] *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).
[58] *See* section 232(b)(l)(A) of the Trade Expansion Act of 1962 (emphasis added); and 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"); *see also CWP from Turkey 2017-2018* IDM at Comment 3.

Comment 4: Affiliated Reseller Purchases

Domestic Parties' Arguments

- Commerce should calculate the transactions disregarded adjustment based on the entire POR instead of per-quarter.[59]
- The transfer price is lower than the market price through the affiliated supplier. Specifically, Maquilacero's affiliated supplier only charges the same price it purchased from a third-party supplier.[60]
- It is Commerce's policy to treat the full acquisition price of the affiliated reseller as a market price (*i.e.*, the acquisition price plus selling, general, and administrative (SG&A) expenses). The transfer price from the affiliated reseller should be adjusted to its full acquisition "price."[61]
- To correctly calculate the market price for the same input, the full acquisition cost from the affiliated suppliers should be weighted average with the prices paid directly to unaffiliated suppliers.[62]
- For the final result, Commerce should use the above calculation and the resulting transactions disregarded adjustment on a POR basis.[63]

Maquilacero's Rebuttal Arguments

- Commerce should not increase Maquilacero's costs for the purchases of steel coils from its affiliated supplier by adding the supplier's SG&A expenses to the acquisition cost.[64]
- Commerce should continue to find that a "transaction disregarded" cost adjustment is not necessary for Maquilacero's purchases of hot-rolled coils (HRCs) from its affiliated supplier because those purchases were made at a higher average purchase price than purchases from unaffiliated suppliers.[65]
- The domestic parties' proposed methodology grossly overstates the "market price as used by Commerce" for purposes of the transactions disregarded rule. The transactions disregarded rule enables Commerce to disregard a direct or indirect transaction between affiliated parties "if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration."[66] While this section of the statute does not specify a particular methodology for determining a fair market value, Commerce has established a hierarchy for establishing market value in

[59] *See* Domestic Parties' Brief at 40.
[60] *Id*. at 40-41.
[61] *Id*. at 40 (citing *Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 82 FR 16378 (April 4, 2017) (*CTL Plate from Belgium*), and accompanying IDM at Comment 6).
[62] *Id*.
[63] *Id*. at 41
[64] *See* Maquilacero's Rebuttal Brief at 1.
[65] *Id*. at 2.
[66] *Id*. at 8 (citing 773(f)(2) of the Act).

which unaffiliated party purchases are "express{ly}" preferred as the basis for market price.[67]

- Commerce found that the market prices exceeded transfer price in three of the four quarters and made an adjustment to increase Maquilacero's HRC costs for those quarters. While the domestic parties claim that Commerce's methodology in the *Preliminary Results* "did not include the affiliated suppliers' full acquisition cost in determining market value," there is no need for Commerce to do so for the final results.[68]
- While the domestic parties cite to *CTL Plate from Belgium* in support of their methodology to average unaffiliated party prices with the affiliate's full acquisition cost, that case does not support the inflated cost adjustment proposed in the domestic parties' brief. In *CTL Plate from Belgium*, Commerce explained its general rule that "market prices may relate to a respondent's purchases of the same input directly from unaffiliated suppliers or an affiliated reseller's average acquisition price plus the affiliated reseller's general expenses."[69]
- Commerce has relied on market prices determined using the affiliated parties' acquisition cost and its SG&A expenses as a final option where the record contained no purchases of the input or service from unaffiliated parties.[70]
- The calculation proposed by the domestic parties overstates the actual steel market prices during the POR. As detailed in Maquilacero's responses to Commerce, the affiliated supplier "maintains inventories at its warehouses throughout Mexico." Given this extensive distribution network, warehousing expenses account for a significant portion of the affiliated supplier's SG&A ratio.[71]

Commerce's Position

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

In this case we have two available sources for a market price. One market price option is derived through the affiliated supplier (*i.e.*, the price Maquilacero's affiliated supplier paid to its unaffiliated suppliers for the inputs, plus the affiliated supplier's SG&A). The other market price

[67] *Id*. at 9 (citing *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Final Affirmative Determination*, 81 FR 49940 (July 29, 2016), and accompanying IDM at 38).
[68] *Id*. at 8 (citing Domestic Parties' Case Brief at 40).
[69] *Id*. at 10 (citing Domestic Parties' Case Brief at 18; and *CTL Plate from Belgium* IDM at Comment 6)).
[70] *Id*. at 11-12 (citing *Certain Cold-Rolled Steel Flat Products from the United Kingdom: Final Determination of Sales at Less Than Fair Value*, 81 FR 49929 (July 29, 2016), and accompanying IDM at 28).
[71] *Id*. at 12 (citing Maquilacero's April 1, 2019 Section B Questionnaire Response at Exhibit B-11).

option is the prices paid by Maquilacero directly to unaffiliated suppliers. Therefore, we agree with the petitioners that given that both market price options are a reasonable representative of market prices, we calculated a weighted-average market price between the two for the final results.[72] Furthermore, consistent with our quarterly cost analysis, we use the quarterly market prices to calculate the transaction disregarded adjustments on a quarterly basis.

Comment 5: Non-Prime Merchandise

Domestic Parties' Arguments

- In the normal course of business, Maquilacero assigns an arbitrary low value to non-prime merchandise, with the remaining costs going to the prime merchandise.[73]
- To report to Commerce, Maquilacero assigned the same cost to prime and non-prime merchandise. Even though this methodology has been accepted by Commerce in previous segments of this proceeding, it is not appropriate in this segment and should be reversed for the final results.[74]
- Maquilacero normally treats the non-prime merchandise in the same manner as scrap.[75] As such, Maquilacero should not report the cost for non-prime and prime products as the same.[76]
- Maquilacero's departure from its normal records in reporting the same cost for prime and non-prime products is not justified.[77]
- In its preliminary results, Commerce properly excluded sales of non-prime merchandise from its NV calculation.[78]
- Therefore, Commerce should use the same treatment of non-prime as in Maquilacero's normal books and records for the final results.[79]

Maquilacero's Rebuttal Arguments

- Maquilacero's methodology for the treatment of non-prime materials is consistent with its practice in the previous review; therefore, no changes are warranted for the final results.[80]
- The domestic parties should have raised this argument before the record had closed; accordingly, Commerce should reject the domestic parties' suggested adjustment to non-prime merchandise.[81]

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[72] *See Light-Walled Rectangular Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 16646 (April 22, 2019), and accompanying IDM at Comment 5.
[73] *See* Domestic Parties' Case Brief at 41.
[74] *Id*. at 42.
[75] *Id*. at 45.
[76] *Id*.
[77] *Id*. at 44.
[78] *Id*.
[79] *Id*. at 45.
[80] *See* Maquilacero's Rebuttal Brief at 13.
[81] *Id*. at 14.

Commerce's Position

Commerce's practice with respect to non-prime products is to analyze those products sold as non-prime on a case-by-case basis to determine: (1) how they are treated in the respondent's normal books and records; (2) whether they remain in the scope of the proceeding; and (3) whether they can still be used in the same applications as prime subject merchandise.[82] Experience shows that sometimes the product's downgrading to non-prime is minor and it continues to remain within a product group while, at other times, the downgraded product differs so significantly that it no longer belongs to the same group and cannot be used for the same intended applications as the prime product. If the product is not capable of being used for the same applications, the corresponding market value is typically impaired significantly, to a point where its full cost cannot be recovered and, assigning full costs to that product would not be reasonable.[83]

In this case, the record shows that Maquilacero's non-prime products are defective and do not have a quality guarantee as prime products do; thus, they may only be used in low level applications.[84] Further, Maquilacero reported that CONNUM costs did not include non-prime products (*i.e.*, the non-prime products are out of scope).[85] In the normal course of business, Maquilacero assigned non-prime products an arbitrary value, rather than full production cost.[86] For reporting purposes, Maquilacero allocated full cost to non-prime products and thus away from the prime products.[87] For these final results, we reversed Maquilacero's allocation to reflect its normal books and records, as consistent with our past practice.[88] Because a market price for Maquilacero's non-prime sale is not on the record, we adjusted costs using the value of non-prime products used by Maquilacero in its normal books.

Comment 6: Scrap Offset

Domestic Parties' Arguments

- Commerce should deny Maquilacero's scrap offset because its reported scrap information is unreliable and contradictory.[89]
- The per-unit values in the scrap inventory movement schedule are uncorrected and meaningless, and the fluctuation of per-unit values do not make sense.[90]

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[82] *See, e.g.*, *Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review*; 2014-2015, 82 FR 27233 (June 14, 2017) (*Rebar from Mexico 2014-2015*), and accompanying IDM at Comment 3; *Welded Line Pipe from Korea LTFV* IDM at Comment 9; and *Rebar from Turkey LTFV* IDM at Comment 15.
[83] *See Welded Line Pipe from Korea LTFV* IDM at Comment 9.
[84] *See* Maquilacero's April 1, 2019 Section D Questionnaire Response (Maquilacero's April 1, 2019 DQR) at 25-26.
[85] *Id* at 26.
[86] *Id* .
[87] *Id*.
[88] *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 30401 (June 28, 2018), and accompanying IDM at Comment 4.
[89] *See* Domestic Parties' Case Brief at 45.
[90] *Id*. at 46.

- Commerce cannot approximate the quantities and values of scrap production or sales because of too many unspecified errors from Maquilacero.[91]
- It is Commerce of practice that the scrap offset should be limited to the quantity of scrap generated. However, Maquilacero reported an offset based on sales revenue received, which is more than the scrap generated during the POR.[92]
- The scrap information submitted by Maquilacero is overwhelmed with errors and meaningless. Therefore, Commerce should deny Maquilacero's scrap offset for the final results.[93]

Maquilacero's Rebuttal Arguments

- To the extent Commerce should limit Maquilacero's scrap offset to the quantity of scrap generated during the POR, Commerce should also make a corresponding adjustment to the scrap offset included in the denominator of the G&A ratio calculation.[94]

Commerce's Position

The monthly quantities of scrap as shown in the scrap inventory movement schedule shows several unexplained transfers.[95] Further, because the schedule is co-mingled between non-prime and scrap, the per-unit values in the table fluctuated significantly. Given these facts, we find the per-unit values in the table to be unreliable for determining the value of scrap sales.[96]

Section 351.401(b)(1) of Commerce's regulations states that "{t}he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment."[97] Commerce also has acknowledged in other cases that with respect to the scrap offset, that it is the burden of the respondent to demonstrate its eligibility for such an adjustment.[98]

Based on the above reasons, we have disallowed the scrap offset. Also, we have excluded the scrap revenue from the denominator of the G&A ratio calculation.

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[91] *Id*.
[92] *Id*. at 47.
[93] *Id*.
[94] *See* Maquilacero's Rebuttal Brief at 18.
[95] *See* Maquilacero's April 1, 2019 DQR at Exhibit D-7; and Maquilacero's October 15, 2019 Supplemental Section D Questionnaire Response at 11-12 (Maquilacero's October 14, 2019 DSQR).
[96] *Id*.
[97] *See* 19 CFR 351.401(b)(1).
[98] *See Steel Nails from Oman* IDM at Comment 11; and *American Tubular Products LLC v. United States*, No. 13-00029, slip op. 14-116 at 17-19 (CIT Sept. 26, 2014).

Issues Related to Prolamsa

Comment 7: Home Market LOT and CEP Offset

Prolamsa reported that it sold HWR pipe and tube through four channels of trade, claiming that it provided sufficient, substantive support demonstrating that it made home market sales at two levels of trade.[99] For the preliminary results, Commerce preliminarily: (1) accepted Prolamsa's claims; and (2) found that Prolamsa made sales at two LOTs in the home market during the POR: one for sales of custom-designed HWR pipe and tube parts (*i.e.*, industrial products) to original equipment manufacturers (OEMs) (HM channel 4) and another for all other commercial sales (HM channels 1, 2, and 3).[100] Specifically, we preliminarily found that the selling activities performed by Prolamsa for its HM channel 4 sales were performed at a higher level of intensity than those performed for its HM channels 1-3 sales and, thus, found that it made HM sales at two levels of trade. In addition, we preliminarily found Prolamsa's home market LOT for non-OEM customers not to be at a more advanced stage of distribution than Prolamsa's U.S. LOT and, thus, preliminarily denied Prolamsa's claim for a CEP offset.[101]

Domestic Parties' Arguments

- Commerce erred in its preliminary finding that Prolamsa made home market sales at two LOTs. Rather, Prolamsa made home market sales at one LOT because it failed to: (1) provide sufficient contemporaneous, verifiable documentation to support its reported differences in selling functions; and (2) differentiate between custom-produced merchandise and merchandise it claimed it sold at a separate LOT.[102] While minor differences exist in the customer bases and merchandise sold between HM channel 4 sales and HM channels 1-3, it does not sufficiently establish a substantial difference between the two that would amount to a different stage in marketing.[103] In addition to finding one home market LOT, Commerce should not grant Prolamsa a CEP offset.
- Prolamsa relied solely on non-verifiable company declarations for five selling activities reported at a "very heavy" level of intensity for HM channel 4 sales (*i.e.*, personnel training;

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[99] *See* Prolamsa's March 15, 2019 Section A Questionnaire Response (Prolamsa's March 15, 2019 AQR) at A-16 – A-30; Prolamsa's April 8, 2019 Section B-C Questionnaire Response (Prolamsa's April 8, 2019 BCQR) at B-34 – B-35; and Prolamsa's October 21, 2019 Supplemental Section A Questionnaire Response (Prolamsa's October 21, 2019 ASQR) at Exhibit 1st Supp A-7.
[100] *See Preliminary Results* PDM at 13-16.
[101] *Id*. at 16.
[102] *See* Domestic Parties' Case Brief at 4-7, 10.
[103] *Id*. at 7 (citing to *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) (*CWP from Turkey 2017-2018 Prelim*), and accompanying PDM at 18, where "{t}he record shows that Borusan's home market selling functions may contain more activities, but did not result in sales at a different marketing stage, as required by Commerce's regulations."; and *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 24471 (May 28, 2019) (*HWR Korea 2016-2017*), and accompanying IDM at Comment 5, where, "{w}hile we acknowledge that the selling functions performed for home market customers may have entailed additional activities, we disagree that these activities were substantial or so significant that they constitute a different marketing stage.").

order input processing; freight and delivery; just-in-time delivery; and after sales service) in addition to market research, which was reported at a light level of intensity.[104] Specifically, Prolamsa, in response to Commerce's supplemental section A questionnaire requesting supporting documentation, provided company declarations to support these reported intensity levels.[105] While these declarations support the narrative description of these activities originally provided in the initial questionnaire, they do not qualify as contemporaneous business documentation.

- In addition, Prolamsa provided no supporting documentation for its performance of inventory and distribution warehouses for post-sale or regional warehousing, which was reported at a "very heavy" level of intensity for its HM channel 4 sales, or its performance of external sales personnel or sales agents.[106,107] In response to Commerce's supplemental section A questionnaire requesting supporting documentation, Prolamsa provided no supporting documentation with respect to these selling activities apart from "minimal additional explanation."[108]
- With respect to advertising and sales promotion activities that Prolamsa reported at a heavy level of intensity for HM channel 4 sales, Prolamsa exaggerated the differences in how these applied uniquely to industrial and commercial customers.[109]
- In support of its advertising activities, Prolamsa provided certain documentation related to "complex product brochures" and on-line videos;[110] however, it failed to adequately differentiate and substantiate the differences in selling activities required between home market commercial and industrial sales. For example, Prolamsa failed to adequately support why its commercial and industrial brochures would be limited by any respective customer base.[111] Further, Prolamsa provided no support demonstrating that its online advertising videos were designed specifically to industrial customers.[112]
- Similarly, regarding sales promotion activities, Prolamsa provided insufficient support demonstrating why "tailored events at international trade shows and expos" and "sponsoring events in conjunction with sporting events" are only held for industrial customers while sales events held for commercial customers are "basic and consist of small, local promotions."[113]
- Prolamsa's Production Part Approval Process (PPAP) documentation submitted to support the reported "very heavy" intensity levels of: (1) engineering services; (2) meeting qualification requirements; and (3) the provision of technical assistance, is inadequate. While the PPAP demonstrates the satisfaction of specific customer requirements for HM channel 4 sales, it does not make reference to specific selling activities being performed or

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[104] *Id*. at 9-10.
[105] *Id*. at 10.
[106] *Id*. at 8-9.
[107] According to Prolamsa's reported selling activities chart, Prolamsa's performance of external sales personnel or sales agents was at a light level of intensity for HM channels 1-3; however, Prolamsa did not perform this activity for HM channel 4 sales. *See* Prolamsa's October 21, 2019 ASQR at Exhibit 1st Supp A-7.
[108] *Id*. at 9.
[109] *Id*. at 10-11.
[110] *Id*. at 10-11.
[111] *Id*. at 11.
[112] *Id*.
[113] *Id*. at 11-12.

their corresponding levels of intensity.[114] Thus, the PPAP documentation alone cannot substantiate the intensity levels at which Prolamsa claims to perform these activities or be used as part of Prolamsa's overall claim that its OEM sales were made at a separate LOT.

- Selling merchandise produced to specific customer requirements does not necessarily equate to a more advanced, separate LOT. In the previous administrative review, Commerce found that, "although Prolamsa performed qualification activities (which included some engineering services) only for OEM sales, as well as order input/processing at a higher level of intensity for those sales, we find that these activities, in and of themselves, do not place OEM sales at a marketing stage which is distinct from the stage at which Prolamsa's other sales are made."[115] In light of this, Commerce, in its LOT analysis, should not consider certain qualification activities that Prolamsa did not adequately support.[116]
- In contrast to Prolamsa's claims of differences between commercial and OEM sales, statements made by U.S. manufacturers of HWR pipe and tube demonstrate that the only meaningful difference between these sales are that commercial sales require production and inventory forecasts while OEM sales require a vendor managed inventory system.[117] In other words, both U.S. OEMs and other customers receive the same levels of freight and delivery, order input and processing, inventory maintenance, just-in-time delivery, technical assistance, PPAP, feasibility studies, and quality assurance. Based on this experience, this suggests that Prolamsa exaggerated the differences between its HM channels.[118]
- According to Commerce's practice, the "Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial difference in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing."[119] As such, Commerce may deny an LOT adjustment if the respondent fails to meet the burden of providing sufficient documentation.[120] In addition, court precedent supports Commerce's discretion to find one LOT if the respondent has not met this burden.[121] For Commerce to determine otherwise, the differences in the functions performed between channels of distribution should be so significant that they constitute a different stage of marketing.[122]
- *Dillinger* points out that the CIT sustained Commerce's determination that the respondent's home market and U.S. sales were made at a single LOT because Commerce's analysis was

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[114] *Id*. at 14 (citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 24473 (May 28, 2019) (*HWR Mexico 2016-2017*), and accompanying IDM at Comment 6). There, Commerce stated that "the PPAP itself does not reference any of the functions or speak to the level of intensity at which they are performed."
[115] *Id*. at 14-15 (citing *HWR Mexico 2016-2017* at Comment 6).
[116] *Id*. at 15.
[117] *Id*. at 15.
[118] *Id*. at 16.
[119] *Id*. at 17 (citing 19 CFR 351.412(c)(2); and *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27370-27372 (May 19, 1997) (*Preamble*)).
[120] *Id*. at 17 (citing 19 CFR 351.401(b)(1); and *Preamble* at 62 FR 27370-27372).
[121] *Id*. at 17 (citing *NTN Bearing Corp. of Am. v. United States*, 248 F. Supp. 2d 1256, 1282-1283 (CIT 2003) (*NTN Bearing*); and *Hyundai Steel Co. v. United States*, 279 F. Supp. 3d 1349, 1368-1372 (CIT 2017)).
[122] *Id*. at 17 (citing *HWR Korea 2016-2017* IDM at Comment 5; and 19 CFR 351.412(c)(2)).

"supported by substantial evidence."[123] Specifically, the CIT sustained that differences in a small number of selling activities would not necessarily result in a separate LOT finding.[124]

- Drawing parallels to Prolamsa's OEM and commercial customers, the CIT, in *Pasta Zara* , sustained Commerce's determination on remand that the respondent's selling activities performed separately for traditional local customers and its mass market customers generally served both customer groups and that the "selling activities performed solely or principally for the traditional local customers did not establish two distinct LOTs."[125]
- Commerce's reference to *Ball Bearings from Japan & the UK* in the *Preliminary Results* as support of its preliminary finding that Prolamsa made home market sales at two LOTs is misplaced.[126] There, the respondent demonstrated substantial differences between the home market OEM and non-OEM distribution channels for nine selling activities.[127] Here, Prolamsa relied heavily on documentation that only relates to a small number of selling activities.
- Commerce preliminarily denied Prolamsa's claim for a CEP offset "because Prolamsa's home market LOT for non-OEM customers is not at a more advanced stage of distribution than Prolamsa's U.S. LOT" and should continue to do so because (1) Prolamsa failed to provide verifiable documentation that its home market LOT is more advanced than its CEP LOT; (2) no differences in LOT exist such that price comparability is affected; and (3) Prolamsa appeared to admit that the "sales process for all channels of distribution within the home and U.S. markets are essentially the same."
- Even though Prolamsa reported that it performed three selling activities (*i.e.*, order input/processing, inventory maintenance, and the provision of freight and delivery) regarding its CEP sales, Commerce's practice is to examine the weight and intensity of these selling activities as the CIT found in *Corus Engineering*; a difference in number of selling functions does not mean that these sales were made at a different LOT.[128]
- Prolamsa reported that it performed inventory maintenance for its CEP sales at the same level as HM 1 and 3 sales, while it performed it at the highest level for HM 4 sales, and not at all for HM 2 sales. On its face, it is unclear how Prolamsa can claim that it performed inventory maintenance at a more, less, or similarly advanced level with respect to Prolamsa's home market LOTs. Even though *CWP from Turkey 1996-1997* acknowledged that "inventory maintenance is a principal selling function," Prolamsa did not demonstrate that its CEP sales were not made at a similar LOT than those in the home market.
- The domestic parties provided a selling activities chart that not only contains more selling activities than what Prolamsa reported but also refutes certain of Prolamsa's selling activity claims.

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[123] *Id*. at 17-18 (citing *Dillinger France S.A. v. United States*, 350 F. Supp. 3d 1349, 1359 (CIT 2018) (*Dillinger*)).
[124] *Id*. at 18 (citing *Dillinger* at 1358-1369).
[125] *Id*. at 18 (citing *Pasta Zara SpA v. United States*, 781 F. Supp. 2d 1297, 1300-1304 (CIT 2011) (*Pasta Zara*)).
[126] *Id*. at 18-19 (citing *Preliminary Results* PDM at 15, where Commerce referenced *Ball Bearings and Parts Thereof from Japan and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Review; 2010-2011*, 79 FR 56771 (September 23, 2014) (*Ball Bearings and Parts Thereof from Japan & the UK*), and accompanying PDM at 10-11 (unchanged in *Ball Bearings and Parts Thereof from Japan and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 80 FR 4248 (January 27, 2015))).
[127] *Id*. at 19 (citing to *Ball Bearings and Parts Thereof from Japan & the UK* at 10-11).
[128] *Id*. at 24 (citing *Corus Engineering Steels Ltd. v. United States*, No. 02-00189, slip op. 03-110 at 10 (CIT December 16, 2003) (*Corus Engineering*).

- In its initial questionnaire response, Prolamsa stated and reported only one U.S. LOT; however, in its supplemental C response it reported that it made a mistake and that "there are two different levels of trade in the United States" and, as such, coded CEP sales at a different LOT than EP sales. This supposed correction was never explained or justified. The difference between Prolamsa's EP and CEP sales are entirely unsubstantiated.

Prolamsa's Rebuttal Arguments

- Contrary to domestic parties' arguments, Prolamsa provided substantial evidence for Commerce to continue to find that Prolamsa performed 9 out of 14 selling activities for its OEM/industrial sales at a high level of intensity, demonstrating that it made its home market sales at two LOTs.[129]
- Contrary to the domestic parties' claims that no evidence was provided to support the external sales personnel and regional warehousing activities, Prolamsa's industrial sales team does not use external sales agents and thus, provided no documentation.[130] Similarly, with respect to regional warehousing, Prolamsa's reported warehouse expenses and locations support that it did not perform these activities.[131]
- The domestic parties provided no legal authority under which its claim that "Prolamsa cannot rely exclusively on statements from its own officials to support" descriptions of selling activities has standing.[132] In fact, Prolamsa's declarations complement the evidence provided and highlight the nuances between activities performed by the commercial and industrial sales teams. Moreover, the domestic parties' reliance on a similar declaration from a U.S. HWR pipe and tube producer to refute Prolamsa's reported intensities of selling activities undermines its own argument that statements by company officials do not have probative value.[133]
- In fact, the domestic parties' declaration is hearsay evidence and, according to the U.S. producer's own admission, is based on speculation.[134] This declaration is antithetical to: (1) Commerce's preliminary finding that "Prolamsa provided certain additional documentation adequately demonstrating that it performed 9 out of 14 selling activities for its HM channel 4 sales at a high level of intensity;" and (2) Prolamsa's detailed statements regarding selling functions based on the experience of sales executives who are familiar with Prolamsa's conduct of business between commercial and industrial customers.[135]
- The domestic parties failed to acknowledge that, in addition to the company officials' declarations used to support certain selling activities (*i.e.*, market research, personnel

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[129] *See* Prolamsa's Rebuttal Brief at 1.
[130] *Id*. at 2-3 (citing *Preliminary Results* PDM at 13, where Commerce recognized that Prolamsa "directed external sales personnel/agents for HM channels 1-3, but not for HM channel 4."); *see also* Prolamsa's October 21, 2019 ASQR at 13.
[131] *See* Prolamsa's Rebuttal Brief at 3 (citing *Preliminary Results* PDM at 13, where Commerce recognized that Prolamsa "performed post-sale warehousing for HM channel 2 while it did not for HM channels 1, 3, and 4.").
[132] *Id*. at 3 (citing Domestic Parties' Case Brief at 10).
[133] *Id*. at 3-4.
[134] *Id*. at 9.
[135] *Id*. at 9-10 (citing *Preliminary Results* PDM at 14; and Prolamsa's October 21, 2019 ASQR at Exhibit 1st Supp. A-6).

training, order input processing, freight and delivery, just-in-time delivery, and after sales service), Prolamsa provided evidentiary, complementary documentation as follows:

  - Market research: Prolamsa described minimal activities performed for both commercial and industrial customers.[136]
  - Personnel training: Prolamsa described performing in-house training and customer visits with respect to industrial sales, as well as specific activities involved in PPAP training.[137] As support, Prolamsa points to its narrative in its supplemental section A response, the company declaration, and PPAP documents.[138]
  - Order input processing: Prolamsa described in detail the differences in activities performed by commercial and industrial sales teams in its supplemental section A response. As support, it provided sample sales documentation, sales quote requests, and the corresponding sales documents to demonstrate the differences in activities between commercial and industrial sales.[139]
  - Freight and delivery and just-in-time delivery: Prolamsa described activities performed for industrial sales and, as support, provided home market sample freight documentation, a sample "Demand Delivery" spreadsheet from a supplier portal, and correspondence between Prolamsa and parts customers related to delivery.[140]
  - After sales service: Prolamsa provided company declarations to outline the different policies in place for commercial and industrial customers. With respect to the latter, this documentation outlines the required timelines related to customer complaints, the corresponding consequences for not doing so, and requirements for chronic issues.[141]

- The domestic parties' arguments alleging that Prolamsa's industrial-customer based brochures, promotional videos, events, and advertising could also be aimed at commercial customers are meritless because: (1) the materials are appropriately named and dedicated to OEM customers; (2) the photographs and videos showcase the abilities to service certain industries and OEMs; and (3) the industrial events focus on value-added capabilities and the advertising costs reflect this.[142]
- The customer specific requirements inherent in the sale of industrial products relate to the industry-specific PPAP process Prolamsa performs to ensure quality and follow established processes for OEM customers.[143] Related to the adherence of the PPAP, Prolamsa provided support documenting meetings and email communications, as well as support for how

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[136] *Id*. at 4 (citing Prolamsa's October 21, 2019 ASQR at 11 and Exhibit 1st Supp. A-6).
[137] *Id*. at 4-5.
[138] *See* Prolamsa's October 21, 2019 ASQR at 11-12, Exhibits 1st Supp. A-6 and 1st Supp. A-10.
[139] *Id*. at 5 (citing Prolamsa's March 15, 2019 AQR at Exhibit A-14; Prolamsa's October 21, 2019 ASQR at 16, Exhibits 1st Supp. A-6 and 1st Supp. A-11; and Prolamsa's April 8, 2019 BCQR at B-20, B-21, and Exhibit B-8 (Part 3)).
[140] *Id*. at 5 (citing Prolamsa's March 15, 2019 AQR at Exhibit A-14; Prolamsa's April 8, 2019 BCQR at B-20, B-21, and Exhibit B-8 (Part 4); and Prolamsa's October 21, 2019 ASQR at Exhibit 1st Supp. A-11 (Part 4)).
[141] *Id*. at 6 (citing October 21, 2019 ASQR at 20 and Exhibit 1st Supp. A-6).
[142] *Id*. at 6-7 (citing Prolamsa's March 15, 2019 AQR at Exhibit A-27; and Prolamsa's October 21, 2019 ASQR at Exhibit 1st Supp. A-5).
[143] *Id*. at 8 (citing *Preliminary Results* PDM at 14, where Commerce recognized the importance of the PPAP for these sales; specifically, with respect to engineering services and technical assistance).

engineering services and technical assistance are performed at a high intensity for these sales.[144] Moreover, Prolamsa works with OEM customers to determine how parts can be improved and how it can re-engineer products or processes, and it provided supporting documentation demonstrating this work, including contemporaneous PPAP documentation.[145] Prolamsa does not perform these activities for commercial customers, further substantiating that OEM sales are determinative of a separate LOT.

- The domestic parties' reliance on *Ball Bearings from Japan & the UK* as an example of how a respondent successfully distinguished "numerous selling activities" between OEM and non-OEM customers for Commerce's consideration is misplaced.[146] Contrary to domestic parties' assertions, this case supports Commerce's preliminary finding that Prolamsa made home market sales at two LOTs because, similar to the respondent there, Prolamsa provided substantial evidence of "numerous selling activities" (*i.e.*, 9 out of 14 selling activities for OEM sales at a high level of intensity).[147]
- The domestic parties incorrectly cite to *Dillinger* to show that "three distinct selling activities" were not enough to warrant a finding of two LOTs and draw a comparison to the fact pattern here.[148] Their reliance on this case is misplaced because Prolamsa performs three selling activities for OEM customers that are not even performed for non-OEM customers (*i.e.*, meeting qualification requirements, engineering services, technical services).[149] Moreover, Prolamsa also performed additional selling activities at a "much higher intensity" for its OEM sales (*e.g.*, personnel training/exchange, order input/processing, inventory maintenance, freight and delivery, and after-sales services), which Commerce preliminarily confirmed.[150]
- Prolamsa performed more activities at a higher intensity than the few considered in *Pasta Zara* and, thus, the domestic parties' reliance on this is not comparable to the fact pattern here. There, the CIT concluded that selling activities performed by a pasta producer solely or principally for the one group of customers did not establish a separate LOT;[151] however, certain of Prolamsa's HM channel 4 selling activities are more technical (*e.g.*, customer product design, engineering, and technical expertise for its industrial customers) and are not comparable to those performed by a pasta producer.[152]
- The domestic parties' reliance on Commerce's finding of one HM LOT for Prolamsa in *HWR Mexico 2016-2017* is misplaced; because, there, Commerce's decision was based on "specific evidence on {that} record" (or lack thereof).[153] Here, Prolamsa provided a different and fully documented record. Further, the domestic parties ignore Commerce's finding that

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[144] *Id*. at 8 (citing Prolamsa's April 8, 2019 BCQR at B-20, B-21, and Exhibit B-8; and Prolamsa's October 21, 2019 ASQR at Exhibit 1st Supp. A-11).
[145] *Id*. at 8-9 (citing Prolamsa's October 21, 2019 ASQR at 14, 19, and Exhibits 1st Supp. A-6 and A-9).
[146] *Id*. at 10 (citing *Ball Bearings and Parts Thereof from Japan & the UK*, 79 FR at 56771).
[147] *Id*. at 10.
[148] *Id*. at 11 (citing *Dillinger*, 350 F. Supp. 3d at 1359).
[149] *Id*. at 10-11 (citing Prolamsa's October 21, 2019 ASQR at Exhibit 1st Supp. A-7).
[150] *Id*. at 11 (citing Prolamsa's October 21, 2019 ASQR at Exhibit 1st Supp. A-7; and *Preliminary Results* PDM at 14).
[151] *Id*. at 11 (citing *Pasta Zara*, 781 F. Supp. 2d at 1302).
[152] *Id*. at 11 (citing Prolamsa's October 21, 2019 ASQR at Exhibit 1st Supp. A-7).
[153] *Id*. at 12 (citing HWR Mexico 2016-2017 IDM at 27).

Prolamsa made home market sales at two LOTs in *HWR Mexico LTFV*.[154] In line with that finding, the facts have not changed since the LTFV investigation, due to the specialized nature of the products an extensive customer interaction.

- If Commerce were to find that Prolamsa made home market sales at one LOT, it should grant a CEP offset because: (1) its sales in the home market are made at a more advanced LOT than the CEP LOT and; (2) the data available do not provide an appropriate basis for quantifying a LOT adjustment.[155] With regards to the former, if Commerce collapses all home market sales channels into one LOT, it is evident that the very limited (and low intensity) selling activities performed for the CEP LOT (*i.e.*, minimal order input processing, inventory management, and freight services), contrast against the diverse, higher number of selling activities performed (and their corresponding high intensity) for Prolamsa's home market sales.[156] The latter is substantiated because Prolamsa's reported selling activities applies to sales of all of Prolamsa's merchandise (*e.g.*, foreign like product, different product lines, pipe and tube products, *etc.*), equally.[157]
- Moreover, Prolamsa demonstrated that its HM channel 1 and 2 sales required seven additional selling activities than those made for sales at Prolamsa's CEP LOT, while 11 of 12 selling activities performed for HM channel 4 sales were performed at a heavy or "very heavy" level of intensity.[158] Accordingly, Prolamsa did not make home market sales at an LOT similar to the CEP LOT during the POR.[159]

Commerce's Position

Based upon the parties' comments and our reexamination of the evidence on the record, we find that Prolamsa has not demonstrated that it sold HWR pipe and tube at two different LOTs in the home market. Accordingly, for these final results we have treated all sales made in the home market at a single LOT during the POR. Moreover, after comparing this single HM LOT to the CEP LOT, we also find that Prolamsa has not established that a CEP offset is warranted. Accordingly, for these final results of review, Commerce has compared Prolamsa's home market sales to its U.S. sales without regard to Prolamsa's reported LOTs and has not granted Prolamsa's requested CEP offset.

As explained in the *Preliminary Results*, section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate normal value based on sales at the same LOT as the U.S. sales.[160] Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).[161] Substantial differences in selling activities are a necessary, but not

[154] *Id*. at 12 (citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Final Determination of Sales at Less Than Fair Value*, 81 FR 47352 (July 21, 2016) (*HWR Mexico LTFV*), and accompanying IDM at 23-25).
[155] *Id*. at 13 (citing Prolamsa's April 8, 2019 BCQR at B-35 – B-36).
[156] *Id*. at 13 (citing Prolamsa's October 21, 2019 ASQR at Exhibit 1st Supp A-7).
[157] *Id*. at 14 (citing Prolamsa's April 8, 2019 BCQR at B-35 – B-36).
[158] *Id*.
[159] *Id*.
[160] *See Preliminary Results* PDM at 10.
[161] *See* 19 CFR 351.412(c)(2)

sufficient, condition for determining that there is a difference in the stages of marketing.[162] In order to determine whether the comparison market sales are at different stages in the marketing process than the U.S. sales, Commerce examines the distribution system in each market (*i.e.*, the chain of distribution), including selling functions and class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),[163] Commerce considers the starting prices before any adjustments. For CEP sales, Commerce considers only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.[164]

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. sale 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 possible, we make an 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 is possible), Commerce will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.[165]

Furthermore, Congress has explained that:

> there is no requirement for Commerce to make a level of trade or offset adjustment in every case. Indeed, the express language of the statute and Statement of Administrative Action indicate that there are circumstances where neither adjustment is appropriate or permissible. For example, Commerce may only make a {LOT} adjustment where there are different levels of trade and where that difference is shown to affect price comparability. Commerce's analysis of these issues must be based on the actual circumstances involved.[166]

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[162] *Id.*; *see also Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*Orange Juice from Brazil*), and accompanying IDM at Comment 7.
[163] Where normal value is based on constructed value, we determine the normal value LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for constructed value, where possible. *See* 19 CFR 351.412(c)(1).
[164] *See Micron Technology, Inc. vs. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).
[165] *See, e.g.*, *Orange Juice from Brazil*, and accompanying IDM at Comment 7.
[166] *See* Senate Remarks on the Uruguay Round Agreements Act, Congressional Record – Senate, S5516 (April 6, 1995).

Accordingly, Commerce will make an LOT or CEP adjustment following an analysis of the case-specific information and if the record supports such an adjustment.[167] Further, Commerce's LOT analysis is holistic and evaluates the seller's marketing scheme as a whole.[168]

Significantly, Commerce's requirement that respondents support LOT claims with quantitative evidence in all proceedings was implemented in 2018 to enhance Commerce's ability to determine whether reported differences in selling functions are substantial enough to warrant a finding that sales were made at different LOTs.[169] Although qualitative information is helpful and relevant to the LOT analysis, reliance on this information alone limits Commerce's ability to analyze selling functions to determine if LOTs identified by a party are meaningful and to evaluate whether a respondent's LOT claims are reasonable and accurate.[170] Indeed, reliance on qualitative evidence, such as narrative descriptions of differences in selling functions, customer correspondence, sample sales records, meeting presentations and the like, without supporting quantitative evidence frequently does not present a complete understanding of a respondent's selling activities. Additionally, reliance on purely qualitative information may create the potential for manipulation (or inaccurate reporting) by permitting respondents to create a narrative that is not linked in any way to its verifiable financial data. Requiring quantitative evidence enhances our LOT analysis because such information allows us to determine whether differences in prices among various customer categories or differences in levels of expenses in different claimed LOTs are, in fact, attributable to differences in LOTs or to some other unrelated factor such as relative sales volumes.[171] Quantitative information permits Commerce to examine whether respondent's narrative explanations and qualitative evidence are supported by its books and records maintained in the ordinary course of business. Additionally, the requirement that respondents provide quantitative support for their claimed LOTs reduces

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[167] *See Pasta Zara*, 34 CIT 355, 366 (CIT 2010) ("The *Preamble* draws a distinction between mere differences in selling activities and differences in selling activities that establish a separate selling *function….*") (citing *Preamble* at 62 FR 27296, 27371).

[168] *See Preamble* at 62 FR 27371 ("{A}n analysis of selling activities alone is insufficient to establish the LOT. Rather, the Department must analyze selling functions to determine if levels of trade identified by a party are meaningful. In situations where some differences in selling activities are associated with different sales, whether that difference amounts to a difference in the levels of trade will have to be evaluated in the context of the seller's whole scheme of marketing.")

[169] *See, e.g., Magnesium from Israel: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 84 FR 32712 (July 9, 2019), and accompanying PDM at 13 (unchanged in *Magnesium from Israel: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 65781 (November 29, 2019)); and *Certain Cold-Rolled Steel Flat Products from the United Kingdom: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 34868 (July 19, 2019), and accompanying PDM at 10 (unchanged in *Certain Cold-Rolled Steel Flat Products from the United Kingdom: Final Results of Antidumping Duty Administrative Review*; 2017-2018, 84 FR 59771 (November 6, 2019)).

[170] *See Pasta Zara*, 34 CIT 355, 366 (CIT 2010) ("{T}he statute indicates that two sales with substantial differences in selling activities nevertheless may be at the same level of trade, and the {Statement of Administrative Action} adds that two sales with some common selling activities nevertheless may be at different levels of trade. Rather, the Department must analyze selling functions *to determine if levels of trade identified by a party are meaningful*." (emphasis added).) (citing *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27371 (May 19, 1997)).

[171] *See, e.g., Timken United States Corp. v. United States*, 434 F.3d 1345 (Fed. Cir. 2006); *Pakfood Pub. Co. v. United States*, 34 CIT 1122, 1138 (CIT 2010); and *Alloy Piping Prods. v. United States*, 33 CIT 349, 358-59 (CIT 2009).

subjectivity and the likelihood of inconsistency in the application of Commerce's analytical framework that results from the analysis of purely qualitative information, which can be, by its nature, subject to different interpretations.

Since 2018, Commerce has required respondents to provide quantitative evidence in support of their LOT claims. For instance, in *Corrosion Resistant Steel from Korea*, Commerce considered, *inter alia*, the following quantitative information in its LOT and CEP offset analysis: (1) how expenses assigned to POR sales made at different claimed LOT impact price comparability functions; (2) a demonstration of how indirect selling expenses vary by the different LOT claimed; and (3) an explanation of how the quantitative analysis provided by respondent supported its claimed levels of intensity for the reported selling activities.[172] In *Corrosion Resistant Steel from Korea*, Commerce found that the quantitative analysis submitted by the respondent corroborated its reported level of intensity information.[173] Additionally, in *Warmwater Shrimp from Thailand*, in conducting its LOT/CEP offset analysis, Commerce considered a respondent's selling expenses in combination with the analysis of selling functions in order to determine if the level of selling expenses substantiated the narrative explanation of selling functions.[174] Furthermore, in recent preliminary determinations, Commerce has declined to find the existence of different LOTs or grant a CEP offset when the record lacks sufficient quantitative evidence corroborating a respondent's LOT claims.[175]

Moreover, even though Commerce began expressly requesting that respondents support their LOT claims with quantitative evidence in 2018, respondents have long borne the burden of establishing their eligibility for an LOT adjustment by demonstrating that different prices and

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[172] *See Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments*; 2017-2018, 85 FR 15114 (March 17, 2020) (*Corrosion Resistant Steel from Korea*), and accompanying IDM at Comment 4.

[173] *Id*. ("Further, Dongkuk's traceable expenses (*e.g.*, wages) for home market sales are seventy times of that for U.S. sales. A ratio derived from the traceable expenses is used to allocate indirect selling expenses to home market sales and CEP sales. As result, the indirect selling expense ratio for home market sales is more than two times of that for U.S. sales. Thus, we find that the quantitative analysis corroborated the reported level of intensity.") (Citation omitted).

[174] *See 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) (*Warmwater Shrimp from Thailand*), and accompanying IDM at Comment 5.

[175] *See Polyethylene Terephthalate Sheet from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 12500 (March 3, 2020), and accompanying PDM at 15 ("The only support that JYC provided for these three questions were a sales/production forecast and business plan that covered both the home and U.S. market and a reference to the sales documentation in the sales traces in Exhibits A-8 and A-9. None of this documentation provides the quantitative analysis requested by Commerce, nor is there an explanation of how the quantitative analysis supports the levels of intensity reported in the selling functions chart." (citations omitted)); *see also Utility Scale Wind Towers from Canada: Preliminary Affirmative Determination of Sales at Less-Than-Fair-Value, Preliminary Negative Determination of Critical Circumstances, and Postponement of Final Determination and Extension of Provisional Measures*, 85 FR 8562 (February 14, 2020), and accompanying PDM at 15-16 (finding that the claimed differences in reported levels of intensity in selling functions between claimed LOTs to be unsubstantiated when respondent did not provide requested quantitative information supporting its claims).

selling expenses are caused by differences in LOT and not by other factors, such as volume sold or arbitrary pricing.[176]

In light of the foregoing, Commerce finds that Prolamsa has not met its burden to establish its eligibility for an LOT adjustment or a CEP offset. Section 351.401(b)(1) of Commerce's regulations states that "{t}he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment." While Prolamsa asserts that it fully demonstrated that there were significant differences in the selling activities performed between home market channels during the POR, none of the documents provided demonstrate direct quantitative support for such claims. Therefore, for these final results, Commerce finds that Prolamsa has not shown that it made sales in the home market at more than one LOT because it has not supported its LOT claims with quantitative evidence. Furthermore, because the record does not establish that Prolamsa made sales at more than one LOT, neither an LOT adjustment nor a CEP offset is warranted.

Regarding Prolamsa's request for a CEP offset, Commerce noted in the *Preliminary Results* that Prolamsa's home market LOT for non-OEM customers was not at a more advanced stage of distribution than Prolamsa's U.S. LOT and, thus a CEP offset was not warranted.[177] As a result of collapsing Prolamsa's OEM and non-OEM home market sales into one LOT, a comparison of the types of selling functions Prolamsa performed for its home market are not significantly different from those performed for its sales to its U.S. affiliate, Prolamsa Inc., such that they would constitute a different marketing stage. Similarly, the record lacks sufficient quantitative information required to determine the relationship of the CEP LOT with the information submitted regarding the home market LOT(s), and thus whether a CEP offset is appropriate.

Although Prolamsa cites prior determinations, including the underlying less-than-fair value investigation in this proceeding and court rulings, its reliance on these outcomes is misplaced. As an initial matter, we note that Commerce is not necessarily bound by its determinations in a prior segment of a proceeding because each segment has its own unique factual record.[178] The factual record of the instant review is distinct from that of the investigation because, as explained above, Prolamsa did not meet its burden to provide the necessary support to substantiate an LOT adjustment or a CEP offset. Commerce's requirement that respondents provide quantitative support for claims made about differing LOTs is consistent with current practice and judicial precedent.

Furthermore, Commerce has the discretion to alter its practices, so long as we present a reasonable rationale for our departure from the previous practice.[179] In applying this analytical

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[176] *See NSK Ltd. v. Koyo Seiko Co.*, 190 F.3d 1321, 1330 (Fed. Cir. 1999) ("Although NTN submitted evidence that merchandise at different levels of trade had different prices and selling expenses, NTN did not provide evidence to prove that those differences were not caused by other factors, such as volume sold or arbitrary pricing practices. In other words, NTN did not present evidence to establish that the difference in the level of trade caused the differences in price and selling expenses.").
[177] *See Preliminary Results* PDM at 16.
[178] *See Dong-A Steel Co. v. United States*, 337 F. Supp. 3d 1356, 1374 (CIT 2018).
[179] *See NTN Bearing*, 27 CIT 129 (CIT 2003) (citing *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 843 (USSC 1984); and *Timken Co. v. United States*, 22 CIT 621, 628 (CIT 1998)).

framework to the record evidence, Commerce has reached a different conclusion in the final results of this review than it reached in the *Preliminary Results* because it has found that the totality of the record evidence contains inadequate support for Prolamsa's LOT claims.

For the foregoing reasons, Commerce finds that the record does not support a finding that Prolamsa made sales at more than one LOT and has not granted a CEP offset.

Comment 8: Non-prime Merchandise

For the *Preliminary Results*, we relied on Prolamsa's COP database that does not distinguish between prime from non-prime costs.

Domestic Parties' Arguments

- Commerce's reliance on Prolamsa's cost datafile in the *Preliminary Results*, which does not distinguish CONNUM costs between prime and non-prime products, resulted in distorted matches for purposes of: (1) the sales-below-cost test; (2) the identification of the proper most similar matches; and (3) any difference-in-merchandise (DIFMER) adjustment related to those sales.[180]
- Prolamsa's normal record keeping for non-prime products, relied on for reporting purposes, results in a distorted COP for any CONNUM containing the production costs of both prime and non-prime merchandise or that containing production costs of only non-prime merchandise.[181]
- Therefore, to prevent costs of non-prime merchandise from being used as costs for prime merchandise, Commerce should: (1) rely on Prolamsa's cost datafile that distinguishes between prime and non-prime production; and (2) adjust the sales-below-cost test and margin calculations, accordingly, for the final results.[182]

Prolamsa did not comment on this issue.

Commerce's Position

We agree with the domestic parties that reliance on Prolamsa's weight-averaged cost file is unreasonable as it results in a distorted sales-below-cost-test and distorted DIFMER calculations that affect the matching of comparison market sales and U.S. sales in Commerce's margin calculations. Accordingly, we relied on Prolamsa's cost information where prime products are separately identifiable from non-prime products for the final results. We treated Prolamsa's

[180] *See* Domestic Parties' Case Brief at 28-30 (citing Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Prolamsa Co., Ltd.," dated November 6, 2019 (Prolamsa Preliminary Cost Calculation Memo) at 2 and Attachment 1; and Prolamsa's September 12, 2019 First Supplemental Section D Questionnaire Response (Prolamsa's September 12, 2019 D1SQR) at SD-7, SD-8, and Exhibit SD-5).
[181] *Id*. at 29-30.
[182] *Id*. at 30.

prime and non-prime product costs separately in the sales-below-cost test as well as the calculations of DIFMER and constructed value (CV).[183]

During the POR, Prolamsa produced and sold first-quality (prime) and second-quality (non-prime) HWR pipe and tube.[184] Non-prime HWR pipe and tube is produced as an unintended result of producing prime HWR pipe and tube.[185] Non-prime HWR pipe and tube is normally classified as such by Prolamsa during the inspection process following the final production process at the end of the cut-to-length line.[186] Prime merchandise may also be reclassified by Prolamsa as non-prime HWR pipe and tube due to deterioration while in inventory.[187] Non-prime pipe and tube may result from a faulty weld, excessive rust, significant dents, or a failed quality test,[188] resulting in a failure to meet product specifications.[189] As a result, Prolamsa does not issue mill certificates to guarantee the quality of non-prime HWR pipe and tube as it does with prime HWR pipe and tube.[190] Because the non-prime HWR pipe and tube products do not have mill certificates, these products are not used by construction buyers for use in commercial products or in any other application requiring a mill certificate.[191] Instead, non-prime HWR pipe and tube is used in other applications such as fences or sheds.[192] In fact, Prolamsa identifies non-prime HWR pipe and tube separately from prime HWR pipe and tube in its production and inventory records.[193] Specifically, in Prolamsa's normal books and records, non-prime HWR pipe and tube is assigned a standard cost that is less than that for prime HWR pipe and tube.[194] For reporting purposes, Prolamsa relied on the costs reflected in its normal books and records for both prime and non-prime HWR pipe and tube[195] and, thus, reported the weight-averaged costs of all prime and non-prime HWR pipe and tube classified within each CONNUM.[196] At Commerce's request, Prolamsa also submitted CONNUM-specific cost information separately identifying prime products from non-prime.[197] For the *Preliminary Results*, Commerce relied on Prolamsa's weight-averaged cost information.[198]

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[183] *See* "Cost of Production and Constructed Value Calculation Adjustments for the Final Results – Prolamsa Co., Ltd.," dated July 6, 2020 (Prolamsa Final Cost Calculation Memo).
[184] *See* Prolamsa's September 12, 2019 D1SQR at SD-6.
[185] *See* Prolamsa's April 16, 2019 Section D Questionnaire Response (Prolamsa's April 16, 2019 DQR) at D-6.
[186] *See* Prolamsa's September 12, 2019 D1SQR at SD-5.
[187] *See* Prolamsa's April 16, 2019 DQR at D-6.
[188] *See* Prolamsa's September 12, 2019 D1SQR at SD-4
[189] *Id*.
[190] *See* Prolamsa's September 12, 2019 D1SQR at SD-6.
[191] *Id*.
[192] *Id*.
[193] *See* Prolamsa's September 12, 2019 D1SQR at SD-5.
[194] *See* Prolamsa's April 16, 2019 DQR at D-6.
[195] *Id*. at D-2.
[196] *See* Prolamsa's April 16, 2019 DQR at Exhibit D-1; Prolamsa's September 12, 2019 D1SQR at Exhibit SD-1; Prolamsa's October 23, 2019 CSQR at Exhibit Supp. C-2; and Prolamsa's letter, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Resubmission of Cost Databases," dated October 25, 2019 at Exhibit 1 (Prolamsa Resubmission of Cost Databases).
[197] *See* Prolamsa's October 23, 2019 CSQR at 1 and Exhibit Supp. C-2; Prolamsa's October 7, 2019 Second Supplemental Section D Questionnaire Response at Exhibit 2SD-1; and Prolamsa Resubmission of Cost Databases.
[198] *See* Prolamsa Preliminary Cost Calculation Memo at 1.

Commerce's practice with respect to non-prime products is to analyze those products sold as non-prime on a case-by-case basis to determine: (1) how they are treated in the respondent's normal books and records; (2) whether they remain in the scope of the proceeding; and (3) whether they can still be used in the same applications as prime subject merchandise.[199] Experience shows that sometimes the product's downgrading to non-prime is minor and it continues to remain within a product group while, at other times, the downgraded product differs so significantly that it no longer belongs to the same group and cannot be used for the same intended applications as the prime product. If the product is not capable of being used for the same applications, the corresponding market value is typically impaired significantly, to a point where its full cost cannot be recovered and, assigning full costs to that product would not be reasonable.[200]

Here, Prolamsa's non-prime HWR pipe and tube products cannot be used for the same applications as prime products because they are not issued mill certificates.[201] Moreover, Prolamsa recognizes in its own books and records that the market value of the non-prime HWR pipe and tube is significantly impaired, so much so that Prolamsa assigns a standard cost to these products that is significantly less than that assigned to prime HWR pipe and tube.[202] As such, Prolamsa's reliance on its standard costs for its prime and non-prime HWR pipe and tube is consistent with Commerce's practice.[203]

However, we agree with the domestic parties that relying on Prolamsa's weight-averaged prime and non-prime costs results in distortions related to the sales-below-cost test, the calculation of DIFMER, the resulting sales comparisons, and the calculation of CV. For example, by weight-averaging the costs of prime and non-prime merchandise by CONNUM, an artificially low CONNUM cost results because the averaged cost includes the lower cost of Prolamsa's non-prime merchandise. Subsequently, the number of sales below cost will erroneously decrease and the DIFMER calculation will be distorted due to the disproportionate inclusion of lower cost non-prime merchandise in the weighted-average CONNUM cost across all CONNUMs. In line with the domestic parties' assertions, the same is true in instances where the CONNUM costs only include the lower cost of non-prime merchandise.

We also find that the weight-averaging of Prolamsa's prime and non-prime products on a CONNUM-specific basis results in differences between CONNUMs apart from those related to physical characteristic differences. Under sections 773(f)(1)(A) and 773(a)(6)(C)(ii) and (iii) of the Act, a respondent's reported product costs should reflect meaningful cost differences attributable to the different physical characteristics. This ensures that the product-specific costs we use for the sales-below-cost test and DIFMER adjustment accurately reflect the distinct physical characteristics of the products whose sale prices are used in the dumping calculations.

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[199] *See, e.g., Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review*; 2014-2015, 82 FR 27233 (June 14, 2017) (*Rebar from Mexico 2014-2015*), and accompanying IDM at Comment 3; *Welded Line Pipe from Korea LTFV* IDM at Comment 9; and *Rebar from Turkey LTFV* IDM at Comment 15.
[200] *See Welded Line Pipe from Korea LTFV* IDM at Comment 9.
[201] *See* Prolamsa's September 12, 2019 D1SQR at SD-6.
[202] *See* Prolamsa's April 16, 2019 DQR at D-6.
[203] *See, e.g., Rebar from Mexico 2014-2015* IDM at Comment 3; *Welded Line Pipe from Korea LTFV* IDM at Comment 9; and *Rebar from Turkey LTFV* IDM at Comment 15.

In this instance, differences in the costs among CONNUMs is occurring where one CONNUM includes only prime products while the next most similar CONNUM includes only non-prime products. Because Prolamsa's cost of non-prime products is significantly less than prime products, the difference between the costs of similar CONNUMs is exaggerated and does not reflect actual cost differences related to the physical characteristics of the CONNUMs. For example, where one CONNUM includes a more significant percentage of non-prime production (*i.e.*, the weighted-average cost is less) and the next most similar CONNUM includes an insignificant percentage of non-prime production (*i.e.*, the weighted-average cost is greater), cost differences unrelated to the product characteristics are negated by the inclusion of non-prime product costs.

The calculation of CV is also affected by the inclusion of non-prime merchandise in the weighted-average CONNUM-specific costs. Where no comparison market sales are made in the ordinary course of trade, Commerce bases NV on CV. In instances where U.S. sales are comprised of only prime products, as seen here, the CV used as NV may include the cost of non-prime products as well as prime products. Again, because the cost of non-prime products is significantly lower than the cost of prime products, relying on the weighted-average CV would result in a lower CV than relying on the CV of only the prime merchandise and, consequently, the lower CV would impact the margin calculations.

Therefore, for these final results, we relied on Prolamsa's cost data file that separately reports the costs of prime products from non-prime products. On this basis, we performed the sales-below-cost test, identification of the most similar matches, and the calculations of DIFMER and CV.

Comment 9: Overrun Sales

During the POR, Prolamsa reported certain home market sales observations based on "overruns." For the *Preliminary Results*, we included Prolamsa's reported home market overrun sales as part of our preliminary calculations.

Domestic Parties' Arguments

- Consistent with prior practice, Commerce should exclude Prolamsa's reported home market overrun sales from Commerce's final calculations because they were made outside the ordinary course of trade.[204]
- Prolamsa failed to report or outline the measures under which it determines a product as an overrun; in fact, there is no mention of the "OVERRUNH" field in Prolamsa's questionnaire responses, even though it is a reported field in its home market sales listing.[205]

[204] *See* Domestic Parties' Case Brief at 30 (citing *Certain Cut-to Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 70 FR 67428, 67430 (November 7, 2005) (*CTL Plate from Korea Prelim 2004-2005*) (unchanged in *Certain Cut-to Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 71 FR 13080 (March 14, 2006))).
[205] *Id*. at 31-32 (citing Prolamsa's October 21, 2019 Second Supplemental Section B Questionnaire Response (Prolamsa's October 21, 2019 B2SQR) at Exhibit Supp. 2nd B-1).

- According to Prolamsa's home market sales listing, certain home market customers purchased either: (1) sales of only overruns; (2) both sales of overrun and non-overrun products.[206] In fact, evidence indicates that the overrun sales do not differ from non-overrun sales with respect to quality or specification.[207]
- On average, the quantity-per-sale amount of Prolamsa's overrun sales represented a fraction of that of a non-overrun sale.[208] Further, according to Prolamsa, it made only a small number of overrun sales compared to that of non-overrun sales.[209]
- According to Prolamsa's reported home market sales data, there was a reduction in the average price of overrun sales relative to non-overrun sales.[210] This difference is also reflected in the average profit percentage between overrun and non-overrun sales.[211]
- In consideration of whether merchandise is outside the ordinary course of trade, Commerce should consider: (1) whether the merchandise is "off-quality" or produced according to unusual specifications; (2) the comparative volume of sales and the number of buyers in the home market; (3) the average quantity of the overrun and commercial sales and frequency of sale; and (4) the price and profit differentials in the home market. The nature of these sales meet the above criteria and thus, should be excluded from Commerce's final calculations in accordance with established practice.[212]

Prolamsa did not comment on this issue.

Commerce's Position

We agree with the domestic parties and find that Prolamsa's overrun sales were outside the ordinary course of trade. Section 773(a)(1)(B)(i) of the Act states, in part, that NV is "the price at which the foreign like product is first sold (or, in absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade." The term "ordinary course of trade" is defined as "the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind."[213] The Statement of Administrative Action (SAA) clarifies this portion of the statute when it states, "Commerce may consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market."[214] Thus, the statute

[206] *Id*. at 32-33.
[207] *Id*. at 32.
[208] *Id*. at 33.
[209] *Id*.
[210] *Id*. at 33 (citing Prolamsa's October 21, 2019 B2SQR at Exhibit Supp. 2nd B-1; and Memorandum, "Calculations for Productos Laminados de Monterrey S.A. de C.V. for the Preliminary Results," dated November 6, 2019 (Prolamsa Preliminary Calculation Memo).
[211] *Id*.
[212] *Id*. at 31 (citing *CTL Plate from Korea Prelim 2004-2005*, 70 FR 67430; and *CWP from Turkey 2017-2018 Prelim* PDM at 23).
[213] *See* section 771(15) of the Act.
[214] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 834.

and the SAA are clear that a determination of whether sales (other than those specifically addressed in section 771(15) of the Act, *i.e.*, below-cost sales and sales between affiliates that are not at market prices) are in the ordinary course of trade must be based on an analysis comparing the sales in question with sales of merchandise of the same class or kind generally made in the home market. In other words, Commerce must consider whether home-market sales of HWR pipe and tube are sales in the ordinary course of trade in comparison with other home-market sales of HWR pipe and tube.

The purpose of determining whether certain sales are outside of the ordinary course of trade "is to prevent dumping margins from being based on sales which are not representative" of the home market.[215] By basing the determination of NV upon representative sales, the provision ensures an appropriate comparison between NV and sales to the United States. Congress has not specified any criteria that the agency should use in determining the appropriate "conditions and practices." Thus, Commerce, "in its discretion, chooses how best to analyze the many factors involved in a determination of whether sales are made within the ordinary course of trade."[216] In evaluating whether sales of overrun merchandise are outside the ordinary course of trade, Commerce has considered several factors in past cases. These non-dispositive factors include, but are not limited to, the following:

> 1) whether the merchandise is "off-quality" or produced according to unusual specifications;
> 2) the comparative volume of sales and the number of buyers in the home market;
> 3) the average quantity of the overrun and commercial sales; and
> 4) the price and profit differentials in the home market.[217]

For the final results, we find that: (1) Prolamsa's sales of overrun merchandise are much more likely to be sales of non-prime merchandise than are its non-overrun sales; (2) Prolamsa's sales of overrun merchandise were of comparatively low volume; (3) the average quantity of Prolamsa's sales of overrun merchandise is smaller than the average quantity of its sales of non-overrun merchandise; and (4) the prices and profit levels between overrun and non-overrun sales in the home market were dissimilar.[218] As a result of this analysis, we determine that Prolamsa's overrun sales were not made in the ordinary course of trade.

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[215] *See Monsanto Co. v. United States*, 698 F. Supp. 275, 278 (CIT 1988).
[216] *See Laclede Steel Co. v. United States*, 19 CIT 1076, 1078 (1995).
[217] *See China Steel Corp. v. United States*, 264 F. Supp. 2d. 1339, 1364-65 (CIT 2003); *Certain Cut-to Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 42075 (September 6, 2017), and accompanying IDM.
[218] Because of the proprietary nature of this argument, *see* Memorandum, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico; 2017-2018: Productos Laminados de Monterrey S.A. de C.V.'s Home Market Overruns," dated July 6, 2020, for further analysis.

V. RECOMMENDATION

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

☒ ☐

Agree Disagree

7/6/2020

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance