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June 13, 2008

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from Mexico (2006-2007)

Summary:

We have analyzed the case and rebuttal briefs submitted by interested parties. As a result of our analysis, we have made changes in the margin calculations. We recommend that you approve the positions described in the Discussion of Interested Party Comments section of this memorandum. Below is the complete list of the issues in this investigation for which we have received comments from the parties:

I. List of Comments

General Issues Involving All Companies

Comment 1: Whether to Deny Home Market Price Adjustments
Comment 2: Whether to Accept Petitioners' Targeted Dumping Allegation
Comment 3: Whether to Subtract Negative Margins from Positive Margins ("Zeroing")

Maquilacero S.A. de C.V. ("Maquilacero")

Comment 4: Whether to Treat Export Rebates as an Adjustment to Sales or Cost of Production
Comment 5: Whether to Use Affiliated Party Downstream Sales in the Department's Analysis

Productos Laminados de Monterrey S.A. de C.V. (“PROLAMSA”)

Comment 6: Whether to Apply Adverse Facts Available to PROLAMSA’s Affiliated Party Downstream Sales
Comment 7: Whether to Make Changes to the Department’s Programming for Currency Conversions used in its Preliminary Determination
Comment 8: Whether to Adjust Reported Costs of Manufacturing
Comment 9: Whether to Use Corrected Variance Allocation Presented at Verification
Comment 10: Whether to Calculate Cost of Manufacturing using Historical Depreciation Costs

II. Background

On January 30, 2008, the Department of Commerce (“the Department”) published the preliminary determination in the above-referenced antidumping duty investigation on light-walled rectangular pipe and tube (“LWR”) from Mexico. See Notice of Preliminary Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Mexico, 73 FR 5515 (January 30, 2008) (“Preliminary Determination”). The merchandise covered by this investigation is described in the Federal Register notice issued the same date as this memorandum. The investigation covers two manufacturers/exporters: Maquilacero and PROLAMSA, who were selected as mandatory respondents. The period of investigation is (“POI”) is April 1, 2006, through March 31, 2007. We gave interested parties an opportunity to comment on our Preliminary Determination. On May 8, 2008, we received case briefs from Maquilacero, PROLAMSA, and petitioners.[1] On May 12, 2008, these same parties filed rebuttal briefs. No party requested a hearing.

III. Discussion of Interested Party Comments

General Issues:

Comment 1: Whether to Deny Home Market Price Adjustments

In its case brief, petitioners state that for both respondents (i.e., Maquilacero and PROLAMSA), home market prices of subject merchandise were reduced by several price adjustments, including adjustments for discounts, rebates, billing adjustments, early payment discounts, and commissions, and that these adjustments were not reported on a product-specific basis. See Case Brief on Behalf of Petitioners, regarding Light-Walled Rectangular Pipe and Tube from Mexico, dated May 8, 2008 (“Petitioners’ Case Brief”). Petitioners argue that these adjustments do not specifically relate to sales of subject merchandise, but rather encompass non-subject merchandise in addition to subject merchandise and should not be used in the calculation of normal value. See Petitioners’ Case brief at 7.

[1] The petitioners, representing the domestic industry, in this investigation are Allied Tube and Conduit, Atlas Tube, Bull Moose Tube Company, California Steel and Tube, Hannibal Industries, Leavitt Tube Company, Maruichi American Corporation, Searing Industries, Southland Tube, Vest Inc., Welded Tube, and Western Tube and Conduit (collectively, “petitioners”).

Petitioners explain the respondents' reported price adjustments were derived by summing credits and debits to price relating to both subject and non-subject merchandise, at either the customer or invoice-specific level, and then proportionally allocating this sum to particular sales based on the ratio of the value of a sale to the total sales value of both subject and non-subject merchandise. Id.

Regarding Maquilacero, petitioners argue that the company reported its adjustment allocations on a customer-specific basis, and, therefore, the reported adjustments are based on both the subject and the non-subject merchandise purchased by the customer. See Petitioners' Case Brief at 9. Thus, as petitioners argue, the same billing adjustments were reported for all home market customers, and in all instances were reported as reductions to the normal value in calculating dumping margins.

With respect to PROLAMSA's methodology for reporting price adjustments, petitioners note that PROLAMSA allocated "the credited or debited amount to all items covered by the specific invoice based on the relative value of each line item" of the invoice, irrespective of whether the credit or debit actually related to non-subject merchandise as opposed to subject merchandise. Petitioners argue that a reduction to the reported gross price of a particular sale is appropriate, provided that the rebates and discounts which constitute the reduction were actually granted on the particular sale. However, petitioners further argue that allocating the sum of all rebates and discounts on an invoice proportionally to particular sales based on the ratio of the value of each line item on the invoice to the total value of all sales on the invoice is not appropriate, because this allocates an amount to sales irrespective of whether a discount or rebate was actually granted for particular sales, and irrespective of whether the discount or rebate even related to subject merchandise. See Petitioners' Case Brief at 10.

In their questionnaire responses, respondents explained that they were unable to report the price adjustments on a transaction-specific basis because they do not record, on a consistent basis, the reason for the adjustment on the actual credit notes.[2] Petitioners contend that respondents did not act to the best of their ability by not recording credits to price on a line-item or product-specific basis in their electronic accounting records. See Petitioners' Case Brief at 12. Citing to Maquilacero's practices, petitioners contend that "…at some point, respondents are able to identify the specific products involved for the sales for which price adjustments are granted. However, respondent(s) chose not to record and retain this product-specific information in their electronic records." Id.

As support for their argument, petitioners cite to several decisions of the United States Court of Appeals for the Federal Circuit ("Federal Circuit").[3] Petitioners argue that in SKF, the Federal

[2] See PROLAMSA's Section B and C Response, dated October 29, 2007 ("PBCQR"); PROLAMSA's Supplemental B and C Response, dated December 7, 2007 ("PSQR"); PROLAMSA's Second Supplemental Questionnaire Response, dated January 8, 2008 ("PSSQR"); see also, Maquilacero's Section B and C Response, dated October 10, 2007 ("MBCQR"); First Supplemental Sections B and C Response dated December 4, 2007 ("MSQR"); and Second Supplemental Sections B and C Response dated January 22, 2008 ("MSSQR").

[3] See SKF USA Inc. v. INA Walzlager Scharffler KG, 180 F. 3rd 1370 (Fed. Cir. 1999) ("SKF") and NSK Ltd. Et al. v. United States, 510 F. 3rd 1375 (Fed. Cir. 2007) ("NSK"). See Petitioners' Case Brief at 13 and 20, respectively.

Circuit concluded that "merchandise which is outside the scope of an antidumping duty order cannot be used in the calculation of antidumping duties." See SKF at 1578. Petitioners contend that the Federal Circuit's decision was based upon its interpretation of 19 U.S.C. §1673, which states that antidumping duties must be calculated based solely on merchandise within the scope of the antidumping duty order, and therefore precludes the use of price adjustments granted on sales of goods outside the scope of the antidumping duty order. See SKF at 1376. Petitioners argue that the Federal Circuit's decision effectively disallows the allocation of price adjustments which involve both subject and non-subject merchandise that are commingled on a customer-specific or invoice-specific basis when there is no indication that the adjustments were actually granted for subject merchandise. See Petitioners' Case Brief at 14. Moreover, petitioners use the circumstances and ruling of SKF to invalidate the Department's findings in the previous investigation of LWR from Mexico, where the Department had accepted an allocation methodology for the billing adjustments reported by respondents. Id. at 15. Similarly, petitioners argue that the Federal Circuit rejected a similar allocation methodology in NSK, where the Federal Circuit ruled that the respondent, who had reported billing adjustments on a customer-specific basis, applied an allocation methodology for the adjustments that effectively "shifts billing adjustments from sales that are not used in calculating normal value to ones that are, and vice versa." See NSK at 1381. Petitioners use these citations from SKF and NSK to argue that commingling credits and debits to price based on allocations which involve both subject and non-subject merchandise, without providing an indication of product specificity, does not ensure that the adjustments relate to or were actually granted for subject merchandise. Based on precedent set by these decisions, petitioners contend that the price adjustments reported by Maquilacero and PROLAMSA should not be used to reduce the normal value.

Additionally, petitioners argue that there are alternate allocation methodologies which can specifically identify the amount related to the subject merchandise. See Petitioners' Case Brief at 16. Specifically, petitioners cite to Smith Corona Group v. United States, 713 F. 2d 1568 (Fed. Cir. 1983) ("Smith-Corona"), where individual credits for subject or non-subject merchandise are granted at a fixed rate or amount. Id. Petitioners contend that, in the instant investigation, Maquilacero reported that its commission expenses were the same for all products, regardless of whether the product was subject or not subject to the investigation. Id. at 17. However, petitioners argue that, unlike Smith-Corona, neither respondent provided any indication that the reported price adjustments were calculated at the same fixed rate or value. Id. at 18. In referencing this citation, however, petitioners also note the Department's determination in the previous investigation of LWR from Mexico to accept price adjustments that were not specifically linked to the subject merchandise. In further support of its arguments, petitioners cite to section 351.401(g)(4) of the Department's regulations, which provides that the Department will not reject an allocation methodology simply because the calculation includes sales of non-subject merchandise. Id. at 16. Petitioners maintain that the primary consideration for the use of an allocation methodology (such as applying a fixed percentage), is for that methodology to not cause any gross inaccuracies or distortive results. Id. at 19. Petitioners return to the decision of NSK to emphasize the need to use a methodology which does not cause inaccuracies or is not distortive; where in NSK the Federal Circuit determined that the ability of the respondent to "allocate its billing adjustments in a more specific manner is irrelevant… regardless of whether a more specific reporting basis is feasible, the simple fact is that" the respondent "failed to demonstrate that its allocation methodology does not cause inaccuracies or

distortion." See NSK at 1382. Petitioners argue that the respondents have not demonstrated that these price adjustments are not inaccurate or distortive. See Petitioners' Case Brief at 20 and 21. Moreover, citing to Fujitsu General Ltd. v. United States, 88 F. 3rd 1034, 1040 (Fed. Cir. 1996), petitioners argue that the Department has long held that the "party seeking a direct price adjustment bears the burden of proving entitlement to such an adjustment." See Petitioners' Case Brief at 21. Petitioners argue that, in order to meet this burden in the present case, respondents would have had to provide a "means of identifying and segregating billing adjustments paid on in-scope merchandise" from those paid on out-of-scope merchandise. Once again, citing to SKF at 1377, petitioners assert that respondents have not done so.

Finally, petitioners cite 19 U.S.C. § 1677m(e), which provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all of the applicable requirements established by the administering authority or the Commission if… the information can be verified, and… the interested party has demonstrated that it acted to the best of its ability." See Petitioners' Case Brief at 22. Despite their identification of this provision in the statute, petitioners contend that it should not be applied to respondents' price adjustments in the instant investigation. Id. First, petitioners refer back to SKF, where the Federal Circuit determined that the amount of price adjustments encompassing non-subject merchandise are not "necessary to the determination" of dumping margins. Second, petitioners assert that the amount of the price adjustments submitted by respondents could not be verified by the Department as relating solely to subject merchandise. Id. at 23. While petitioners state that the Department may have been able to verify the respondents' methodology of deriving the reported price adjustments, they note that the Department could not verify that the portion which respondents allocated to the subject merchandise actually relates to the subject merchandise. Finally, petitioners argue that respondents did not act to the best of their ability by not recording product-specific price adjustment data in their books and records.

In rebuttal, Maquilacero argues that petitioners' claims are inaccurate and contradicted by the record evidence. See Rebuttal Brief on Behalf of Maquilacero S.A. de C.V, dated May 12, 2008 ("Maquilacero Rebuttal Brief") at 5. Maquilacero argues that its price adjustments are reported at the highest level of detail at which these adjustments were granted and, furthermore, were calculated on a product-specific basis. Id. at 6; see also, e.g., Letter from Arent Fox to the Department, regarding Additional Factual Information Submitted for the Preliminary Determination, dated January 28, 2008. Maquilacero maintains in its rebuttal that the company did in fact report price adjustments on home market sales at the transaction-specific level for more than ninety percent of the total value of such adjustments. Id.

Maquilacero contends that petitioners' case brief omits two factors; that Maquilacero reported its price adjustment calculations on an invoice- and transaction-specific basis, and that more than ninety percent of the reported adjustments were based on fixed percentages applicable to each product on the invoice. See Maquilacero Rebuttal Brief at 7. Maquilacero explains in its rebuttal that the company does not record in its accounting records the reason for the price adjustment or the invoice to which it applies. Rather, Maquilacero records the customer name to which the credit or debit was given. Id. Initially, Maquilacero points out that it had reported its price adjustments at the customer-specific level, but that following a request from the

Department, Maquilacero manually reviewed each of the applicable credit notes so as to allow a more specific level of reporting (i.e., reporting price adjustments at the transaction-specific level). See Letter from Arent Fox to the Department, regarding Additional Factual Information Submitted for the Preliminary Determination, dated January 28, 2008. Moreover, Maquilacero points out that several examples of the credit notes, which were manually reviewed, are currently on the record. See MBCQR and MSQR at Exhibits 8-12. While the overwhelming majority of Maquilacero's reported price adjustments were reported at the transaction-specific level, Maquilacero states that certain adjustments pertaining to billing adjustments and warranty adjustments were calculated by allocating a credit note amount to both subject and non-subject merchandise (i.e., an invoice-specific basis). See Maquilacero Rebuttal Brief at 8. Maquilacero further asserts that more than ninety percent of its reported adjustments were based on an allocation methodology across an entire invoice, and were calculated using a fixed percentage, which was applied to all products on the invoice.

Maquilacero contends that the facts in SKF and NSK, to which petitioners cite, are entirely dissimilar from those of the instant investigation. Specifically, Maquilacero argues that in NSK, the Federal Circuit upheld the Department's rejection of a customer-specific allocation methodology for price adjustments because the Department "directly observed clear evidence of a substantial distortion caused by the methodology." See Maquilacero Rebuttal Brief at 9, citing to NSK at 1381. In NSK, Maquilacero argues, the Department found that the reported adjustments were not contemporaneous to that case, were incurred on specific models but were allocated to all models and, finally, the respondent failed to explain why their methodology was not distortive. Id. Maquilacero contends that NSK holds no applicability to the instant investigation because there is no evidence that Maquilacero's methodology causes distortions or inaccuracies in the data. Additionally, Maquilacero reported the majority of its adjustments on a transaction-specific basis. Id. at 10. Maquilacero then argues that petitioners' reliance on SKF is also unwarranted, as the facts in SKF (i.e., where the respondents' reported price adjustments were rejected) indicate that respondents had misrepresented their methodology by claiming its price adjustments were reported on a transaction-specific basis, whereas the Department found that these adjustments were actually reported on a customer-specific allocation methodology. Id., citing to SKF at 1377. Conversely, Maquilacero argues that it had properly demonstrated that its adjustments were reported at the transaction-specific level, and that, additionally, this level of reporting was verified by the Department. Moreover, Maquilacero points out that the CIT, in SKF, upheld the Department's recognition that customer-specific allocations are acceptable if the percentage amount is "uniform… to all of a customer's sales." See Maquilacero Rebuttal Brief at 11, citing to SKF at 269. Maquilacero argues that its reported price adjustments (with regard to volume rebates and early payment discounts) were calculated using a fixed percentage adjustment, which was applied across all products covered by the same invoice. Id. Additionally, Maquilacero avers that petitioners' case brief concedes that this methodology may be permissible as an adjustment to sales of subject merchandise. Id., citing to Petitioners' Case Brief at 17-18. Therefore, Maquilacero contends that petitioners allegation that Maquilacero did not calculate price adjustments using a fixed rate, is wrong and inaccurate as demonstrated by the record and the precedent set in NSK, SKF and other cases to which petitioners cite (i.e., Smith-Corona).

Finally, Maquilacero takes issue with petitioners' statement that the company had access to product-specific information in order report its price adjustments on that basis, but as it chose not record them in its books and records, it did not act to the best of its ability. Maquilacero also take issue with petitioners' suggestion that it deliberately did not record its price adjustments at a higher level of detail in order to claim that the information is not available. Maquilacero argues that petitioners' contentions are absurd, as Maquilacero's record-keeping practices were in place long before the petition was filed in this case. See Maquilacero Rebuttal Brief at 12. Maquilacero argues that in NSK, one of the cases cited by petitioners as support for its arguments on this issue, the Federal Circuit rejected a similar argument by stating that the Department cannot retroactively apply a more stringent requirement for record-keeping than that which was in effect when the records were created. Id. at 12-13, citing to NSK at 1383 (citing to Princess Cruises, Inc. v. United States, 397 F.3d 1358, 1365-67 (Fed. Cir. 2005) ("Princess Cruises").

In its rebuttal brief, PROLAMSA first points out that the Department had previously rejected the argument of disallowing certain price adjustments due their composition of subject and non-subject merchandise in the prior investigation of LWR from Mexico. See Rebuttal Brief on Behalf of Productos Laminados de Monterrey, S.A. de C.V, dated May 12, 2008 ("PROLAMSA Rebuttal Brief") at 2, citing to Light-Walled Rectangular Pipe and Tube from Mexico, 69 FR 53677 (September 2, 2004) ("LWR from Mexico (2004)"), and accompanying Issues and Decision Memorandum at Comment 1. PROLAMSA explains that petitioners' characterization of its reported adjustments is inaccurate, as PROLAMSA, where possible, links debits and credits for price adjustments to the specific line item of an invoice where the price adjustment corresponds to that specific line item. PROLAMSA further clarifies that, in all other cases, the company links debits and credits to the entire invoice because the price adjustment itself was issued against the entire invoice and not one specific line item. In such cases, PROLAMSA explains that it allocated the price adjustments on an invoice-specific basis as this was the basis upon which the adjustment was made. Id. Citing specific sales examples from the Department's verification report, PROLAMSA contends that it provided adequate information demonstrating that its reported price adjustments (whether for billing adjustments, early payment discounts, rebates, etc.) pertain to credits granted on subject merchandise, and that the Department verified this information. Id. at 3-6; see also, Memorandum to the File, from Patrick Edwards, Senior Case Analyst, titled "Verification of the Sales Responses of Productos Laminados de Monterrey, S.A. de C.V. in the Antidumping Investigation of Light-Walled Rectangular Pipe and Tube from Mexico," dated April 24, 2008 ("PROLAMSA Verification Report (Monterrey)"). Additionally, PROLAMSA argues that its method of allocating price adjustments granted on an invoice-specific basis provides a reasonable methodology and "is consistent with U.S. law, Department practice, and the Department's determination in the previous investigation of LWR from Mexico." Id. at 7.

PROLAMSA argues that petitioners' reliance on SKF is misplaced, as the ruling in SKF preceded the Uruguay Rounds Agreement Act ("URAA"), which makes SKF legally irrelevant to this issue. PROLAMSA contends that following the URAA, and the adoption of 19 U.S.C. § 1677m(e), the Department's requirements for a respondent's reporting was "liberalized," whereby the Department would "not reject information that fails to meet all of its reporting requirements." See PROLAMSA Rebuttal at 8, citing Torrington Co. v. United States, 146 F.

Supp. 2d 845, 849 (CIT 2001) ("Torrington"). PROLAMSA explains that the Department's own regulations were revised by 19 C.F.R. § 351.401(g), which specifically states that the Department would "consider allocated price adjustments 'when transaction-specific reporting is not feasible' and it 'is satisfied that the allocation method used does not cause inaccuracies or distortions.'" Id. Moreover, PROLAMSA argues that in SKF, the Federal Circuit came to its decision because the respondent in the case provided no means of segregating price adjustments that applied to non-scope merchandise. Id. Additionally, PROLAMSA contends that in a separate proceeding before the Federal Circuit ("the Court"), the Court distinguished the facts of that case with SKF, where the respondent in this proceeding had presented methodologies which proportionately allocated its reported price adjustments to in-scope and non-scope merchandise. See Petitioners Rebuttal at 9, citing to NTN Bearing Corp. v. United States, 295 F.3d 1263, 1267-68 (Fed. Cir. 2002) ("NTN"). PROLAMSA further argues that the Court in NTN also noted that the Department must "accept information that does not meet all of its requirements if certain conditions are met." Id. at 9. PROLAMSA asserts that these facts warrant a decision that SKF cannot be used to preclude the use of a methodology which allocates price adjustments to subject and non-subject merchandise. Id.

PROLAMSA contends that the facts of that case are markedly different from those of the instant investigation. As an initial matter, in NSK, PROLAMSA argues that the issue of price adjustment allocations pertained to a customer-specific allocation, whereas PROLAMSA reported on an invoice-specific basis. See PROLAMSA Rebuttal at 9. Moreover, PROLAMSA explains that the Court found that in NSK, the reported price adjustment allocation method caused inaccuracies and distortions, as the respondent had reported adjustments that "related entirely to transactions outside either the scope of the antidumping order or the period of review, yet were allocated in part to scope merchandise during the period of review." Id. at 10, citing NSK, 510 F.3d at 1380-82. As mentioned previously, PROLAMSA noted that the Department rejected this same argument in the previous investigation of LWR from Mexico, where the Department found that PROLAMSA (as the company was a respondent in that prior proceeding) "demonstrated entitlement to price adjustments by providing allocation methodologies that relate proportionately to the reported sale." See PROLAMSA Rebuttal at 10, citing LWR from Mexico (2004), and accompanying Issues and Decision Memorandum at Comment 1. With these facts and case precedents in mind, PROLAMSA argues that the Department properly accepted the company's reported price adjustments at the Preliminary Determination.

Citing to 19 U.S.C. § 1677m(e), PROLAMSA states that, in accordance with the statute, the Department will accept a respondent's information that is "necessary to the determination," provided that that information was timely submitted, can be verified, is sufficiently complete and reliable, can be used without undue difficulties, and demonstrates that the respondent acted to the best of its ability." See PROLAMSA Rebuttal at 11. With regard to this provision, PROLAMSA finally contends that petitioners' case brief is unconvincing. First, PROLAMSA argues that its reported price adjustments are reported on a line-item-specific basis, and where that was not possible, on an invoice-specific basis where the adjustment was allocated proportionately over all line items of those invoices. Id. at 12. Second, PROLAMSA claims that the Department will accept (and has previously accepted) an allocation to report a price adjustment that covers both subject and non-subject merchandise when line item-specific reporting is not feasible. Id. PROLAMSA argues that the quantified, per-unit adjustments, as

well as the methodology of allocation were verified by the Department. Third, with regard to petitioners' argument that PROLAMSA failed to act to the best of its ability by not recording credit and debit amounts on a product-specific basis in its accounting records, PROLAMSA avers that petitioners "misconstrue the law." Id. at 13. PROLAMSA claims that it acted to the best of its ability by reporting its price adjustments on as specific a basis as possible, and that the "'best of its ability' standard relates to the respondent's effort in providing requested information to the Department – not the company's maintenance of sales and accounting records in the normal course of business.'" Id. In conclusion, PROLAMSA argues that, for the above reasons, it satisfied the Department's requirements contained at 19 U.S.C. § 1677m(e), by offering an allocation methodology, where applicable, that cause no inaccuracies or distortions in the Department's margin calculations.

Department's Position:

Section 782(e) of the Tariff Act of 1930, as amended, ("the Act") (19 U.S.C. § 1677m(e)) provides that the Department will not "reject information that fails to meet all of its reporting requirements." Additionally, as cited by petitioners in their case brief, the Department will consider "allocated price adjustments 'when transaction-specific reporting is not feasible' provided that the Department is satisfied that such a methodology causes no "inaccuracies or distortions." See 19 C.F.R. § 351.401(g). Petitioners' arguments that respondents have failed to properly report certain price adjustments are inaccurate. Both respondents did, in fact, report their price adjustments under the transaction-specific methodology which petitioners argue is the correct methodology. See PBCQR at B-24 and C-22; see also, MBCQR at B-31 and C-27. The Department's practice of preferring transaction-specific adjustments, but accepting other allocation methodologies with regard to price adjustments has been demonstrated in several cases, e.g., LWR from Mexico 2004; Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta From Italy, 65 FR 7349 (February 14, 2000); and Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 65 FR 5554 (February 4, 2000), where the Department has not only accepted allocation methodologies for reporting price adjustment data, but also indicates the allowance granted to respondents to establish a methodology which will convey the data on as specific a basis as possible, pursuant to section 351.401(g) of the Department's regulations.

Maquilacero's and PROLAMSA's respective methodologies used to report price adjustments in both markets are reasonable and, furthermore, are reflective of the most accurate methodology possible in light of each company's accounting records. In the absence of records which would meet the Department's requested level of specificity, the burden of reporting accurate information in a proceeding is placed on all respondents, that they are to establish a methodology that reports that information to the best of their ability and as accurately as possible. Both Maquilacero and PROLAMSA reported in their questionnaire responses that neither company tracks in their sales nor accounting records (in any consistent fashion) the reasoning behind the issuance of a credit note against an original sales price. See PBCQR and MBCQR. Moreover, this fact was verified by the Department. See PROLAMSA Verification Report (Monterrey); see also, Memorandum to the File from Patrick Edwards and Judy Lao, Case Analysts, through Angelica L. Mendoza, Program Manager, Office 7, titled "Verification of the Sales Responses of

Maquilacero S.A. de C.V. in the Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from Mexico," dated April 11, 2008 ("Maquilacero Verification Report"). Maquilacero had initially reported its price adjustments on a customer-specific basis, however, following a manual and meticulous review of the credit notes issued during the POI, Maquilacero revised its reporting methodology. See Letter from Arent Fox to the U.S. Department of Commerce, regarding Additional Factual Information Submitted for the Preliminary Determination, dated January 28, 2008.

Both Maquilacero and PROLAMSA, as demonstrated in their questionnaire responses and as verified by the Department, have reported their respective price adjustments on a transaction-specific basis where possible, which accounted either for all or the majority of their respective price adjustments. In all other instances where credit notes were issued against an entire invoice which potentially includes subject and non-subject merchandise, the total credited value was allocated to each line item on the invoice in order to report a more transaction-specific price adjustment. Maquilacero, by virtue of its manual review of its issued credit notes was able to provide transaction-specific values for all price adjustments reported in its sales database. Id. We therefore find that, for purposes of this final determination, both companies reported price adjustments on as accurate a basis as possible and, furthermore, that this information was timely submitted, was verified by the Department, and can be used without undue difficulties, as required by 19 U.S.C. § 1677m(e). Moreover, similar allocation methodologies for price adjustments have been accepted by the Department in prior cases, including the prior investigation of LWR from Mexico (2004), where the Department noted:

> We find that respondents have demonstrated entitlement to price adjustments by providing reasonable allocation methodologies that relate proportionately to the reported sale. In this case, these allocation methodologies employed by respondents were verified with no significant distortions or discrepancies noted.

See LWR from Mexico (2004), and the accompanying Issues and Decision Memorandum, Comment 1.

We disagree with petitioners that the rulings in SKF and NSK are applicable to the circumstances of the instant investigation. Petitioners' appear to cite to SKF as the standard by which the Department should reject respondents' price adjustments as they allegedly do not meet the level of specificity which was upheld as necessary in SKF. Subsequent to SKF, and subsequent to the URAA, however, the Department adopted its current regulations and practice not to reject a respondent's information simply because it does not meet all of the Department's reporting requirements. This acceptance, however, is predicated on the Department's ability to conclude that a respondent's information (or methodology) will not cause inaccuracies or distortions. See section 782(e) of the Act (19 C.F.R. § 351.404(g)). As explained above, both Maquilacero and PROLAMSA, due to the means by which the two companies record price adjustments in their normal books and records, carry the burden to devise a methodology of reporting that does not result in inaccuracies or distortions. We find that the methodology used by both companies to report their price adjustments, which is explained above, is reasonable. Moreover, there is no evidence to suggest that respondents' reporting methodologies cause inaccuracies or create distortions in the Department's analysis and calculations. Additionally, as

Maquilacero explains in its rebuttal brief, the Department rejected the respondent's reported price adjustments in SKF because the Department discovered at verification that its price adjustments were reported on an entirely different basis than that which the respondent had reported in its questionnaire responses. See Maquilacero Rebuttal Brief at 10; see also, SKF at 1377. In contrast, there is no such finding in this proceeding. Similarly, we disagree with petitioners that the ruling in NSK has a bearing on the instant investigation, as the Federal Circuit upheld the Department's rejection of the methodology used in that case to report price adjustments, as the Department found that the methodology caused "substantial distortions" in the Department's calculations. See NSK at 1381. As noted above, the record evidence does not demonstrate any distortions in respondents' reported price adjustments.

Finally, we disagree with petitioners that the respondents did not act to the best of their ability by choosing not to record the reason for issuance of the credit notes at issue, nor the specific product to which the credit note relates in their normal books and records. First, there is no evidence that either respondent did not act to the best of its ability. In the absence of an accounting system that does not record certain information that may otherwise better meet the Department's sought level of specificity, both respondents devised a reasonable methodology to report that information as accurately as possible. Moreover, that methodology and the reported price adjustments were verified by the Department and were found not to cause any inaccuracies in either respondents' data, or the Department's calculations. See Maquilacero Verification Report and PROLAMSA Verification Report (Monterrey). Second, the Department's practice is to obtain and analyze a respondent's data as it is kept and recorded in their normal course of business. See section 773(f)(1)(A) of the Act. See also Stainless Steel Sheet and Strip in Coils from Taiwan: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 75504 (December 15, 2006), and accompanying Issues and Decision Memorandum at Comment 3. An argument that urges an adverse finding against a respondent based solely on how it records and tracks data in its normal course of business is inappropriate if the data proves to be useable, is verified by the Department, and causes no inaccuracies. Id. Additionally, the Federal Circuit ruled that the Department "cannot retroactively apply a more stringent requirement for record-keeping than that which was in effect when the records were created." See NSK at 1365-67, citing Princess Cruises. Additionally, the respondents were not under the discipline of an antidumping duty order during the relevant time period. Respondents, thus, had no reason to tailor their record-keeping system to the Department's reporting requirements.

Therefore, for all of the reasons detailed above, we find that both Maquilacero and PROLAMSA have provided a reasonable methodology for reporting its price adjustments. Moreover, this methodology and the value of the adjustments themselves were timely submitted, verified by the Department, and can be used without any undue difficulties, pursuant to 19 U.S.C. § 1677m(e). Given the method by which Maquilacero and PROLAMSA record its credit and debits to invoiced sales prices, we find that both companies acted to the best of their abilities in providing adjustment data on as specific and accurate a basis as possible.

Comment 2: Whether to Accept Petitioners' Targeted Dumping Allegation

Based on an allegation of targeted dumping submitted by petitioners on December 26, 2007, as well as a supplemental response to a request by the Department for further information to

support the allegation (see "Petitioners' Targeted Dumping Supplemental Allegation," received on January 28, 2008), we determined that the allegations of targeted dumping failed to provide a reasonable basis to find a pattern of export prices for comparable merchandise that differ significantly among purchasers or regions. We determined further that petitioners had not demonstrated that any such differences could not be taken into account using the average-to-average methodology, pursuant to section 777A(d)(1)(B) of the Act. We concluded that, for the final determination, we should continue to utilize the average-to-average methodology in calculating the final margins for Maquilacero and PROLAMSA. See Memorandum from Angelica L. Mendoza, Program Manager, Office 7, to Richard O. Weible, Office Director, entitled "Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube (LWR) from Mexico: Final Analysis on Targeting Dumping," dated April 30, 2008 ("Targeted Dumping Memorandum").

In their case brief, petitioners argue that their targeted dumping allegation fully satisfies the statutory requirements, as it shows "a pattern of export prices that differ significantly between purchasers (and regions) of comparable merchandise." See Petitioners' Case Brief at 30-34. Petitioners defend their targeted dumping methodology by stating that it controls for several potential sources of statistical error. Petitioners state that their calculations control for (1) price fluctuations over the POI because they averaged over the entire POI, and (2) price variations between sales because they averaged the prices of all sales made to a particular customer (and region) by product control number (i.e., "CONNUM") and then compared this to the averaged prices of all sales made to all other customers for that CONNUM.

Petitioners state that the requirement of section 777A(d)(1)(B)(i) of the Act is that comparisons be made between "comparable merchandise." Petitioners contend that making the comparisons within a specific CONNUM, rather than across a range of CONNUMs, satisfies this requirement.

This same section, petitioners argue, requires that this comparison demonstrate that prices "differ significantly among purchasers, regions, or periods of time." With regard to purchasers (petitioners have made no allegation with regard to periods of time), petitioners contend their methodology demonstrates that the prices for the "targeted" purchasers "differ significantly" from the prices for the "non-targeted" purchasers because they are more than two percent less. Petitioners rely upon Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the Republic of Korea, 72 FR 60630 (October 25, 2007) ("CFS Paper Korea") and the accompanying Issues and Decisions Memorandum ("CFS Paper Korea Memo"), stating that light-walled rectangular pipe and tube is a commodity comparable to that in CFS Paper Korea. Petitioners therefore contend that the two-percent test of CFS Paper Korea is valid for light-walled rectangular pipe and tube.

Petitioners claim their methodology controls for factors other than targeted dumping which could create price variations. Petitioners maintain that the CONNUM-specific nature of their comparisons eliminates the possibility that other factors could create price variations. Petitioners add that there is no evidence on the record that differences in channel of distribution or quantities purchased created price differences between the target and non-target groups.

In its rebuttal brief, Maquilacero argues that petitioners' dumping allegation does not meet statutory requirements. See Maquilacero Rebuttal Brief at 16. Maquilacero avers that the Department's Targeted Dumping Memorandum identifies these deficiencies in petitioners' targeted dumping allegation, but only after the Department offered petitioners an opportunity to "correct and substantiate their allegation." Id. at 17. Maquilacero explains that the Department's Targeted Dumping Memorandum correctly indicates that petitioners failed to respond to the allegation's inadequacies which were identified by the Department, namely: 1) the need for evidence that a two percent price variation is relevant to the LWR market, 2) alleged price differences are due to purchasers and regions, and 3) evidence and explanation that the average-to-average comparison methodology does not account for such price differences. Id.

Maquilacero argues that petitioners relied on the finding of CFS Paper Korea as the benchmark in its targeted dumping allegation, claiming that LWR, like coated free sheet paper, is a commodity product, and therefore, the two-percent price differential benchmark established in CFS Paper Korea is an applicable standard for the instant investigation. However, as Maquilacero points out, the two-percent benchmark from CFS Paper Korea fails to take into consideration the conditions of the LWR market. Maquilacero further contends that the "appropriate margin of variation" is subject to a case-by-case analysis, and the price differences required under the statute must "be significant for the LWR market." Id. at 19, citing Targeted Dumping in Antidumping Duty Investigations: Request for Comment, 72 FR 60651 (October 25, 2007). Maquilacero argues that petitioners should provide justification whether a pattern of "significantly differing" export prices exist in the instant investigation when analyzed against the market conditions specific to the LWR industry. Id., citing 19 U.S.C. § 1677f-1(d)(1)(B)(i).

Maquilacero also states that petitioners failed to address whether the observed price differences in their allegation are due to other factors such as market fluctuations, differences in channels of distribution, or the quantities purchased. See Maquilacero Rebuttal Brief at 19. Maquilacero argues that petitioners neglect to identify the pattern of export prices, but merely state that "there is no systematic explanation of the significant pattern of price difference among purchasers and regions other than they are the result of respondent's targeting." Id. at 20, citing Petitioners' Targeted Dumping Supplemental Allegation. Furthermore, Maquilacero argues that, as the Department noted in its Targeted Dumping Memorandum, petitioners failed to identify regional markets for LWR in its allegation and, instead, selected destination cities from the respondents' sales databases and put forward that these cities constitute regional markets. Id. Maquilacero argues that petitioners simply selected the destination of the U.S. sales, which are nothing more than individual selections from the destination field (i.e., DESTU) in the U.S. sales databases. Moreover, Maquilacero avers that petitioners have not provided any justification as to why these city destinations constitute a region under the statute. Id.

As the Department also indicated in its Targeted Dumping Memorandum, Maquilacero explains that petitioners have not "adequately demonstrated that the impact of the alleged price differences is such that would render the average-to-average comparison prices meaningless and not account for targeted dumping." See Maquilacero Rebuttal Brief at 21. Maquilacero states that the only argument put forth by petitioners to this regard is that "the lower priced sales within the targeted group would be masked unless the Department uses an average-to-transaction

methodology." Id., citing to Petitioners' Case Brief at 37. Maquilacero contends that such an argument is legally insufficient to meet the requirements of the statute.

Finally, Maquilacero identifies that petitioners' allegation of targeted dumping contained further deficiencies than those outlined above. See Maquilacero Rebuttal Brief at 21. First, Maquilacero argues that the numbers explicated by petitioners as representing Maquilacero's percentage sales value that are targeted by customer and region are inaccurate, as they represent the "percentage of observations that fall within the corresponding targeted group and have nothing to do with value." Id. at 22. Second, Maquilacero contends that petitioners' non-targeted price comparison includes both targeted and non-targeted sales, although the narrative explanation in petitioners' case brief indicates that this calculation was done properly. For all of the above reasons, Maquilacero avers that petitioners, who were given two opportunities to submit a meaningful targeted dumping allegation, failed to do so and the Department should consequently continue to reject the targeted dumping allegation.

Similarly, PROLAMSA also argues in its rebuttal brief that petitioners' targeted dumping allegation fails "to provide a reasonable basis to determine that there is a pattern of export prices for comparable merchandise that differ significantly among purchasers or regions," as required by section 777A(d)(1)(B) of the Act. Furthermore, PROLAMSA states that the Department properly rejected petitioners' targeted dumping allegation and should continue to do so for purposes of this final determination. See PROLAMSA Rebuttal Brief at 18.

PROLAMSA, citing to the Department's regulations, contends that a targeted dumping allegation "must include all supporting factual information, and an explanation as to why the average-to-average or transaction-to-transaction method could not take into account any alleged price differences." See PROLAMSA Rebuttal Brief at 19, citing to 19 C.F.R. § 351.414(f)(3). PROLAMSA argues that, on many fronts, petitioners' targeted dumping allegation falls well short of this standard and was, therefore, properly rejected by the Department. PROLAMSA contends that petitioners' allegation fails to establish a pattern of significantly lower prices to purchasers and regions, as required by the statute. Id. at 20. Moreover, PROLAMSA contends that, as was stated in CFS Paper Korea, the pattern of lower prices to the purchaser or region must be consistent across products. In their allegation however, PROLAMSA argues that petitioners simply selected the CONNUM-specific average prices that satisfied the two-percent variation benchmark, the benchmark which petitioners' take from CFS Paper Korea. Id. at 21. PROLAMSA avers that, "irrespective of whether other CONNUM-specific average prices to the same purchaser/region failed to meet" petitioners' two-percent test, petitioners merely highlighted those which did and labeled them as "targeted." PROLAMSA further argues that by relying on CONNUM-specific averages, petitioners misinterpret the statute, finding that "comparable merchandise" equates to a CONNUM. Thereby, PROLAMSA argues, petitioners' assumption is that they need only demonstrate "a pattern of significantly lower priced sales to 'a particular targeted U.S. customer for a particular CONNUM' – not a pattern of lower-priced sales across a range of multiple CONNUMs to the allegedly targeted customer." Id. at 23, citing to Petitioners' Case Brief at 34.

PROLAMSA additionally argues that petitioners' allegation fails to demonstrate that a two percent price differential is significant for the LWR market, contending that petitioners' provide

no attempt to show how the two-percent threshold is appropriate. See PROLAMSA Rebuttal Brief at 27. Rather, petitioners simply highlight CFS Paper Korea as the appropriate basis for a two-percent threshold, as LWR is a commodity product, as was also the case in CFS Paper Korea. PROLAMSA avers that this approach is not only arbitrary, but is insufficient to support the use of a two-percent benchmark in this case. Id. Finally, PROLAMSA contends that petitioners' targeted dumping allegation is invalid as they made no attempt to support their reported "regions." Id. at 28. PROLAMSA points out that petitioners explained that they relied on the "regions" reported by the respondents. However, PROLAMSA argues that this is inherently impossible, as it did not "identify or claim to sell to regional markets in the United States…" Rather, PROLAMSA simply "reported the destinations for its U.S. sales" as required by Section B of the Department's Antidumping Duty Questionnaire. Id. at 28. PROLAMSA avers that petitioners simply used these destinations as the targeted regions without providing any evidence as to how they constitute distinct regional markets. Id. In conclusion, PROLAMSA contends that, based on the facts of record, the Department should continue to find that petitioners' targeted dumping allegation fails to meet the requirements for initiation as detailed in the Department's regulations and, therefore, should continue to reject the allegation.

Department's Position:

In the Targeted Dumping Memorandum, we determined that, for purposes of this investigation, petitioners' allegations of targeted dumping had failed to provide a reasonable basis for the Department to initiate an inquiry of whether a pattern of export prices for comparable merchandise differed significantly among purchasers or regions. We further found that petitioners' allegations of targeted dumping had failed to provide a reasonable basis to find any such differences cannot be taken into account using the average-to-average methodology, pursuant to section 777A(d)(1)(B) of the Act.

Pursuant to section 777A(d)(1) of the Act, in calculating dumping margins in investigations, the Department normally will compare U.S. prices and normal values using an average-to-average or transaction-to-transaction comparison methodology. However, section 777A(d)(1)(B) of the Act allows the Department to compare transaction-specific export or constructed export prices to weighted-average normal values if there is a pattern of export or constructed export prices for comparable merchandise that differ significantly among purchasers, regions, or periods of time and the Department explains why such differences cannot be taken into account using the average-to-average or transaction-to-transaction methods.

Further, 19 CFR 351.414(f)(1)(i) requires that a determination of targeted dumping be made "through the use of, among other things, standard and appropriate statistical techniques." The regulations further elaborate that targeted dumping allegations "must include all supporting factual information, and an explanation as to why the average-to-average or transaction-to-transaction method could not take into account any alleged price differences." See 19 C.F.R. § 351.414(f)(3).

In their allegation, petitioners failed to provide reasonable grounds to find that two percent is a valid price differential threshold for this particular product or the LWR market as a whole. Moreover, but to a lesser degree of importance, petitioners failed to explain or substantiate why

its use of individual cities from respondents' sales data should constitute an export region. The Department identified these deficiencies and requested in a supplemental questionnaire that petitioners provide further analysis to clarify and substantiate these points of its allegation. Following the submission of Petitioners' Targeted Dumping Supplemental Allegation, the Department found that petitioners had still not provided necessary information or evidence with regard to price differences charged to the alleged target and other customers or regions and have not explained why those differences are significant, relative to the market for LWR in the United States. Consequently, the Department issued the Targeted Dumping Memorandum on April 30, 2008, where we rejected petitioners' allegation of targeted dumping and did not initiate based on the deficiencies in their allegation, as noted by the Department.

In the absence of such evidence, there is no basis upon which to evaluate the price differences. The Department's evaluation of prices to customers or regions is dependent upon a substantiated price differential that can be used as a benchmark in conducting the evaluation. Moreover, the Act requires that allegations of targeted dumping provide substantiated evidence that the price differential, to be used as the benchmark, constitutes a significant price change relative to the industry, in this case the LWR market in the United States, in order to initiate an inquiry of targeted dumping. While petitioners advocate the use of two percent as the threshold for measuring significance of price differences in the instant investigation, the Department did not adopt or establish the two-percent test from CFS Paper Korea as a standard. See CFS Paper Korea and accompanying Issues and Decision Memorandum; see also Issues and Decision Memorandum for the Final Determination in the Less-Than-Fair-Value Investigation of Certain Steel nails from the United Arab Emirates (UAE), dated June 6, 2008, at Comment 1.

Petitioners' sole explanation for applying the two percent test from CFS Paper Korea is that coated free sheet paper, like LWR, is a commodity product, and therefore the two percent test satisfies the requirement of their allegation to establish a significant price difference. We agree with petitioners' contention that light-walled rectangular steel pipe and tube is a commodity product. However, the Department did not establish the CFS Paper Korea two percent threshold as a standard to be used in subsequent cases. Furthermore, petitioners have not demonstrated that two percent is an appropriate threshold in the LWR market in the United States. Because petitioners otherwise fail to address the significant price differences requirement in the Act, which lies at the core of the targeted dumping provision, petitioners' allegation fails overall.

We therefore continue to find that petitioners have not adequately demonstrated that the impact of the alleged price differences is such that it would render the average-to-average comparison of prices meaningless and would not account for targeted dumping. Thus, we continue to find that there is insufficient information to conduct a targeted dumping analysis. Petitioners have commented on averaging prices over the POI, analyzing prices on a CONNUM-specific basis, and offered argument as to why its regional allegation is valid. However, we find that those issues are moot given petitioners' failure satisfy the basic initiation prerequisite, i.e., their allegation does not demonstrate significant price differences for this particular commodity as required by the Act. For this reason, the Department continues to find that it properly did not initiate a targeted dumping analysis based on the deficiencies contained in petitioners' allegation.

Comment 3: Whether to Subtract Negative Margins from Positive Margins ("Zeroing")

Petitioners assert that the Department should not subtract negative margins from positive margins in determining antidumping duties for the final determination of the present investigation. See Petitioners' Case Brief at 39. Petitioners argue that as in other investigations following the Department's determinations in various "Section 129 proceedings" in 2007, the Department applied an "offset" practice of subtracting the result of comparisons where the normal value ("NV") is less than the export price ("EP") (i.e., negative margins) from the result of comparisons where the NV exceeds the EP (i.e., positive margins) to determine the weighted-average dumping margin.

Petitioners argue that the Department has stated that if the offset practice was applied to instances of targeted dumping, the resulting margin would be the same as would occur if export (or constructed export price ("CEP")) prices were averaged. Therefore, the Department found that its offset practice was inconsistent with the statute when targeted dumping was found. See Petitioners' Case Brief at 39. Additionally, petitioners argue that the Department has also found its offset practice to be inconsistent with the statute at 19 U.S.C. § 1677(35)(A) (section 771(35)(A) of the Act), pertaining to the calculation of margins in administrative reviews. Petitioners assert that the Department found that subtracting negative margins from positive margins (in the context of administrative reviews) involved making fair value comparisons where the normal value does not exceed the export price. Petitioners cite to Stainless Steel Bar from the United Kingdom ("Stainless Bar"), where the Department did not permit non-dumped sales to offset the amount of dumping found with respect to other sales. See Petitioners' Case Brief 40; see also, Stainless Steel Bar from the United Kingdom: Final Results of Antidumping Duty Administrative Review, 72 FR 43598 (August 6, 2007).

Petitioners contend that this interpretation of the statute is equally applicable to investigations as it is for reviews, since the Federal Circuit has held that the dumping margins cannot be interpreted differently for reviews than for investigations. See Petitioners' Case Brief at 41; see also, 19 U.S.C. § 1677(35)(A). Based on this ruling, petitioners assert that the Department should bring its practice in antidumping investigations in line with its practice in antidumping administrative reviews, where positive margins are not offset by negative margins. See Petitioners' Case Brief at 41. Petitioners claim further that the "offset" is due to the Department's commitment to abide by its World Trade Organization ("WTO") obligations, where the WTO ruled that the offset of positive margins by negative margins is required. Petitioners, however, argue that the instant investigation does not involve compliance with a WTO decision, and, therefore, the method of calculating the dumping margin is governed entirely by U.S. law. Id. at 42. Therefore, petitioners conclude that the Department should "abide by its commitment to the U.S. Congress which established the statutory language for section 1677(35) and the U.S. Courts which have interpreted it, in rejecting its offset practice in antidumping investigations." Id.

In its rebuttal, PROLAMSA contends that through their argument, petitioners confuse the statutory procedures through which the Department abandoned the practice of zeroing. See PROLAMSA Rebuttal Brief at 29. First, PROLAMSA points out that the Department abandoned its zeroing practice when using average-to-average comparisons in investigations in

the context of Section 123 proceedings – not Section 129, as petitioners indicate. Id. PROLAMSA confirms petitioners' reference to several Section 129 determinations in which it allowed negative offsets in order to bring its original determinations into compliance with subsequent WTO decisions, stating that such is the point of Section 129(b) of the URAA. However, PROLAMSA argues that this is not the reason why the Department did not apply zeroing in the instant case.

PROLAMSA contends that the Department did not zero negative margins in the instant case due to a Section 123(g) proceeding where the Department announced "that it 'will no longer make average-to average comparisons in investigations without providing offsets for non-dumping comparisons,' and that this policy will apply to all pending and future antidumping investigations as of January 16, 2007." See PROLAMSA Rebuttal Brief at 30 (citing to Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin during an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006) ("Final Modification"); see also Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margins in Antidumping Investigations; Change in Effective Date of Final Modification, 72 FR 1704 (January 16, 2007), extending the effective date of the Final Modification to January 26, 2007. Therefore, PROLAMSA argues that applying the zeroing methodology in the instant investigation would not only be unreasonable, but contrary to its current practice, and in "contravention of U.S. international obligations under the WTO Agreements." Id. at 30.

In its rebuttal brief, Maquilacero argues that petitioners' argument has no merit, as it effectively urges the Department to "backtrack" on its obligations under the WTO. See Maquilacero Rebuttal Brief at 25. Maquilacero explains that the United States eliminated its use of zeroing in antidumping investigations on February 22, 2007, after a WTO Panel found it violated the WTO Anti-Dumping Agreement. Id. See also Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation, 71 FR 77722 (December 27, 2006), as amended at 72 FR 3783 (January 26, 2007) (delaying final modification until February 22, 2007). Maquilacero argues that petitioners' contention would force the Department to take a position that runs contrary to current law and the Department's own regulations. Id. at 25.

Department's Position:

While recognizing that the Department's zeroing methodology is a permissible interpretation of the statutory provisions, the Federal Circuit also repeatedly held that "the antidumping statute does not require the use of zeroing in calculating dumping margins. . . ." Corus Staal BV. v. United States, 502 F.3d 1370, 1372 (Fed. Cir. 2007). Accordingly, the Department is not required to use zeroing in the context of average-to-average comparisons in investigations. In response to the WTO dispute settlement body report in United States - Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing") (WT/DS294) ("US - Zeroing (EC)"), the Department adopted the Final Modification, where the Department stated that it will no longer make average-to-average comparisons in investigations without providing offsets for non-dumped comparisons. The Department further stated that it was adopting the Final Modification in response to the report in US - Zeroing (EC), following the procedures set forth in

section 123 of the URAA, and that the new policy does not apply to any other type of proceeding, including administrative reviews.

Petitioners' view that section 771(35) of the Act cannot be interpreted differently for reviews than for investigations is inconsistent with Supreme Court precedent. In Chevron, the Supreme Court explained that an agency may interpret a statutory provision differently in different contexts. See Chevron at 842-45. In Chevron, the Court deferred to the Environmental Protection Agency when the agency, following an adverse decision by an appellate court, adopted two different interpretations of the same statutory definition in two different contexts. Similar to Chevron, Commerce has interpreted "dumping margin" in section 771(35) of the Act differently in two separate contexts, i.e., antidumping investigations using an average-to-average comparison methodology and administrative reviews using an average-to-transaction comparison methodology. In the former, pursuant to the Final Modification adopted in response to an adverse WTO dispute settlement body report, it no longer applies the zeroing methodology, but in the latter it has not, to date, granted offsets for non-dumped sales. The Federal Circuit has held consistently that section 771(35) of the Act is ambiguous, thus, the agency may interpret this statutory language differently in two different contexts.

Congress has also spoken with respect to this type of situation. When Congress enacted the URAA, it contemplated that such implementation of an adverse WTO report could create different, but permissible, interpretations of the statute that may lawfully coexist. See SAA at 1027 (stating that, with respect to implementation of an adverse WTO report, courts should be "sensitive to the fact that under the applicable standard of review. . . multiple permissible interpretations of the law and the facts may be legally permissible in any particular case. . ."). Thus, the legislative history further supports that Commerce may have two different, but valid, interpretations when the United States addresses the rulings and recommendations of the Dispute Settlement Body of the WTO, the exact situation that occurred in with respect to Commerce's methodology.

Inherently, antidumping investigations and administrative reviews "are different proceedings with different purposes." See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Thirteenth Administrative Review, 73 FR 14220 (March 17, 2008) and accompanying Issues and Decision Memorandum at Comment 1. Specifically, in antidumping investigations, the Act specifies particular types of comparisons that may be used to calculate dumping margins and the conditions under which those types of comparisons may be used. See section 777A(d)(1) of the Act. In antidumping investigations, the Department generally uses average-to-average comparisons, whereas in administrative reviews, the Department generally uses average-to-transaction comparisons. Id. at (c). The purpose of the dumping margin calculation also varies significantly between antidumping investigations and reviews. In antidumping investigations, the primary function of the dumping margin is to determine whether an antidumping duty order will be imposed on the subject imports. See sections 735(a), (c), and 736(a) of the Act. In administrative reviews, in contrast, the dumping margin is the basis for the assessment of antidumping duties on entries of merchandise subject to the antidumping duty order. See section 751(a) of the Act. With these existing distinctions between investigations and reviews, it is reasonable for the Department to interpret section 771(35) of the Act differently in two different contexts. Moreover, in the Final

Modification, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews. See Final Modification at 77724.

Finally, section 777A(d)(1)(B) of the Act provides for an alternative methodology to be used in antidumping investigations if certain conditions are met. Section 777A(d)(1)(B) of the Act holds that the Department may compare a weighted-average normal value to the export prices or constructed export prices of individual transactions if there is a pattern of export prices or constructed export prices that differs significantly among purchasers, regions or periods of time, and the Department explains why such differences cannot be taken into account using one of the methods described in section 777A(d)(1)(A). The Final Modification does not apply to alternative methodologies under section 777A(d)(1)(B) of the Act. And as more fully explained in Comment 2 above, petitioners' allegation in this investigation does not meet the criteria under section 777A(d)(1)(A) of the Act.

For all of these reasons, the Department will continue to offset average-to-average comparisons by subtracting the result of such comparisons where the NV is less than the export price EP (i.e., negative margins) from the result of comparisons where the NV exceeds the EP (i.e., positive margins) to determine the weighted-average dumping margin.

Maquilacero-Specific Issues:

Comment 4: Whether to Treat Export Rebates as an Adjustment to Sales or Cost of Production

At the Preliminary Determination, the Department made an adjustment to Maquilacero's cost of production for certain rebates granted to it by its domestic supplier of hot-rolled coil, rather than making this adjustment to U.S. export price as Maquilacero had reported in its sales databases. In their case brief, petitioners argue that hot-rolled coil is the major material input used to produce the subject merchandise. Petitioners further argue that the cost of hot-rolled steel is, therefore, a cost of production and a not a selling expense. See Petitioners' Case Brief at 25. Petitioners cite to past cases where the Department also denied a proposed adjustment to price, but rather made the adjustment to cost of production. See, e.g., Mantex Inc. et al. v. United States, 841 F. Supp 1290, 1293-94 (CIT 1993). Petitioners contend that, at the Preliminary Determination, the Department properly accepted the supplier rebate as a reduction to Maquilacero's cost of production. They further argue that Maquilacero's sales and cost responses, as well as the verification report validate the Department's determination. Id. at 25-26.

For purposes of the Preliminary Determination, Maquilacero notes that the Department applied its reported export rebates against the total cost of manufacturing ("COM"). See Preliminary Determination at 5521. While the adjustment to cost of manufacturing may be an adequate method to account for supplier rebates in general, Maquilacero avers that because in the instant proceeding the rebates were specific to export sales and reported at the line item level and by invoice and gauge of the steel, the Department should have made an adjustment to U.S. price for

these rebates.[4] Specifically, Maquilacero claims that because these rebates affect only EP and not NV, the Department should adjust for this difference in order to insure appropriate price comparability as required by 19 U.S.C. § 1677b(a)(6)(C).

Maquilacero claims that the Department did not explain the rationale for applying the export rebate as an adjustment to the cost of manufacturing rather than EP, as reported by Maquilacero, or for not making a circumstance of sale ("COS") adjustment. In making the adjustment to its cost of manufacturing, Maquilacero notes that the Department stated that the "...rebates, in the form of credit notes, had the effect of decreasing the final price paid for Maquilacero's material inputs used to produce both the merchandise under consideration and the merchandise not under consideration."[5] However, Maquilacero contends that it did not report the export rebate at an aggregate level (i.e., as a single rebate for all subject and non-subject merchandise). Rather, Maquilacero reiterates that it reported the export rebate for export sales only, because the rebate is granted only on export sales. Because the export rebates are tied directly to, and contingent upon, the export invoices of subject merchandise, Maquilacero asserts that they are more properly described as a function of export sales, not of cost. Accordingly, Maquilacero argues that the Department should make an adjustment to EP for the export rebate, rather than its cost of manufacturing.

Maquilacero contends that these export rebates represent additional revenue received by Maquilacero from its unaffiliated supplier of hot-rolled coils contingent upon its exportation of the subject merchandise and upon Maquilacero submitting detailed information of its export sales to prove that the subject merchandise was effectively invoiced and exported. See MCQR at 5-6. Maquilacero notes that there are no physical differences in the hot-rolled coils purchased from its unaffiliated supplier based on the whether the subsequently-produced LWR is destined for the domestic or export market. See Case Brief on Behalf of Maquilacero S.A. de C.V., regarding Light-Walled Rectangular Pipe and Tube from Mexico, dated May 8, 2008 ("Maquilacero Case Brief") at 5. In the normal course of business, Maquilacero states that it tracks this rebate and, therefore, was able to report the export rebate at the transaction-specific level and by paper invoice number and steel gauge. Further, Maquilacero notes that it has provided copies of all of the credit notes received by Maquilacero for POI export sales and all supporting calculations. See MSSQR at Exhibit 6.

Maquilacero claims that its received export rebate has the same economic effect as a duty drawback for which the Department makes an adjustment under 19 U.S.C.§ 1677a(c)(l)(B). Maquilacero states that section 772(c)(I)(B) of the Act (or 19 U.S.C.§ 1677a(c)(l)(B)) requires the Department to increase EP by the amount of any import duties imposed by the country of exportation which have been rebated, by reason of the exportation of the subject merchandise to the United States. According to Maquilacero, the duty drawback adjustment is intended to prevent dumping margins from being created or affected by the rebate or exemption of import

[4] See MBCQR, MSQR, and MSSQR.

[5] Maquilacero cites the Memorandum to Neal Halper, Director, Office of Accounting, from Robert Greger, Senior Accountant, regarding Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination - Maquilacero S.A. de C.V. dated January 23, 2008 ("Maquilacero Preliminary Cost Memo").

duties on inputs used in the production of exported merchandise. See Wheatland Tube Company v. United States, 414 F. Supp. 2d 1271,1286. (CIT 2006) rev'd on other grounds Wheatland Tube Company v. United States, 495 F.3d 1355 (Fed. Cir. 2007) (collectively, "Wheatland").

Maquilacero asserts that the duty drawback adjustment takes into account any differences in the prices for home market (or NV) and export sales, accounted for by the fact that import duties were paid on inputs destined for home market sales but were not paid on inputs used to make the merchandise exported to the United States. See Wheatland 414 F. Supp. 2d 1271,1286. (CIT 2006) citing to Homos Electricos de Venezuela, S.A. (Hevensa) v. United States, 285 F. Supp. 2d 1353, 1358 (CIT 2003). As such, like a duty drawback adjustment, Maquilacero contends that an adjustment for the export rebate is necessary in order to ensure a fair comparison between the revenue received by Maquilacero on domestic sales and the revenue received by Maquilacero on export sales of the same product. Therefore, Maquilacero argues that the export rebate is the economic equivalent of the duty amounts rebated to respondents under a duty drawback program. Citing Article 2.4 of the WTO Antidumping Agreement, Maquilacero claims that such adjustment would also be consistent with the Antidumping Agreement.[6]

While conceding that the rebate is not a drawback, Maquilacero contends that the rebate operates in a similar manner. First, like a duty drawback, the export rebate is granted only upon the act of exportation which Maquilacero avers would meet the first prong of the Department's test to determine a respondent's eligibility for a duty drawback adjustment. See Wheatland, 414 F. Supp. at 1286. Second, similar to the second prong of the Department's duty drawback test, Maquilacero claims that there is complete traceability of the export rebates granted by its unaffiliated supplier, as each rebate is tied to a specific export sale, on an invoice-specific basis and gauge specific basis. See MSSQR at Exhibit 6 and Maquilacero Verification Report at 11. Based on the above, Maquilacero argues that the Department should treat the export rebate in the same manner in which it treats duty drawback, by making an adjustment to EP.

Alternatively, Maquilacero contends that the Department should make a COS adjustment to EP and NV in accordance with 19 U.S.C. § 1677b(a)(6)(C) by increasing NV by the amount equal to the export rebates. Maquilacero claims that the Department has made adjustments for similar rebates and the Courts have recognized the Department's discretion in granting a COS adjustment for similar types of rebates.[7]

While the export rebate is not specifically identified as such in the statute, according to Maquilacero, the Department has discretion to make an adjustment pursuant to 19 U.S.C. § 1677b(a)(6)(C), which states in relevant part that an adjustment to NV will be made:

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[6] According to Maquilacero, Article 2.4 of the WTO Antidumping Agreement states that "due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability." See Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Art. 2.4.

[7] See, e.g., Sawhill Tubular Division Cyclops Corp. v. United States, 666 F. Supp. 1550 (CIT 1987) ("Sawhill"); Zenith Electronics Corp. v. United States, 77 F.3d 426 (Fed. Cir. 1996); and, U.S. Steel Group v. United States, 973 F. Supp. 1076 (CIT 1997) ("U.S. Steel Group").

> ...by the amount of any difference (or lack thereof) between the export price or constructed export price and the price described in paragraph 1(B) (other than a difference for which allowance is otherwise provided under this section) that is established to the satisfaction of the administering authority to be wholly or partly due to ... (iii) other differences in circumstances of sale.

See 19 U.S.C. § 1677b(a)(6)(C).

Citing OCTG from Argentina, Maquilacero states that the Department determined that different tax rebates between sales to the United States and sales to a third country upon which NV was based constituted a different "circumstance of sale" and made a COS adjustment. See Oil Country Tubular Goods from Argentina: Final Results of Antidumping Duty Administrative Review, 60 FR 33539 (June 28, 1995) ("OCTG from Argentina"). In its determination, Maquilacero explains that the Department established that the rebate was directly related to and contingent upon export sales, and that the rebate was identifiable and quantifiable based on the record evidence. See Id. Accordingly, Maquilacero asserts that the Department raised normal value by the difference between the rebates on sales to the U.S. and the rebates on sales to a third country, explaining the rationale for this adjustment as follows:

> In calculating dumping margins, the Department equalizes the effective rates in each market. .. Here, ...the pipe exported to the U.S. was taxed in excess of the tax on the pipe exported to China...because the statute provides no mechanism for removing tax from U.S. price, however, we achieved the necessary equivalence~ in tax rates by adding the difference between the effective rebate percentages claimed by Siderca... to the price of pipe exported to China as a circumstance-of sale adjustment...

See OCTG from Argentina, 60 FR at 33546.[8]

According to Maquilacero, the CIT reaffirmed the prevailing view that the Department has discretion to decide what constitutes a bona fide COS in determining the NV and has the authority to make necessary adjustments. See Id. at 1082 (citing to Smith Corona-Group v. United States, 713 F.2d 1568 (Fed. Cir. 1983)). Maquilacero cites to Sawhill in which the CIT stated that under certain circumstances an export rebate can constitute a "circumstance of sale" for purposes of determining NV and making an adjustment. See Id. at 1083. Upon finding that the rebate at issue in OCTG from Argentina was both identifiable and quantifiable, Maquilacero states that the CIT held that a COS adjustment for the export rebates was in accordance with law and supported by the record. Consistent with the CIT's analysis in U.S. Steel Group, Maquilacero avers that the Department should treat the export rebates received by Maquilacero on its export sales as a circumstance of sale and make a COS adjustment.

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[8] According to Maquilacero, the CIT confirmed that adjustment in U.S. Steel Group v. United States, 973 F. Supp. 1076 (CIT 1997) ("U.S. Steel Group").

Notwithstanding prior determinations where the Department denied COS adjustments for similar supplier rebates, Maquilacero argues that these determinations do not preclude the Department from making adjustments for the export rebate received by Maquilacero. Moreover, Maquilacero claims that these Department determinations are easily distinguished from the instant investigation.[9] See Maquilacero Case Brief at 10-12. Maquilacero contends that the Department denied the COS adjustment in Pipe and Tube from Mexico because the rebates did not reflect a difference in selling expenses and citing its determination in Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Standard Pipes and Tubes from India, 56 FR 64753 (December 12, 1991) as supporting authority.

However, Maquilacero notes that the law has changed since the Department's 1992 determination in Pipe and Tube from Mexico cited above. In fact, Maquilacero argues, in a subsequent review of that antidumping duty order, the Department again denied the adjustment but for entirely different reasons.[10] However, Maquilacero explicates that the Department also specifically stated that such an adjustment to EP would be appropriate:

> Rather than use the claimed rebate in the calculation of EP, which would be appropriate if we treated the acquisition of the coil as a sale, we used the cost of the acquisition, which we verified, in the calculation of Cost of Production, in accordance with Section 773 (b)(3)(A).

See 1996 Pipe and Tube from Mexico, 61 FR at 68710 (citation omitted).

Maquilacero argues that judicial interpretation of the COS adjustment supports an adjustment for supplier rebates. Citing Sawhill, Maquilacero alleges that the CIT expressly rejected the Department's argument that a COS adjustment is appropriate only in the case of a difference in selling expenses, and stated that it declines to adopt such a narrow construction of the COS provision. See Sawhill, 666 F. Supp. at 1555. Maquilacero further contends that, more recently, in U.S. Steel Group the Court re-affirmed the finding in Sawhill that an export rebate can constitute a circumstance of sale. See U.S. Steel Group, 973 F. Supp. at 1083. In addition, Maquilacero asserts that the Department's use of a COS adjustment in Budd Company v. United States, 14 CIT 595,602, 746 F. Supp. 1093, 1099 (1990) was found to be fair and reasonable by the CIT when the Department made a COS adjustment to account for extreme exchange rate fluctuations. Similarly, Maquilacero avers that making a COS adjustment to account for the export rebate on Maquilacero's export sales would allow for a fair comparison of NV and EP.

Based on all of the above, Maquilacero contends that Department precedent and judicial interpretation of the COS provision are consistent in recognizing the Department's ability to make a COS adjustment for an export rebate, such as the export rebate reported by Maquilacero.

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[9] See Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe and Tube from Mexico, 57 FR 42953 (September 17, 1992) ("Pipe and Tube from Mexico").

[10] See Preliminary Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe and Tube from Mexico, 61 FR 68708, 68710 (December 30, 1996) ("1996 Pipe and Tube from Mexico") (unchanged in final).

Through its questionnaire responses, including the detailed explanations and the complete documentation provided with its MBCQR and MSSQR, Maquilacero alleges that it has established that the export rebate is granted only on the U.S. sales, is contingent upon Maquilacero making export sales, and is quantified at the transaction specific level. Accordingly, Maquilacero argues that in order to make a fair comparison between NV and EP, the Department should make a COS adjustment for the export rebate as it has the effect of increasing the revenue received by Maquilacero on its export sales only. As such, Maquilacero contends its export rebates are better described as a function of sales rather than cost.

In its rebuttal to Maquilacero's arguments, petitioners assert that, despite Maquilacero's contention that the Department did not explain the rationale for applying the export rebate as an adjustment to cost, it is evident from the Department's statements that it interpreted the rebate of the steel coil input as a rebate to Maquilacero's cost rather than as an adjustment to price. See Rebuttal Brief on Behalf of Petitioners, dated May 12, 2008 ("Petitioners' Rebuttal Brief") at 6. Specifically, petitioners cite to two documents released by the Department: Maquilacero Preliminary Cost Memo from the Preliminary Determination and Maquilacero's cost verification report.[11] In the Maquilacero Preliminary Cost Memo, the Department noted that the reported export rebates "had the effect of decreasing the final price paid for Maquilacero's material inputs used to produce both the merchandise under consideration and the merchandise not under consideration…" See Maquilacero Preliminary Cost Memo. The Maquilacero Cost Verification Report, in turn, notes that "for the final determination, it may be necessary to exclude the claimed 'export rebate' adjustment to the U.S. price..." and may be necessary to "include the POI 'export rebate' as an adjustment to Maquilacero's reported cost of materials." See Maquilacero Cost Verification Report at 2.

Further, with reference to Mantex, petitioners contend that, in that case, the CIT ruled that a payment for input steel which is used in the production of merchandise that is subsequently exported "relate to differences in production costs rather than to a difference in sales," where these rebates were found to apply to production cost rather than sales and marketing. See Petitioners' Rebuttal Brief at 7, citing to Mantex at 1303. With regard to Maquilacero's citation to Sawhill, petitioners argue that the Department later outlined its policy in which it would deny COS adjustments for revenues received pursuant to two-tiered pricing schemes," specifically citing Mantex at 1303, in turn citing Light-Walled Rectangular Carbon Steel Tubing from Taiwan, 56 FR 26382 (June 7, 1991). Therefore, petitioners aver that by accepting Maquilacero's export rebates as a COS adjustment, the Department would be departing from its established policy "without the deliberative process that accompanied the establishment of the current policy." See Petitioners' Rebuttal Brief at 8.

Finally, petitioners argue that the CIT has previously accepted argument that export rebates "are 'merely predicated upon exportation and are therefore a function of exportation rather than directly related' to sales." See Petitioners' Rebuttal Brief at 8, citing to Mantex at 1397-1399. Under the precedent set by Mantex, petitioners argue that Maquilacero has failed to demonstrate its export rebates are directly related to price. Therefore, for these reasons, petitioners argue that

[11] See Memorandum to Neal Halper, Director, Office of Accounting, from Robert Greger, Senior Accountant, titled "Verification of the Cost Response of Maquilacero S.A. de C.V. in the Antidumping Investigation of Light-Walled Rectangular Pipe and Tube from Mexico," dated April 15, 2008 ("Maquilacero Cost Verification Report") at 2.

the Department should continue to deny Maquilacero's export rebates as an adjustment to price for purposes of the final determination. Rather, petitioners contend that the Department should continue to apply the export rebates as an adjustment to Maquilacero's cost of production. Id.

In its rebuttal, Maquilacero argues that Mantex, the case upon which petitioners rely as the holding precedent to deny Maquilacero's export rebates as an adjustment to export price, was decided prior to the January 1, 1995, effective date of the URAA. However, in that case, Maquilacero contends, the CIT ruled than "an importer must demonstrate a 'causal link'… between the differences in circumstances of sale and the differential between United States price and foreign market value" in order to be entitled to the COS adjustment. See Maquilacero Rebuttal Brief at 14, citing to Mantex at 1300. Maquilacero argues that the circumstances involved in the Mantex decision differ from the nature of Maquilacero's export rebate in the instant investigation. First, Maquilacero argues that the rebate at issue in Mantex was granted via a government-run program in India, whereas in the instant investigation, the export rebate is an "additional revenue granted by a non-affiliated, privately-owned company." Id. Furthermore, Maquilacero contends that its reported export rebates are not legal entitlements, but rather a "negotiated agreement between Maquilacero" and the unaffiliated supplier of the steel coil, which was negotiated "solely on market considerations" and the selling practices of the two companies. Id. This circumstance, Maquilacero argues, is also different from those involved in Mantex.

Second, Maquilacero argues that past precedent, issued subsequent to Mantex, also clarifies the requirements for and the Department's ability to grant a COS adjustment for such rebates. Specifically, Maquilacero cites to U.S. Steel, where the CIT determined that the case of Mantex does not preclude the Department to find that a causal link "exists when costs to the seller are in different markets; Mantex simply says that Commerce does not have to make such a finding." See Maquilacero Rebuttal Brief at 15, citing U.S. Steel Group at 1083-1084. Maquilacero further argues that the CIT has also clarified that "a 'causal link' must be established to the satisfaction of the administering authority," and that "if there are differences in circumstances of sale, and if there is also a price differential, then the administering authority will be satisfied that there is a causal connection between those events upon a showing… that the costs to the seller are different…" See Maquilacero Rebuttal Brief, citing to U.S. Steel Group at 1083, citing Brother Industries Ltd. V. United States, 540 F.Supp 1341 (1982).

Maquilacero contends that the record of the instant investigation supports a finding of such a "causal link" between the purchase price of the steel coil input, purchased from Maquilacero's unaffiliated supplier, and the sales prices of finished product which Maquilacero sells to the United States. The purchase price of the coil has a direct effect on the prices charged by Maquilacero to its customers. See Maquilacero Rebuttal Brief at 15. Maquilacero argues that, during the POI, both its sales prices and the coil purchase prices from its unaffiliated supplier were subject to significant variation, as demonstrated by current record evidence. Id.; see also, MSQR at Exhibit 18 and MSSQR at Exhibit 4. Also on the record of the instant investigation is documentation which indicates communication between Maquilacero and the supplier of the coil with regard to the prices of the hot-rolled steel coil input. See MSQR at 30 and Exhibit 18; see also, MSSQR at Exhibit 4. Referencing this evidence, Maquilacero argues that the afore-mentioned documentation clearly indicates that the market price of coil and the value of the

rebate dually influence the prices which Maquilacero charges to its customers and were, therefore, factored into its pricing practices. See Maquilacero Rebuttal Brief at 16. Maquilacero further asserts that without the knowledge of these negotiated prices and potential rebates, the company would not have otherwise altered its export sales prices in accordance to the movements in price of the hot-rolled steel coil input. Id.

For these reasons, Maquilacero argues that the Department should apply the reported export rebates as an adjustment to its U.S. sales price rather than cost of production. Maquilacero avers this contention as 1) U.S. Steel Group allows the Department the discretion to make a COS adjustment for its export rebates, 2) Mantex does not preclude the Department from doing so, and 3) there is ample record evidence that demonstrates the relationship (i.e., causal link) between the difference in price charged for the steel coil input purchased from the unaffiliated supplier, and the final sales price charged to Maquilacero's customers in the United States.

Department's Position:

We continue to find that Maquilacero's reported export rebates are more appropriately recognized as an adjustment to Maquilacero's cost of production, rather than as an adjustment to export price. In its case brief, Maquilacero states that the Department neglected to explain its rationale for applying the export rebates to the cost of manufacturing rather than EP. Maquilacero's statement is inaccurate. The Department explained its rationale in Maquilacero's cost memorandum from the Preliminary Determination, that the export rebates "… had the effect of decreasing the final price paid for Maquilacero's material inputs used to produce both the merchandise under consideration and the merchandise not under consideration." See Maquilacero Preliminary Cost Memo. This statement indicates that the reported export rebates, in the Department's view, first and foremost affect cost rather than sales price. The reasoning behind this position is outlined below, but while there is an indirect correlation between cost and price, for the reasons explained below, Maquilacero's export rebates are more closely relevant to the company's production costs.

Maquilacero contends that its reported export rebates affect export price and not normal value; however, this is not accurate. Record evidence demonstrates that these export rebates are not a reduction in the price invoiced to the U.S. customer. Rather, the rebates serve as reductions in the price that Maquilacero pays for its raw materials (i.e., hot-rolled coils, which are a major input in the production of the subject merchandise), where raw materials are a factor comprising a company's cost of production. Section 773(f)(1)(A) of the Act states that "costs shall normally be calculated based on the records of the exporter or producer of the merchandise," so that they may "reasonably reflect the costs associated with the production and sale of the merchandise." In its normal books and records, Maquilacero treats these export rebates, in the form of credit notes, as a reduction in costs. See Maquilacero Cost Verification Report at 8-9. Moreover, Maquilacero continuously references its export rebates as "revenue" received from its supplier of hot-rolled coils in its case and rebuttal briefs. However, the Department's verification establishes that the export rebate does not represent a reduction in the price of subject merchandise; the export rebate represents a reduction in the price of acquiring an input material needed to manufacture the subject merchandise. See Maquilacero Cost Verification Report at 8-9 and 14. Additionally, the Department's verification demonstrates that the export rebate is

treated as a cost of sales in Maquilacero's financial statements. Furthermore, the export rebate is never treated as revenue by Maquilacero within the context of its financial statements or financial accounting system. Id. As such, in accordance with section 773(f)(1)(A) of the Act, the Department finds that the appropriate adjustment for Maquilacero's export rebates is as an adjustment to its costs.

Furthermore, export rebates do not constitute a duty drawback. While Maquilacero contends that its export rebates are predicated on an export sale, the duty drawback provision is not applicable to the circumstances of Maquilacero's export rebates. The duty drawback provision was established to refund import duties assessed on an input material that was imported into the country of manufacture before it was further manufactured and subsequently exported to the United States. See section 772(c)(1)(B) of the Act. Moreover, import duties are charges established by a government, and hardly applicable to the circumstances of the instant investigation in which a domestic supplier is providing a discount on the acquisition cost of an input material to a domestic purchaser. Export rebates are not synonymous to duty drawback as a duty drawback is a refund of duties. In this case, Maquilacero's export rebates are a refund of material costs, similar to any of the other credits that are issued by the supplier in relation to Maquilacero's purchases of hot-rolled coils.

Furthermore, we do not treat the export rebates as a COS adjustment pursuant to section 773(a)(6)(C) of the Act (19 U.S.C. § 1677b(a)(6)(C)). The Department exercises its discretion in granting COS adjustments as it has done in Sawhill and U.S. Steel Group, where the Department's regulations clearly state that "the Secretary will make a reasonable allowance for a bona fide difference in the circumstances of the sales compared if the Secretary is satisfied that the amount of any price differential is wholly or partly due to such a difference." See 19 C.F.R. § 353.56 of the Department's regulations.

Maquilacero cites to OCTG from Argentina as an instance in which the Department determined that a COS adjustment was warranted due to varying tax rebates, which is a system established by the Government of Argentina, between sales made to the United States and sales made to a third country. In that case, the Department determined, and the Court upheld (see U.S. Steel Group, A Unit of USX Corp. v. United States, 21 C.I.T. 761, 973 F.Supp. 1076 (CIT 1997)) that a COS adjustment was appropriate to "equalize" the calculation and comparison of NV to EP given the differing levels of tax rebates granted on export sales to the United States and export sales to third countries. The Department effectively raised NV by the difference between the rebates on sales to the U.S. and rebates on sales to third-country markets as the COS adjustment. Id.; see also, OCTG from Argentina, at 33546. The Court, furthermore, upheld this position as the rebate was identifiable and quantifiable. Id. There are discernable differences in each of the afore-mentioned cases in comparison to the instant investigation. Most notably, the program by which the rebates were granted were part of an over-arching, government-employed, incentive program to bolster domestic production. Again, as noted previously, such is the not the case here. Rather, and as clearly stated by Maquilacero, the export rebates on Maquilacero's purchases of hot-rolled coil is the result of a negotiation process between it and its unaffiliated supplier of coils. Additionally, the above cases invariably related to arguments of a rebated tax. Taxes themselves are potential expenses which are incurred on sales and, therefore, can warrant a COS adjustment, as they are intrinsically linked to a final imported or invoiced sales value.

Maquilacero's export rebates, however, are not a function of sales value. By contrast, the export rebates in the instant investigation are negotiated discounts on the cost of acquiring a material input and, therefore, are a reduction to the cost of production, not a selling expense. Therefore, we find that Maquilacero's export rebates are not classifiable as a selling expense and thus do not require, nor meet the standard, for a COS adjustment.

Maquilacero also points to past cases, specifically Pipe and Tube from Mexico, where the Department denied COS adjustments for similar rebates because those rebates did not reflect a difference in selling expenses. However, Maquilacero contends that in a subsequent review of the antidumping duty order in Pipe and Tube from Mexico, the Department again denied the COS adjustment, but for different reasons, recognizing the possibility of adjusting EP for the instant export rebates. Maquilacero asserts that judicial interpretation, based on these past cases, supports a COS adjustment for supplier rebates and that the Act grants the Department discretion in determining what constitutes an appropriate adjustment under the COS provision. We note, however, that during the review of 1996 Pipe and Tube from Mexico, the review to which Maquilacero cites as support for a COS adjustment for supplier rebates, the Department's position on adjusting EP for the supplier rebates stated that such an adjustment would have been appropriate, "if we treated the acquisition of the coil as a sale." See 1996 Pipe and Tube from Mexico, at 68710. For purposes of this investigation, and based on record evidence, the Department does not consider Maquilacero's acquisition of the hot-rolled coil as a sale, but rather as a purchase of a material input used to produce the subject merchandise. Therefore, we find it appropriate to adjust Maquilacero's reported cost of manufacturing for the export rebate.

We disagree with Maquilacero's characterization of the export rebate as an increase to received revenues. The rebate, effectively, acts as a discount or reduction to its cost of purchasing raw material. See Maquilacero Cost Verification Report at 8-9. We also disagree with Maquilacero's assessment that the export rebate must be an adjustment to export price as Maquilacero would have otherwise charged a different price for its U.S. export sales were it not receiving the rebate. There is currently no evidence on the record to support this contention. Further, we disagree with this characterization because it establishes a premise that Maquilacero is able to charge the sales price to the U.S. customer that it does specifically because the rebate is granted on the sale itself. This is not the case. We find that the export rebate is directly tied to the price charged by Maquilacero's unaffiliated supplier of the hot-rolled coils, and therefore, the calculation of the rebate is based on the differences in input costs. Importantly, the reported rebates are a reduction in the price that Maquilacero ultimately pays for its purchases of hot-rolled coils, similar to any other discount offered by its supplier. They are recorded as a reduction of the cost of sales in Maquilacero's normal books and records, and therefore, it is appropriate to treat these export rebates as an adjustment to Maquilacero's cost of production.

Comment 5: Whether to Use Maquilacero's Affiliated Party Downstream Sales in the Department's Analysis

During the POI, Maquilacero notes that it made sales to one affiliated party in the comparison market, a reseller of steel products ("Reseller A").[12] After the Preliminary Determination,

[12] In its questionnaire responses, Maquilacero has requested proprietary treatment for the identity of Reseller A. As such, the Department is unable to disclose the affiliate's name in this document.

Maquilacero contends that the Department required it to report Reseller A's downstream sales and made these sales subject to verification. See Letter from Maquilacero to the Department regarding Affiliated Party Downstream Sales Response, dated February 6, 2008. Maquilacero claims that these data were successfully verified and, following the correction of the downstream data to account for minor corrections and the Department's verification findings, the Department could use this data for purposes of its final determination in this investigation. However, Maquilacero does not believe that these downstream sales should be used in the Department's margin calculation in its final determination for the reasons discussed below.

First, Maquilacero contends that the total volume of sales to Reseller A are marginal, i.e., barely above the Department's 5 percent threshold. Second, Maquilacero argues that only a small percentage of total home market sales represent sales to Reseller A that have a matching U.S. CONNUM. Moreover, Maquilacero asserts that, in the Preliminary Determination, the Department found identical price-to-price matches within Maquilacero's own home market sales for the vast majority of its U.S. market sales during the POI.

Third, contrary to the Department's finding in the Preliminary Determination, Maquilacero claims that its sales to Reseller A were made at arm's-length, once monthly price fluctuations during the POI were considered. See MBCQR at Exhibit B-3. See also Maquilacero Case Brief at 15-16. In order to account for significant price fluctuation during the POI from one month to the next, Maquilacero argues that it performed its arm's-length test analysis on a CONNUM-specific and month-specific basis, and then weight-averaged these monthly results by the total quantity sold by Reseller A in that month. Maquilacero avers that the overall result of this analysis shows that Maquilacero's prices to Reseller A were well within 98-102 percent of its prices to unaffiliated distributors, which meets the Department's range for determining whether sales to affiliated parties have been made at arm's-length. See Preliminary Determination at 5521.

Fourth, Maquilacero asserts that the sales made by Reseller A are at a more advanced level of trade when compared to Maquilacero's U.S. market sales or Maquilacero's home market sales, as discussed in more detail below. Accordingly, Maquilacero claims that even if these sales would be used by the Department, they would not match to U.S. sales since they are at different levels of trade. Lastly, Maquilacero argues that the Department is not required by law to use the affiliated party downstream sales if the sales to the affiliated party are made at arm's-length. Maquilacero notes that section 773(a)(5) of the Act allows the Department to base NV on sales to affiliated parties in the home market. Moreover, Maquilacero states that the Statement of Administrative Action limits this discretion by requiring the Department to ignore, for purpose of calculating NV, sales to affiliated parties which cannot be demonstrated to be at arm's-length. See Statement of Administrative Action ("SAA"), H.R. Doc. No. 103-316, vol. 1 (1994) at 827. The Department's regulations similarly state, according to Maquilacero, that NV may be calculated based on sales between affiliated parties "only if the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller." See 19 C.F.R. § 351.403(c). Maquilacero further notes that the current arm's-length methodology "places an affirmative obligation on respondents to report such sales where sales to an affiliate cannot be shown to be at arm's-length." See Antidumping Proceedings: Affiliated

Party Sales in the Ordinary Course of Trade, 67 FR 69186 (November 15, 2002) (citing Preamble to Antidumping Regulations, 62 FR 27295, 27355 (May 19, 1997)).

In this case, Maquilacero claims that it has met that burden by demonstrating that, for each month of the POI, the sales to Reseller A were made at arm's-length prices, i.e., within the 98-102 percent range. See Maquilacero Case Brief at Exhibit 1. Maquilacero states that the Department's current methodology for testing affiliated party sales is to compare the weighted-average product-specific price ratios for all products sold to an affiliated customer to arrive at an affiliate-specific price ratio. See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade, 67 FR at 69192. However, Maquilacero argues that neither the statute nor the Department's regulations preclude it from conducting an arm's-length analysis on a monthly-basis. Citing CTL Plate from Japan, Maquilacero notes that the Department acknowledged that, in addition to the arm's-length test, "there may be other methods available" to determine the arm's-length nature of sales to affiliated parties. See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Japan, 64 FR 73215, 73229 (December 29, 1999) ("CTL Plate from Japan") (citing to Preamble, 62 FR 27295, 27355). Moreover, Maquilacero contends that it would be illogical to base the analysis on weighted-average POI prices when, as during the POI, there were significant price fluctuations. See Maquilacero Case Brief at 18.

According to Maquilacero, a month-to-month analysis is an adequate, and logical, method for demonstrating that its sales to Reseller A were at arm's-length. Based on its arm's-length analysis, which accounts for monthly price fluctuations, provided at Exhibit B-3 of its MBCQR, Maquilacero avers it has demonstrated that its POI sales to Reseller A were made at arm's-length prices. Therefore, Maquilacero urges the Department to rely on its sales to Reseller A, rather than Reseller A's downstream sales in its final determination.

To the extent that the Department determines to use Reseller A's downstream sales for the final determination, Maquilacero states that it should find that the downstream sales are at a different level of trade than its home market or the U.S. sales. According to Maquilacero, there are numerous quantitative and qualitative differences between the sales process and functions performed by Maquilacero and those performed by Reseller A.

Maquilacero avers that following an analysis of selling functions similar to that used by the Department in the Preliminary Determination to determine Maquilacero's level of trade for U.S. sales and home market sales, it is readily apparent that the downstream sales by Reseller A were made at a different, i.e., higher, level of trade than Maquilacero's sales. See Maquilacero Case Brief at 18-20.

In the Preliminary Determination, Maquilacero states that the Department examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer to determine whether comparison market sales are at a different LOT from U.S. sales. See Preliminary Determination at 5522. Maquilacero notes that the Department explained that it analyzed differences in selling functions in relation to the LOTs claimed:

> If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar.

See Preliminary Determination at 5522 (citing Porcelain-on-Steel Cookware from Mexico: Final Results of Administrative Review, 65 FR 30068 (May 10, 2000) and accompanying Issues and Decision Memorandum at Comment 6).

Similar to the Department's analysis in the Preliminary Determination, Maquilacero contends that it analyzed the level of trade of Reseller A's sales by organizing the reported selling activities into the following four selling functions: sales process and marketing support, freight and delivery, inventory maintenance and warehousing, and warranty and technical services. See Preliminary Determination at 5523.

Sales Process and Marketing Support

As noted in the Amended Sales Functions Chart provided at Exhibit 2 of its Case Brief, Maquilacero states that Reseller A has been a national distributor of flat steel, round steel, rebar, beams and specialty steels for more than 60 years. See Maquilacero Verification Report at 8 and Verification Exhibit 6 ("VE-6") at MAQ 0687-0689. Maquilacero further notes that Reseller A has its own sales and service personnel at each of its six national distribution centers (warehouses) and the headquarters in Monterrey. Id. Therefore, Maquilacero claims that the number of sales people and the level of order input/processing activities is higher than in Maquilacero's case. However, Maquilacero states that Reseller A does not use commission agents to make sales, whereas it does. See Maquilacero Verification Report at 18.

Maquilacero explains that Reseller A handles all volumes of sales, including sales by the bundle, and two employees are dedicated to dealing with small quantity orders. See Amended Selling Functions Chart at Exhibit 2 of Maquilacero Case Brief and Maquilacero Verification Report at 18. In contrast, Maquilacero states that it normally sells its products by the truckload. With respect to sales forecasting, Maquilacero notes that Reseller A conducts sales forecasting on a product specific level, based upon the sales history of each product and inventory levels. See Maquilacero Verification Report at 19. Because Reseller A offers a large assortment of products and sizes, as illustrated by its detailed product brochure, Maquilacero claims that sales forecasting and inventory maintenance are activities with a very high level of intensity. See Maquilacero Verification Report at VE-6 at MAQ0690 - 0704.

Freight and Delivery

According to Maquilacero, Reseller A arranges for freight and delivery from all of its national locations, using unaffiliated carriers. See Maquilacero Verification Report at 18. However, Maquilacero notes that some of Reseller A's warehouses also own and operate their own fleet of trucks, unlike Maquilacero. Id. Maquilacero states that Reseller A will fill an order from the warehouse location that is most convenient to the customer, a feature that Maquilacero claims it cannot provide because it has a single warehouse.

Inventory Maintenance and Warehousing

Because of the larger number of products sold, Maquilacero argues that Reseller A's inventory maintenance and warehousing activities are more intense than its own. See Maquilacero Verification Report at VE-6 at MAQ 0690- 0704. While Maquilacero sells only its own products, Maquilacero explains that Reseller A sources products from numerous suppliers in order to keep its inventory adequately stocked. See Maquilacero Verification Report at 8. Maquilacero reiterates that Reseller A has six national distribution centers in Mexico; where it has warehouses, including sales and service personnel. See Maquilacero Verification Report at 17. Because its warehousing activities are limited to one warehouse, Maquilacero avers that Reseller A's level of activity for warehousing is far more intense than its own.

Warranty and Technical Services

Because each of Reseller A's national distribution centers has sales and service personnel, Maquilacero asserts that warranty claims and other customer needs can be serviced more effectively through the closest warehouse.

In conclusion, under the same analysis of selling functions used by the Department with respect to Maquilacero's sales, Maquilacero argues that it is readily apparent that Reseller A's downstream sales were made at a different, i.e., higher, level of trade than its own sales. Maquilacero contends the information on record, as verified by the Department, fully supports a finding that Reseller A's downstream sales were made at a higher level of trade than its U.S. or home market sales.

In their rebuttal brief, petitioners argue that the Department has previously rejected the argument of conducting its arm's-length test on a monthly basis. See Petitioners' Rebuttal Brief at 9 (citing Tapered Roller Bearings and Parts Thereof from Japan, 63 FR 20585 (April 27, 1998)). Furthermore, petitioners contend that Maquilacero has failed to demonstrate that the Department's arm's-length test is unreasonable, and therefore, the Department should use the downstream sales of Maquilacero's affiliated reseller in its analysis. Id.

With regard to Maquilacero's argument that the affiliated reseller's downstream sales are made at a different, more advanced LOT than Maquilacero's, petitioners argue that the differences between the selling practices of Maquilacero and its affiliated reseller are not significant. See Petitioners' Rebuttal Brief at 10. Petitioner cites to the evidence currently on record and in Maquilacero Verification Report (which Maquilacero also uses as its evidence of a different LOT) contending that the neither indicates a greater level, or more advanced sales process on the part of the affiliated reseller. It is on this premise which petitioners argue a different level of trade does not exist for the affiliated reseller's downstream sales. Id. at 10-11.

Department's Position:

Pursuant to 19 U.S.C. § 351.403, a respondent is required to report the downstream sales of its affiliate(s) to the first unaffiliated customer if the respondent's sales to that affiliate, 1) account for greater than five percent of the respondent's total comparison market sales of the foreign like

product, and 2) if those sales to the affiliate are determined to not be at arm's-length. All respondents are notified of this requirement in the Department's standard antidumping duty questionnaire. See Antidumping Duty Questionnaire - Section B at pages B-1 through B-3. The questionnaire also provides that, where a respondent is able to demonstrate that its sales to affiliated parties were made at arm's-length, the requirement of reporting downstream sales can be waived. At the Preliminary Determination, due to the results of the arm's-length test, the Department required Maquilacero to provide the downstream sales information from its affiliate, which it subsequently submitted on February 6, 2008.

Maquilacero contends that its sales to Reseller A were made at arm's-length, provided that the arm's-length test is conducted by comparing prices to the affiliate with prices to unaffiliated comparison market customers on a CONNUM-specific and monthly basis. Concerning Maquilacero's argument that the Department should conduct the arm's-length test on a CONNUM-specific basis, we find that altering the current arm's-length test on this premise is unwarranted. The Department, in its modification of the arm's-length test in 2002, considered a similar suggestion raised by a commenter. See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade, 67 FR 69186 (November 15, 2002) ("Antidumping Proceedings") (citing Preamble to Antidumping Regulations, 62 FR 27295, 27355 (May 19, 1997)) at 69189. The comment was raised within the context of using certain statistical tests rather than the Department's current 98-102 percent test. The Department stated that "the only specific proposal offered for a statistical test would apply the test on a CONNUM-specific basis." Id. However, the Department determined that applying the arm's-length test on a CONNUM-specific basis is "inconsistent with the purpose of evaluating the overall pricing relationship between the affiliates." Id. With regard to conducting the arm's-length test on a monthly basis, a comment was also raised and addressed by the Department to this effect, also in the context of Antidumping Proceedings at 69190. Specifically, it was argued that "sales prices routinely diverge by more than this range in the normal course of business, and that the ratio can be affected by other factors such as the timing of sales to affiliates and non-affiliates within the period of investigation." Id. at 69190. In response, the Department recognized that the pricing of individual transactions will vary in the normal course of business, but that:

> … such sales may still be found to be at arm's-length and included in the dumping analysis as long as sales to the affiliate are, on average, within the band. The test in this respect is appropriately geared toward a recognition that, while individual sales transactions may be expected to vary in the normal course of business, systematic under-pricing or overpricing between affiliates over the period examined in the dumping analysis is indicative of sales not made at arm's-length.

See Antidumping Proceedings at 69190. In Tapered Roller Bearings from Japan, the Department rejected arguments of applying the arm's-length test on a monthly basis. In that case, the Department explained that "a party must provide evidence of distortion in order for us to verify its allegations that our arm's-length test is distortive." See Tapered Roller Bearings from Japan at 20592. Moreover, the Department's position in that case references Usinor Sacilor v. United States, where the CIT stated that "given the lack of evidence showing any distortion of price comparability, the court finds the application of Commerce's arm's-length test reasonable." Id. (citing Usinor Sacilor v. United States, 872 F. Supp. 1000 (CIT 1994) at 1004). In the instant

investigation, Maquilacero has not provided any evidence or even analysis as to why the Department's current arm's-length test is distortive or not applicable to Maquilacero's sales to Reseller A. Maquilacero has merely stated that prices of the LWR market fluctuated during the POI, but it has not demonstrated that those price fluctuations significantly impact the Department's arm's-length test. Despite no explanation or analysis as to why the Department's current arm's-length test is distortive, Maquilacero has argued that the Department would be able to find that Maquilacero's sales to Reseller A pass the test if the Department were to revise the arm's-length test. However, for this final determination, we find that the use of the Department's current arm's-length test is appropriate and causes no undue distortions in our analysis. Furthermore, we determine that, based on the results of our arm's-length test, Maquilacero has properly reported its downstream sales data, which will be used in our calculations for the final determination.

Maquilacero alternatively proposes that, if the Department determines to use Reseller A's downstream sales in its calculations for the final determination, it should find that Reseller A's sales are made at a different level of trade. As Maquilacero contends in its argument, there are numerous quantitative and qualitative differences between the sales process and functions performed by Maquilacero and those performed by Reseller A. See Maquilacero Case Brief at 18-20. Maquilacero grouped these selling functions into the following four general classifications: sales process and marketing support, freight and delivery, inventory maintenance and warehousing, and warranty and technical services. See Preliminary Determination at 5523.

Maquilacero argues that Reseller A has its own sales and service personnel at each of its six national distribution centers (warehouses) and the headquarters in Monterrey. Id. Therefore, Maquilacero claims that the number of sales people and the level of order input/processing activities is higher than in Maquilacero's case. See Maquilacero Verification Report at 18. With regard to Maquilacero's argument that Reseller A has a higher level of order input/processing than Maquilacero, we find that this assessment is misapplied. Sections 773a(7)(A)(i) and (ii) of the Act hold that the Department will find a difference in level of trade between EP (or CEP) and NV, if the difference "involves the performance of different selling activities and is demonstrated to affect price comparability." We do not find that Maquilacero's contention of a larger sales force on the part of Reseller A demonstrates "performance of different selling activities" nor that the differences "affect price comparability." The number of workers comprising a sales force does not speak directly to the actual selling processes and functions provided by a company. That one company has a larger sales force than another says nothing to evidence that either company's selling activities differ from the other. It also does not demonstrate that the performance of selling activities between the two companies is more significant or advanced than that of the other company. It merely indicates that the company with the larger sales force has more employees to process what are conceivably the same type of selling practices (e.g., invoicing, processing orders, coordinating shipment, etc.). This same rationale holds true to the "order input/processing" selling function. Arguably, Maquilacero, as a manufacturer, has an equal degree of order input and processing as Reseller A via its various production scheduling and documentation processing activities. Additionally, an argument based on the volume of sales also does not speak to specific selling activities provided, nor does it identify the degree to which those selling activities are provided. Regardless, there is nothing on record, other than the fact that Reseller A has more sales employees, that would support Maquilacero's claim of a more

advance degree of performance in sales process, marketing support, or order input and processing.

Maquilacero also argues that, because each of Reseller A's national distribution centers has sales and service personnel, warranty claims and other customer needs can be serviced more effectively through the closest warehouse. Again, availability of more personnel does not constitute a demonstration of a more advanced level of selling activities. However, particularly with regard to warranty claims and "other customer needs," we again find Maquilacero's argument to not fully correlate to evidence on record. In examining Maquilacero's revised selling activities chart, submitted as a minor correction during its sales verification, all "customer need" related selling functions indicate the same degree of performance are provided by both Maquilacero and Reseller A. See Maquilacero's Section A Questionnaire Response, dated October 9, 2007, at Exhibit 6.[13] Specifically, the provision of rebates and guarantees, technical assistance, travel to customer location, and the provision of warranty, cash and early payment discounts are all either indicated as being equal in performance between the two companies or only differ in so far as one company provides a "low" degree of service; whereas the other provides a "medium" degree of performance. The Department finds that, with regard to this argument, Maquilacero has not demonstrated any significant difference in the level to which these functions are performed by either company.

With regard to Maquilacero's argument of higher degree of inventory maintenance and warehousing performed by Reseller A, the Department recognizes that Reseller A indeed operates more warehouses than Maquilacero to coordinate stock and inventory processing. However, this fact follows closely to points made above, where the number of warehouses owned by Reseller A does not necessarily constitute a higher degree of performance of inventory maintenance and warehousing. However, the Department accepts that additional efforts in tracking, coordination and processing are employed given the distance between Reseller A's many warehouses and that each warehouse inventories multiple products, which Reseller A attempts to keep at specified, forecasted stock levels. See Maquilacero Verification Report at 18. Finally, the Department finds that Reseller A, by maintaining its own fleet of trucks does have a higher degree of freight and delivery services provided to its customers than that of Maquilacero. Record evidence demonstrates that both companies coordinate its freight on an ex-works basis. However, record evidence also points to the fact that Reseller A has a larger fleet of trucks that are directly owned, maintained, and operated by Reseller A; thereby, less effort may be required to provide freight and delivery services for sales delivery by which it used its own trucks.

In conclusion, when examined in its totality, the Department's disagrees with Maquilacero's argument that the downstream sales made by Reseller A are at a more advanced level of trade. The Department, based on evidence currently on record, recognizes that small differences in the degree of selling functions exist between the two entities. However, we find that these differences are not so significant that they would constitute a finding of different selling activities or that they would affect price comparability. Additionally, we find that these differences are not so significant that they would constitute a finding of a different, more advanced level of trade on the part of Reseller A's downstream sales. Therefore, for this final determination, we find that Reseller A's downstream sales are made at a comparable level of

[13] See also Maquilacero Case Brief at Attachment 2 (where it provided the selling activities chart for convenience).

trade in comparison to those of Maquilacero. Therefore, the Department will incorporate the downstream sales made by Reseller A into its analysis and margin calculations for Maquilacero, finding that the sales made by both companies are at a comparable and similar level of trade.

PROLAMSA-Specific Issues:

Comment 6: Whether to Apply Adverse Facts Available to PROLAMSA's Affiliated Party Downstream Sales

In their case brief, petitioners state that PROLAMSA indicated in its questionnaire responses that its affiliated party sales "are made at arm's-length," and as such did not report the affiliated parties' downstream sales. See PBCQR at 2; see also Petitioners' Case Brief at 27. Petitioners explain that at the Preliminary Determination, the Department found that many of PROLAMSA's sales to its affiliated resellers failed the Department's arm's-length test. Therefore, petitioners note that the Department requested downstream sales from PROLAMSA's affiliated resellers prior to verification, which were first reported on the third day of the Department's verification of PROLAMSA's sales responses in Monterrey, Mexico. See Petitioners' Case Brief at 28. Petitioners argue that the verification report subsequently released by the Department identifies "numerous and systematic discrepancies with the downstream sales" reported by PROLAMSA's affiliated reseller. Id.; see also PROLAMSA Verification Report (Monterrey). Petitioners continue by arguing that these systemic discrepancies merit the use of adverse facts available ("AFA").

Petitioners cite to specific examples from PROLAMSA Verification Report (Monterrey) as support for their argument. Specifically, petitioners note the Department's statement that "company officials explained that with the limited time to prepare its downstream sales response, it did not provide complete reconciliation packages for several of its adjustments. Additionally, they explained that with the limited time remaining in the verification, collection and preparation of supporting documentation for these claimed adjustments would be difficult to compile and cross reference for accuracy and completeness." See PROLMASA Verification Report (Monterrey) at 54. Petitioners also cite to several instances where the Department notes that it was unable to reconcile certain data in the affiliated reseller's database, including commission expenses, customer relationship and category, sales terms, and inventory carrying costs. See Petitioners' Case Brief at 29. Petitioners argue that similar discrepancies were found in each of the sales traces conducted by the Department during verification, and that since discrepancies existed for each of the sales selected for examination at verification they can reasonably be attributed to sales which were not examined. Id.

In conclusion, petitioners argue that the magnitude and extent of the discrepancies noted at verification lead to the unquestionable conclusion that PROLAMSA failed verification with regard to the downstream sales reported by its affiliated reseller. Accordingly, petitioners claim that the findings noted in PROLAMSA Verification Report (Monterrey) call into question the validity and reliability of the affiliated reseller's downstream sales and that, upon this basis, the Department must apply AFA to these sales for purposes of the final determination.

In its rebuttal brief, PROLAMSA addresses petitioners' argument in two points. First, PROLAMSA contends that its home market sales to its affiliated reseller pass the Department's

arm's-length test, which, accordingly, renders this issue moot as the Department would then use the sales from PROLAMSA to its affiliate in its margin calculations. See PROLAMSA Rebuttal Brief at 14-15. PROLAMSA continues by arguing that the results of the arm's-length test from the Preliminary Determination are incorrect, as the margin calculation program used at the Preliminary Determination included several errors with regard to currency conversion (discussed further in Comment 7, below). Id. at 15. PROLAMSA claims that with the correction of these errors, which the Department indicated was its intention in a memorandum dated May 1, 2008, all of PROLAMSA's affiliate sales pass the arm's-length test.

Second, PROLAMSA contends that if the Department were to use the downstream sales made by the affiliated reseller to the first unaffiliated customer, there is no basis upon which to apply AFA as urged by petitioners. See PROLAMSA Rebuttal Brief at 15. Particularly, PROLAMSA counters that the "numerous and systemic discrepancies" to which petitioners' refer in their case brief are relatively minor and that the Department only found a small amount of the affiliated reseller's data to be unverifiable. Id. Specifically, PROLAMSA references many of the same trace items that were cited by petitioners (such as sales terms and customer category), stating that these items are not necessary for the margin calculation.

However, PROLAMSA acknowledges that the Department found discrepancies with respect to its affiliates' reporting of gross unit price and inventory carrying cost, but that "the differences are negligible, and thus cannot fairly be considered to question the accuracy of {the affiliated reseller's} data overall." Id. at 16. PROLAMSA further acknowledges that the Department was unable to confirm the amounts reported for commission expenses during verification, which may warrant the application of partial facts available for solely the affiliated reseller's commission expenses, but for only the sales traces examined. Citing the Department's PROLAMSA Verification Report (Monterrey), PROLAMSA notes that for one sales trace, the Department was unable to "confirm that the merchandise" for one of the affiliated party's sales was "sourced from PROLAMSA, but that this comports with Perfiles' explanation that it does not trace the manufacturer of the products which it sells" in its books and records. Id. at 16; see also PROLAMSA Verification Report (Monterrey) at 55.

PROLAMSA also argues that there is no basis for the application of AFA as the statute dictates that the Department may draw adverse inferences if it finds that a respondent "failed to cooperate by not acting to the best of its ability to comply with a request for information." See 19 U.S.C. § 1677e(b). PROLAMSA avers that there can be no question that PROLAMSA acted to the best of its ability to respond to the Department's request for the downstream sales information. See PROLAMSA Rebuttal Brief at 17. To support its argument, PROLAMSA explains the time-line under which it had to prepare the downstream sales response. PROLAMSA states that it did not receive a request for submitting the downstream sales until January 24, 2008, the day on which the Preliminary Determination was signed by the Assistant Secretary. Id. PROLAMSA further states that the Department required the submission of the affiliated reseller's downstream sales by February 4, 2008, which coincided with the first day of the verification of PROLAMSA's sales responses in Monterrey, Mexico. During this time, PROLAMSA explains that, in addition to preparing the downstream sales response, the company was busy preparing for PROLAMSA's sales verification and responding to a supplemental questionnaire regarding PROLAMSA's cost responses. Id. PROLAMSA argues that, given the difficult circumstances under which it had to compile and respond to the Department's request for downstream sales data, it "would be

unreasonable to conclude that PROLAMSA failed to give a maximum effort," and that, therefore, the application of AFA to the affiliate party's sales would be inappropriate.

Department's Position:

We find the application of AFA to PROLAMSA's downstream sales is not warranted. The Department reached this conclusion in light of the results of the arm's-length test in PROLAMSA's final margin calculation programs, where the sales at issue passed the arm's-length test. Pursuant to 19 U.S.C. 351.403, a respondent is required to report the downstream sales of its affiliate(s) to the first unaffiliated customer if the respondent's sales to that affiliate, 1) account for greater than five percent of the respondent's total comparison market sales of the foreign like product, and 2) if those sales to the affiliate are determined to not be at arm's-length. At the Preliminary Determination, due to the results of the arm's-length test, the Department required PROLAMSA to provide the downstream sales information from its affiliate. PROLAMSA did provide the downstream sales information during the course of the Department's on-site sales verification, on February 6, 2008.

In preparing for this final determination, the Department has made several changes to PROLAMSA's margin calculation programs. First, as is discussed in Comment 7 below, the Department made several corrections to its programming language where it found that the program was not properly converting the currencies of several sales variables (reported in both Mexican pesos and U.S. dollars, including the gross unit price variable). Second, following a request by the Department, PROLAMSA submitted revised comparison market and U.S. sales databases which reflected the minor corrections presented and the findings noted during PROLAMSA's sales verifications in Monterrey, Mexico and Houston, Texas. See PROLAMSA Verification Report (Monterrey) and Memorandum to the File from Patrick Edwards, Case Analyst, through Angelica L. Mendoza, Program Manager, Office 7, entitled "Verification of the Sales Responses of Productos Laminados de Monterrey, S.A. de C.V. and Prolamsa, Inc. in the Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from Mexico," dated April 24, 2008 ("PROLAMSA CEP Verification Report"); see also Letter from Angelica L. Mendoza, Program Manager, Office 7, to PROLAMSA, regarding "Request for Revised Sales Databases," dated April 30, 2008. PROLAMSA submitted these revised sales databases on May 7, 2008, and, finding them to be consistent with the minor corrections and findings from the PROLAMSA Verification Report (Monterrey), the Department used these datasets in its final margin calculation programs for PROLAMSA. Finally, during PROLAMSA's cost verification in Monterrey, Mexico, PROLAMSA presented to the Department several minor corrections detailing several discrepancies in the company's reported data. The Department reviewed these corrections and, finding them to be minor and correctly reconciled, accepted these corrections. PROLAMSA provided a revised cost database (in hard-copy form only) to the Department during the verification, which the Department verifiers accepted. On May 23, 2008, we requested PROLAMSA to file an electronic version of that revised cost database, reflecting only the revision to its cost data for the minor corrections. We incorporated this revised cost database into our programming for this final determination. The Department has also made several additional changes to PROLAMSA's margin calculation programs regarding the company's reported costs. A complete description of these changes to PROLAMSA's reported costs are provided in the Memorandum from Gina K. Lee, Case Accountant, to Neal M. Halper, Office of Accounting, Director, entitled "Cost of Production and Constructed Value Calculation

Adjustments for the Final Determination: Productos Laminados de Monterrey S.A. de C.V.," dated June 13, 2008 ("PROLMASA Cost Memo").

As a result of the changes made to PROALMSA's margin calculation programs, we find that for purposes of this final determination, PROLAMSA's sales to its affiliate were made at arm's-length. See Memorandum to The File, from Patrick Edwards, Senior International Compliance Analyst, entitled "Light-Walled Rectangular Pipe and Tube from Mexico - Final Determination of Sales at Less Than Fair Value Analysis Memorandum for Productos Laminados de Monterrey S.A. de C.V.," dated June 13, 2008 ("PROLAMSA Final Analysis Memo"). Therefore, the need to incorporate the downstream sales data into PROLAMSA's margin calculation is not necessary and will not be included in our analysis for the final determination. For a complete discussion of the changes the Department is making to PROLAMSA's sales data, see PROLAMSA Final Analysis Memo.

Comment 7: Whether to Make Changes to the Department's Programming for Currency Conversions used in its Preliminary Determination

On May 1, 2008, the Department issued a memorandum which disclosed certain changes to the programming used in PROLAMSA's margin calculation to account for and adjust several errors it discovered regarding the conversion of reported currencies. See Memorandum to the File, through Stephen Bailey, Acting Program Manager, Office 7, from Patrick Edwards, Senior International Compliance Specialist, titled "Intended Changes to the Comparison Market and U.S. Margin Calculation Programs for Productos Laminados de Monterrey, S.A. de C.V. and Revision to Briefing Schedule," dated May 1, 2008 ("PROLAMSA Programming Changes Memo"). The Department invited comments from parties on these intended changes.

In its case brief, petitioners state that they concur with the need for these changes. See Petitioners' Case Brief at 43. We received no further comments regarding these intended changes from any other party, including PROLAMSA.

Department's Position:

In the PROLAMSA Programming Changes Memo, the Department indicated that it had discovered several inadvertent errors related to the conversion of reported currencies in both the comparison market and U.S. margin calculation programs for PROLAMSA, which it used in the Preliminary Determination. As stated above, the Department disclosed these intended changes to all parties and requested that parties comment on these changes in their case briefs. As no party has offered any comments against these proposed changes, the Department will include the disclosed programming language, accounting for the proper conversion of currencies reported by PROLAMSA, in its margin calculation program for this final determination. Further discussion of these changes is included in the Department's analysis memorandum for the final determination regarding PROLAMSA. See PROLAMSA Final Analysis Memo; see also, PROLAMSA Programming Changes Memo.

Comment 8: Whether to Adjust Reported Costs of Manufacturing

PROLAMSA argues that it presented a detailed worksheet at the cost verification which reconciled its audited figures to the per-unit costs as reported to the Department. PROLAMSA argues that the unreconciled difference shown on the reconciliation indicates that they overstated their reported cost. PROLAMSA contends that in the previous investigation of LWR from Mexico, the Department increased their reported per-unit costs for an unreconciled difference that indicated that they understated their reported cost. Therefore, PROLAMSA argues fairness and objectivity require that the Department should likewise make a downward adjustment to their reported costs for this final determination.

Petitioners disagree with PROLAMSA. Petitioners point out that according to the cost verification report PROLAMSA had a positive reconciliation difference due to the difference between the total COM from the cost accounting system and the COM of the non-subject merchandise. Petitioners assert that the COM of the subject merchandise was obtained from the cost accounting system, and when the Department compared it to the total COM of subject merchandise stated in the cost reconciliation, there was only a miniscule difference. Therefore, petitioners do not find it necessary for the Department to include the difference for the subject merchandise.

In addition, petitioners reject PROLAMSA's allegation that fairness and objectivity require that the Department make adjustments without regard to whether COM, and ultimately normal value, will increase or decrease. Petitioners agree that when the reported costs are materially less than can be verified from a respondent's accounting records, as was the case with PROLAMSA's costs in the previous investigation of LWR, an upward adjustment to the reported costs is appropriate. However, petitioners contend that in the current proceeding, the Department verified that PROLAMSA's costs were fully reported. Moreover, petitioners argue that PROLAMSA had not identified any error in its reported costs in the present case, which would merit a reduction to its reported costs. Therefore, petitioners believe that no reduction to costs for the cost reconciliation is appropriate in the present case.

Department's Position:

At verification, we noted that there was an unexplained difference in PROLAMSA's reconciliation which PROLAMSA could not clarify. The difference indicates that PROLAMSA's reported costs for both merchandise under consideration and merchandise not under consideration equaled an amount that was greater than the total costs in their cost accounting system. The Act is silent on how the Department should treat unexplained unreconciled differences between a respondent's reported costs and the costs reflected in its cost accounting system. Where the Act is silent or ambiguous, the agency has considerable discretion in how it handles the discrepancy. See Micron Tech v. United States, 117 F 3rd 1386, 1394-1396 (Fed. Cir. 1997) ("Micron"); see also Asociacion Colombiana de Exportadores v. United States, 6 F.Supp 2d 865, 900 (CIT 1998) ("as the Statute is silent, Commerce has broad discretion…"). The way we have consistently exercised our discretion in these situations has been to increase costs by the amount of unreconciled differences that indicate understatement of

reported costs unless the respondent identifies and documents why the amount does not relate to the merchandise under consideration.

In contrast, our practice has been to not decrease reported costs when the difference indicates that respondent may have overstated its reported costs. See Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 64 FR 38756 (July 19, 1999) at Comment 43 (where the Department noted its normal practice is to include such items in the calculation of COP and constructed value ("CV") unless respondent can identify and document why such amount does not relate to the merchandise under investigation), and Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Taiwan, 64 FR 15493, 15498 (March 31, 1999) (where the Department determined that the respondent should include the unreconciled difference between amounts in the accounting records and the reported costs). We have established this practice because respondent is the sole party who can explain and support the unreconciled difference. Through the course of an investigation, respondent is encouraged to identify and explain all of its costs, and whether they are related to merchandise under consideration or merchandise not under consideration. Therefore, if respondent has not identified the nature of the under-reported costs, the unidentified additional costs could relate to the merchandise under consideration. As a result, in instances where there are unexplained additional costs, we have included them in COP/CV. On the other hand, if a respondent has not identified the nature of over-reported costs, we do not assume that the unidentified difference relates to the merchandise under consideration. The respondent, a party in possession of all relevant documents related to its own costs, has had opportunities to show us to what the unidentified difference relates. And, if the respondent has not shown us how the difference relates to the merchandise under consideration, we cannot assume that it does. Therefore, in those instances, we do not adjust COP/CV. In fact, at verification, we identified that PROLAMSA had over-reported costs for a single CONNUM due to an input error. We have adjusted PROLAMSA's COP/CV downward for that error in our final determination because PROLAMSA was able to identify, explain, and support the correction. See Memorandum to Neal M. Halper, from Gina K. Lee, RE: Cost of Production and Constructed Value Calculation Adjustments for the Final Determination - Productos Laminados de Monterrey, S.A. de C.V. ("PROLAMSA"), dated June 13, 2008.

We acknowledge that there have been instances where we have reduced COP/CV by reconciliation differences. However, in these instances, the differences that were under question related to items that we were able to track to the specific merchandise. See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan, 64 FR 24329, 24351 (May 6, 1999) at Comment 20, and Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from Thailand, 69 FR 34122 (June 18, 2004) and accompanying Issues and Decision Memorandum at Comment 10. That is not the case here. For these reasons, we have not included the unidentified difference in COP/CV.

Comment 9: Whether to Use Corrected Variance Allocation Presented at Verification

During the course of verification, an error was found in PROLAMSA's variance calculation. In addition to correcting the error, PROLAMSA also revised its variance cost allocation

methodology. PROLAMSA argues that the Department should now accept the new methodology which PROLAMSA presented at verification. PROLAMSA contends that its new allocation methodology more accurately reflects the processes involved in the production of the merchandise subject to this investigation versus non-subject finished products. PROLAMSA contends that the new methodology allocates the variance associated with a specific process only to those products which used that process. PROLAMSA argues that a general allocation of the variance across all products based on the COM of the finished products would not account for the particular process cost differences. PROLAMSA further argues that their new methodology is more accurate because it uses quantity as the basis to allocate the variance, as opposed to using value in the methodology, which it had originally reported. PROLAMSA argues that because there is a sizable quantity variance component (i.e., a usage variance) of the variance in question, the proper way to allocate the variance would be to use quantities of intermediate product used to produce finished products. PROLAMSA asserts that there is no doubt as to the accuracy of the calculation because of the supporting documentation that it presented in its cost verification exhibit. Lastly, PROLAMSA argues that there are no reasonable grounds for the Department to reject this new methodology simply because it differed from what PROLAMSA previously submitted in its section D responses. PROLAMSA contends that the Department routinely accepts minor changes in data and methodologies at verification. PROLAMSA insists that this is a minor change, relating to a minor cost element – the cost variance.

Petitioners argue that after the Department traced production quantities that were used to calculate total standard costs to production records and material usage records, the Department noted that the production quantities used in PROLAMSA's standard cost calculation were overstated. Petitioners note that the Department asked PROLAMSA at verification to revise its variance calculation to use only finished product quantities in its allocation of the variance. Petitioners claim that this new methodology shifts the burden of the variance in a new direction. Petitioners argue that verification is not the place for a respondent to revise its methodology of allocating its cost variance from the methodology it has reported to the Department throughout the proceeding. Further, petitioners contend that there is no indication that PROLAMSA's original reporting methodology for its cost variance was inaccurate. Therefore, petitioners ask that the Department use the reported methodology in computing the cost variance related to subject merchandise for the final determination.

Department's Position:

During the cost verification, we discovered a double-counting error in PROLAMSA's cost variance allocation adjustment. We requested that PROLAMSA provide a revised variance rate calculation to correct for the error. The revised variance rate calculation that PROLAMSA provided incorporated a methodology for allocating the variance that differed from the method they submitted in the original response. Specifically, rather than allocating the total variance based on total company-wide standard costs, PROLAMSA broke up the overall value variance into a quantity variance, processing variances, and a value variance. This new method is not used in PROLAMSA's normal books and records because PROLAMSA does not normally allocate its cost variance to products. The Act is silent on how the Department should determine the appropriateness of one methodology over another for calculating a variance factor. See

Micron. However, the Department will normally reject a methodology that we find to be inaccurate or distortive. See Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review, 73 FR 7710 (February 11, 2008), and accompanying Issues and Decision Memorandum at Comment 3. See also, NSK at 1381-1382, where the Court upheld the Department's rejection of a respondent's allocation methodology for finding that the methodology was unreasonably distortive.

After reviewing PROLAMSA's revised variance rate calculation, and the record evidence, we have allowed part of its revised calculation methodology. We consider it reasonable for PROLAMSA to allocate certain process-specific variances to the specific products that passed through those same processes. However, we do not agree with PROLAMSA's argument that a significant portion of the rest of the variance should be allocated over quantities instead of values. Although a portion of the variance is related to usage, it is pertinent that the variance calculation is ultimately calculated using values. Therefore the variance is not strictly related to quantity as respondent suggests. Using quantities as an allocation base, when the quantity units have different unit values, results in a meaningless variance allocation. Since extended values (i.e., quantity times unit values) are used to determine the variances, we consider it more appropriate to allocate the variance portion at issue on a value basis, which is a function of both quantities and value.

Comment 10: Whether to Calculate Cost of Manufacturing using Historical Depreciation Costs (i.e., accounting for the B-10 Inflation)

PROLAMSA argues that in the past, the Department has acknowledged that there is distortion created by comparing indexed costs to historical sales prices. PROLAMSA cites to the previous LWR investigation where the Department discussed eliminating the constant currency adjustment from the calculation of COP/CV, so as to avoid comparing year-end constant currency costs to transaction-specific sales prices that occurred throughout the reporting period and which had not been converted to constant currency. PROLAMSA claims that in order to avoid such distortion the Department has refused to make wholesale adjustments to COP based on constant currency costs when the home market economy has not been high inflationary. See LWR from Mexico 2004 and accompanying Issues and Decision Memorandum at Comment 23. Likewise, PROLAMSA claims that the Department has refused to apply the Mexican B-10 adjustment to restate respondent's general and administrative ("G&A") expense ratio in the past.[14] PROLAMSA cites to Stainless Steel Sheet and Strip in Coils from Mexico, where the Department concluded that it would be incorrect to include in the cost computation an adjustment to reflect costs at year-end constant currency levels when such costs are being compared to transaction-specific sales prices. See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 73 FR 7710 (February 11, 2008) ("SSSS from Mexico") and accompanying Issues and Decision Memorandum at Comment 9.
PROLAMSA explains that in LWR from Mexico 2004, the Department required respondents to make the B-10 adjustment to depreciation expenses because the depreciation on the assets was

[14] Under Mexican GAAP, financial statements are prepared giving effect to Bulletin-B10, which was issued by the *Instituto Mexicano de Contadores Publico*, the Mexican Institute of Public Accountants. Bulletin B-10, as amended, provides for the recognition of certain effects of inflation. The practice of accounting for inflation under Bulletin B-10 will expire in 2009.

included in the respondents' normal books and records. PROLAMSA argues that in the previous investigation the Department cited to cases in which the respondents actually revalued the assets in their normal books and records. PROLAMSA claims that the adjustments did not relate to merely indexing the financial data for financial statement presentation. PROLAMSA argues that the B-10 adjustment it has reported does not reflect an actual cost, but is merely an adjustment necessary to express historical depreciation costs in constant currency terms. PROLAMSA asserts that it records B-10 adjustments in separate accounts from the historical expense accounts, and that the B-10 adjustment is not a revaluation of asset values. Therefore, PROLAMSA argues that including the B-10 adjustment in depreciation expenses is artificially increasing its depreciation expenses.

However, PROLAMSA insists that if the Department continues to include the B-10 adjustment related to its depreciation expenses, it should likewise include the B-10 adjustment related to its sales values for purposes of the sales below cost test. PROLAMSA argues that comparing costs expressed in constant currency terms with historical sales prices would be distortive. Therefore, PROLAMSA asserts that the Department should use record data to adjust the sales prices in order to compare sales prices and costs that are both expressed in constant currency terms.

Maquilacero agrees with PROLAMSA's argument that the Department should remove the B-10 adjustment from the cost of production. Maquilacero states that the B-10 adjustment does not represent an actual or current cost, and that it did not revalue any of its fixed assets for any reason other than the B-10 adjustment. Additionally, Maquilacero contends, financial expenses are also affected by the B-10 adjustment through a certain loss/gain on monetary position. Maquilacero asserts that the transaction-specific prices reported in Maquilacero's sales databases do not similarly include an adjustment according to B-10. To the extent that the Department agrees with PROLAMSA's arguments to remove the B-10 adjustments from the cost of production, Maquilacero argues the Department should adjust Maquilacero's costs accordingly.

Petitioners argue that based on the correct reasoning presented by the Department in LWR from Mexico 2004, the Department should continue to calculate PROLAMSA's depreciation expenses based on the inflation-adjusted (i.e., revalued) fixed assets. As Maquilacero's arguments were submitted in its rebuttal brief, petitioners did not specifically comment on the points raised by Maquilacero.

Department's Position:

Section 773(f)(1)(A) of the Act states that "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise." Thus, unless a company's normal books and records kept in accordance with home country GAAP result in a distortion of the costs, the Department will rely on the assurances of the company's independent accountants and auditors as the basis for calculating costs. See Notice of Final Results of Antidumping Duty Administrative Review, Final Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile, 68 FR 6878 (February 11, 2003) (Fresh Atlantic Salmon from Chile) and accompanying Issues and Decision Memorandum at

Comment 13; Notice of Final Results of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile, 65 FR 78472 (December 15, 2000) ("Fresh Atlantic Salmon from Chile 2000") and accompanying Issues and Decision Memorandum at Comment 1, and Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from Mexico, 64 FR 14872, 14882 (March 29, 1999) ("Rubber from Mexico").

The record shows that the depreciation on revalued assets was included in the normal books and records of respondents and is in accordance with Mexican GAAP. See Memorandum to the File, through Neal M. Halper, from Gina K. Lee, dated April 15, 2008, regarding "Verification of Cost Responses of Productos Laminados de Monterrey, S.A. de C.V.," dated April 15, 2008 ("PROLAMSA Cost Verification Report") at 7, where we note that "to calculate depreciation expense, the company first calculates the actualized (i.e., restated amount based on the Mexican consumer price indices) values for each category of fixed assets, and then divides these actualized values by the appropriate useful lives." See also Maquilacero Cost Verification Report at 7, where we included an identical statement for Maquilacero. Depreciation calculated based on the revalued asset values represents the current cost associated with holding these assets. Calculating depreciation on revalued assets is not unreasonable in light of the inflationary impact over multiple years of the useful lives of the assets. In other words, the adjusted depreciation expense associated with purchases in prior years reasonably reflects historical values updated to current currency levels.

We disagree with PROLAMSA's argument that if the Department continues to include the depreciation expenses that are calculated based on the revalued assets from PROLAMSA's normal books and records, we should then adjust their sales prices to include the constant currency adjustment. In non-high inflation cases we do not calculate costs using a constant currency or replacement cost methodology. For example, we are not indexing the expenses incurred monthly by the respondents, such as materials, labor, and overhead. The Department has followed this practice in several cases. See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago, 67 FR 55788 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comment 5, Flat Products from Thailand, 66 FR 49622 (September 28, 2001) and accompanying Issues and Decision Memorandum at Comment 1, Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Quality Steel Plate Products from France, 64 FR 73143, 73153 (December 29, 1999), and LWR from Mexico 2004 at Comment 21. Moreover, this practice has been upheld by the Court of International Trade in Cinsa S.A. de C.V. v. United States, 966 F. Supp 1230, 1234 (CIT 1997).

We disagree with PROLAMSA that LWR from Mexico 2004 contradicts this case. In LWR from Mexico 2004, the Department stated that "it is reasonable to include the depreciation and monetary correction adjustment in the calculation of COP/CV. We are only incorporating certain inflation adjustments required by Mexican GAAP to be recognized in the company's financial statements which would distort the dumping analysis were they not included for the reasons enumerated above." In that case, although we excluded the constant currency adjustments from computing COP/CV, for the same reasons we described above, we included the inflation adjustments related to depreciation expenses as well as the monetary correction for purposes of computing COP/CV in LWR from Mexico 2004. Regarding PROLAMSA's reliance on SSSS from Mexico, the Department explained in those final results that the issue

pertained to “only one of the three Mexican B-10 bulletin adjustments made to Mexinox’s normal books and records. Specifically, the adjustment at issue restates the income statement into year-end currency levels (i.e., constant currency accounting).” We agree with respondent that in SSSS from Mexico we did not include the constant currency adjustment in the COP/CV calculation. In the current proceeding, we are also not including the constant currency accounting adjustment in PROLAMSA’s COP/CV calculation. However, that is not related to the depreciation adjustment at issue in this proceeding. As with LWR from Mexico 2004, we included the inflation adjustments related to depreciation expenses as well as the monetary correction for purposes of computing COP/CV.

Agree _______ Disagree _______

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David M. Spooner
Assistant Secretary
for Import Administration

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Date