

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-201-836]

**Light-Walled Rectangular Pipe and Tube From Mexico: Preliminary Results of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to requests from Productos Laminados de Monterrey S.A. de C.V. (Prolamsa), Nacional de Acero S.A de C.V (Nacional), Ternium S.A de C.V. (Ternium) and petitioners,<sup>1</sup> the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on light-walled rectangular pipe and tube (LWRPT) from Mexico. The review covers imports of subject merchandise from nine firms, two of which were selected as mandatory respondents (*i.e.*, Maquilacero and Regiomontana de Perfiles y Tubos S.A. de C.V.). The period of review (POR) is January 30, 2008, to July 31, 2009.

We preliminarily determine that sales of LWRPT from Mexico have been made below normal value (NV) by Maquilacero and Regiopytsa during the POR. If these preliminary results are adopted in our final results of this administrative review, we will issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP). Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issues; (2) a brief summary of the argument; and (3) a table of authorities.

**DATES:** *Effective Date:* September 13, 2010.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****Background**

On August 5, 2008, the Department published in the **Federal Register** the

antidumping duty order covering, *inter alia*, LWRPT from Mexico. *See Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value*, 73 FR 45403 (August 5, 2008) (*Order*). On August 3, 2009, the Department published in the **Federal Register** its notice of opportunity to request an administrative review of this order entitled *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 38397 (August 3, 2009), covering, *inter alia*, LWRPT from Mexico for the POR (*i.e.*, January 30, 2008, through July 31, 2009).

In response, on August 28, 2009, petitioners requested that the Department conduct an administrative review of entries of subject merchandise made by nine Mexican producers/exporters<sup>2</sup> for the POR January 30, 2008, through July 31, 2009. In addition, on August 31, 2009, the Department received requests for review from three Mexican exporters/producers and their affiliates included in the petitioner's request (*i.e.*, Prolamsa, Nacional, and Ternium).

On September 22, 2009, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period January 30, 2008, through July 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 48224 (September 22, 2009) (*Initiation Notice*).<sup>3</sup>

On September 22, 2009, Ternium S.A. de C.V., and its affiliates Hylsa S.A. de C.V.; Galvak S.A. de C.V.; and Industrias Monterrey S.A. de C.V. requested that

<sup>2</sup> These producers/exporters are Prolamsa, Maquilacero S.A. de C.V. (Maquilacero), Regiomontana de Perfiles y Tubos S.A. de C.V. (Regiopytsa), Nacional, Industrias Monterrey S.A. de C.V. (IMSA), Perfiles y Herrajes LM S.A. de C.V. (Perfiles y Herrajes), Galvak S.A. de C.V. (Galvak), Hylsa S.A. de C.V. (Hylsa), and Ternium.

<sup>3</sup> As noted in the memorandum to Richard O. Weible, Director, AD/CVD Operations, Office 7, entitled, "Respondent Selection Memorandum," dated October 15, 2009, there were spelling errors with respect to the names of certain companies for which we initiated reviews in our *Initiation Notice* at 74 FR 48225. We published a correction regarding these company names in the following month's notice of initiation of antidumping and countervailing duty reviews and also correctly identified the POR as January 30, 2008, through July 31, 2009, *see Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 54958 (October 26, 2009).

the Department rescind the review of these companies and/or clarify that the administrative review of Ternium and its affiliates was initiated solely based on Ternium's request for review. Based on 19 CFR 303(f)(3)(ii), Ternium alleged that petitioner's request was invalid due to the fact that the certificate of service did not indicate that copies were served on counsel to Ternium and its affiliates or on these companies directly. In response, petitioner contended that domestic parties complied with the Department's service regulations at 19 CFR 303(f)(3)(ii) by serving a copy of the review request to all parties on the latest public service list for the proceeding, thus, using the list generated in the investigation of the present proceeding. Petitioners also argued that even if domestic parties did not technically comply with the Department's notice regulation, service in accordance with the Department's latest service list for the proceeding represents a good faith attempt to service. Petitioners re-filed their review request with a revised public service list and specifically served Ternium parties concurrent with the filing on September 25, 2009. In its response letter to Ternium's request, on October 14, 2009, the Department clarified that the initiation of Ternium and its affiliates was based on both Ternium's request for review, dated August 31, 2009, and petitioner's review request, dated August 28, 2009. Moreover, as noted above, a request for review with corrected errors was served to all parties and filed on September 25, 2009, demonstrating a good faith attempt to comply with the Department's service requirements on behalf of petitioners. *See* Letter from petitioners titled, "Light-Walled Rectangular Pipe and Tube from Mexico: Administrative Review," dated September 25, 2009.

On September 28, 2009, the Department issued a letter to all interested parties indicating its intention to select mandatory respondents based on U.S. import data obtained from U.S. CBP and provided parties an opportunity to comment on the CBP data. *See* Letter from the Department titled, "To All Interested Parties," dated September 28, 2009. Petitioners responded, on October 1, 2009, and recommended the Department choose the largest exporters by volume as respondents. In addition, in its October 16, 2009, letter, Prolamsa requested to be selected as a mandatory respondent alleging that it is the largest Mexican producer and exporter of LWRPT to the United States, and also

<sup>1</sup> Petitioners include Atlas Tube, Bull Moose Tube Company, and Searing Industries, Inc.

because the number of valid, pending review requests is not large.

On October 15, 2009, the Department determined that, because it was not feasible to examine all nine producers/exporters of the subject merchandise; the most appropriate methodology for purposes of this review was to select the two largest producers/exporters by export volume. Accordingly, the Department selected Maquilacero and Regiopytsa as mandatory respondents.<sup>4</sup> See Memorandum to Richard O. Weible, Director, AD/CVD Operations, Office 7, "Respondent Selection Memorandum," dated October 15, 2009.

The Department issued its standard antidumping duty questionnaire to Maquilacero and Regiopytsa on October 16, 2009.

#### Maquilacero

Maquilacero submitted its response to section A of the questionnaire (AQR) on November 16, 2009, its response to sections B and C of the questionnaire (BQR, CQR, respectively) on December 8, 2009, and section D response (DQR) on December 14, 2009. On January 19, 2010, Maquilacero submitted cost data using quarterly averaging cost periods and requested that the Department rely on this quarterly cost data for purposes of calculating its margin. The Department issued a supplemental questionnaire to Maquilacero for sections A through C of the questionnaire on February 2, 2010. Maquilacero filed its response on March 4, 2010. On April 8, 2010, the Department issued a second supplemental questionnaire (SSQR) covering sections A through C of the Department's antidumping duty questionnaire. On April 30, 2010, Maquilacero filed its response to the Department's SSQR. On May 14, 2010, the Department issued its first supplemental questionnaire covering section D of the Department's antidumping duty questionnaire. On June 14, 2010, Maquilacero filed its response to the Department's May 14, 2010, section D supplemental questionnaire (FDQR). Maquilacero submitted its response to the Department's June 14, 2010, third supplemental questionnaire (TSQR) on June 30, 2010. On August 9, 2010, the Department issued a second supplemental section D questionnaire (SDQR), and on August 11, 2010, a fourth supplemental questionnaire

covering sections A through C. Maquilacero submitted its response to the Department's SDQR on August 17, 2010, and its response to the fourth supplemental questionnaire on August 23, 2010.

The Department received no comments on any of Maquilacero's questionnaire responses from petitioners.

#### Regiopytsa

Regiopytsa submitted its response to section A of the questionnaire (RAQR) on November 24, 2009, and its response to sections B and C of the questionnaire (RBQR, RCQR, respectively) on December 8, 2009. On December 22, 2009, the Department received a company-specific allegation from petitioners that home market sales made by Regiopytsa were made at prices below the cost of production. On January 25, 2010, petitioners, at the Department's request, revised their December 22, 2009 cost allegation. See Memo to the File titled, "Telephone Call with Petitioners' Counsel Regarding Sales-Below-Cost Allegation for Regiomontana de Perfiles y Tubos S.A. de C.V.," dated January 12, 2010 (Cost Allegation Memo), which explains that petitioners must submit a cost test comparing the net home market price with the cost of production rather than the cost of manufacture. On February 16, 2010, the Department initiated a sales-below-cost of production investigation with respect to Regiopytsa. See Memorandum to the File titled, "The Petitioners' Allegation of Sales Below the Cost of Production for Regiomontana de Perfiles y Tubos S.A. de C.V."

On February 19, 2010, the Department issued a letter to Regiopytsa requesting that it respond to section D of the Department's antidumping duty questionnaire. On March 3, 2010, the Department issued a supplemental questionnaire covering Regiopytsa's RAQR, RBQR, and RCQRs. On March 22, 2010, Regiopytsa submitted its response to section D of the Department's antidumping duty questionnaire (RDQR). On March 31, 2010, Regiopytsa submitted its response to the Department's March 3, 2010 supplemental questionnaire (RSQR). On April 16, 2010, petitioners submitted comments covering both Regiopytsa's RDQR and RSQR. On April 30, 2010, Regiopytsa submitted an additional response containing supplemental information covering the Department's March 3, 2010, supplemental questionnaire (RSSQR). On May 14, 2010, the Department issued a supplemental questionnaire covering

Regiopytsa's RDQR. On May 17, 2010, the Department issued a supplemental questionnaire covering both Regiopytsa's RSQR and RSSQRs. On June 11, 2010, Regiopytsa submitted its response to the Department's May 14, 2010 supplemental questionnaire (RSDQR). On June 18, 2010, Regiopytsa submitted its response to the Department's May 17, 2010 supplemental questionnaire as well as provided additional information related to the Department's May 14, 2010, supplemental questionnaire covering Regiopytsa's RDQR (collectively, RSSQR).

On July 15, 2010, Regiopytsa submitted its minor corrections related to the sales verification (*see* letter titled, "Light-Walled Rectangular Pipe and Tube from Mexico: Submission of Minor Corrections") and on July 21, 2010, it submitted the sales verification exhibits (*see* letter titled, "Light-Walled Rectangular Pipe and Tube from Mexico: Submission of Sales Verification Exhibits"). On July 26, 2010, Regiopytsa submitted its minor corrections related to the cost verification (*see* letter titled, "Light-Walled Rectangular Pipe and Tube from Mexico: Submission of Minor Corrections") and on July 27, 2010, it submitted the cost verification exhibits (*see* letter titled, "Light-Walled Rectangular Pipe and Tube from Mexico: Submission of Cost Verification Exhibits"). On August 30, 2010, the Department requested Regiopytsa revise its cost file presented during the Department's July 19, 2010 through July 23, 2010 cost verification. Additionally, on August 31, 2010, the Department requested Regiopytsa revise its home market and U.S. sales databases pursuant to the Department's verification findings and the minor corrections presented by company officials at the start of the verifications. See Memorandum to the File titled, "Telephone Call with Counsel to Regiomontana de Perfiles y Tubos S.A. de C.V. ("Regiopytsa") Requesting Revised COP File Reflecting Certain Minor Corrections Presented at Verification," dated August 30, 2010 and Letter to Regiopytsa from Angelica L. Mendoza, Program Manager, regarding Submission of Revised Sales Databases, dated August 31, 2010. Regiopytsa submitted its revised cost database on August 31, 2010, and its revised sales databases on September 2, 2010.

#### Non-Selected Companies

In situations where we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary

<sup>4</sup> The companies not selected as mandatory respondents for this review are Prolamsa, Nacional, Industrias Monterrey S.A. de C.V., Perfiles y Herrajes LM S.A. de C.V., Galvak S.A. de C.V., Hylsa S.A. de C.V., and Ternium.

information but where use of a simple average does not yield the best proxy of the weighted-average margin relative to publicly available data, normally we will use the publicly available figures as a matter of practice. See *Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53,661 (September 1, 2010). See “Rates for Non-Selected Companies” below.

#### Tolling of Deadlines

As explained in the memorandum from the Deputy Assistant Secretary (DAS) for Import Administration, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding were extended by seven days. See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding “Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm,” dated February 12, 2010. Therefore, the deadline for the preliminary results of this review became May 17, 2010.

Subsequently, on May 10, 2010, the Department published in the **Federal Register** a notice extending the time limits for the preliminary results of this review. See *Light-Walled Rectangular Pipe and Tube from Mexico; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 25841 (May 10, 2010). This extension established the deadline for these preliminary results as September 7, 2010, at 25842.

#### Period of Review

The POR is January 30, 2008, through July 31, 2009.

#### Scope of the Order

The merchandise that is the subject of this order is certain welded carbon-quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm.

The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30

percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to this order is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this order is dispositive.

#### Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.307, we conducted sales and cost verifications of the questionnaire responses of Regiopytsa from July 12, 2010, through July 16, 2010 (sales) and July 19, 2010, through July 23, 2010 (cost). We used standard verification procedures, including on-site inspection of Regiopytsa's production facility in Apodaca, Mexico. Our verification results are outlined in the following memoranda: (1) Memorandum to the File, through Angelica L. Mendoza, Program Manager, “Verification of the Home Market and Export Price Sales Responses of Regiomontana de Perfiles y Tubos S.A. de C.V. in the Administrative Review of the Antidumping Duty Order on Light-Walled Rectangular Pipe and Tube from Mexico,” dated September 7, 2010 (Sales Verification Report); and (2) Memorandum to File, through Neal Halper, “Verification of the Cost Response of Regiomontana de Perfiles y Tubos S.A. de C.V. in the Antidumping Duty Review of Light-Walled Rectangular Pipe and Tube from Mexico,” dated September 7, 2010 (Cost Verification Report). Public versions of these reports are on file in the Central Records Unit (CRU) located in room 7046 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC.

#### Affiliated Respondents

Under section 771(33)(E) of the Act, if one party owns, directly or indirectly, five percent or more of the other, such parties are considered to be affiliated for purposes of the antidumping law. Furthermore, pursuant to 19 CFR 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 home market sales of foreign like product, and (2) if those sales to the affiliate are determined to not be at arm's length.

#### Maquilacero

In the final determination of the sales at less-than-fair-value investigation of LWRPT from Mexico, the Department determined that, pursuant to section 771(33)(E), Maquilacero had one affiliated party and used the downstream sales reported by Maquilacero's affiliate. See *Notice of Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube From Mexico*, 73 FR 35649 (June 24, 2008). For purposes of this administrative review, and pursuant to section 771(33)(E) of the Act, we determined that Maquilacero owns, directly or indirectly, five percent or more of another party and, therefore, Maquilacero submitted its affiliate's downstream sales as well as its POR sales of the foreign like product to this affiliate.

#### Regiopytsa

For purposes of this administrative review, and pursuant to section 771(33)(E) of the Act, we determined that Regiopytsa owns, directly or indirectly, five percent or more of another party. See Regiopytsa's RAQR at pages A-13 through A-18. However, at page 5 of its RSQR and page 3 of its RSSQR, Regiopytsa indicated that sales of merchandise that would constitute the foreign like product were made to its affiliate in the home market during the POR. Therefore, we asked that Regiopytsa report its downstream sales from the affiliate to unaffiliated customers. We also performed an arm's-length test. Due to the proprietary nature of the discussion, please see memorandum to the file titled, “Analysis of Data Submitted by Regiomontana de Perfiles y Tubos S.A. de C.V. for the Preliminary Results of the Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from Mexico” (A-201-836) and dated September 7, 2010 (Regiopytsa Preliminary Analysis Memo Memorandum), for a detailed explanation.

#### Fair Value Comparisons

To determine whether sales of subject merchandise were made in the United States at less than fair value, we compared the export price (EP) to the NV, as described in the “Export Price”

and “Normal Value” sections of this notice. In accordance with section 777A(d)(2) of the Act, we compared the EP of sales within the POR to the monthly weighted-average normal value of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the “Price-to-Price Comparisons” section below.

### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Maquilacero and Regiopytsa covered by the description in the “Scope of the Order” section above, and sold in the home market during the POR, to be foreign like product for purposes of determining appropriate product comparisons to U.S. sales. We relied on six characteristics to match U.S. sales of subject merchandise to home sales of the foreign like product: (1) Steel input type; (2) whether metallic coated or not; (3) whether painted or not; (4) perimeter; (5) wall thickness; and (6) shape. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department’s original October 16, 2009, questionnaire.

### Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales made in the home market at the same level of trade (LOT) as EP or the constructed export price (CEP). The NV LOT is based on the starting price of sales in the home market or, when NV is based on constructed value (CV), that of the sales from which we derived selling, general, and administrative (SG&A) expenses and profit. *See also* 19 CFR 351.412(c)(1)(iii). With respect to CEP transactions in the U.S. market, the CEP LOT is the level of the constructed sale from the exporter to an affiliated importer after the deductions required under section 772(d) of the Act. *See* 19 CFR 351.412(c)(1)(ii). For EP, it is the starting price, which is usually from exporter to importer. *See* 19 CFR 351.412(c)(1)(i). In this review, Maquilacero and Regiopytsa claimed their sales to the United States were entirely EP sales.

To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See* 19 CFR

351.412(c)(2). If the home market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and home market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act and 19 CFR 351.412. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

### Maquilacero

We obtained information from Maquilacero regarding the marketing stages involved in making their reported home market and U.S. sales to both unaffiliated customers. Maquilacero provided a description of all selling activities performed, along with a flowchart and description comparing the LOTs among each channel of distribution and customer category for both markets. *See* Maquilacero’s AQR at A–13 through A–16, Exhibit A–6, and FSQR at 15 through 18 and Exhibit SA–10.

Maquilacero sold LWRPT to end-users and retailers/distributors in both the home and U.S. markets.

For the U.S. market, Maquilacero reported one LOT, with one channel of distribution, for its EP sales. *See* FSQR at 17. Based on our analysis of Maquilacero’s selling functions for its sales to the United States, we determine that there was one LOT, *i.e.*, the EP LOT (LOTU1), for its U.S. sales.

For the home market, Maquilacero identified two channels of distribution described as follows: (1) Direct sales made by Maquilacero, and (2) indirect sales made by its affiliated reseller to the first unaffiliated customer. Maquilacero further reported that the downstream sales through its affiliated reseller were made at a distinct LOT, resulting in two LOTs in the home market. We reviewed the intensity at which Maquilacero performed each of the claimed selling functions with respect to each claimed channel of distribution. While we find small differences in the degree of selling functions that exist between Maquilacero and its affiliated reseller; such differences are not so significant that they would constitute a distinction in the performance of selling activities or have an effect on price comparability. Therefore, based on our analysis of all of Maquilacero’s home market selling functions, we preliminarily find that the selling functions for the reported channels of distribution constitute one LOT in the home market, the NV LOT.

For further discussion, *see* the “Level of Trade” section in the Memorandum to the File, through Angelica L. Mendoza, Program Manager, Office 7, entitled “Analysis of Data Submitted by Maquilacero S.A. de C.V. for the Preliminary Results of the Antidumping Duty Administrative Review on Light-Walled Rectangular Pipe and Tube from Mexico,” dated September 7, 2010. (Maquilacero Preliminary Analysis Memo).

We then compared the NV LOT, based on the selling functions associated with the transactions between Maquilacero and its affiliated reseller in the home market, to the EP LOT, which is based on the selling functions associated with the transaction between Maquilacero and its customers, based on our analysis of record evidence, we find that the degree to which Maquilacero provides the selling functions for its customers in both markets to be similar (*i.e.*, sales forecasting, strategic/economic planning, advertising and promotion, packing, order input/processing, market research, cash and early payment discounts, warranty service, sales and marketing support, technical assistance, and after-sales services). Therefore, we matched EP sales to sales at the same LOT in the home market and did not make a LOT adjustment. *See* section 773(a)(7)(A) of the Act. A complete and detailed explanation of our level of trade analysis can be found in the “Level of Trade” section of Maquilacero’s Preliminary Analysis Memo.

### Regiopytsa

We obtained information from Regiopytsa regarding the marketing stages involved in making sales in both the reported home and U.S. markets. Regiopytsa provided a description of all selling activities performed among each channel of distribution and customer category for both markets, along with a flowchart and description comparing the LOTs. *See* Regiopytsa’s RAQR at A–18 through A–23, and Exhibit A–4.

For both the home market and U.S. market, Regiopytsa sold LWRPT to end-users and retailers/distributors.

In the U.S. market, Regiopytsa made only EP sales. The company reported one LOT, with one channel of distribution to two classes of customers, which were distributors and steel service centers. *See* RAQR at A–19 through A–20 and Exhibit A–4. Based on our analysis of Regiopytsa’s selling functions for its sales to the United States, we determine that there was one LOT for its U.S. sales.

For sales in the home market, Regiopytsa reported one channel of distribution to two classes of customers,

which were distributors and end-users. *Id.* Certain home market customers were affiliated parties. For all sales to its affiliates, the merchandise was resold to unaffiliated customers. However, Regiopytsa reported a single level of trade in the home market. Based on our analysis of all of Regiopytsa's home market selling functions, we preliminarily find that the selling functions for the reported channel of distribution constitute one LOT in the home market, the NV LOT. For further discussion, see the "Level of Trade" section in the Memorandum to the File, from John Drury and Brian Davis, International Trade Compliance Analysts, entitled, "Analysis of Data Submitted by Regiomontana de Perfiles S.A. de C.V. for the Preliminary Results of the Antidumping Duty Administrative Review on Light-Walled Rectangular Pipe and Tube from Mexico," dated September 7, 2010 (Regiopytsa Preliminary Analysis Memo).

We then compared the NV LOT, based on the selling functions associated with the sales at the NV LOT, to the EP LOT. Based on our analysis of record evidence, we preliminarily find that the degree to which Regiopytsa provides the selling functions for its customers in the home market to be greater than those provided in the U.S. market. While both markets had many similar selling functions (*i.e.*, sales promotion, packing, inventory maintenance, and after-sales services), Regiopytsa provided certain selling functions in the home market that it did not provide in the U.S. market (*i.e.*, providing discounts, commissions to selling agents, and post-sale warehousing). However, we preliminarily find that we are unable to quantify the differences in levels of trade because we have found a single level of trade in Regiopytsa's home market. Therefore, we matched the EP sales to HM sales without making an adjustment for LOT. See section 773(a)(7)(A) of the Act. A complete and detailed explanation of our level of trade analysis can be found in the "Level of Trade" section of the Regiopytsa's Preliminary Analysis Memo.

#### **Date of Sale**

The Department will normally use invoice date, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale, but may use a date other than the invoice date if it better reflects the date on which the material terms of sale are established. See 19 CFR 351.401(i).

#### **Maquilacero**

Maquilacero reported the invoice date as the date of sale for all sales made in each channel of distribution for both the home and U.S. markets. See Maquilacero's BQR at page B-25, CQR at C-20, First Supplemental Questionnaire Response (FSQR) at 27 and 49, and the Affiliate's Section B Questionnaire Response (AFBQR) at B-23. Pursuant to 19 CFR 351.401(i), the Department will normally use the invoice date as the date of sale unless an interested party submits information that supports the use of a different date.

For purposes of this review, we examined whether invoice date or another date better represents the date on which the material terms of sale were established. In its FSQR at page 29, Maquilacero states that sales are invoiced at the price in effect at the time of shipment; therefore, changes in the material terms of sale, such as price, can occur until the issuance of the invoice on the date of shipment. The Department examined sales documentation, including order confirmations and invoices, provided by Maquilacero for its U.S. market sales (*e.g.*, FSQR at 30 through 31, Exhibits SA-3 and SA-4) and found that the material terms of sale were set on the date on which the invoice is issued, which is coincident with the date of shipment. Therefore, we preliminarily determine that invoice date is the appropriate date of sale for the U.S. market sales in this administrative review because it better represents the date upon which the material terms were established. See Maquilacero's FSQR at 27, 30 through 31 and exhibit SA-3 for a sample sale.

With respect to Maquilacero's home market sales, there were small differences in quantity between purchase order, order confirmation, and invoice date. Based on record evidence, the purchase order is subject to cancellation, and all material terms of sale are subject to change up until the merchandise is released for shipment at the date of the invoice. See FSQR at 27, 31 and exhibit SA-4 for a sample sale. Therefore, for Maquilacero's home market sales, we have preliminarily used invoice date as the date of sale. See Maquilacero's Preliminary Analysis Memo for a further discussion of this issue.

#### **Regiopytsa**

Regiopytsa reported the invoice date as the date of sale for all sales made in each channel of distribution for both the home (except where noted below) and U.S. markets. See Regiopytsa's RAQR at

page A-32, RBQR at page B-16, and RCQR at C-14. For purposes of this review, we examined whether invoice date or another date better represents the date on which the material terms of sale were established for Regiopytsa's home market and U.S. sales. The Department examined sales documentation, including order confirmations and invoices, provided by Regiopytsa for both its home market and U.S. sales and found that the material terms of sale were set on the date on which the invoice is issued. See Regiopytsa's RAQR at attachment 6 for sample home market sales documents (*i.e.*, purchase order, invoice, credit notice, and weight slip) and at attachment 7 for sample U.S. sales documents (*i.e.*, purchase order, internal order (export), invoice, packing list, and U.S. Customs Entry Summary Form 7501).

With respect to its home market, Regiopytsa explained that certain sales involved "special invoicing." See Regiopytsa's RAQR at pages 32 through 33, RSQR at pages 15 through 17, and RSSQR at attachment 1. Based on our analysis of these sales, the Department has determined that material terms of sale are subject to change up until the merchandise is released for shipment, which occurs after the invoice date. Therefore, for these preliminary results, the Department finds that the shipment date is the appropriate date of sale for such sales. For the remainder of Regiopytsa's home market sales, we have preliminarily used invoice date as the date of sale as we have preliminarily found that material terms of sale are subject to change up until the date upon which the invoice is issued. See Regiopytsa's Preliminary Analysis Memo for a further discussion of this issue.

With respect to Regiopytsa's U.S. sales, in its RSQR at page 33, Regiopytsa explained that there are, "generally no changes in the material terms of sale between the order date and the date of invoice." Regiopytsa also explained that in some instances, "such as when steel prices change substantially, a price increase or decrease will occur during this period," and that, "if there is a change in quantity or type of product ordered, the purchase order is cancelled and a new order is issued." See verification exhibit (VE) 16 ("Completeness") at pages 0375-0377 for an example of a cancelled sale; see also VE-4 ("Home Market Sales Process") at pages 0422 (the initial invoice) and 0429 (credit note adjusting price). Therefore, we preliminarily determine that invoice date is the appropriate date of sale for Regiopytsa's U.S. sales in this

administrative review because it best represents the date upon which the material terms were established.

#### Export Price

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

#### Maquilacero

Maquilacero has classified all its U.S. sales as EP sales; see CQR at C–16. For purposes of these preliminary results, we accepted this classification and calculated EP in accordance with section 772(a) of the Act because the merchandise was sold prior to importation by the exporter or producer outside the United States to the first unaffiliated purchaser in the United States and because CEP was not otherwise warranted. We calculated EP based on the packed price charged to the first unaffiliated U.S. customer. We made deductions for movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act, including foreign inland freight from the plant to the port of exportation, brokerage and handling expenses incurred in the home market, international freight and warehousing expenses, where appropriate.

#### Regiopytsa

Regiopytsa has classified all their U.S. sales as EP sales; see RCQR at C–14. For purposes of these preliminary results, we accepted this classification and calculated EP in accordance with section 772(a) of the Act because the merchandise was sold prior to importation by the exporter or producer outside the United States to the first unaffiliated purchaser in the United States and because CEP was not otherwise warranted. We calculated EP based on the packed price charged to the first unaffiliated U.S. customer. We made deductions for movement expenses in accordance with section

772(c)(2)(A) of the Act, including inland freight (plant/warehouse to port of exportation), country of manufacture inland insurance, brokerage and handling expenses, and inland freight (warehouse to the unaffiliated customer), where appropriate.

#### Normal Value

##### A. Selection of Home Market

To determine whether there is a sufficient volume of sales of LWRPT in the home market to serve as a viable basis for calculating NV, we compared Maquilacero’s and Regiopytsa’s volume of home market sales of the foreign like product to the volume of each company’s respective U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act.

Pursuant to section 773(a)(1)(B) of the Act, because both Maquilacero’s and Regiopytsa’s aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for subject merchandise, we determined that the home market was viable for comparison purposes for both companies.

##### B. Affiliated Party Transactions and Arm’s Length Test

Sales to affiliated customers in the home market not made at arm’s length prices are excluded from our analysis because we consider them to be outside the ordinary course of trade. See section 773(f)(2) of the Act; see also 19 CFR 351.102(b). Consistent with 19 CFR 351.403(c) and (d) and agency practice, “the Department may calculate NV based on sales to affiliates if satisfied that the transactions were made at arm’s length.” See *China Steel Corp. v. United States*, 264 F. Supp. 2d 1339, 1365 (CIT 2003). To test whether the sales to affiliates were made at arm’s length prices, we compared, on a model-specific basis, the starting prices of sales to affiliated and unaffiliated customers, net of all direct selling expenses, billing adjustments, discounts, rebates, movement charges, and packing. Where prices to the affiliated party are, on average, within a range of 98 to 102 percent of the price of identical or comparable merchandise to the unaffiliated parties, we determine that the sales made to the affiliated party are at arm’s length. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69194 (November 15, 2002).

#### Maquilacero

Maquilacero reported that it made sales in the home market to one

affiliated reseller and to unaffiliated customers and reported the downstream sales from its affiliated reseller to the first unaffiliated customers. With respect to Maquilacero, we found that prices to its affiliate were, on average, within the 98 to 102 percent of the price of identical or comparable subject merchandise sold to unaffiliated parties. Therefore, we determined that all sales to the affiliated party were made at arm’s-length; thus we included these sales in our analysis. See Maquilacero’s Preliminary Analysis Memo for a further discussion of this issue.

#### Regiopytsa

Regiopytsa reported that it made sales of the foreign like product to two affiliated parties during the POR. One affiliate purchased the foreign like product for consumption, while the second affiliate resold the foreign like product and non-prime merchandise in the home market. See Regiopytsa’s December 7, 2009, response at pages B–14 through B–15. We performed the arm’s-length test on Regiopytsa’s sales to affiliates and found that prices to its affiliates were, on average, within the 98 to 102 percent of the price of identical or comparable subject merchandise sold to unaffiliated parties. Therefore, we determined that all sales to the affiliated parties were made at arm’s-length; thus we included these sales in our analysis. See Regiopytsa’s Preliminary Analysis Memo for a further discussion of this issue.

##### C. Cost-Averaging Methodology

The Department’s normal practice is to calculate an annual weighted-average cost for the POR. See, e.g., *Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review*, 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18, and *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department’s practice of computing a single weighted-average cost for the entire period). We recognize that possible distortions may result if we use our normal annual-average cost method during a period of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, we evaluate the case-specific record evidence using two primary factors: (1) The change in the cost of manufacturing (COM) recognized by the

respondent during the POR must be deemed significant; and (2) the record evidence must indicate that sales prices during the shorter averaging periods could be reasonably linked with the COP or CV during the same shorter averaging periods. *See, e.g., Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010) (*SSSS from Mexico*), and accompanying Issues and Decision Memorandum at Comment 6 and *Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008), and accompanying Issues and Decision Memorandum at Comment 4 (*SSPC from Belgium*).

Regiopytsa provided pertinent information for control numbers with the five highest volumes sold in the comparison market and the United States over the POR in its June 11, 2010, response to the Department's RSDQR at exhibit 6 and Maquilacero provided the same information in its June 14, 2010 response to the Department's FDQR at exhibit 34.

#### 1. Significance of Cost Changes

In prior cases, we established 25 percent as the threshold (between the highest cost and lowest costs quarter by COM) for determining that the changes in COM are significant enough to warrant a departure from our standard annual-cost approach. *See SSPC from Belgium* at Comment 4. In the instant case, record evidence shows that Regiopytsa and Maquilacero experienced significant changes (*i.e.*, changes that exceeded 25 percent) between the highest cost and lowest cost quarterly COM divided by the lowest quarterly COM during the POR. This change in COM is attributable primarily to the price volatility for hot rolled steel coil used in the manufacture of LWRPT. Hot rolled steel coil is the major input consumed in the production of LWRPT. *See* "Cost of Production and CV Calculation Adjustment for the Preliminary Results—Regiomontana de Perfiles y Tubos S.A. de C.V." from Stephanie C. Arthur to Neal M. Halper, dated September 7, 2010 (Regiopytsa Cost Calculation Memorandum) at page 1 and "Cost of Production and CV Calculation Adjustment for the Preliminary Results—Maquilacero S.A. de C.V." from Frederick W. Mines to Neal M. Halper, dated September 7, 2010 (Maquilacero Cost Calculation Memorandum) at pages 1 and 2. We found that prices for hot rolled steel coil changed significantly throughout the POR and, as a result, directly affected

the cost of the material inputs consumed by Regiopytsa and Maquilacero.<sup>5</sup> *See* Regiopytsa Cost Calculation Memorandum at attachment 3 and Maquilacero Cost Calculation Memorandum at attachment 1.

#### 2. Linkage Between Cost and Sales Information

Consistent with past precedent, because we found the changes in costs to be significant, we evaluated whether there is evidence of a linkage between the cost changes and the sales prices during the POR. The Department's definition of "linkage" does not require direct traceability between specific sales and their specific production costs but, rather, relies on whether there are elements that would indicate a reasonable correlation between the underlying costs and the final sales prices levied by the company. *See SSPC from Belgium* at Comment 4. These correlative elements may be measured and defined in a number of ways depending on the associated industry and the overall production and sales processes. To determine whether a reasonable correlation existed between the sales prices and their underlying costs during the POR, we compared weighted-average quarterly net sales prices to the corresponding quarterly COM for the five control numbers with the highest volume of sales in the comparison market and the five control numbers with the highest sales volume to the United States. After reviewing this information, we determined that sales prices and costs were generally trending in a consistent manner, and therefore, showed evidence of linkage. *See* Regiopytsa Cost Calculation Memorandum at attachments 1 and 2 and Maquilacero Cost Calculation Memorandum at attachments 3 and 4.

Because we have found significant cost changes in COM as well as reasonable linkage between costs and sales prices, we have preliminarily determined that a quarterly costing approach leads to more appropriate comparisons in our antidumping duty calculations for Regiopytsa and Maquilacero.

#### D. Cost of Production Analysis

##### Maquilacero

In the previous segment of this proceeding, the Department disregarded sales made by Maquilacero that were

<sup>5</sup> We also found that prices for cold rolled steel coil (a major input consumed to produce certain LWRPT) changed significantly throughout the POR and, as a result, directly affected the cost of the material inputs consumed by Regiopytsa. *See* Regiopytsa Cost Calculation Memorandum for further details.

found to be below its cost of production (COP). *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube From Mexico*, 73 FR 5521 (January 30, 2008). Therefore, pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that the respondent made sales of the foreign like product in the home market at prices below the COP within the meaning of section 773(b) of the Act, as below cost sales made by Maquilacero were disregarded in the most recently completed investigation. Accordingly, on October 16, 2009, the Department requested that Maquilacero respond to section D (Cost of Production/Constructed Value) of the Department's antidumping duty questionnaire.

##### Regiopytsa

Based on petitioners' cost allegation (*see* Cost Allegation Memo), the Department had reasonable grounds to believe or suspect that Regiopytsa had made below-cost sales of foreign like product. *See* section 773(b)(2)(A)(i) of the Act. Therefore, the Department initiated a cost investigation of Regiopytsa on February 19, 2010, and requested that Regiopytsa file a response to section D of the Department's antidumping duty questionnaire.

For Maquilacero and Regiopytsa, we calculated the COP on a product-specific basis, based on the sum of costs of materials and fabrication for the foreign like product plus amounts for general and administrative (G&A) expenses, interest expenses, and the costs of all expenses incidental to preparing the foreign like product for shipment in accordance with section 773(b)(3) of the Act.

We relied on the COP information provided by Maquilacero and Regiopytsa except for the following adjustments:

##### Maquilacero

1. Using Maquilacero's hot rolled coil inventory movement data from the August 16, 2010, response, we measured the cost changes in terms of a percentage, to develop the direct material indices for each quarter. We used these indices to calculate an annual weighted-average material cost for the POR and then restate that annual average material cost to each respective quarter on an equivalent basis.

2. We made two adjustments to Maquilacero's G&A expense: (1) By offsetting project revenue against the G&A expense up to the amount of the expenses related to producing the project revenue which is included in the

reported costs, and (2) by including Corporacion Maquilacero S.A. de C.V.'s (Maquilacero's affiliate) net results. *See* Maquilacero Cost Calculation Memorandum.

#### Regiopytsa

1. Using Regiopytsa's inventory movement data for hot-rolled and cold-rolled coil we obtained during our verification of the company's cost response, we measured the cost changes throughout the period, in terms of a percentage, to develop the direct material indices for each quarter. We used these indices to calculate an indexed annual weighted-average material cost for the POR, and then restated that annual average material cost to each respective quarter on an equivalent basis.

2. We made an upward adjustment to Regiopytsa's reported COM to account for an un-reconciled cost difference.

3. We deducted certain freight-in expenses from Regiopytsa's reported direct materials costs because we discovered during our cost verification that these charges had been double-counted in the reported costs.

4. During the POR, Regiopytsa purchased hot-rolled steel coils from an affiliate. For each quarter, we have analyzed these transactions within the context of section 773(f)(2) of the Act (the "transactions disregarded" provision) and have made an adjustment to Regiopytsa's reported direct material costs to account for the difference between transfer and market price for these inputs.

5. We excluded the value of purchased scrap from Regiopytsa's calculation of its direct materials scrap offset ratio.

For further details regarding these adjustments for Maquilacero and Regiopytsa, *see* Maquilacero's and Regiopytsa's Cost Calculation Memos, which are on file in the CRU of the main Commerce Department building.

On a product-specific basis, we compared the adjusted weighted-average COP figures to the home market sales of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales were made at prices below the COP. The prices were exclusive of any applicable movement charges, packing expenses, warranties, and indirect selling expenses. In determining whether to disregard home market sales made at prices below their COP and in accordance with sections 773(b)(2)(B), (C), and (D) of the Act, we examined whether such sales were made within an extended period of time in substantial quantities and at prices

which permitted the recovery of all costs within a reasonable period of time.

We found that, for certain products, more than 20 percent of respondents' home market sales were at prices below the COP and these below-cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not permit the recovery of costs within a reasonable period of time. Therefore, we disregarded these sales and used the remaining sales of the same product as the basis for determining normal value in accordance with section 773(b)(1) of the Act.

#### E. Price-to-Price Comparisons

##### Maquilacero

We calculated NV based on prices to unaffiliated and affiliated customers that passed the arm's length and cost tests, where appropriate. We accounted for billing adjustments, discounts, and rebates, where appropriate. We also made deductions, where applicable, for inland freight, insurance, handling, and warehousing, pursuant to section 773(a)(6)(B) of the Act. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act. In particular, we made COS adjustments for imputed credit expenses, warranty expenses, and commissions. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act. For more information, *see* Maquilacero's Preliminary Analysis Memo.

##### Regiopytsa

We calculated NV based on prices to unaffiliated customers that passed the cost test. We accounted for billing adjustments, discounts, and rebates, where appropriate. We also made deductions, where applicable, for inland freight, insurance, handling, and warehousing, pursuant to section 773(a)(6)(B) of the Act. We also made adjustments for differences in COS in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. In particular, we made COS adjustments for warranty, commission, and certain direct selling expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act. *See* Regiopytsa's Preliminary Analysis Memo for a detailed explanation of these adjustments.

#### Use of Adverse Facts Available

For the reasons discussed below, we determine that the use of adverse facts available is appropriate for the preliminary results with respect to certain unreported expenses incurred by Regiopytsa on U.S. sales and unreported sales in the U.S. market.

##### A. Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall use facts otherwise available in reaching the applicable determination.

During verification, we discovered that certain U.S. sales had incurred unreported direct selling expenses. In light of this fact, we carefully examined all pre-selected and surprise U.S. sales in order to determine if any had these unreported direct selling expenses. While examining the documentation for the ten U.S. pre-selected and surprise sales, we found that some sales had certain direct selling expenses that were incurred by Regiopytsa but were not reported to the Department. Also during verification, company officials explained that in gathering the sales documentation for a U.S. surprise sale, Regiopytsa discovered that a sale, originally reported as subject merchandise in the U.S. sales file, was in fact non-subject merchandise. As a result of this discovery, Regiopytsa conducted a manual review of the U.S. sales file in order to determine whether or not other sales were improperly reported as subject or non-subject. Company officials explained that as a result of this manual review, Regiopytsa uncovered additional sales which were reported as subject merchandise but were in fact non-subject in nature. Additionally, company officials explained that one sale was subject merchandise, but was originally considered non-subject merchandise, was inadvertently not reported to the Department. *See* Sales Verification Report for additional details.

Pursuant to section 776(a)(2) of the Act, because Regiopytsa failed to report certain direct selling expenses incurred on U.S. sales and did not correctly identify all U.S. sales of subject merchandise prior to the start of verification (*i.e.*, before the deadline to

submit new factual information) it is appropriate to use facts available.

#### B. Application of Adverse Inference for Facts Available

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. (1994) (SAA), explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” See SAA at 870. It is the Department’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation. See, e.g., *Id.*

Furthermore, “affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.” See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27340 (May 19, 1997) (*Preamble*). We find that, by failing to report the expenses associated with certain U.S. sales prior to verification, Regiopytsa failed to cooperate to the best of its ability. In addition, with regard to Regiopytsa’s failure to report all EP sales of LWRPT to the United States during the POR, we find that Regiopytsa failed to cooperate by not acting to the best of its ability to comply with a request for information. In particular, in section A of the Department’s antidumping duty questionnaire, dated October 16, 2009, we explicitly requested that Regiopytsa report the total quantity and value of the merchandise, under review, it sold during the POR in (or to) the United States. Therefore, the Department has preliminarily determined that in selecting from among the facts otherwise available, an adverse inference is warranted.

The Federal Circuit has stated that, “{w}hile the \* \* \* adverse facts available \* \* \* standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.” See *Nippon Steel Corporation v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003). The AFA standard, moreover, assumes that because respondents are in control of their own information, they

are required to take reasonable steps to present information that reflects its experience for reporting purposes before the Department. Therefore, we find it appropriate to use an inference that is adverse to the company’s interests in selecting from among the facts otherwise available.

As partial adverse facts available, and to account for the unreported direct selling expenses, we applied the highest, verified per MT unreported direct selling expense to all of Regiopytsa’s U.S. sales (except for the sales of subject merchandise reviewed during verification). Also as partial adverse facts available, and in order to account for an unreported U.S. sale of subject merchandise, we applied the highest calculated margin to the quantity and value of that sale.<sup>6</sup> Moreover, because we are relying on the company’s own information, there is no need to corroborate the chosen facts available under section 776(c) of the Act. For a detailed discussion on the Department’s application of adverse facts available, see the “Issues” section of Regiopytsa’s Preliminary Analysis Memorandum.

#### Currency Conversion

The Department’s preferred source for daily exchange rates is the Federal Reserve Bank. See *Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France*, 68 FR 47049, 47055 (August 7, 2003), unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France*, 68 FR 69379 (December 12, 2003). However, the Federal Reserve Bank does not track or publish exchange rates for the Mexican peso. Therefore, pursuant to section 773A(a) of the Act, we made currency conversions from Mexican pesos to U.S. dollars based on the daily exchange rates from Factiva, a Dow Jones & Reuters Retrieval Service. Factiva publishes exchange rates for Monday through Friday only. We used the rate of exchange on the most recent Friday for conversion dates involving Saturday through Sunday where necessary. See Import Administration Web site at: <http://ia.ita.doc.gov/exchange/index.html>.

<sup>6</sup> We note that in a letter dated August 31, 2010, we requested that Regiopytsa provide us with a revised database (inclusive of revisions that occurred as a result of minor corrections and findings during verification). The remaining sales (i.e., those reported as subject when they were non-subject) were removed from consideration for these preliminary results.

#### Rates for Non-Selected Companies

Based on our analysis of the responses and our available resources, we selected certain companies for individual examination of their sales of the subject merchandise to the United States during the POR as permitted under section 777A(c)(2) of the Act. For responding companies under review of the antidumping duty order on LWRPT from Mexico that were not individually examined, we have assigned the simple-average margin of the two selected respondents, i.e., Maquilacero and Regiopytsa, in this review.<sup>7</sup> Therefore, we have applied, for these preliminary results, the rate of 16.05 percent to the firms not individually examined in this review.

#### Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted-average dumping margin exists for the period January 30, 2008, through July 31, 2009:

Manufacturer/Exporter	Weighted-average margin (percent)
Maquilacero S.A. de C.V. ....	22.62.
Regiomontana de Perfiles y Tubos S.A. de C.V. ....	9.48.
Industrias Monterrey S.A. de C.V. ....	16.05.
Perfiles y Herrajes LM S.A. de C.V. ....	16.05.
Galvak S.A. de C.V. ....	16.05.
Nacional de Acero S.A. de C.V. Productos laminados de Monterrey S.A. de C.V. ....	16.05.
Ternium Mexico S.A. de C.V. <sup>8</sup> ...	16.05.

#### Disclosure and Public Comments

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d).

<sup>7</sup> Because Regiopytsa reported public, indexed quantity and value sales information (while Maquilacero reported public, ranged quantity and value sales information), we were unable to perform the analysis articulated in *AFBs Final* in this review. See *AFBs Final*, 75 FR at 53662-3.

<sup>8</sup> On August 18, 2009, the Department determined that Ternium is the successor-in-interest to Hylsa S.A. de C.V. and should be treated as such for antidumping duty cash deposit purposes. See *Final Results of Antidumping Duty Changed Circumstances Review: Light-Walled Rectangular Pipe and Tube From Mexico*, 74 FR 41680 (August 18, 2009).

Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c). Rebuttal briefs limited to issues raised in the case briefs may be filed no later than five days after the time limit for submitting the case briefs. *See* 19 CFR 351.309(d). Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, parties submitting case briefs and/or rebuttal briefs are requested to provide the Department with an additional copy of the public version of any such argument on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such argument or at a hearing, within 120 days of publication of these preliminary results, unless extended. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

#### Duty Assessment

Upon completion of this administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate importer or customer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. *See* 19 CFR 351.212(b). Where the duty assessment rates are above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer in accordance with the requirements set forth in 19 CFR 351.106(c)(2). The Department will instruct CBP to assess antidumping duties at the lesser of the cash deposit rate in effect on the date of entry or the final assessment rate, for entries during the period January 30, 2008, through July 27, 2008. *See* section 703(d) of the Act. Pursuant to section 703(d) of the Act, suspension of liquidation was discontinued on July 28, 2008, and no antidumping duties will be assessed on entries made on or after July 28, 2008, through August 3, 2008. For entries made on or after August 4, 2008, through July 31, 2009, if the amount of duties that would be assessed by applying importer or customer specific assessment rates determined herein ("final duties") is different from the amount of duties that would be assessed by applying the

estimated duties rate applied to these entries ("provisional duties"), the Secretary will instruct the Customs Service to disregard the difference to the extent that the provisional duties are less than the final duties, and to assess antidumping or countervailing duties at the assessment rate if the provisional duties exceed the final duties. *See* 19 CFR 351.212(d). In accordance with 19 CFR 356.8(a), the Department intends to issue assessment instructions to CBP on or after 41 days following the publication of the final results of this review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by the company included in these preliminary results for which the reviewed company did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company or company(ies) involved in the transaction.

#### Cash Deposit Requirements

Furthermore, the following cash deposit requirements will be effective upon completion of the final results of this administrative review, for all shipments of LWRPT from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the companies covered by this review (*i.e.*, Maquilacero, Regiopytsa, IMSA, Perfiles y Herrajes, Galvak, Hylsa, Nacional, Prolamsa, and Ternium) will be the rate established in the final results of this review, except if the rate is less than 0.50 percent (*de minimis* within the meaning of 19 CFR 351.106(c)(1)), the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review

conducted by the Department, the cash deposit rate will be the all-others rate of 3.76 percent, which is the all-others rate established in the LTFV investigation. *See Order* at 73 FR 45405. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 7, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-916]

#### Laminated Woven Sacks From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* September 13, 2010.

**SUMMARY:** The Department of Commerce ("the Department") is conducting the first administrative review of the antidumping duty order on laminated woven sacks ("woven sacks") from the People's Republic of China ("PRC") for the period of review ("POR") January 31, 2008, through July 31, 2009. The Department has preliminarily determined that sales have been made below normal value ("NV") by the respondent. If these preliminary results are adopted in our final results of this review, the Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We intend to issue