

in harmony with the Department's *Final Results*.

**EFFECTIVE DATE:** January 30, 2008.

**FOR FURTHER INFORMATION CONTACT:** Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482-0413.

**SUPPLEMENTARY INFORMATION:** On August 31, 2007, the CIT directed the Department to reopen the record and obtain additional evidence regarding Shandong Huarong Machinery Co., Ltd.'s ("Huarong") production of metal pallets. *See Ames True Temper v. United States*, 2007 Ct. Int'l Trade LEXIS 131, Slip Op. 2007-133 (CIT, 2007) ("Ames I"). Pursuant to the Court's remand instructions, we issued supplemental questionnaires on September 19, 2007, and October 19, 2007. Huarong responded to the questionnaires on October 17, 2007, and October 26, 2007, respectively. In the supplemental questionnaires the Department requested: (a) Consumption ratios for all factors of production ("FOPs") associated with the production of pallets used in packing and shipping heavy forged hand tools; (b) information to select surrogate values for any unreported pallet making FOPs; and, (c) supplier distances for any unreported pallet making FOPs.

The Department released the *Draft Results of Redetermination Pursuant to Court Remand* ("Draft Redetermination") to the petitioner, Ames True Temper ("Ames"), and Huarong for comment on November 16, 2007. No party submitted comments. On November 28, 2007, the Department filed its final results of redetermination pursuant to *Ames I* with the CIT. *See Final Results of Redetermination Pursuant to Court Remand*, Court No. 05-00581, (November 28, 2007) ("Final Redetermination"), found at <http://ia.ita.doc.gov/remands/07-133.pdf>. In the remand redetermination, the Department determined that welding wire was consumed in Huarong's pallet making process and that welding wire should have been reported by Huarong as a FOP during the thirteenth review. The Department valued welding wire using publicly available Indian import statistics for February 2003–January 2004 from the *World Trade Atlas* ("WTA").<sup>1</sup> Thus, the Department included the cost of welding wire in

Huarong's NV, including freight costs associated with Huarong's purchases of the welding wire. On January 18, 2008, the CIT sustained all aspects of the remand redetermination made by the Department pursuant to the CIT's remand of the *Final Results*.

In its decision in *Timken*, 893 F.2d at 341, the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended ("the Act"), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. As a result of the Department's addition of the welding wire consumed in making steel pallets in the remand redetermination, the CIT's decision in this case on January 18, 2008, constitutes a final decision of the court that is not in harmony with the Department's *Final Results*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the CIT's ruling is not appealed or, if appealed, upheld by the Federal Circuit, the Department will instruct U.S. Customs and Border Protection to revise the cash deposit rates covering the subject merchandise.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: January 24, 2008.

**David M. Spooner,**

Assistant Secretary for Import Administration.

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-201-836]

#### Notice of Preliminary Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube From Mexico

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

**EFFECTIVE DATE:** January 30, 2008.

**SUMMARY:** The U.S. Department of Commerce (the Department) preliminarily determines that light-walled rectangular (LWR) pipe and tube from Mexico is being, or is likely to be,

sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the "Suspension of Liquidation" section of this notice. Interested parties are invited to comment on this preliminary determination.

**FOR FURTHER INFORMATION CONTACT:** Angelica Mendoza, Patrick Edwards (PROLAMSA), or Judy Lao (Maquilacero), AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3019, (202) 482-8029, or (202) 482-7924, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 17, 2007, the Department initiated the antidumping duty investigation of LWR pipe and tube pipe and tube from Mexico. *See Initiation of Antidumping Duty Investigations: Light-Walled Rectangular Pipe and Tube from Republic of Korea, Mexico, Turkey, and the People's Republic of China*, (Initiation Notice), 72 FR 40274 (July 24, 2007). The petitioners in this investigation are Allied Tube and Conduit, Atlas Tube, Bull Moose Tube Company, California Steel and Tube, Hannibal Industries, Leavitt Tube Company, Maruchi American Corporation, Searing Industries, Southland Tube, Vest Inc., Welded Tube, and Western Tube and Conduit (collectively, petitioners).

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. *See Initiation Notice*, 72 FR 40274 (July 24, 2007). No parties submitted comments on the scope.

On August 28, 2007, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of LWR pipe and tube from Korea, Mexico, Turkey and the People's Republic of China are materially injuring the U.S. industry and the ITC notified the Department of its findings. *See Light-Walled Rectangular Pipe and Tube From China, Korea, Mexico, and Turkey Case Numbers: 701-TA-449 (Preliminary) and 731-TA-1118-1121 (Preliminary)*, 72 FR 49310, (August 28, 2007).

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known

<sup>1</sup> WTA is published by Global Trade Information Services, Inc., which is a secondary electronic source based upon the publication, *Monthly Statistics of the Foreign Trade of India*, Volume II: Imports. See <http://www.gtis.com/wta.htm>.

exporter and producer of the subject merchandise. The Department identified a large number of producers and exporters of LWR pipe and tube from Mexico and determined that it was not practicable to examine each known exporter/producer of the subject merchandise, as provided in section 777A(c)(1) of the Act. The Department sent quantity and value questionnaires to the companies identified in the petition along with any other companies identified during our research. The following 14 companies were sent quantity and value (Q&V) questionnaires on July 31, 2007: Arco Metal S.A. de C.V., Hylsa S.A. de C.V., Industrias Monterrey S.A. de C.V., Internacional de Aceros, S.A. de C.V., Maquilacero S.A. de C.V., Nacional de Acero S.A. de C.V., PEASA—Productos Especializados de Acero, Perfiles y Herrajes LM, S.A. de C.V., Productos Laminados de Monterrey S.A. de C.V., Regiomontana de Perfiles y Tubos, Talleres Acero Rey S.A. de C.V., Tuberias Aspe, Tuberia Laguna, S.A. de C.V., and Tuberias y Derivados S.A. de C.V.

The Department did not receive a response to the Q&V questionnaire (or received an improperly filed and/or incomplete response) from the following five companies: Industrias Monterrey S.A. de C.V., PEASA—Productos Especializados de Acero, Tuberias Aspe, Tuberias y Derivados S.A. de C.V., and Nacional de Acero S.A. de C.V. (Q&V Non-Responding Companies). These five companies that failed to respond, or provided an improperly filed and/or incomplete response, were given a second opportunity to file a response on August 16, 2007. We received no response from these companies.

The remaining nine exporters/producers responded to the Department's Q&V questionnaire: Arco Metal S.A. de C.V., Hylsa S.A. de C.V., Internacional de Aceros, S.A. de C.V., Maquilacero S.A. de C.V., Perfiles y Herrajes LM, S.A. de C.V., Productos Laminados de Monterrey S.A. de C.V., Regiomontana de Perfiles y Tubos, Talleres Acero Rey S.A. de C.V., and Tuberia Laguna S.A. de C.V. (Q&V Responding Companies). Two Q&V Responding Companies—Maquilacero S.A. de C.V. (Maquilacero) and Productos Laminados de Monterrey S.A. de C.V. (PROLAMSA)—accounted for the largest volume of subject merchandise exported to the United States during the POI. These two companies were selected as mandatory respondents pursuant to section 777A(c)(2)(B) of the Act. See the September 6, 2007, Memorandum to Deputy Assistant Secretary Stephen J.

Claeys, titled “Antidumping Duty Investigation on Light-Walled Rectangular Pipe and Tube from Mexico (A-201-836); Respondent Selection” (Respondent Selection Memorandum). We issued antidumping duty questionnaires to Maquilacero and PROLAMSA on September 7, 2007.

#### **Maquilacero**

The Department received the Section A response from Maquilacero on October 9, 2007. Petitioners filed comments on Maquilacero's Section A response on October 16, 2007, and the Department subsequently issued a supplemental questionnaire regarding Maquilacero's Section A Response on October 23, 2007. We received the Sections B and C responses from Maquilacero on October 30, 2007. Petitioners filed comments on Maquilacero's Sections B and C responses on November 8, 2007. On November 19, 2007, Maquilacero filed its response to the Department's supplemental questionnaire regarding Section A. The Department issued a supplemental questionnaire to Maquilacero concerning the company's Sections B and C responses on November 20, 2007. Maquilacero replied to this supplemental questionnaire on December 4, 2007.

On December 5, 2007, based on an allegation timely filed by petitioners, the Department initiated a sales-below-cost investigation for Maquilacero, finding reasonable grounds to believe that Maquilacero made comparison market sales of LWR pipe and tube at prices below its cost of production. See “Cost of Production Analysis” section below for further information.

Consequently, the Department requested in a letter dated December 6, 2007, that Maquilacero respond to section D of the Department's antidumping duty questionnaire. We received Maquilacero's section D response on December 27, 2007. On January 4, 2008, the Department issued a supplemental questionnaire to Maquilacero regarding its section A through C supplemental responses. Maquilacero filed its response to the supplemental questionnaire on January 22, 2008. We were unable to analyze Maquilacero's response prior to the January 23, 2008, preliminary determination deadline. We will address any deficiencies in its responses for the final determination.

#### **PROLAMSA**

The Department received the section A response from PROLAMSA on October 9, 2007. Petitioners filed comments on PROLAMSA's section A

response on October 11, 2007, and the Department subsequently issued a supplemental questionnaire regarding PROLAMSA's section A Response on October 23, 2007. We received the sections B and C responses from PROLAMSA on October 29, 2007. On November 6, 2007, PROLAMSA filed its response to the Department's supplemental questionnaire regarding section A. Petitioners filed comments on PROLAMSA's sections B and C responses on November 8, 2007. The Department issued a supplemental questionnaire to PROLAMSA concerning the company's sections B and C responses on November 16, 2007. PROLAMSA replied to this supplemental questionnaire on December 7, 2007. The Department issued a second supplemental questionnaire with regard to PROLAMSA's supplemental responses for sections A, B and C of the questionnaire on December 20, 2007. PROLAMSA submitted its second supplemental response on January 7, 2008.

On December 4, 2007, based on an allegation timely filed by petitioners, the Department initiated a sales-below-cost investigation for PROLAMSA, finding reasonable grounds to believe that PROLAMSA made comparison market sales of LWR pipe and tube at prices below its cost of production. See “Cost of Production Analysis” section below for further information. Consequently, the Department requested in a letter dated December 6, 2007, that PROLAMSA respond to Section D of the Department's antidumping duty questionnaire. We received PROLAMSA's Section D response on December 27, 2007.

#### **Maquilacero and PROLAMSA**

On December 26, 2007, petitioners timely filed with the Department separate allegations of targeted dumping for both Maquilacero and PROLAMSA. Maquilacero filed comments regarding petitioners' allegation of targeted dumping on January 7, 2008. Upon review of petitioners' allegations, the Department determined that further information was needed in order to adequately analyze petitioners' allegations. The Department issued a supplemental questionnaire to petitioners on January 11, 2008, requesting they address deficiencies identified by the Department. See Letter from Richard O. Weible, Office Director, to Petitioners, dated January 11, 2008. On January 15, 2008, PROLAMSA filed comments regarding petitioners' allegation of targeted dumping. Because there was a need for supplemental

information regarding these allegations, we do not have sufficient bases for making a finding of targeted dumping prior to the January 23, 2008, deadline for issuance of the preliminary determination. We intend to address these allegations in full upon receipt of a satisfactory response by petitioners to our request for additional information.

On January 18, 2008, two business days prior to the signature date for this preliminary determination, petitioners filed comments regarding the responses and data of Maquilacero and PROLAMSA for the Department's consideration for the preliminary determination. Petitioners' comments were specific to both companies' reported post-sale adjustments, and also, that the Department should not deduct negative margins from positive margins for the preliminary determination. Accordingly, the Department does not have sufficient time to address these comments for the preliminary determination.

#### **Postponement of Preliminary Determination**

On October 19, 2007, petitioners requested that the Department postpone the preliminary determination by 50 days. The Department published an extension notice on November 14, 2007, which set the new deadline for the preliminary determination at January 23, 2008. *See Light-Walled Rectangular Pipe and Tube from Mexico, Turkey, and the Republic of Korea: Postponement of Preliminary Determination of Antidumping Duty Investigations*, 72 FR 64044 (November 14, 2007).

#### **Period of Investigation**

The period of investigation (POI) is April 1, 2006, to March 31, 2007.

#### **Scope of Investigation**

The merchandise that is the subject of this investigation 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 investigation 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 investigation is dispositive.

#### **Model Match**

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the "Scope of Investigation" section above, and sold in Mexico during the POI, are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales.

On August 16, 2007, the Department asked all parties in this investigation and in the concurrent antidumping duty investigations of LWR pipe and tube from the Republic of Korea, Turkey, and the People's Republic of China, for comments on the appropriate product characteristics for defining individual products. In addition, the Department requested that all parties in this investigation and in the concurrent antidumping duty investigations of LWR pipe and tube from the Republic of Korea and Turkey submit comments on the appropriate model matching methodology. *See Letter from Richard Weible, Office Director, AD/CVD Enforcement 7, dated August 16, 2007.* The Department received comments from the Mexican company Perfiles y Herrajes LM, S.A. de C.V. on August 23, 2007; from the Mexican companies PROLAMSA and Prolamsa USA, Inc. (PROLAMSA's U.S. sales affiliate) on August 27, 2007, and September 4, 2007; from the Turkish company Noksel Celik Boru Sanayi A.S. on August 24, 2007; from the Chinese producer/exporter Zhangjiagang Zhongyuan Pipe-Making Co., Ltd.; and from the petitioners on August 24, 2007. However, the Department has not made any changes to its proposed characteristics and model matching methodology as a result of the comments submitted by parties.

We have relied on six criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: steel input type,

whether metallic coated or not, whether painted or not, perimeter, wall thickness, and shape. Where there were no sales of identical merchandise in the ordinary course of trade 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 listed above. For both PROLAMSA and Maquilacero, it was necessary to rely on facts available in order to properly match U.S. sales of subject merchandise to comparison market sales of the foreign like product as discussed below.

Maquilacero's home market sales included sales of non-prime merchandise. As noted in Maquilacero's original and supplemental questionnaire responses, Maquilacero does not record certain product characteristics for its sales of non-prime merchandise. Specifically, Maquilacero does not document the perimeter, thickness, or shape of its non-prime sales on the documents produced in its ordinary course of trade. As such, these product characteristics for non-prime merchandise were not specifically identified in Maquilacero's home market database (in neither their respective field and nor in the control number (CONNUM) string). Section 776(a)(1) of the Act provides that the Department may use facts otherwise available if necessary information is not available on the record. Because the necessary product characteristic information needed to properly perform our margin calculations with respect to these sales is not on the record of this investigation, we must rely on facts otherwise available. In order for the Department to accurately compare Maquilacero's comparison market sales to its U.S. sales and its cost of production data, the Department applied, as neutral facts available, the product characteristics of the most common type of LWR pipe and tube (CONNUM) sold in the comparison market to the missing product characteristics of non-prime merchandise (*i.e.*, perimeter, thickness, and shape). For more details regarding the application of neutral facts available to Maquilacero's sales of non-prime LWR pipe and tube, *see Memorandum to the File titled "Analysis of Data Submitted by Maquilacero S.A. de C.V. (Maquilacero) in the Preliminary Determination of the Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from Mexico," dated January 23, 2008 (Maquilacero Preliminary Analysis Memo).*

With respect to PROLAMSA's reported steel input type (INPUTH/U), we note that the model matching criteria designated by the Department in its antidumping duty questionnaire requested that respondent report steel input type as either: hot-rolled steel or cold-rolled steel. In its initial and supplemental questionnaire responses, PROLAMSA reported a third designation in its fields for INPUTH/U as it claims to not know whether these coils were of hot-rolled or cold-rolled steel. As noted above, section 776(a)(1) of the Act provides that the Department may use facts otherwise available if necessary information is not available on the record. Because the necessary product characteristic information needed to properly perform our margin calculations with respect to these sales is not on the record of this investigation, we must rely on facts otherwise available. Therefore, for purposes of this preliminary determination, we have revised PROLAMSA's reported steel input type for those sales that PROLAMSA could not identify as hot-rolled or cold-rolled steel in both PROLAMSA's comparison market and U.S. sales databases. Specifically, based on neutral facts available, we re-coded the reported CONNUMH/U and INPUTH/U as either hot-rolled or cold-rolled steel depending upon the reported thickness (THICKH/U) for these products. Due to the proprietary nature of this issue, see Memorandum to the File titled "Analysis of Data Submitted by Productos Laminados de Monterrey S.A. de C.V. (PROLAMSA) in the Preliminary Determination of the Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from Mexico," dated January 23, 2008 (PROLAMSA Preliminary Analysis Memo) for further details.

#### Use of Facts Otherwise Available

For the reasons discussed below, we determine that the use of adverse facts available (AFA) is appropriate for the preliminary determination with respect to the Q&V Non-Responding Companies. As noted in the "Supplementary Information" section above, the Q&V Non-Responding Companies failed to respond (or to respond in a timely fashion) to the Department's Q&V questionnaire and to the Department's follow up letter dated August 16, 2007.

Section 776(a)(2) of the Act provides that, (1) if an interested party withholds information requested by the administering authority, (2) fails to provide such information by the deadlines for submission of the information and in the form or manner

requested, subject to subsections (c)(1) and (e) of section 782, (3) significantly impedes a proceeding under this title, or (4) provides such information but the information cannot be verified as provided in 782(i), the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that, if the administering authority determines that a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this case, the Q&V Non-Responding Companies all failed to provide the information requested by the deadlines for submission of the information and/or in the form or manner requested. Specifically, the Q&V Non-Responding Companies did not respond to our Q&V questionnaires and, as such, they failed to provide pertinent information that we requested for our consideration and selection of mandatory respondents, thereby significantly impeding this proceeding. Thus, for these companies, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we have based their dumping margin on facts otherwise available.

#### Application of Adverse Inferences for Facts Available

According to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. See, e.g., *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025–54026 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and*

*Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–55796 (August 30, 2002). The SAA explains that the Department may apply adverse inferences to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. See *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. No. 103–316, Vol. 1, at 870 (1994) (SAA), reprinted in 1994 U.S.C.C.A.N. 4040, 4198–4199. 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); see also *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382–83 (Fed. Cir. 2003) (Nippon); and *Certain Polyester Staple Fiber from Korea: Final Results of the 2005–2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007).

Although the Department provided the Q&V Non-Responding Companies with notice informing them of the consequences of their failure to respond adequately to the Q&V questionnaire in this case, pursuant to section 782(d) of the Act, these companies did not respond as requested. This constitutes a failure on the part of these companies to cooperate to the best of their ability to comply with a request for information by the Department within the meaning of section 776(b) of the Act. Because these companies did not provide the information requested, section 782(e) of the Act is not applicable. Based on the above, the Department has preliminarily determined that the Q&V Non-Responding Companies failed to cooperate to the best of their ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. See, e.g., *Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000) (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

#### Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other

information placed on the record. *See also*, 19 CFR 351.308(c) and the SAA at 829–831. It is the Department's practice to use the highest calculated rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland*, 70 FR 28279 (May 17, 2005)). Therefore, because an adverse inference is warranted, we have assigned to the Q&V Non-Responding Companies the highest margin alleged in the petition, as referenced in the *Initiation Notice*, of 11.50 percent. (*See Initiation Notice* at 40278.)

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably available at its disposal.

The SAA clarifies that “corroborate” means the Department will satisfy itself that the secondary information to be used has probative value. *See SAA at 870*. As stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825, 11843 (March 13, 1997)), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested

parties during the particular investigation. *See* 19 CFR 351.308(d) and the SAA at 870.

For the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis and for purposes of this preliminary determination. *See Initiation Checklist*. We examined evidence supporting the calculations in the Petition to determine the probative value of the margins alleged in the Petition for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we examined the key elements of the export-price and normal-value calculations used in the Petition to derive margins. During our pre-initiation analysis, we also examined information from various independent sources provided either voluntarily in the Petition or, based on our requests, in supplements to the Petition, that corroborates key elements of the export-price and normal-value calculations used in the Petition to derive estimated margins.

Specifically, the petitioners calculated a single export price using the average monthly Customs Unit Values (AUVs) ((Free Alongside Ship) (FAS)) of LWR pipe and tube from Mexico for consumption in the United States, classified under HTSUS numbers 7306.60.50.00 and 7306.61.50.00. As the IM145 data is considered direct import data from CBP, we consider petitioners' AUVs based on this data to be reliable. Further, we obtained no other information that would make us question the reliability of the pricing information provided in the Petition.

The petitioners adjusted export prices for inland freight from the plant to the port of importation, specifically, Laredo, Texas. The petitioners used inland freight charges obtained from inland freight price quotes from certain Mexican producers of LWR pipe and tube. *See Petition* at page II–10 and July 6, 2007 Supplement to the Petition at 7. This is a source of information that we consider reliable. *See, e.g., Notice of Preliminary Determination of Sales at Less than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 48538 (August 18, 2005) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 65886 (November 1, 2005)). Further, we obtained no other information that would make us question the reliability of the adjusted information provided in the Petition, nor the July 6, 2007, deficiency response.

Based on our examination of the aforementioned information, we consider the petitioners' calculation of net U.S. prices corroborated.

With respect to normal value, petitioners derived Mexican comparison market prices by obtaining price quotations from certain Mexican manufacturers of LWR pipe and tube through an economic consultant, which identified specific terms of sale and payment terms. Petitioners made no adjustments to the quoted prices, as the terms of delivery for the quotations were “free on board” (FOB) at the respective manufacturing facilities. *See Volume II of the Petition* at 6–7, Exhibits II–14 and II–15, and *Volume II of the Supplement to the Petition*, dated July 6, 2007, at 1, 3–5 and Exhibits 4 and 5.

Based on our examination of the aforementioned information, we consider the petitioners' calculation of net comparison market prices corroborated.

We also examined information obtained from interested parties during this particular investigation to corroborate the home market and U.S. prices. Certain transaction-specific margin percentages calculated for Maquilacero and PROLAMSA exceeded those from the Petition.

Therefore, because we confirmed the accuracy and validity of the information underlying the derivation of margins in the Petition by examining source documents, publicly available information and primary information submitted by respondents Maquilacero and PROLAMSA, we preliminarily determine that the margins in the Petition are reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin as “best information available” (the predecessor to “facts available”) because the margin was based on another company's uncharacteristic business expense that resulted in an unusually high dumping margin.

In *Am. Silicon Techs. v. United States*, 273 F. Supp. 2d 1342, 1346 (CIT 2003), the court found that the adverse

facts-available rate bore a “rational relationship” to the respondent’s “commercial practices,” and was, therefore, relevant. In the pre-initiation stage of this investigation, we confirmed that the calculation of margins in the Petition reflects commercial practices of the particular industry during the period of investigation. Further, no information has been presented in the investigation that calls into question the relevance of this information. As such, we preliminarily determine that the highest margin in the Petition, which we determined during our pre-initiation analysis was based on adequate and accurate information and which we have corroborated for purposes of this preliminary determination, is relevant as the adverse facts-available rate for the Q&V Non-Responding Companies in this investigation.

Similar to our position in *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405 (September 11, 2006) (unchanged in *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982 (January 17, 2007)), because this is the first segment of this proceeding involving these companies, there are no probative alternatives. Accordingly, by using information that was corroborated for the initiation stage of this investigation and preliminarily determined to be relevant to the Q&V Non-Responding Companies in this investigation, we have corroborated the adverse facts-available rate “to the extent practicable.” See section 776(c) of the Act, 19 CFR 351.308(d), and *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating, “pursuant to the ‘to the extent practicable’ language, the corroboration requirement itself is not mandatory when not feasible”). Therefore, we find that the estimated margin of 11.50 percent in the *Initiation Notice* has probative value. Consequently, in selecting AFA with respect to the Q&V Non-Responding Companies, we have applied the margin rate of 11.50 percent, the highest estimated dumping margin set forth in the notice of initiation. See *Initiation Notice* at 40278.

#### Date of Sale

Section 351.401(i) of the Department’s regulations states the Department normally will use the date of invoice, as recorded in the producer’s or exporter’s records kept in the ordinary course of business, as the date of sale. The regulations further provide that the Department may use a date other than

the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. See 19 CFR 351.401(i). Maquilacero reported the sales invoice date as the date of sale for all sales in the U.S. and in the comparison market. See Maquilacero’s Section B and C Response at B-23 and C-19, respectively. PROLAMSA reported the sales invoice date as the date of sale for all sales in the comparison and U.S. markets. See PROLAMSA’s Section B and C Response at B-18 and C-15, respectively. However, with regard to PROLAMSA, the company reported two invoice dates as all of its sales are back-to-back CEP sales. The first invoice date (which is identical to the date of shipment) is the date on which PROLAMSA invoices its U.S. affiliate, Prolamsa, Inc. The second reported invoice date is the date on which Prolamsa, Inc. invoices the unaffiliated U.S. customer. We have preliminarily determined that the date of PROLAMSA’s invoice to Prolamsa, Inc. is the appropriate date to use as PROLAMSA’s date of sale as it is the date that the material terms of sale are set.

Based on the responses of both companies, and having no record evidence that would indicate otherwise, we preliminarily determine that the sales invoice date is the appropriate date of sale in both markets for Maquilacero and PROLAMSA. For a further discussion of this issue, see Maquilacero Preliminary Analysis Memo; see also, PROLAMSA Preliminary Analysis Memo.

#### Fair Value Comparisons

To determine whether sales of LWR pipe and tube from Mexico were made in the United States at less than normal value (NV), we compared the export price (EP) or constructed export price (CEP) to the NV, as described in the “Export Price and Constructed Export Price” and “Normal Value” sections below. In accordance with section 777A(d)(1) of the Act, we calculated the weighted-average prices for NV and compared these to the weighted-average of EP (and CEP), when appropriate.

#### Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. Pursuant to section 772(a) of the Act, we used the EP methodology when the merchandise was sold by the producer or exporter outside the United States directly to the first unaffiliated

purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. See section 772(b) of the Act. We based EP and CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale.

#### Maquilacero

Maquilacero classified its sales to the United States solely as EP sales, i.e., sales to unaffiliated direct end user customers. Maquilacero’s U.S. sales were made directly to unaffiliated customers in the United States prior to importation, and CEP is not otherwise warranted based on Maquilacero’s questionnaire response. Therefore, for purposes of this preliminary determination, we have accepted Maquilacero’s classification of its sales to the United States as EP sales.

Accordingly, we calculated EP based on prices charged to the first unaffiliated U.S. customer. We based EP on the packed and delivered (to port and/or to customer) prices to the first unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, including foreign inland freight, and foreign brokerage and handling. When appropriate, we adjusted prices to reflect deductions and/or increases to prices due to billing adjustments, early payment discounts and rebates. See Maquilacero Preliminary Analysis Memo.

#### PROLAMSA

PROLAMSA’s U.S. sales were made by its U.S. affiliate, Prolamsa, Inc. We therefore based all of PROLAMSA’s prices to the United States on CEP. When appropriate, we adjusted prices to reflect deductions and/or increases to price due to billing adjustments, early payment discounts and rebates. In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight, brokerage and handling in the country of manufacture, international freight, and U.S. brokerage and handling.

In its supplemental questionnaire responses, PROLAMSA explained that it was never invoiced for foreign inland freight services provided on certain U.S. sales. As such, PROLAMSA reported no

inland freight expense for these observations. See PROLAMSA's Second Supplemental Response at 9. As a general matter, our calculations include the value of foreign inland freight services because these services are not provided on a gratuitous basis. Although PROLAMSA claims that it was never invoiced for these services on certain U.S. sales, the suppliers of said services still could invoice PROLAMSA for these services provided in connection with certain POI sales. There is no record evidence that the suppliers wrote off the value of these services from their accounts receivable. Section 776(a)(1) of the Act provides that the Department may use facts otherwise available if necessary information is not available on the record. Because the expenses needed to properly calculate net CEP for these sales are not on the record of this investigation, we must rely on facts otherwise available. Accordingly, based on neutral facts available, we revised PROLAMSA's reported foreign inland freight to account for missing values for certain U.S. sales. Specifically, we used a weighted average of all observations where a positive value was reported under the inland freight field (DINLFTP), and where those observations had an identical destination and customer code in PROLAMSA's dataset, for the sales in question. For further details, see PROLAMSA's Preliminary Analysis Memo dated January 23, 2008.

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (*i.e.*, commissions and imputed credit expenses). We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act. See PROLAMSA Preliminary Analysis Memo.

#### **Normal Value**

##### *A. Home Market Viability and Comparison Market Selection*

To determine whether there was a sufficient volume of sales in the home market (*i.e.*, Mexico) to serve as a viable basis for calculating NV, we compared the respondents' volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B)(I) of the Act, because each respondent had an aggregate volume of home market sales of the foreign like product that was

greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the respondents' sales of LWR pipe and tube in Mexico were sufficient to find the home market as viable for comparison purposes. Accordingly, we calculated NV for Maquilacero and PROLAMSA based on sales prices to Mexican customers.

##### *B. Arm's-Length Test*

Maquilacero and PROLAMSA reported sales of the foreign like product to affiliated and unaffiliated customers in the comparison market. The Department calculates NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the producer or exporter, *i.e.*, sales at "arm's-length." See 19 CFR 351.403(c). To test whether these sales were made at arm's-length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we considered the sales to be at arm's-length prices and included such sales in the calculation of NV. See 19 CFR 351.403(c). Conversely, where sales to the affiliated party did not pass the arm's-length test, all sales to that affiliated party were excluded from the NV calculation. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002); see also, Maquilacero Preliminary Analysis Memo and PROLAMSA Preliminary Analysis Memo.

##### *C. Cost of Production Analysis*

Based on our analysis of petitioners' allegation, we found that there were reasonable grounds to believe or suspect that Maquilacero's and PROLAMSA's sales of LWR pipe and tube in the comparison market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost investigation to determine whether these companies had sales that were made at prices below their respective COPs. See Memorandum to Richard O. Weible, Director, Office 7, titled "Petitioners' Allegation of Sales Below the Cost of Production for Maquilacero S.A. de C.V.," dated December 5, 2007

(Maquilacero Cost Initiation Memo); *see also*, Memorandum to Richard O. Weible, Director, Office 7, titled "Petitioners' Allegation of Sales Below the Cost of Production for Productos Laminados de Monterrey S.A. de C.V.," dated December 4, 2007 (PROLAMSA Cost Initiation Memo).

##### **1. Calculation of Cost of Production**

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COP based on the sum of their costs of materials and conversion for the foreign like product, plus an amount for home market selling expenses, general and administrative (G&A) expenses, interest expenses and packing costs. See the "Test of Comparison Market Sales Prices" section below for the treatment of comparison market selling expenses.

The Department relied on the COP data submitted by Maquilacero and PROLAMSA, in their respective section D questionnaire responses for the COP calculation, except for the following instances:

**Maquilacero:** We adjusted Maquilacero's reported total cost of manufacturing (TOTCOM) to include certain rebates which Maquilacero received from its supplier of hot-rolled coils; rebates which Maquilacero had previously included as an adjustment to price. We adjusted Maquilacero's data to apply this ratio to the reported TOTCOM of each CONNUM.

**PROLAMSA:** We adjusted PROLAMSA's G&A expense ratio to include 2006 profit-sharing costs included in PROLAMSA's 2006 audited financial statements and applied the adjusted G&A ratio to the revised TOTCOM of each CONNUM.

For a complete discussion of the changes made to the cost information submitted by Maquilacero and PROLAMSA, see Memorandum to Neal M. Halper, Director, Office of Accounting, titled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination—Maquilacero, S.A. de C.V.," dated January 23, 2008 (Maquilacero COP Memo); *see also*, Memorandum to Neal M. Halper, Director, Office of Accounting, titled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination—Productos Laminados de Monterrey, S.A. de C.V. (Prolamsa)," dated January 23, 2008 (PROLAMSA COP Memo).

##### **2. Test of Comparison Market Sales Prices**

On a product-specific basis, we compared the adjusted weighted-

average COP to the comparison market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. For purposes of this comparison, we used the COP exclusive of selling and packing expenses. The prices were exclusive of any applicable movement charges, direct and indirect selling expenses, and packing expenses.

### 3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than COP, we determined that such sales have been made in "substantial quantities." See section 773(b)(2)(C) of the Act. Further, the sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because we examined below-cost sales occurring during the entire POI. In such cases, because we compared prices to POI-average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain specific products, more than 20 percent of Maquilacero's and PROLAMSA's sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

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

*Maquilacero:* We calculated NV based on prices to unaffiliated customers (as well as those affiliated customers which passed the arm's length test) and matched U.S. sales to NV. We made deductions, where appropriate, for billing adjustments, discounts, rebates, movement expenses, and packing pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, as well as for differences in circumstances of sale (COS) as

appropriate (*i.e.*, commissions and credit), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

*PROLAMSA:* We based comparison market prices on packed prices to unaffiliated customers (as well as those affiliated customers which passed the arm's length test) in Mexico. Starting with gross prices, we added or subtracted billing adjustments and rebates, where appropriate, and deducted early payment discounts. We adjusted the starting price for inland freight and insurance, where appropriate, pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, as PROLAMSA's sales were all CEP sales, for comparisons made to those CEP sales, we only deducted Mexican credit expenses and commissions from comparison market prices, because U.S. credit expenses and commissions were deducted from U.S. price, as noted above and in accordance with section 772(c)(2) of the Act.

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

### E. Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The LOT in the comparison market is the LOT of the starting-price sales in the comparison market or, when NV is based on CV, the LOT of the sales from which we derive SG&A expenses and profit. With respect to U.S. price for EP transactions, the LOT is also that of the starting-price sale, which is usually from the exporter to the importer. See section 351.412(c)(i) of the Department's regulations. For CEP, the LOT is that of the constructed sale from the exporter to the affiliated importer. See section 351.412(c)(ii) of the Department's regulations. See also *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

To determine whether comparison market sales are at a different LOT from U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated

customer. If the comparison market sales are at different LOTs, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, the Department makes an LOT adjustment in accordance with section 773(a)(7)(A) of the Act. For CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. We analyze whether different selling activities are performed, and whether any price differences (other than those for which other allowances are made under the Act) are shown to be wholly or partly due to a difference in LOT between the CEP and NV. Under section 773(a)(7)(A) of the Act, we make an upward or downward adjustment to NV for LOT if the difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined. Finally, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP, but the data available do not provide an appropriate basis to determine a LOT adjustment, we reduce NV by the amount of indirect selling expenses incurred in the foreign comparison market on sales of the foreign like product, but by no more than the amount of the indirect selling expenses incurred for CEP sales.

See section 773(a)(7)(B) of the Act (the CEP offset provision).

In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27371 (May 19, 1997). 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 *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.

*Maquilacero:* Maquilacero reported two channels of distribution in the comparison market (*i.e.*, Mexico): (1) Distributors and end-users. Maquilacero reported its selling functions to both distributors and end-users in the home market as: sales forecasting, strategic/economic planning, advertising, sales

promotion, packing, inventory maintenance, order input/processing, direct sales personnel, market research, providing cash and early payment discounts, providing warranty services, providing freight and delivery, travel to customer location, collections, and paying commissions. We examined the selling activities reported for each channel of distribution and organized 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. We found that Maquilacero's level of selling functions to its home market customers for each of the four selling function categories did not vary significantly by channel of distribution. *See* Maquilacero's Supplemental Section A Response at Exhibit 16. Therefore, we preliminarily conclude that the selling functions for the reported channels of distribution constitute one LOT in the comparison market.

Maquilacero reported that all of its sales to the United States were EP sales made through two channels of distribution, *i.e.*, distributors and end-users. For EP sales, we examined the selling activities related to each of the selling functions between Maquilacero and its U.S. customers. Maquilacero reported its selling functions to both distributors and end-users in the United States as: sales forecasting, strategic/economic planning, engineering services, advertising, sales promotion, packing, inventory maintenance, order input/processing, direct sales personnel, market research, providing cash and early payment discounts, providing warranty services, providing freight and delivery, travel to customer location, collections, and paying commissions. We examined the four selling function categories and found that Maquilacero's selling functions for its U.S. sales did not vary significantly by channel of distribution. Therefore, we preliminary determine that Maquilacero's U.S. sales constitute a single LOT.

We then compared the selling functions Maquilacero provided in the comparison market LOT with the selling functions provided to the U.S. LOT. On this basis, we determined that the comparison market LOT is similar to Maquilacero's U.S. LOT. We made this determination based upon the minor differences that exist between Maquilacero's comparison and U.S. markets in terms of the selling functions that are provided to Maquilacero's customers in each market. Moreover, we find that the degree to which Maquilacero provides these identical

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 preliminarily determine that Maquilacero is not entitled to a LOT adjustment.

**PROLAMSA:** In the present investigation, PROLAMSA did not request a LOT adjustment. See PROLAMSA's Section B Response at B-27. In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"),<sup>1</sup> including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

PROLAMSA reported one LOT in the comparison market, Mexico, with two channels of distribution to five classes of customers: (1) Direct sales to distributors, builders (construction), and industrial end-users (collectively, Channel 1), and (2) direct sales to automotive and original equipment manufacturers (OEMs) and furniture producers (collectively, Channel 2). PROLAMSA further identified its customer categories by those that typically order stock subject merchandise (*i.e.*, Channel 1 customers), and those that typically order non-stock (or "made to order") subject merchandise (*i.e.*, Channel 2 customers). *See* PROLAMSA's Section A Response at A-11 through A-12; *see also*, PROLAMSA's Section A Response at Exhibit A-5 and PROLAMSA's Supplemental A Response at Exhibit A-18.

Based on our review of the record evidence, we find that comparison market sales to both customer categories and through both channels of distribution were substantially similar with respect to selling functions and stages of marketing. *See* PROLAMSA's Supplemental A Response at Exhibit A-18 (*i.e.*, the revised selling functions chart). Specifically, PROLAMSA performed the same selling functions at a similar level of performance for sales

in both comparison market channels of distribution (*e.g.*, packing, order input/processing, direct sales personnel and marketing support, technical assistance, rebates, cash discounts, commissions, freight and delivery). *Id.* We find that the only meaningful difference between the two channels in terms of the services provided in the stages of marketing (and the degree of performance of those services) is that PROLAMSA provides inventory maintenance services at a higher degree for its Channel 1 customers. We do not find this difference alone to be sufficient for finding more than one LOT.

Accordingly, we preliminarily find that PROLAMSA had only one LOT for its comparison market sales.

PROLAMSA reported one LOT with regard to its CEP sales through Prolamsa, Inc., with two channels of distribution in the United States, and with four classes of customers for those CEP sales: (1) Sales through U.S. affiliate (CEP sales) to other producers of LWR pipe and tube, distributors and service centers, and metal building and component manufacturers (collectively, Channel (1) and (2) sales through U.S. affiliates (CEP sales) to OEMs (Channel 2). Similar to its comparison market customers, PROLAMSA further identified its U.S. customer categories by those that typically order stock subject merchandise (*i.e.*, Channel 1 customers), and those that typically order non-stock (or "made to order") subject merchandise (*i.e.*, Channel 2 customers). *See* PROLAMSA's section A Response at A-11 through A-12; *see also*, PROLAMSA's Supplemental A Response at Exhibit A-18.

For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. *See Micron Technology Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). We reviewed the selling functions and services performed by PROLAMSA on CEP sales for both channels of distribution relating to the CEP LOT, as described by PROLAMSA in its questionnaire responses, after these deductions. We have determined that the selling functions performed by PROLAMSA on its U.S. sales (all of which are CEP sales) are similar because for all U.S. sales, PROLAMSA provides almost no selling functions to its U.S. affiliate, Prolamsa, Inc., in support of either channel of distribution. PROLAMSA reported that the only services it provided for its CEP sales were packing, freight and delivery direct to the U.S. customer (which included documentation preparation related to packing and shipment of the

<sup>1</sup> The marketing process in the United States and comparison market begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered PROLAMSA's narrative response to properly determine where in the chain of distribution the sale occurs.

merchandise to the U.S. port of importation)<sup>2</sup> and very limited sales/marketing support services through customer visits.

See PROLAMSA's Supplemental A Response at A-9 and Exhibit A-18. Accordingly, because the selling functions provided by PROLAMSA for CEP sales are comparably minimal, and the selling functions provided by Prolamsa, Inc. to unaffiliated customers in the United States in both channels of distribution are substantially similar and provided at the same degree of service (*i.e.*, order input/processing, direct sales personnel, provide cash discounts, commissions, warranty service, visits to customers, calls and correspondence to U.S. customers), we preliminarily determine that there is one CEP LOT in the U.S. market. As PROLAMSA made no direct sales to unaffiliated customers in the United States during the POI, there is no additional analysis required to compare LOTs in the U.S. market.

According to section 773(a)(7)(B) of the Act, a CEP offset is appropriate when the LOT in the home market is at a more advanced stage than the LOT of the CEP sales and there are no data available to determine the existence of a pattern of price difference. PROLAMSA reported that it provided minimal selling functions and services for the one (CEP) LOT in the United States and that, therefore, the comparison market LOT is more advanced than the CEP LOT. Based on our analysis of the channels of distribution and selling functions performed by PROLAMSA for sales in the comparison market and CEP sales in the U.S. market, we preliminarily find that the comparison market LOT is at a more advanced stage of distribution when compared to CEP sales because PROLAMSA provides many more selling functions in the comparison market at a higher level of service as compared to selling functions performed for its CEP sales (*i.e.*, inventory maintenance, order input/processing, direct sales personnel, sales/marketing support, technical assistance, provide rebates, rebates, cash discounts, pay commissions, provide warranty service, provide freight and delivery, visit customers, and call and correspond with customers). Thus, we find that PROLAMSA's comparison market sales are at a more advanced LOT than its CEP sales. There was only one LOT in

the comparison market, and there are no data available to determine the existence of a pattern of price difference, and we do not have any other information that provides an appropriate basis for determining a LOT adjustment. Therefore, consistent with section 773(a)(7)(B) of the Act, we applied a CEP offset to NV for CEP comparisons.

To calculate the CEP offset, we deducted from NV the comparison market indirect selling expenses from NV for comparison market sales that were compared to U.S. CEP sales. As such, we limited the comparison market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

#### Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on exchange rates in effect on the dates of the U.S. sales, as certified by the Dow Jones Reuters Business Interactive LLC (trading as "Factiva"). See Import Administration Web site at: <http://ia.ita.doc.gov/exchange/index.html>.

#### All-Others Rate

Pursuant to section 735(c)(5)(A) of the Act, the all-others rate is equal to the weighted average of the estimated weighted-average dumping margins of all respondents investigated, excluding zero or *de minimis* margins and any margins determined exclusively under section 776 of the Act. Maquilacero and PROLAMSA are the only respondents in this investigation for which the Department has calculated a company-specific rate. For PROLAMSA, we calculated a zero rate; however, for Maquilacero, we calculated a rate above *de minimis*. Therefore, for purposes of determining the all-others rate and pursuant to section 735(c)(5)(A) of the Act, we are using the above *de minimis* rate calculated for Maquilacero as the all-others rate, as referenced in the "Suspension of Liquidation" section below.

#### Verification

As provided in section 782(i) of the Act, we intend to verify all information upon which we will rely in making our final determination.

#### Preliminary Determination

The weighted-average dumping margins are as follows:

Producer/exporter	Weighted-average margin (percentage)
Maquilacero S.A. de C.V .....	4.96
Productos Laminados S.A. de C.V (PROLAMSA) .....	0.00
Arco Metal S.A. de C.V .....	4.96
Hylsa S.A. de C.V .....	4.96
Industrias Monterrey S.A. de C.V .....	11.50
Internacional de Aceros, S.A. de C.V .....	4.96
Nacional de Acero S.A. de C.V .....	11.50
PEASA-Productos Especializados de Acero ..	11.50
Perfiles y Herrajes LM, S.A. de C.V .....	4.96
Regiomontana de Perfiles y Tubos .....	4.96
Talleres Acero Rey S.A. de C.V .....	4.96
Tuberias Aspe .....	11.50
Tuberia Laguna, S.A. de C.V .....	4.96
Tuberias y Derivados S.A. de C.V .....	11.50
All Others .....	4.96

#### Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of LWR pipe and tube from Mexico, with the exception of those produced and exported by PROLAMSA, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin, as indicated in the chart above, as follows: (1) The rate for the firms listed above (except for PROLAMSA, see below) will be the rate we have determined in this preliminary determination; (2) if the exporter is not a firm identified in this investigation, but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 4.96 percent. These suspension-of-liquidation instructions will remain in effect until further notice.

In accordance with 19 CFR 351.204(e)(2), because the weighted-average margin for PROLAMSA is zero, we will not instruct CBP to suspend liquidation of merchandise produced and exported by PROLAMSA.

#### ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the Department's final determination is affirmative, the ITC

<sup>2</sup> PROLAMSA explained in its questionnaire responses that the U.S. affiliate, Prolamsa, Inc., does not take physical possession of the merchandise when it arrives in the United States. See PROLAMSA's Supplemental A Response at A-8 through A-9.

will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of LWR pipe and tube from Mexico are materially injuring, or threaten material injury to, the U.S. industry. We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

#### Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the final verification report in this proceeding. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d)(1) and (2). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette. In accordance with section 774 of the Act, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined.

Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. *See* 19 CFR 351.310(c). At the hearing, oral presentations will be limited to issues raised in the briefs.

This determination is issued and published pursuant to sections 733(f) and 777(I)(1) of the Act.

Dated: January 23, 2008.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E8-1654 Filed 1-29-08; 8:45 am]

**BILLING CODE 3510-DS-P**

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

**RIN: 0648-XF32**

##### Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

**AGENCY:** AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public workshop.

**SUMMARY:** The South Atlantic Fishery Management Council (Council), in partnership with Duke University, Nicholas School of the Environment and Earth Sciences and the University of North Carolina at Chapel Hill, is conducting a South Atlantic Ecosystem Tools and Model Development Workshop in Beaufort, NC.

**DATES:** The Ecosystem Modeling Workshop will take place from 8:30 a.m. - 5 p.m. on February 21, 2008, and from 8:30 a.m. - 1 p.m. on February 22, 2008.

**ADDRESSES:** The workshop will be held at the Duke Repass Center, Duke Marine Laboratory, 135 Duke Marine Lab Road, Beaufort, NC 28516; telephone: (252) 504-7501.

*Council address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer; telephone (843) 571-4366 or toll free (866) SAFMC-10; fax: (843) 769-4520; email: [kim.iverson@safmc.net](mailto:kim.iverson@safmc.net).

**SUPPLEMENTARY INFORMATION:** The Workshop is designed to provide an understanding of regional data availability, partner capabilities, tool and model development status and funding mechanisms to support multiple task-based Ecosystem model development efforts in the South Atlantic region. The Workshop is designed to build on previous coordination meetings and model development efforts to establish short-term development and long-term development strategies necessary to

support ecosystem-based management, the South Atlantic Fishery Management Council's Fishery Ecosystem Plan and future Comprehensive Fishery Ecosystem Amendments.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meetings.

Note: The times and sequence specified in this agenda are subject to change.

Dated: January 25, 2008.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E8-1601 Filed 1-29-08; 8:45 am]

**BILLING CODE 3510-22-S**

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

**RIN: 0648-XF36**

##### Gulf of Mexico Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting on Aquaculture Amendment.

**DATES:** The meeting will convene at 6 p.m. on Tuesday, February 19, 2008 and conclude no later than 9 p.m.

**ADDRESSES:** This meeting will be held at The Islander, 82100 Overseas Highway, Islamorada, FL 33036; telephone: (305) 664-2031.

*Council address:* Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

**FOR FURTHER INFORMATION CONTACT:** Wayne Swingle, Executive Director; telephone: (813) 348-1630.

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico Fishery Management Council (Council) is preparing an amendment which will require persons to obtain a permit from NMFS to participate in aquaculture by constructing an aquaculture facility in the exclusive economic zone (EEZ) of the Gulf of Mexico. Each application for a permit must comply with many permit conditions related to record keeping and operation of the facility. These permit