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MEMORANDUM TO: James J. Jochum  
Assistant Secretary  
for Import Administration

FROM: Holly A. Kuga  
Acting Deputy Assistant Secretary  
for Group II, Import Administration

DATE: December 1, 2003

SUBJECT: Issues and Decision Memorandum for the Final Determination of the  
Investigation of Prestressed Concrete Steel Wire Strand from Mexico

### **Summary**

We have analyzed the comments in the case and rebuttal briefs submitted by interested parties in the investigation of prestressed concrete steel wire strand (PC strand) from Mexico. As a result of our analysis, we have made the appropriate changes in the margin calculation. We recommend that you approve the positions we have developed in the Discussion of the Issues section of this memorandum. Below is a complete list of the issues in this investigation for which we have received comments from the parties.

### **Background**

On July 10, 2003, the Department of Commerce (the Department) issued the preliminary determination of the investigation of PC strand from Mexico.<sup>1</sup> The period of investigation (POI) is January 1, 2002, through December 31, 2002. We invited parties to comment on the preliminary determination and received case briefs from the petitioners<sup>2</sup> and one respondent, Cablesa S.A. de C.V. (Cablesa). Additionally, we received rebuttal briefs from the petitioners, Cablesa and the other respondent,

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<sup>1</sup> See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Prestressed Steel Wire Strand From Mexico, 68 FR 42373, 42378 (July 17, 2003)

<sup>2</sup>The petitioners in this investigation are American Spring Wire Corp., Insteel Wire Products Company, and Sumiden Wire Products Corp.

Aceros Camesa S.A. de C.V. (Camesa).

### **List of Comments**

#### **I. ISSUES SPECIFIC TO ACEROS CAMESA**

- Comment 1: Unverified Movement Expenses
- Comment 2: Indirect Selling Expenses
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#### **II. ISSUES SPECIFIC TO CABLESA**

- Comment 6: Reliability of Cost Information
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- Comment 8: Critical Circumstances

### **Discussion of Issues**

#### **I. ISSUES SPECIFIC TO CAMESA**

##### **Comment 1: Unverified Movement Expenses**

In their case brief, the petitioners argue that the Department should make an adverse inference for sales with movement expenses that were unverified. The petitioners note that during verification Camesa was unable to provide the freight invoices for some home market sales. Additionally, according to the petitioners, Camesa was “unable to correct its improper reporting of standard, rather than actual, figures for U.S. inland freight, Mexico-incurred brokerage, and U.S. duties.”<sup>3</sup>

Therefore, because of the deficiencies found at verification, the petitioners argue that an adverse inference is warranted and necessary for the movement expenses in question. Specifically, as adverse facts available, the petitioners contend that the Department should apply a freight charge of zero for home market sales with unverified freight expenses. Likewise, for U.S. freight incurred in Mexico, U.S. inland freight, and brokerage, the petitioners argue that “the Department should assign the highest per-unit amount for any sale” where actual charges could not be verified.<sup>4</sup> Finally, for sales with unverified U.S. duty expenses, the petitioners assert that the Department should use the highest percentage duty

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<sup>3</sup>See the petitioners’ case brief at 4.

<sup>4</sup> See *id.* at 5.

rate reported for any sale in Camesa's U.S. sales database.

In its rebuttal brief, Camesa contends that the Department should not make an adverse inference for the movement expenses in question. Camesa states that at verification the Department randomly chose 10 observations from the worksheet for revised home market freight and tied them to the corresponding freight invoices. Additionally, Camesa argues that it "provided detailed and specific information with regard to these expenses, describing the particular methodology used to derive this information."<sup>5</sup> Therefore, according to Camesa, the Department should not make an adverse inference to the sales for which it was unable to provide freight invoices.

With regard to U.S. duty expenses, Camesa argues that the Department should not use the highest percentage rate from the U.S. sales database, as advocated by the petitioners. Instead, Camesa contends that, if the Department applies facts available, the appropriate expense is the U.S. duty rate for imports of PC strand from Mexico classified under subheadings 7312.103010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS) and in use during the POI.<sup>6</sup>

**Department's Position:** We agree with the petitioners. Section 776(a) of the Act provides that the Department may use facts available if an interested party either withholds requested information or supplies information which cannot be verified. Section 776(b) of the Act permits the Department to make an adverse inference in cases where it finds that the interested party failed to cooperate by not acting to the best of its ability. Camesa calculated home market inland freight, U.S. freight incurred in Mexico, U.S. inland freight, brokerage, and U.S. duties based on a standard rate. However, at verification, we found that the standard rate often differed from the actual rate as recorded on the expense invoice. See Memorandum from Daniel O'Brien and Jim Kemp, International Trade Compliance Analysts, to Gary Taverman, Director, Office 5, Re: Verification of the Sales Response of Aceros Camesa S.A. de C.V. in the Investigation of Prestressed Concrete Steel Wire Strand from Mexico (The Camesa Verification Report), dated October 3, 2003, at 12,13, 22, and 23. While we provided Camesa with an opportunity to recalculate the expenses at verification, it was unable to do so for all sales.<sup>7</sup> Consequently, we find that the use of facts available is appropriate for the movement expenses in question, in accordance with section 776(a) of the Act.

Moreover, because Camesa misreported these expenses and subsequently failed to report the error and recalculate the expenses despite numerous opportunities to do so, we have determined that the company failed to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act,

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<sup>5</sup> See Camesa's rebuttal brief at 7.

<sup>6</sup> See id. at 7-8.

<sup>7</sup> See id. at 12, 13, 22, and 23.

the application of adverse facts available to sales with unverified movement expenses is warranted.

In making our adverse facts available decision, we considered whether Camesa had the necessary instruction and time to report the movement expenses correctly. On April 4, 2003, we issued the antidumping questionnaire requesting information on various expenses incurred by Camesa and describing the format in which the company should report the data. On June 4, 2003, we issued a supplemental questionnaire requesting additional information. In that document, we questioned Camesa's reliance on a standard rate for U.S. domestic inland freight. However, in its response, the company contended that it properly reported the expense.

Two weeks prior to verification on August 11, 2003, we issued the verification outline, which required Camesa to collect, for our review at verification, all the source documents for the expenses incurred on certain sales. These documents included the invoices for the movement expenses in question. The collection of such documents for the "sales traces" provides the respondent with the opportunity to check the submitted information for accuracy prior to verification. Accordingly, on the first day of verification, we requested that the company present any ministerial errors found in preparation for verification. This exercise allows the respondent to inform the Department's verification team of any problems encountered at the start of verification. Camesa reported only one error, pertaining to inventory carrying costs.

Based on this sequence of events, we have determined that Camesa received specific instructions on how to report the expenses in question and had ample time and opportunity to discover and revise any errors in its calculations or to inform the Department of any difficulties it had encountered in compiling the information. However, it was not until the third day of verification during the sales trace analysis that the Department discovered the errors and requested revisions by the end of verification. Therefore, we determine that Camesa did not act to the best of its ability and adverse facts available, pursuant to section 776(b) of the Act, is warranted with regard to the unverified expenses.

As a result and consistent with previous cases, we have applied a freight charge of zero to unverified home market freight expenses. See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Brazil, 67 FR 62134 (October 3, 2002) and accompanying Decision Memorandum at Comment 10 (Cold-Rolled Decision Memorandum). In its questionnaire response, Camesa reported a freight expense for these sales, however, lacking a freight invoice, we found no evidence at verification that freight charges were incurred on the sales in question.

Additionally, for U.S. freight incurred in Mexico, U.S. inland freight, brokerage, and U.S. duties, we have assigned the highest per-unit amount for any sale, where the expense could not be verified. See Cold-Rolled Decision Memorandum, Comment 11. For a description of the resulting changes in the

margin calculation, see Memorandum from Jim Kemp, International Trade Compliance Analyst, to Constance Handley, Program Manager, Re: Analysis Memorandum for Aceros Camesa S.A. de C.V., dated December 1, 2003 (Analysis Memorandum).

We note that the petitioners argued that, for unverified U.S. duties, the Department should make an adverse inference using the highest percentage duty rate reported for any sale in Camesa's U.S. sales database. Camesa countered that the Department should calculate the expense using the duty rate for PC strand from the HTSUS. We disagree with both parties in this regard. The respondent did not calculate the expense on a percentage basis and, instead, relied on the broker's expense invoice, which included the duties and a handling fee. Therefore, as adverse facts available, we have taken the highest per-unit duty amount for any U.S. sale and applied it to sales with unverified duty expenses.

## **Comment 2: Indirect Selling Expenses Incurred in the United States**

In their case brief, the petitioners argue that the Department should not accept Camesa's calculation of the indirect selling expense factor for the respondent's affiliated reseller, Camesa Inc., because the methodology and arithmetic behind the ratio are flawed. From a methodological perspective, according to the petitioners, the Department should not allow a respondent to segregate U.S. selling expenses between subject and non-subject merchandise based on the number of employees involved in the sales process of the product. Instead, the petitioners contend that the appropriate methodology for the calculation of indirect selling expenses is to take all expenses as a proportion of all sales. The petitioners argue that such a methodology is the best option because the expenses and sales come directly from the audited financial statements and, therefore, are not susceptible to manipulation.<sup>8</sup>

The petitioners state that Camesa's indirect selling expense factor consisted of the salary of one employee divided by all the sales from Camesa Inc.'s unconsolidated financial statements.<sup>9</sup> According to the petitioners, the arithmetic of this ratio is flawed because it stems from the "division of (1) expenses allegedly related only to PC strand by (2) sales of all Camesa Inc. products."<sup>10</sup> If the Department chooses to segregate expenses by product group in the calculation of the indirect selling expense factor, the petitioners contend that it then must include only sales of PC strand in the denominator. Moreover, the petitioners state that the indirect selling expenses calculation should capture an element of "other expenses associated with running Camesa Inc." in addition to salary expenses in the numerator of the ratio.<sup>11</sup>

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<sup>8</sup>See the petitioner's case brief at 6.

<sup>9</sup>See id. at 6.

<sup>10</sup>See id. at 6.

<sup>11</sup>See id. at 6.

In its rebuttal brief, Camesa argues that it fully complied with the Department's reporting requirements for indirect selling expenses incurred in the United States. Additionally, according to Camesa, "{t}here is no indication in the sales verification report that the information reported by the respondent companies is erroneous, unsupportable, or incomplete."<sup>12</sup> Camesa states that to verify the reported expense the Department interviewed employees involved in work related to PC strand and examined relevant documentation. The result, according to Camesa, is that the selling expense ratio is accurate and fully verified. Therefore, Camesa argues that the Department should accept the reported calculation instead of the methodology advocated by the petitioners.

**Department's Position:** We disagree with the petitioners' contention that the Department should calculate the indirect selling expense factor by taking selling expenses for all products and dividing by all sales. While our normal practice is to allocate indirect selling expenses relative to sales value, we may accept an alternative methodology if we determine that the methodology is reasonable and non-distortive. See 19 CFR 351.401(g)(1). This is consistent with past Department practice; see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Korea 65 FR 41437 (July 5, 2000) and accompanying decision memorandum at Comment 14, and Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and Singapore: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Review in Part, and Determination Not to Revoke Order in Part, 68 FR 35623 (June 16, 2003) and accompanying decision memorandum at comment 5.

At verification, we found that Camesa Inc. plays a minor role in Camesa's sales process for PC strand. Camesa Inc.'s involvement is limited to issuing invoices, arranging freight from the border to the customer, and collecting payment. See The Camesa Verification Report at 18. For other products, the Department's verifiers found that Cablesa Inc. conducts sales negotiations, seeks new customers, and incurs warehousing expenses, in addition to issuing invoices, arranging freight and collecting payment. Based on this finding, we determine that the methodology advocated by the petitioners and used in the preliminary determination includes a number of indirect selling expenses that were unrelated to Camesa Inc.'s sales of PC strand and is thus overstated.

We agree with the petitioners that if only PC strand related expenses are in the numerator of the calculation, then the denominator should likewise consist of only sales of PC strand. We also agree with the petitioners that, even though Camesa Inc. performed few selling activities for PC strand, the expense ratio should capture more than just salary expenses because the sale of PC strand involves overhead expenses incurred at Camesa Inc. At verification, we found that there were two employees assigned to complete administrative tasks for sales of PC strand. We also found that these tasks only occupied a small percentage of their work day. Since we could not measure this percentage, we determined that including one full salary in the calculation was a conservative estimate of the total labor

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<sup>12</sup>See Camesa's rebuttal brief at 8.

cost related to indirect selling expenses. Therefore, we have recalculated indirect selling expenses including in the numerator the salary of one employee and a percentage of all other indirect selling expenses applicable to Camesa Inc.'s sales of PC strand. Additionally, in the denominator of the calculation, we have included all of Camesa Inc.'s sales of PC strand, as reported in the U.S. sales database. See the Analysis Memorandum.

**Comment 3: Understatement of Cost of Manufacturing**

The petitioners assert that the Department should increase raw material costs to reflect the actual cost of wire rod, the actual yield loss, and the plantwide variance.

Camesa argues that the amounts reported for raw material costs are actual costs. Also, the respondent asserts that the yield loss as described by the petitioners was taken out of context. The actual yield loss tested at verification was for only one diameter size of wire rod while the yield loss used in the reported costs was an overall yield loss. According to the respondent, the plantwide variance was applied to the wire rod costs and it was reported in the variable overhead field in the cost file. Camesa continues that the labor variance referenced in the cost verification report reflects the difference between standard direct labor costs and actual direct labor costs, not the difference between actual direct labor costs and the reported direct labor costs. Further, Camesa explains that the labor variance was captured in the plantwide variance. Lastly, the respondent points out that the reported variable overhead costs are based on actual costs, not standard costs.

**Department's Position:** We agree with the respondent that raw material costs, labor, variable overhead, and fixed overhead costs were reported using actual costs. Camesa reported raw material costs, labor, variable overhead, and fixed overhead costs using standard costs adjusted to actual cost through the application of the plantwide variance.<sup>13</sup> Thus, no adjustment is necessary for the final determination.

**Comment 4: General and Administrative Expense**

The petitioners argue that the reported general and administrative (G&A) expenses should be increased for additional expenses found at verification. Additionally, the petitioners contend that G&A expenses should include a portion of the expenses incurred by Camesa's parent company, Grupo Industrial Camesa S.A. de C.V. (GICSA).

Camesa asserts that although the amounts referenced by petitioners are noted in the cost verification report, the Department did not conclude that the expenses should be included in the numerator of the G&A expense ratio. Camesa argues that the petitioners provided no support that a portion of

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<sup>13</sup>See Memorandum from Margaret Pusey and Sheikh Hannan, Accountants, to Neal M. Halper, Director, Office of Accounting, Re: Verification Report of the Cost of Production and Constructed Value Data Submitted by Aceros Camesa S.A. de C.V., dated October 14, 2003, at Cost Exhibit 3.

GICSA's G&A expense should be included in its G&A expense ratio. The respondent also states that GICSA is a holding company for Camesa and other manufacturing and processing companies and does not perform any administrative services on behalf of Camesa. Therefore, according to the respondent, no costs incurred by GICSA should be included in its G&A expense ratio.

**Department's Position:** We agree with the petitioners in part that the additional expenses found at verification should be included in the G&A expense ratio. At verification, we noted that Camesa used its unadjusted trial balance G&A figure for the numerator of the G&A expense ratio instead of the adjusted figures reported in the audited financial statements. In addition, Camesa was unable to provide the requested details of the net "other" expenses as reported in their 2002 audited income statement. We have adjusted the numerator of Camesa's G&A expense factor to include the adjusted trial balance G&A amounts and the net "other" expenses. We disagree with the petitioners that an amount for GICSA's unconsolidated administrative services should be included in the G&A expense ratio. GICSA charges its subsidiaries for the services rendered. These charges are shown as income in GICSA's unconsolidated financial statements and as an expense in the subsidiaries financial statement. GICSA charged Camesa for the administrative services rendered on its behalf. We have included the amount paid by Camesa to GICSA in the G&A expense ratio.

#### **Comment 5: Financial Expense**

The petitioners argue that the reported financial expenses should be increased for interest income Camesa received from customers because these are recognized as sales price adjustments.

Camesa states that a financial expense ratio is calculated in order to determine the cost of production (COP) and constructed value (CV) of the subject merchandise and is a calculation independent of the normal value (NV) of the merchandise. Camesa argues that even if interest income from customers was an adjustment to NV, it would not be inconsistent to also include this amount in the calculation of COP or CV. Cablesa states that interest from customers, which may or may not relate to sales of the subject merchandise in the home market during the POI, is not a statutory adjustment to NV defined by section 773(a)(6) or (7) of the Act (19 U.S.C. 1677b(a)(6) or (7)) and, therefore, no adjustment should be made to Camesa's financial expense ratio.

**Department's Position:** We agree with the petitioners that Camesa's financial expenses should not be reduced for the interest income from customers. In the standard section B questionnaire, the Department directs respondents to report interest income from customers as a sales specific adjustment. Therefore, we have disallowed the interest revenue from customers as an offset to the COP.

## **II. ISSUES SPECIFIC TO CABLESA**

#### **Comment 6: Reliability of Cost Information**

The petitioners argue that the Department should reject Cablesa's cost data and apply total adverse facts available because Cablesa failed to reconcile the total cost of manufacturing in its financial statements to the total of the per-unit manufacturing costs submitted to the Department. In support of their argument, the petitioners cite Notice of Final Determination of Sales at Less than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Venezuela, 67 FR 62119 (October 3, 2002) where the Department determined that the use of total adverse facts available was warranted because the respondent failed to reconcile its COP data to its normal books and records. According to the petitioners, the reconciliation of the POI costs with a company's financial records is crucial in determining whether the data provided are complete and accurate. The petitioners note that Cablesa failed to provide the requested reconciliation of the costs reported on the financial statements to the per-unit manufacturing costs submitted to the Department in its original and supplemental section D questionnaire responses, and again failed to provide a complete reconciliation at the cost verification. Moreover, the petitioners maintain that without this reconciliation, the Department is unable to determine whether Cablesa accounted for all costs related to the merchandise under investigation. They contend that because the Department is unable to determine whether Cablesa properly accounted for all costs without the requested reconciliation, the Department is left with no way to determine whether any of Cablesa's reported cost data are correct, and that the lack of the reconciliation alone makes all of Cablesa's submitted costs unreliable.

According to the petitioners, in the Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Wire Rods From India, 68 FR 26288 (May 15, 2003) (SSWR from India), the Department determined that the necessity of a correct cost reconciliation was so critical that the failure to present a cost reconciliation prior to verification warranted the cancellation of all cost and sales verifications and the application of total adverse facts available. Similarly, in Gourmet Equipment Corp. v. United States, 2000 CIT Slip Op 00-78 (July 6, 2000 at 7-13) (Gourmet Equipment Corp. V. United States), the court upheld the Department's use of total adverse facts available based on a respondent's failure to reconcile its reported COP and CV data to its financial records substantiated by independent sources.

The petitioners further claim that Cablesa did not prepare the supporting documents for the cost reconciliation nor did they prepare in advance the worksheets or supporting documents for the verification steps outlined in the cost verification agenda. As a result, the Department was unable to complete many portions of the verification. Moreover, the petitioners contend that from what the Department was able to verify, costs were excluded from Cablesa's reported costs.

Finally, the petitioners maintain that Cablesa not only failed to reconcile its reported COP and CV data to its normal books and records, but also failed to reconcile its books and records to either audited financial statements or to its tax returns or other independently prepared documents. Therefore, for the final determination the Department should reject Cablesa's cost data, and apply total adverse facts available.

Cablesa acknowledges that the Department encountered difficulties in its verification of Cablesa's COP and CV data, but contends that many of these difficulties resulted from events beyond Cablesa's control, and not from Cablesa's refusal to provide the requested information. According to Cablesa, most of the key production and accounting staff do not speak English. In addition, Cablesa stated that this is the first time that it has participated in an antidumping case and the Cablesa official who prepared the response became seriously ill and was unable to return to work. Cablesa hired a consultant so that the company could continue to actively participate in the investigation. According to the Cablesa, the consultant and other Cablesa employees attempted to assemble the required supporting documents for the reported costs, but were unsuccessful. Cablesa also acknowledges that it could not reconcile its books and records to audited financial statements or to its tax returns because Cablesa did not have audited financial statements and its provisional tax return contains limited information that cannot be reconciled to the normal books and records.

Cablesa maintains that throughout this investigation, it has acted to the best of its ability to comply with the Department's requests for information and successfully completed the sales verification. However, due to the circumstances cited above, Cablesa could not complete the cost verification. Cablesa requests that the Department not make an adverse inference in selecting facts available because it argues that it has cooperated with the Department. In support of its request, Cablesa cites to Notice of Final Determination of Sales at Less than Fair Value: Grain-Oriented Electrical Steel from Italy, 59 FR 33952 (July 1, 1994) (GOES from Italy). According to Cablesa, the circumstances in GOES from Italy were similar to this case, and the Department found the respondent cooperative and did not apply an adverse inference in selecting from best information available.

Cablesa rebuts the petitioners' citation to SSWR from India by stating that the respondent's (Panchmahal) submitted questionnaire responses were so deficient that the Department refused to conduct a verification. In this case, Cablesa's questionnaire responses were more complete and the Department attempted to conduct the cost and sales verifications. Cablesa contends that the Department should be more lenient in an investigation than in a review because in Gourmet Equipment Corp. v. United States the court expressed that it is appropriate for the Department to judge past behavior.

**Department's Position:** The cost reconciliation is the starting point for a verification of the reported costs. Section 773(f)(1)(A) of the Act specifically requires that costs be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise. In accordance with the statutory directive, the Department will accept costs of the exporter or producer if they are based on records kept in accordance with GAAP of the exporting country and reasonably reflect the costs associated with the production and sale of the merchandise (i.e., the cost data can be reasonably allocated to subject merchandise). In determining if the costs were reasonably allocated to all products the Department will, consistent with section 773(f)(1)(A) of the Act, examine whether the allocation

methods are used in the normal accounting records and whether they have been historically used by the company.

Before assessing the reasonableness of a respondent's cost allocation methodology, however, the Department must ensure that the aggregate amount of the reported costs captures all costs incurred by the respondent in producing the subject merchandise during the period under examination. This is done by performing a reconciliation of the respondent's submitted cost data to the company's audited financial statements, when such statements are available. Because of the time constraints imposed on verifications, the Department generally must rely on the independent auditor's opinion concerning whether a respondent's financial statements present the actual costs incurred by the company, and whether those financial statements are prepared in accordance with GAAP of the exporting country. In situations where the respondent's total reported costs differ from amounts reported in its financial statements, the reconciliation of the costs from the financial statements to the submitted per-unit costs, assists the Department in identifying and quantifying those differences in order to determine whether it was reasonable for the respondent to exclude certain costs for purposes of reporting COP and CV. Although the format of the reconciliation of submitted costs to actual financial statement costs depends greatly on the nature of the accounting records maintained by the respondent, the reconciliation represents the starting point of a cost verification because it assures the Department that the respondent has accounted for all costs before allocating those costs to individual products.

Cablesa, however, failed to perform such a reconciliation. The reconciliation worksheets and the revised cost database presented at verification failed to demonstrate that Cablesa accounted for all costs related to the production of the merchandise under investigation. That is, Cablesa failed to reconcile the total costs assigned to subject and non-subject merchandise in the reported costs to the total costs allocated to the subject and non-subject merchandise in its normal books and records. In addition, while requested numerous times during the cost verification, Cablesa failed to provide details on how costs are allocated to specific broad product groups in its normal books and records. See Memorandum from Margaret Pusey and Sheikh Hannan, Accountants, to Neal M. Halper, Director, Office of Accounting, Re: Verification Report on the Cost of Production and Constructed Value Data Submitted by Cablesa, S.A. de C.V. dated October 10, 2003 (Cablesa Cost Verification Report) at 12. The Department also found that Cablesa failed to include processing costs for covering the subject merchandise at one of its divisions, failed to include the adjustment for the difference between the book and physical inventory count, and did not include the actual yield loss experienced by the company during the cost reporting period. These unreported costs were substantial and raised concerns about whether there are additional costs related to the PC strand production process which were not reported by Cablesa and not discovered by the Department at verification due to Cablesa's failure to complete the overall cost reconciliation. See Cablesa Cost Verification Report at 5, 18, and 22.

We disagree with Cablesa that the difficulties faced by the Department during the cost verification resulted from events beyond its control. In spite of the illness of Cablesa's of manufacturing director, the accounting records used by the manufacturing director to prepare the section D responses were

under Cablesa's control. Hence, Cablesa had the ability to recreate a cost file from these accounting records. Therefore, contrary to its claim, the ability to reconcile the reported costs to the accounting records maintained in its normal course of business was under Cablesa's control. We also disagree with Cablesa that a language barrier was the cause of difficulties at verification. Nowhere in the cost verification report is there mention of difficulties encountered during verification due to language problems. More often than not, English is not the primary language of the company officials who are needed to prepare the responses and conduct verification in an antidumping case. It is for this reason that the Department hires experienced translators to assist with the verification. In this case, the Department had a translator present throughout verification to facilitate communication between the verifiers and Cablesa's officials. Additionally, Cablesa was represented by experienced legal counsel and received the verification outline well in advance of verification. However, at no point prior to or at verification did Cablesa inform the Department of potential difficulties at verification due to a language barrier.

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information by the deadlines for such information or in the form and manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. In this case: (1) Cablesa failed to provide a verifiable reconciliation of the total POI cost of manufacturing allocated to subject and non-subject merchandise to amounts recorded in their normal books and records; and, (2) Cablesa failed to provide the requested details on how costs are allocated to specific product groups in its normal books and records.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and, to the extent practicable, shall provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department, subject to section 782(e) of the Act, may disregard all or part of the original and subsequent responses, as appropriate. In this case, the Department requested a cost of manufacturing reconciliation in the original section D questionnaire and found the response to be deficient. To remedy this deficiency, the Department issued three supplemental section D questionnaires requesting that Cablesa provide a proper reconciliation. While the Department believed it had a proper cost reconciliation prior to the verification, the verification proved otherwise. At verification, Cablesa provided a new COP and CV database and a new reconciliation of the POI cost of manufacturing allocated to subject and non-subject merchandise. The figures contained in the reconciliation worksheets, however, did not tie to amounts contained in Cablesa's normal books and records. We informed Cablesa at verification that the amounts did not reconcile. In addition, we gave them several days to try and rectify the problem. By the end of the verification, Cablesa was still not able to reconcile its total reported costs to its normal books and records.

Section 782(e) of the Act provides that the administering authority shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements, if 1) the information is submitted by the deadline established; 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 in providing the information and meeting the requirements; and 5) the information can be used without undue difficulties. In this case a proper reconciliation was never provided, which renders the reported costs unverified. Thus, in this case, section 782(e) of the Act does not compel the Department to use Cablesa's reported per-unit data. Therefore, we conclude that, pursuant to section 776(a) of the Act, use of facts otherwise available is appropriate.

The Department must determine whether (1) the use of facts available for Cablesa's cost data renders Cablesa's submitted sales data not usable, and (2) whether the use of adverse information as facts available is warranted. In order to determine whether the subject merchandise was sold at less than fair value, the Department compares the U.S. price to NV. In this case, we are using the price of the foreign-like product sold in the home market as NV. In a sales-below-cost investigation, the Department compares the home market price to its COP to determine whether the foreign-like product was sold above or below the COP. The Department compares the U.S. price to the home market prices that have passed the cost test. Cablesa's inability to reconcile its reported cost data to its normal books and records has rendered the reported per-unit cost data incomplete and unreliable. As such, the cost test could not be performed. Therefore, we were unable to determine whether the home market sales were made in the ordinary course of trade based upon the cost test. In situations where the U.S. price cannot be compared to home market prices, the Department compares the U.S. price to CV which is also a type of NV. However, the CV information reported by Cablesa suffers from the same problems as the unverifiable COP cost data because most of the cost elements are the same for COP and CV. In this case, we could not compare the U.S. price to NV because we could not conduct the cost test nor do we have verified cost data to calculate the CV. Therefore, the necessity for use of facts available for COP data precludes the use of the submitted CV information.

The Department's practice has been to reject a respondent's submitted information in total when flawed and unreliable cost data renders any price-to-price comparison impossible. See GOES from Italy, Cold-Rolled Products from Venezuela, and Notice of Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Mexico, 64 FR 76, 77-78 (January 4, 1999). If the Department were to accept verified sales information when a respondent's cost information (a substantial portion of the response) does not verify, respondents would be in a position to manipulate margin calculations by permitting the Department to verify only that information which the respondent wishes the Department to use in its margin calculation. Accordingly, we find that there is no reasonable basis for determining NV for Cablesa. As a result, we could not use Cablesa's reported sales data to calculate a dumping margin. The Department, therefore, has based Cablesa's margin on total facts available.

We agree with petitioners that Cablesa did not act to the best of its ability and that the Department should make an adverse inference when choosing from the facts available. Section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. See, e.g., 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, 55794-96 (August 30, 2002). See also Statement of Administrative Action (SAA) at 870. Specifically, section 776(b) of the Act provides that, where 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 from the administering authority” the Department “may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.” As discussed above, Cablesa, after having been given numerous opportunities by the Department, failed to reconcile its reported costs to its normal books and records when the information necessary to do so was in its control. Moreover, Cablesa made no effort to inform the Department of its inability to perform such a reconciliation. We have thus determined that Cablesa has not acted to the best of its ability to comply with our requests for information. Accordingly, consistent with section 776(b) of the Act, we have applied total adverse facts available. As adverse facts available, we assigned to Cablesa the highest margin alleged for Mexico in the petition in accordance with section 776(b)(1) of the Act. See Notice of Preliminary Determination of Sales at Less than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Prestressed Concrete Steel Wire Strand from Mexico, 68 FR 42378 (July 17, 2003).

Finally, we find Cablesa’s reliance on GOES from Italy in its argument against the application of adverse facts available to be misplaced. In GOES from Italy, the Department applied facts available in accordance with section 776(b) of the Act. We note that GOES from Italy was a case that was conducted under the old law when the Department used a two-tiered method of determining the best information available. In this case, the Department also applied facts available in accordance with section 776(b) of the Act. Like Panchmahal in SSWR from India, Cablesa failed to provide a reconciliation of its reported costs to those in its normal books and records. The fact that the Department conducted verification of Cablesa’s response does not distinguish this case from SSWR from India. The Department only attempted to conduct the cost verification for Cablesa because it originally believed that Cablesa had provided an adequate reconciliation. At verification, the Department found that Cablesa’s reconciliation was inadequate. In Gourmet Equipment Corp. v. United States, the Department applied adverse facts available because the respondent failed to reconcile its reported costs to financial records prepared for purposes independent of the antidumping investigation. Similarly, in this case, the Department applied adverse facts available because Cablesa failed to reconcile its reported costs to its normal books and records.

### **Comment 7: Adjustments to Cost Information**

The petitioners contend that if the Department does not apply total adverse facts available with respect to Cablesa's cost data, the Department should adjust Cablesa's reported costs for affiliated party transactions, the difference between the book and physical inventory count, and the yield loss.

Cablesa argues that its classification of the difference between the book and physical inventory count was reported to the Department in the manner in which it was recorded in its normal books and records. Regarding affiliated party transaction and yield loss issues, Cablesa did not provide any comments.

**Department's Position:** Because we have applied total adverse facts available, as explained in Comment 6, this issue, and all sales-specific issues raised by the petitioners, are moot. See SAA at 892.

### **Comment 8: Critical Circumstances**

Cablesa argues in its rebuttal brief that even if the Department bases Cablesa's final antidumping duty margin on facts available, then it is not obligated to disregard all of Cablesa's reported data, namely Cablesa's critical circumstances data that was revised at verification in September 2003. Cablesa argues that the critical circumstances data "constitute a body of information separate from Cablesa's sales database which the Department separately verified as complete and accurate."<sup>14</sup> Moreover, Cablesa argues, its critical circumstances data are not used in the Department's margin calculation; therefore, Cablesa asserts, "rejecting these data as part of a 'total facts available' determination would not serve the Department's prevention-of-manipulation purpose."<sup>15</sup> Furthermore, Cablesa asserts that the petitioners have not argued that the Department reject Cablesa's revised critical circumstances data.

**Department's Position:** We agree with Cablesa. We verified Cablesa's revised critical circumstances data at verification in September 2003 and found the data to be reliable. See Memorandum from Daniel O'Brien and Jim Kemp, International Trade Compliance Analysts, to Gary Taverman, Director, Office 5, Re: Verification of the Sales Response of Cablesa S.A. de C.V. in the Investigation of Prestressed Concrete Steel Wire Strand from Mexico, dated October 7, at 22-23. Accordingly, we have determined that critical circumstances do not exist for Cablesa because the revised statistics show an increase in imports of PC strand produced and exported by Cablesa of less than 15 percent. Therefore, all other arguments raised regarding critical circumstances are moot.

Based on our analysis of the comments received, we recommend adopting the above positions.

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<sup>14</sup>See Cablesa's Rebuttal Brief at 11-13.

<sup>15</sup>See id. at 13.

If this recommendation is accepted, we will publish the final determination in the *Federal Register*.

Agree\_\_\_\_\_

Disagree\_\_\_\_\_

Let's Discuss\_\_\_\_\_

\_\_\_\_\_  
James J. Jochum  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date