

September 24, 2010

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Susan H. Kuhbach
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Seamless Refined Copper Pipe and Tube from Mexico
(Period of Investigation: July 1, 2008, through June 30, 2009)

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Investigation of Seamless Refined Copper Pipe and Tube from
Mexico

Summary

We have analyzed the case and rebuttal briefs submitted by Cerro Flow Products, Inc., KobeWieland Copper Products, LLC, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc. (collectively, "Petitioners"), and Respondents, Nacional de Cobre S.A. de C.V. and its affiliate ("Nacobre") and IUSA S.A. de C.V. and its affiliate ("IUSA"). As a result of our analysis, we have made changes to the margin calculations. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments from interested parties.

I. Background

On May 12, 2010, the Department of Commerce ("the Department") published in the Federal Register the Preliminary Determination of sales at less-than-fair-value ("LTFV") in the antidumping duty investigation of seamless refined copper pipe and tube ("copper pipe and tube") from Mexico. See Seamless Refined Copper Pipe and Tube From Mexico: Notice of Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination, 75 FR 26726 (May 12, 2010) (Preliminary Determination). The period of investigation ("POI") is July 1, 2008, through June 30, 2009. For a detailed discussion of the events which have occurred in this investigation since the Preliminary Determination, see the "Background" section of the Federal Register notice which this memorandum accompanies.

II. List of Comments

Comment 1: Comments Regarding the Investigation

Comment 2: Alternative Cost Averaging Methodology

Comment 3: Cost Recovery Test

Comment 4: Model Matching Hierarchy

Comment 5: Nacobre's U.S. Date of Sale

Comment 6: Treatment of Nacobre's General and Administrative Expense Ratio

Comment 7: Nacobre's Weight Basis

Comment 8: Treatment of the Negative Value of Certain U.S. Expense Variables for IUSA

Comment 9: Treatment of Early Payment Discounts for IUSA's Home Market Sales

Comment 10: IUSA's Packing Costs

Comment 11: Further Manufactured Line Sets

Comment 12: "All Others" Rate

III. Discussion of Interested Party Comments

Comment 1: Comments regarding the Investigation

On August 2, 2010, the Department placed on the record of this investigation a letter dated June 22, 2010, from the Honorable Gerardo Ruiz Mateos, former Secretary of the Economy of Mexico, to the Honorable Gary Locke, U.S. Secretary of Commerce, regarding this antidumping investigation. On August 2, 2010, the Department solicited comments from all interested parties regarding this letter.¹

Petitioners state that, in the Department's memorandum transmitting the letter to the parties, the Department correctly concluded that the "letter does not raise new factual information or argument, but reiterates certain issues raised by Respondents." *Id.* Petitioners assert that, to the extent the letter raises any new issue, it pertains to the subject of "cumulation," which falls under the jurisdiction of the U.S. International Trade Commission ("ITC"), not the Department. For these reasons, Petitioners assert that the Department should not give any separate consideration to the issues raised by this letter.

¹ See the Department's letter to All Interested Parties, dated August 2, 2010, titled "Comments regarding the Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from Mexico."

Respondents, IUSA and Nacobre (collectively, “Respondents”) state that the letter from former Secretary Mateos calls to the attention of the Department the extreme volatility in copper prices that affected copper tube costs and prices during the POI, and appropriately asks that the Department consider a fair method to match prices and costs in these circumstances. In Respondents’ case brief, Respondents proposed a monthly cost-averaging and price matching methodology that would be more appropriate to address the actual volatility in copper prices than the quarterly period methodology adopted in the Preliminary Determination.

Respondents state that former Secretary Mateos also expressed concern about the exclusion of sales because the Department preliminarily determined that such sales were below cost. Respondents assert that former Secretary Mateos correctly points to the recovery of costs within a reasonable period of time as the applicable standard under the World Trade Organization (“WTO”) Antidumping Agreement and U.S. law. As more fully described in its case brief, respondents urge the Department to comply with U.S. law and U.S. obligations under the WTO Agreements, and Respondents reiterate their argument that the Department should not reject any home market sales that are above POI-average cost. Respondents state that former Secretary Mateos has urged the Department not to lose sight of the important trading relationship between the two neighboring countries. Finally, Respondents assert that it should be plain from the case law that the Department cannot decline to apply the statutory POI-average standard, *i.e.*, the plain language of the statute, for the cost-recovery test.

Department’s Position:

We have fully considered the issues raised in the aforementioned letter and the comments from the interested parties regarding this letter. Our positions with respect to the cost issues raised in this letter are discussed below in Comments 2 and 3. The issue of cumulation of imports was also raised in the aforementioned letter. However, this issue does not fall within the jurisdiction of the Department, but is contemplated by the ITC’s injury investigation. Therefore, we defer to the ITC which evaluates this issue within the context of its separate investigation.

Comment 2: Alternative Cost Averaging Methodology

Respondents acknowledge that when deciding whether to employ shorter cost averaging periods, the Department looks for both cost volatility² and an indication that costs and prices are reasonably correlated.³ Further, Respondents note that the Department consistently applies a shorter cost averaging methodology when both of these factors are present, and that the Court of International Trade (“CIT”) has reviewed and affirmed the validity of this methodology.⁴

² See, e.g., SeAH Steel Corp. v. United States, No. 09-00248, at 6 (CIT 2010) (“SeAH Steel Corp.”).

³ See, e.g., SeAH Steel Corp., Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review, 73 FR 75398 (December 11, 2008), and accompanying Issues and Decision Memorandum at Comment 4 (“Plate from Belgium”) and Certain Welded Stainless Steel Pipes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 74 FR 31242 (June 30, 2009), and accompanying Issues and Decision Memorandum at Comment 1 (“Pipe from Korea”).

⁴ Certain Concrete Steel Reinforcing Bars from Turkey: Final Results of Redetermination Pursuant to Court Remand, (September 8, 2009) affirmed by Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States, Slip Op. 09-133 (November 23, 2009).

Respondents agree that both factors are present in this proceeding and that it was therefore appropriate for the Department to utilize a shorter cost averaging period in accordance with its affirmed practice. However, Respondents aver that in employing this practice the use of quarterly cost averaging periods does not properly account for the rapid and dramatic changes in copper costs and its effect on prices during the POI. Accordingly, Respondents argue that the Department should utilize monthly cost and price comparisons in this investigation.

Respondents contend that copper costs are by far the primary drivers of the production cost and the price of the merchandise under consideration, and that the copper cost movements during the POI both between and within quarters were tremendous. According to Respondents, the price of copper changed by more than 25 percent (*i.e.*, the standard applied by the Department to adopt quarterly cost averaging periods) within each quarter of the POI. Moreover, Respondents assert that, although the volatility calmed down somewhat in the second half of the POI, prices within each quarter fluctuated significantly and copper prices sometimes changed by more than 25 percent within the same month (based on the difference between the minimum and maximum daily Commodity Exchange Inc. (“COMEX”) closing prices).

Respondents argue that it is appropriate to use monthly cost averaging periods in this investigation as it is consistent with the fundamentals of each company’s copper tube business. However, due to the proprietary nature of this discussion, Respondents’ arguments cannot be presented in this public forum. We have therefore summarized these arguments in each company’s final cost calculation memorandum. See memorandum to Neal M. Halper from Robert B. Greger titled, “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – IUSA, S.A. de C.V.,” (“IUSA Cost Calculation Memo”) dated September 24, 2010, and Memorandum to Neal M. Halper from Sheikh M. Hannan titled, “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Nacional de Cobre, S.A. de C.V.,” (“Nacobre Cost Calculation Memo”) dated September 24, 2010.

Respondents also assert that matching sales within the same month is entirely appropriate. Respondents cite Certain Pasta from Italy: Notice of Final Results of the Twelfth Administrative Review, 75 FR 6352 (February 9, 2010), and accompanying Issues and Decision Memorandum at Comment 5 (“Pasta from Italy”) and aver that matching sales outside of a particular month would result in comparisons between U.S. sale prices and normal values that do not reflect market conditions at the time of the U.S. sale because the normal values would not properly reflect the changing prices resulting from significant changes in costs. Accordingly, Respondents argue, the Department should base the final determination on Respondents’ monthly costs during the POI and match sales only within the period for which the cost was determined, *i.e.*, the same month. Respondents reason that this practice would be consistent with section 773(a)(1)(A) of the Tariff Act of 1930, as amended (“the Act”), which states that normal value shall be determined “at a time reasonably corresponding to the time of the sale.” Since the main determinant of the price of the merchandise under consideration is copper, Respondents contend that a reasonably corresponding price must be consistent with the contemporaneous copper values of the product being compared, which is best reflected in sales that occur in the same month.

Petitioners assert that the Department should continue to use quarterly cost and price averaging periods in the final determination. Petitioners contend that the use of quarterly cost averaging and quarterly sale comparisons in the Preliminary Determination is consistent with the Department's established practice and is supported by substantial record evidence. Petitioners cite Plate from Belgium and note that the Department's general practice is to use quarterly cost averaging periods where it determines that there has been a significant change in cost during the relevant period and sale prices during the shorter averaging periods can be reasonably linked with the cost of production ("COP"). In the Preliminary Determination of this proceeding, Petitioners note that the Department found significant changes in costs and reasonable linkage between costs and sale prices for both respondents.

According to Petitioners, neither IUSA nor Nacobre have demonstrated a sufficient basis to depart from the Department's practice as applied in the Preliminary Determination. Petitioners opine that neither respondent has put forth a principled, non-arbitrary basis for the selection of an appropriate cost period, much less explained why monthly averaging periods should be used in this investigation. Petitioners maintain that the information provided by Respondents shows that monthly copper price fluctuations were below the Department's 25 percent significance threshold for 10 out of 12 months of the POI. Further, Petitioners aver that the monthly comparisons of costs and prices in Respondents' case briefs show significant differences between costs and prices that do not appear to support the linkage requirement of the Department's practice. Moreover, Petitioners assert, the record evidence does not show that changes in metal costs are passed through on a monthly basis or that Respondents' costs reflect monthly average metal costs or any other reason for using monthly costs. For all of these reasons, Petitioners conclude, there is no reason for the Department to depart from its established practice of using quarterly cost averaging and price comparisons in the final determination.

Department's Position:

Section 773(b)(3) of the Act defines the COP as an amount equal to the sum of: (A) the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product, during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business; (B) an amount for selling, general, and administrative expenses based on actual data pertaining to production and sales of the foreign like product by the exporter in question; and (C) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the foreign like product in condition packed ready for shipment. Constructed Value ("CV") is defined in section 773(e) of the Act as the cost of materials, plus fabrication expenses, selling, general and administrative expenses, profit and packing expenses. Although the Department's established practice has been to calculate COP and CV based on an average costs over the entire POI or period of review ("POR"),⁵ the Act

⁵ See Color Television Receivers From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 55 FR 26225, 26228 (June 27, 1990) (where the Department stated that the use of quarterly data would cause aberrations due to short-term cost fluctuations); see also Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review, 58 FR 47253, 47257 (September 8, 1993) (where the Department explained that the annual period used for calculating costs accounts for any seasonal fluctuation which may occur as it accounts for a full operation cycle).

does not specifically dictate the method of calculating COP and CV, nor does it provide a definition as to what the correct time period is to use in calculating COP and CV.

Because the issue as to what constitutes the correct time period by which to measure costs has continued to arise in a number of cases,⁶ we recognize the importance of having a consistent and predictable approach to analyzing and determining when to deviate from our normal POI/POR average cost methodology. Towards this goal, the Department has made a concerted effort to develop a predictable methodology for determining when the use of shorter cost averaging periods is more appropriate due to the occurrence of significant cost changes within the POI/POR. Under this methodology, the Department first tests for significant changes in costs between quarters and then assesses whether those quarterly cost changes can be reasonably linked to quarterly changes in selling prices.⁷ If we find evidence of both significant cost changes and reasonable linkage, we then employ our alternative cost averaging methodology.⁸ By establishing this standard practice, we ensure a more equitable and consistent application of the methodology.

We note that neither party to this proceeding disputes the Department's use of its alternative cost averaging methodology at the Preliminary Determination. Rather, the arguments hinge on how that methodology should be employed in terms of the specific averaging periods (*i.e.*, quarterly or monthly). With respect to the averaging periods, when employing our alternative cost averaging methodology, the Department's established standard practice is to use quarterly cost averaging periods.⁹ Many companies in varied industries calculate costs and value inventory in different ways (*e.g.*, job order specific, process specific, market based, etc.) and over different periods (*e.g.*, daily, monthly, quarterly, etc.), but this does not mandate the use of monthly, quarterly or even POI/POR average costs in the Department's analysis. Using the Department's normal methodology, we routinely weight-average the costs in a respondent's normal accounting books and records over the entire POI or POR. Regardless of whether a respondent calculates monthly or quarterly costs in its normal accounting books, we will deviate from our average POI/POR cost methodology when significant cost changes occur. In such instances, as noted above, the Department has developed a consistent practice of using quarterly average costs. Therefore, in order for the Department to deviate from its standard practice, record evidence must be provided that demonstrates that the quarterly cost methodology leads to a distortive or unreasonable result in the cost test and/or margin analysis.

In this proceeding, Respondents have claimed that the use of quarterly average periods distorts the margin analysis, but have not provided any data or analysis that adequately supports this claim. In fact, the only analysis provided is a comparison of the daily high and low movements in the publicly provided COMEX copper prices within each quarter, and the assertion that these daily movements meet the Department's 25 percent significance threshold. Simply pointing to

⁶ See, *e.g.*, Pipe from Korea.

⁷ See Pipe from Korea at Comment 1.

⁸ Id.

⁹ See, *e.g.*, Pasta from Italy, Pipe from Korea, and Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 74 FR 6365 (February 9, 2009), and accompanying Issues and Decision Memorandum at Comment 5 ("SSSSC from Mexico").

daily changes in the COMEX price does not, in and of itself, establish good cause to deviate from our standard practice. Moreover, while the daily COMEX prices reflect the market price for copper, they do not reflect a respondent's actual costs as recorded in their normal books and records. In fact, Respondents' records show that their cost of manufacturing changed by more than 25 percent within only one quarter of the POI, not all four quarters.¹⁰ As such, public COMEX prices do not provide evidence that the use of the respondents' quarterly cost data is distortive.

Furthermore, Respondents' assertion that the daily movement of copper prices meets the Department's 25 percent significance threshold, incorrectly assumes that this threshold should be applied to "daily" changes. Notwithstanding the differences between public commodity exchange prices and the actual production costs of a respondent, as discussed above, the 25 percent significance threshold was established as a benchmark for measuring "quarterly" average cost differences to ensure that the change in cost is sustained for a reasonable period of time, not isolated to specific days. In addition, the Department's 25 percent quarterly cost change threshold was established with regard to the change in the total cost of manufacturing, not a single input. The purpose of this high threshold was to ensure that we do not move away from our normal practice without good cause, and forgo the benefits of using a POI/POR average cost, but allows for a change in methodology when sustained significantly changing input costs are clearly affecting our POI/POR average cost calculations.

With respect to Respondents' assertion that matching sales outside the month is inappropriate, we disagree. The same reasons stated above regarding the use of the alternative quarterly cost methodology apply to sale comparisons between the home and U.S. markets. The Department's established practice is to limit comparisons to the quarter in which the sales were made to be consistent with our use of quarterly average cost information.¹¹ However, as stated earlier, to deviate from our established practice, record evidence must be provided that demonstrates that the quarterly cost methodology is distortive and comparisons between the quarterly normal values and the quarterly U.S. sale values distort the margin analysis. In this proceeding, Respondents have claimed that matching sales outside the month is distortive, but have not provided any data or analysis to support that claim. Accordingly, we have continued to compare quarterly average normal value and U.S. sale prices.

Comment 3: Cost-Recovery Test

Respondents contend that if the Department determines that particular sales are below cost at the time of sale using its alternative cost averaging methodology, then section 773 of the Act provides that the sale cannot be disregarded as long as it was made at a price that permits the "recovery of all costs within a reasonable period of time." Respondents assert that section 773(b)(2)(D) of the Act expressly sets out that a sale that is below cost when made is deemed to recover costs within a reasonable period of time if its price is "above the weighted-average per-unit cost of production for the period of investigation." Therefore, Respondents reason, the

¹⁰ See IUSA Cost Calculation Memo and Nacobre Cost Calculation Memo.

¹¹ See Pipe from Korea.

Department cannot disregard those sales that are above the weighted-average COP for the POI as the statute unequivocally provides that they provide for the recovery of costs within a reasonable period of time.

Respondents argue that the statute is clear that the cost-recovery test in an investigation must be based on the weighted-average COP for the entire POI, and not some shorter period.

Respondents assert that the statute explicitly contemplates two cost tests and two different COPs: one reflecting the per-unit COP at the time of sale and the other reflecting the weighted-average COP for the POI. Accordingly, Respondents reason, even if particular sales are below cost at the time of sale, the statute is explicit in rehabilitating those sales if their prices are above the average COP for the POI. Respondents hold that the Department has expressly and routinely recognized that the statute requires it to conduct the cost-recovery test using POI or POR weighted-average costs even if COP was calculated using quarterly cost data. See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Dynamic Random Access Memory Semiconductors of One Megabit and Above (“DRAMs”) From Taiwan, 64 FR 28983 (May 28, 1999) (“DRAMs from Taiwan”) and Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8926 (February 23, 1998) (“SRAMS from Taiwan”). Further, Respondents maintain, the CIT has likewise recognized that the Department has no discretion in choosing a shorter period for the cost-recovery test. See SeAH Steel Corp.

Respondents note that in the Preliminary Determination, the Department relied on quarterly indexed costs to determine if sales were below cost at the time of sale. Respondents assert that the Department’s approach does not withstand scrutiny, as it made no comparison of individual prices to the weighted-average cost of a CONNUM for the POI, but rather limited its comparisons to the costs within each particular quarter. However, Respondents aver that quarterly costs, whether indexed or not, are by no means equivalent to the weighted-average COP of a CONNUM for the POI. Accordingly, Respondents argue, the Department inappropriately disregarded Respondents’ sales made in the ordinary course of trade at prices that were above their weighted-average POI costs. Consequently, Respondents conclude, the Department’s approach cannot be sustained and should not be carried over to the final determination.

Petitioners did not comment on this issue.

Department’s Position:

We disagree with Respondents. Because the quarterly cost methodology was necessary for the below-cost test, we adjusted our normal cost recovery methodology to account for the distortive effect of significant cost changes. We find that performing the cost-recovery test using an unadjusted POI/POR average cost when the Department has employed its alternative cost averaging methodology results in a comparison of home market prices to the same single period-wide average COP the Department found to be distortive in the sales-below-cost test. Due to the significant change in cost of manufacturing (“COM”) throughout the POI, the use of an unadjusted POI/POR average cost becomes meaningless when used to test sale prices throughout the POI/POR. In the alternative, as detailed below, the Department used a POI/POR average cost calculation approach that incorporates an indexing method that neutralizes the distortive effects that the significant change in cost has on the cost recovery calculations.

Although we agree that Congress intended that the Department should normally use the single period average cost for the POI or POR, we disagree that Congress mandated the use of a single POI/POR weighted-average cost when it leads to distortions. See section 773(f)(1)(A) of the Act (explaining that the costs must reasonably reflect the costs associated with the production and sale of the merchandise); see also Statement of Administrative Action (“SAA”) at 832 (stating that the determination of cost recovery is based on an analysis of actual weighted average prices and costs during the POR or POI).

In this case, the Department reasonably exercised its discretion to address significant variations in the cost of a major input that dramatically changed the per-unit cost of manufacturing during the POI. The magnitude of cost changes from quarter to quarter during the POI was so significant that the Department deviated from its normal methodology of using a single POI/POR weighted-average cost in performing the sales-below-cost test because it would have resulted in a cost that does not reasonably reflect the costs associated with the production and sale of the merchandise. If we were to adjust for this distortion in performing the sales-below-cost test, but fail to adjust for it in performing the cost-recovery test, it would lead to similarly distorted results.

As requested by the Department, Respondents reported quarterly copper costs, the primary driver of the significant changes in COM throughout the POI, and POI weighted-average costs for all other cost elements. In the margin calculation program used for the Preliminary Determination, the Department indexed the quarterly copper costs to a common point-in-time, thereby neutralizing the effect of the significant cost changes for the input between quarters. Then, consistent with section 773(b)(2)(D) of the Act and analogous to our standard practice in high-inflation cases, the Department calculated a POI weighted-average per-unit cost for the copper input.¹² Finally, the POI weighted-average per-unit cost for the copper input was indexed back to each quarter during the POI to calculate a quarterly COM consistent with the copper input’s significantly changing price levels occurring between quarters. This methodology addresses the statute’s requirement of weighted-average costs for the period (*i.e.*, recovery-of-cost test) while preserving the indexed differences between quarters resulting from the significant price level changes.

Under the Department’s indexing methodology, the CONNUM-specific costs reflect the POI weighted-average cost of other materials, labor, and overhead. The only cost component adjusted to reflect price level changes throughout the year is the price of the input experiencing significant cost change. Therefore, the Department’s methodology relies upon the respondents’ actual weighted-average costs for the entire POI, while also neutralizing the distortion caused by the significant cost changes for the input at issue. Despite Respondents’ argument to the contrary, the Department finds that this approach satisfies the requirements set forth in section 773(b)(2)(D) of the Act. Further, we find that this treatment does not contradict the Department’s conduct of the recovery-of-cost test in DRAMs from Taiwan and SRAMs from

¹² See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia, 64 FR 73164, 73169 (December 29, 1999); Silicomanganese From Brazil: Final Results of Antidumping Duty Administrative Review, 69 FR 13813 (March 24, 2004), and accompanying Issues and Decision Memorandum at Comment 4; and Light-Walled Rectangular Pipe and Tube from Turkey: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 69 FR 19390, 19396 (April 13, 2004), unchanged in final results, 69 FR 53675 (September 2, 2004).

Taiwan, as in both those cases and in the instant proceeding we used the respondents' POI/POR weighted-average costs.¹³

We find that the rationale for the Department's methodology is consistent with the intent of the statute. If the Department were to use an unadjusted weighted-average per-unit cost for the POI for purposes of the cost-recovery test, sale prices which were determined to be below cost may be erroneously considered to have recovered costs and be rehabilitated based simply on the law of averages and the timing of the sale.

It is undisputed that the cost of the primary input, copper, significantly changed within the POI. In addition, a reasonable linkage between sale prices and costs has been established. When costs change significantly, and prices follow such cost changes, using an unadjusted POI average cost in performing the recovery-of-cost test will result in virtually all sales during the highest cost periods passing the recovery-of-cost test simply due to the timing of the sale in relation to the cost change cycle. This comparison says little about true cost recovery; rather it simply shows which sales were made during high cost periods. Even if the company were to incur losses daily from unprofitable below-cost sale prices that never catch up with rapidly raising costs, prices during the highest cost period will still usually be higher than the POI average costs. Accordingly, the test would erroneously show that the costs have been recovered, regardless of the true financial state of the company. Therefore, we have continued to use an indexed weighted-average POI average cost in our cost-recovery test for the final determination.

Comment 4: Model Matching Hierarchy

Respondents argue that the current order of the model matching characteristics: TYPE, ALLOY, ODU (outside diameter), WALL (wall thickness), FORM, TEMPER, BORE, OUTSURF (outer surface), and ATTACH (attachments), is not reflective of the merchandise in question, and that the existing hierarchy "has resulted in inappropriate and aberrant matches where identical products were not compared." See Respondents' Case Brief at 13. Respondents propose to re-order the model match hierarchy fields used in the instant investigation as follows: WALL, TEMPER, ODU, FORM, ALLOY, TYPE, BORE, OUTSURF, and ATTACH. Respondents believe that this hierarchy will better reflect the realities of the industry and the commercial significance of the characteristics to the functionality, production, cost, pricing and marketing of copper pipe and tube, ranking higher those characteristics with greater significance than those with less. Id. at 12-13.

Specifically, respondents claim that what is most significant with regard to the COP and, hence, product price, is not the TYPE (which represents the American Society for Testing and Materials ("ASTM") code) or ALLOY (which represents the copper input), but rather the TEMPER, ODU, and WALL of the product. Respondents maintain that TEMPER is accomplished through annealing in expensive annealing furnaces. The cost associated with annealing is necessary to release internal mechanical stress in the metal to give flexibility in the tube required for particular applications. Respondents claim that a flexible, coiled tube is a very different tube, in terms of COP, physical characteristics, uses and commercial value, from a straight, rigid tube which is not annealed. Respondents further state that WALL and ODU determine how many

¹³ See DRAMs from Taiwan at 28988 and SRAMs from Taiwan at 8911.

stages of drawing a tube must pass through before it reaches its final specified dimension and each stage requires additional tooling, labor, and processing costs. Respondents assert that, for the foregoing reasons, the Department should revise the order of its model matching criteria to achieve the most accurate product comparisons based on physical characteristics and the commercial significance of differences between products being compared. Id. at 14.

Petitioners rebut Respondents' arguments regarding changes to the order of the model matching characteristics, stating that the hierarchy reflected in the Department's December 2, 2010, questionnaire carefully accounted for the comments, rebuttals, and other supporting information submitted by various parties to the proceeding, including Petitioners, Golden Dragon, Nacobre, and IUSA.¹⁴ Based on these submissions, Petitioners assert that the Department selected a hierarchy of product matching characteristics that substantially reflected the points advocated by both Petitioners¹⁵ and Golden Dragon. Petitioners argue that now, eight months later, Respondents are seeking to take another bite at the apple, advocating a series of unprincipled, results-driven changes.

First, with respect to TYPE, Petitioners rebutted Respondents' arguments, stating that the ASTM type is the principal identifier of plumbing tube in the marketplace."¹⁶ Therefore, Petitioners argue, the Department should not reduce the ranking of the field, TYPE, from the first to the sixth place in the model match hierarchy. With respect to ALLOY, Respondents assert that the Department should reduce the ranking of the field from second to fifth place in the model match hierarchy. Petitioners argue that this should also be rejected by the Department because, although most products reviewed by the Department in this investigation use alloy C12200 "[s]ignificant differences in cost are attendant to different chemistries."¹⁷ Thus, Petitioners assert, in the limited instances where there are differences in chemistry, it is very important to distinguish such products at a high level in the model match hierarchy.

Petitioners state that the primary characteristic mentioned by Golden Dragon was the ASTM specification (which is captured by the TYPE variable). Golden Dragon also referenced chemistry (ALLOY), followed by dimensions (OD and WALL), noting that "smaller diameter and thinner wall tubes require more draws and therefore more manufacturing processes." See Golden Dragon Comments on Appropriate Physical Characteristics, dated November 10, 2009.

Second, with respect to OD and WALL fields, Petitioners state that Respondents are content to let OD remain in the third position but Respondents would like to elevate WALL from its current

¹⁴ See, e.g., Petitioners' Comments on Product Characteristics and Hierarchy (November 10, 2009); Golden Dragon's Comments on Product Characteristics and Hierarchy (November 10, 2009); Comments of IUSA and Nacobre on Product Characteristics and Hierarchy (November 10, 2009); Petitioners' Rebuttal Comments on Product Characteristics and Hierarchy (November 16, 2009), Petitioners' Additional Comments on Product Characteristics and Hierarchy (November 24, 2009); Golden Dragon's Comments on Product Characteristics and Hierarchy (November 24, 2009); Comments of IUSA and Nacobre on Product Characteristics and Hierarchy (November 24, 2009).

¹⁵ Petitioners originally proposed the following model matching characteristics: (1) ASTM, (2) chemistry, (3) dimensions, (4) physical form, (5) temper, (6) bore and outer surface, and (7) attachments. See Petitioners' Comments on Product Characteristics and Hierarchy (November 10, 2009).

¹⁶ See, e.g., Nacobre's Revised Section A Questionnaire Response at Exhibit 17 (February 5, 2010) (containing price lists that describe copper tubes by reference to "ASTM SPECIFICATIONS" for water tube and refrigeration tube).

¹⁷ See Petitioners' Comments on Product Characteristics and Hierarchy at 2 (November 10, 2009).

position in fourth place to the first spot. Petitioners argue that this proposal makes no sense because any particular wall thickness could be associated with a relatively large diameter tube with thin wall, a common combination of OD and WALL, or a relatively small diameter tube with a thick wall. Petitioners assert that, since the number of draws (and therefore the processing expense before yield loss) is determined by the OD rather than the WALL, Respondents' proposal is misguided and should be rejected.

Third, with respect to FORM, Petitioners state that respondents seek to elevate FORM from the fifth to the fourth place and indicate that this incremental change in its ranking is a result of Respondents' proposed re-ranking of other factors (*i.e.*, TYPE, ALLOY, AND TEMPER), rather than a substantive proposal regarding the proper ranking for FORM.

Finally, with respect to TEMPER, respondents propose that the Department move TEMPER from sixth to second place in the hierarchy. Although Petitioners indicate that it may be reasonable to disagree about whether TEMPER and FORM should be ranked as sixth and fifth (or vice-versa) in the hierarchy, Petitioners assert that moving TEMPER to second position makes no sense. Petitioners state that Respondents' reasons are based on their following claims: (1) annealing is done in expensive annealing furnaces, and (2) a flexible coiled tube has very different costs, physical characteristics, and commercial value from a hard straight tube.¹⁸ Petitioners argue that Respondents' arguments are incorrect. First, Petitioners state that the fact that annealing furnaces are expensive says nothing about the variable cost of annealing. Petitioners assert that, if the annealing furnaces are fully depreciated and the variable cost of annealing is low, the fully allocated cost of annealing may be low. Second, Petitioners assert that Respondents appear to be making an argument about FORM, (*e.g.*, coil versus straight length) instead of temper. Petitioners argue that nothing that Respondents have stated makes a convincing case that TEMPER should be elevated from the sixth to the second position in the model match hierarchy. The petitioner concludes that, based on the foregoing reasons, the Department should leave its product matching hierarchy unchanged for the final determination.

Department's Position:

We agree with Petitioners. The Department considered all comments submitted by interested parties prior to its issuance of the Department's questionnaire. Specifically, we reviewed the comments submitted by Respondents pursuant to the development of the Department's model match hierarchy under section 771(16) of the Act. In their respective case briefs, Respondents now suggest that the characteristics, TEMPER and TYPE, should replace each other by switching positions from second to sixth within their proposed model match. Based on our examination of such proposed changes, we find that their arguments are contrary to their prior statements made in the instant investigation regarding their proposed model match hierarchy. Specifically, in the comments provided by Respondents in November 2009, they proposed that the model matching characteristic, TYPE, should be listed as the second highest characteristic and the characteristic, TEMPER, should be listed as the least important characteristic for the Department's model match hierarchy.¹⁹ Respondents stated in these earlier comments that they

¹⁸ See petitioners' rebuttal brief, dated August 9, 2010, at 7-8; see also Nacobre's case brief, dated August 2, 2010, at 14.

¹⁹ See IUSA and Nacobre's comments submitted on November 10, 2009, at page 3.

“believe that the following characteristics accurately identify the key aspects of the products within the scope of the Department’s investigation and, in the order arrayed below, will generate appropriate product comparisons.” Respondents also stated that the characteristics identified in their proposed model matching hierarchy, FORM, TYPE, OD, WALL, LENGTH, and TEMPER, “are commercially meaningful, as they reflect the way in which individual products are presented to customers and are sold. At the same time, of course, they reflect the key aspects of the product’s production which drive product cost.” *Id.* at pages 2-3. However, in their latest comments submitted for the final determination, Respondents assert that “TYPE is not a commercially significant criteria.” *See* Nacobre’s Case Brief at 14.

Respondents have provided general statements regarding why product comparisons should be arranged differently and why the costs reported do not reflect the industry in which it operates. For example, Respondents assert that the field, TEMPER, should be raised in the Department’s model match hierarchy because “annealing is done in expensive annealing furnaces.” *See* Nacobre’s Case Brief at page 14 and IUSA’s Case Brief at page 15. However, neither party has provided any specific information, analysis, or specific product coding examples to support revising the hierarchy to reflect TEMPER in the second position of the model match hierarchy used by the Department.

The Department has considered all interested parties comments in the development of the model matching hierarchy in the instant investigation. The Department finds that Respondents have directly contradicted their prior statements regarding model matching hierarchy with no statistical support and no adequate explanation as to why their prior statements regarding proper order of model matching fields should now be considered invalid. The Respondents have not explained how or why, during the course of this investigation, their position on the model matching has changed, nor explained why the existing model matching hierarchy is distortive. Accordingly, the Department does not find that Respondents have provided a sufficient basis to support a change in the model match hierarchy for the final determination.

Comment 5: Nacobre’s U.S. Date of Sale

Petitioners argue that the Department should apply partial facts available in correcting the date of sale for Nacobre’s U.S. sales where the price was fixed on the date of shipment. The Petitioners reference Nacobre’s response to the Department’s supplemental questions regarding date of sale. Specifically, Nacobre reported in its response that it had two distinct pricing schemes and listed the names of the customers that used each scheme. In regard to the second scheme, Petitioners state that Nacobre’s responses implied that Nacobre reported the shipment date as the date of sale for customers who specified “price in effect” (“PIE”) pricing. In addition, Petitioners state that, at verification, the Department was told that “{i}f it is a sale based on the PIE, the price of the sale will be based on the prevailing Comex price when the product is shipped.”

Petitioners reviewed Nacobre’s U.S. sales database and identified certain sale transactions for certain customers that purchased based on PIE pricing in which the reported date of sale did not match the shipment date. Based on their review of sale dates using the limited customer coding information made available by Nacobre on the record, Petitioners assert that it is likely that Nacobre failed to accurately report the date of sale for numerous records in its U.S. sales database. Petitioners state that Nacobre neglected to disclose this deficiency during its

discussion of PIE sales at verification. Furthermore, Petitioners state that, because the date of shipment is the correct date of sale for Nacobre's PIE customers, the Department needs to consider that: (1) U.S. sales to PIE customers with an order date toward the end of the POI will now have a date of sale (*i.e.*, shipment date) outside the POI; and (2) similarly, U.S. sales to PIE customers with an order date immediately before the POI will now have a date of sale (*i.e.*, shipment date) within the POI. Petitioners assert that, due to Nacobre's incorrect reporting of the date of sale for sales based on PIE pricing, Nacobre failed to report complete U.S. sales data for PIE customers in this latter category.

For purposes of the final determination, Petitioners assert that the Department should set the date of sale as the shipment date for all U.S. sales to these customers (*i.e.*, change the date of sale from order date to shipment date for the relevant PIE customers in the United States) and eliminate the U.S. sales that fall outside the POI based on the corrected date of sale for the PIE sales. Finally, as partial facts available, Petitioners assert that the Department should assume that the quantity of sales that would be eliminated from the end of the POI, based on the revised sale date, is the same as the quantity of sales that were not reported for the beginning of the POI, and assign to such quantities the highest dumping margin to any customer during the first quarter of the POI.

In rebuttal, Nacobre argues that the Department verified Nacobre's submissions and did not identify any issues regarding the reporting of Nacobre's sales. Nacobre argues that the Department verified the universe of sales reported and asserts that the Department's verification report states that the Department verified that "the order date is the appropriate date of sale for the U.S. market."²⁰ Nacobre states that the sales verification report recognized that its U.S. reseller, Copper and Brass International ("CBI"), engages in some transactions where orders are invoiced on a PIE basis. Nacobre states that the Department verified the elimination of sale orders invoiced in the POI and the addition of sale orders invoiced before the POI. Based on this examination, Nacobre asserts that CBI's reported sales based on order date, including sales ordered on a PIE basis, are correct.

Citing Stainless Bar from India and Rubber from Mexico, Nacobre argues that the Department has treated order date as the date of sale, even where the contract contains a price adjustment factor reflecting changes in the market price of certain inputs.²¹ Furthermore, Nacobre argues that the Department verified transaction-specific data for sales trace packages which included items such as the date of sale, the invoice date, sale date, and shipment date. Nacobre identifies several sales trace packages which it states are PIE sales and indicates that the date of sale for such sales reflected the order date.

²⁰ See Nacobre's Rebuttal Brief, dated August 9, 2010, at page 4.

²¹ See, e.g., Notice of Preliminary Results of Antidumping Duty Administrative Review, Intent to Rescind and Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Bar from India, 72 FR 10151, 10154 (March 7, 2007) ("Stainless Bar from India") ("... price adjustment factor reflecting market price changes for certain alloys used in the production of stainless steel bar."). See also, Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From Mexico, 64 FR 14872, 14880 (March 29, 1999) ("Rubber from Mexico") ("... price term is fixed if it is established by a published source outside of the control of either party to the contract, such that there is nothing more that the parties need to negotiate concerning the price of the goods sold.")

In summary, Nacobre asserts that it properly and fully reported its sales, including CBI's sales made on a PIE basis. Nacobre rebuts Petitioners' arguments, stating that, even if PIE sales could have been presented in some other manner in the sales database, there is no basis to resort to a "facts available" approach to a sales universe, which Nacobre claims was clearly explained and accepted by the Department.

Department's Position:

In the Department's Second Supplemental Questionnaire issued to Nacobre, the Department asked Nacobre to "{e}xplain why Nacobre asserts that the order date is the appropriate date of sale for the U.S. market, as opposed to invoice date (which was reported for the home market)."

In response, Nacobre stated that:

"{i}n most cases, including orders shipped out of inventory, the date that the U.S. customer places an order is the date when the metal price (Comex) is fixed by agreement with the purchaser. Nacobre considers this the date of sale, and it is essential to a fair comparison that prices fixed at time of order be compared to prices based on contemporaneous metal values. Where material is ordered as a general production order or otherwise, with metal pricing to be determined as the price in effect ("PIE") on the date that material is ready for shipment, the date of shipment (or invoice date) is likewise the appropriate date of sale, as that is the date on which the price of the product is determined."²²

Based on this statement, the Department believed that Nacobre's date of sale for its PIE sales was reported using the date of shipment and understood this statement to mean that Nacobre's reporting of such sale date data corresponded to its narrative description of its date of sale methodology. However, based on our review of the reported information and the identification of certain PIE sales within the sales traces reviewed at verification, it is apparent that Nacobre did not report its date of sale based on date of shipment for all of its PIE sales.²³

Nacobre takes issue with certain arguments made by Petitioners. Specifically, Nacobre claims that the data fields in its sales traces were verified and, therefore, the Department has confirmed its reporting of order date as date of sale. As noted in the Department's verification report, "{t}his report does not draw conclusions as to whether the reported information was successfully verified, and further does not make findings or conclusions regarding how the facts obtained at verification will ultimately be treated in the Department's determinations."²⁴ Although the documentation corresponded to items including the order date, invoice date, and shipment date, the Department did not confirm at verification that Nacobre's reporting of order date as date of sale for all of its sales was appropriate. In fact, Nacobre's reference which asserts that the Department verified that "the order date is the appropriate date of sale for the U.S. market" is misconstrued. The reference cited by Nacobre, which states that "the order date is the

²² See Nacobre's Second Supplemental Questionnaire Response, dated March 23, 2010, at pages 12-13.

²³ See Nacobre Sales Verification Report at pages 8-9, and 20. See also Nacobre's Rebuttal Brief, dated August 9, 2010, at page 5.

²⁴ See Verification of the Sales Response of Nacobre, S.A. de C.V. and its affiliates ("Nacobre") in the Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from Mexico, dated July 21, 2010, at 1.

appropriate date of sale for the U.S. market,” was not an affirmative statement but referred to the standard language stated in the Department’s verification agenda. This statement cited in the verification agenda was based on Nacobre’s reported data fields and was posed as a question to it, rather than as a conclusion or finding that the order date is the appropriate date of sale for the U.S. market.

As referenced above, Nacobre maintains that the order date constitutes the date of sale, even for sales made on a PIE basis, based on the Department’s sales verification. Nacobre does not specifically defend its use of order date as the date of sale. Instead, Nacobre argues that, because the Department examined its quantity and value of sales (“Q&V reconciliation”) and sales traces, the Department has, therefore, accepted its reported date of sale for all of its sale transactions. The Department disagrees with Nacobre’s assertion. With respect to the comments made regarding the universe of Nacobre’s U.S. sales, the Department verified the Q&V reconciliation based on its understanding of the sale dates reported by Nacobre in its questionnaire responses. The sales database and sales traces reviewed by the Department during verification did not have a field which identified the specific sales that were made by Nacobre on a PIE basis. However, upon further review of the reported sale date information using the PIE customer list supplied in Nacobre’s supplemental response,²⁵ the Department confirmed the sale date discrepancy for Nacobre’s PIE sales where the sale date was reported based on order date rather than invoice date. Furthermore, in Nacobre’s rebuttal comments, Nacobre concedes to a potential change in its sale date reporting, stating “{e}ven if PIE sales could have been presented in some other manner in the sales database, that is no basis to resort to a contorted, so called “facts available” approach to a sales universe which Respondents clearly explained...”²⁶

Citing Stainless Bar from India and Rubber from Mexico, Nacobre argues that the Department has treated order date as the date of sale, even where the contract contains a price adjustment factor reflecting changes in the market price of certain inputs. We have reviewed the facts of the aforementioned cases and find that there are distinct differences between those cases and the instant investigation. In Stainless Bar from India, the Department stated that:

“{i}n the U.S. market, Venus stated that all of its sales are made to order under contracts which can include a price adjustment factor reflecting market price changes for certain alloys used in the production of stainless steel bar. However, because the terms of the price adjustment are set in advance, there are no changes to the material terms of sale negotiated by the parties involved in the transaction after the purchase order date. Therefore, we instructed Venus to use the purchase order date as the date of sale. See Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from Mexico, 64 FR 14872, 14880 (March 29, 1999), for an explanation of our practice in these circumstances. Furthermore, we instructed Venus to report the gross unit price on the invoice (inclusive of any surcharges) in the sales listings.”

²⁵ See Nacobre’s Second Supplemental Questionnaire Response, dated March 23, 2010, at page 16.

²⁶ See Nacobre’s Rebuttal Brief at 5.

Therefore, the Department accepted a date of sale based on the purchase order date “because the terms of the price adjustment are set in advance, there are no changes to the material terms of sale negotiated by the parties involved in the transaction after the purchase order date.”²⁷ However, the price adjustment factor referenced in Stainless Bar from India refers to an alloy surcharge which is an additional pricing component apart from the quoted prices.²⁸ In contrast, in the instant case, for PIE sales, the price of the copper tube product sold is primarily based on the prevailing copper price via the Comex pricing component which comprises a significant portion of the total price.²⁹

Similarly, the facts surrounding the date of sale issue in Rubber from Mexico are unique to that particular case. In Rubber from Mexico, Respondents made sales pursuant to long-term contracts involving minimum purchase amounts. Specifically, the Department stated that:

“{t}he terms of each year-long contract provided that the U.S. customer was obligated to purchase a minimum amount of ESBR during the contract’s year-long duration. Prices for the minimum required annual quantities were established in the contracts based on a mathematical formula incorporating the published monthly monomer prices and prices of butadiene and styrene, two major inputs of ESBR.”³⁰

In contrast, Nacobre’s PIE sales do not relate to long-term contracts with minimum purchase quantities. Instead, Nacobre’s PIE sales are structured as normal sale transactions in which the customer places its order for a certain volume, with the exception being that the copper component of the price of the product is determined on the date when the material is ready for shipment.

The price is essentially based on the primary input, copper, which, in the case of Nacobre’s PIE sales, is not determined or fixed until the date of shipment. We find that, for PIE sale transactions, the material term of sale, *i.e.*, price, is not determined until Nacobre ships and issues its invoice to the customer.³¹ Accordingly, we find that date of invoice is the appropriate date of sale for Nacobre’s U.S. sales reported on a PIE basis.³²

With respect to Petitioners’ proposal to apply facts available, based on its assertion that the universe of sales was incorrectly reported by Nacobre, we find that such an approach is not warranted in the instant case. Nacobre correctly reported the date of sale for its U.S. sale transactions, with the exception of its sales made on a PIE basis. The Department is able to apply the corrected date of sale to the PIE sales at issue. The sales affected by the revision of the

²⁷ See Stainless Bar from India at 10155.

²⁸ *Id.*

²⁹ See Nacobre’s Case Brief at page 1.

³⁰ See Rubber from Mexico, 64 FR at 14879.

³¹ See Nacobre’s Second Supplemental Questionnaire Response, dated March 23, 2010, at pages 12-13.

³² We have reviewed Nacobre’s sales and there are certain instances in which shipment date precedes invoice date. It is the Department’s practice to use the date of shipment as the date of sale where date of shipment precedes invoice date. See Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review, 69 FR 623, (January 6, 2004). See also Notice of Final Determinations of Sales at Less than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada, 68 FR 52741, (September 5, 2003) and accompanying Decision Memo at Comment 3. Therefore, we have applied the earlier of these two dates as the date of sale.

sale dates made on a PIE basis are negligible.³³ Therefore, we disagree with Petitioners' argument and find that there is not a material change in the calculations resulting from the shift from order date to invoice date for such sales. Accordingly, for the reasons outlined above, the Department does not find that this revision to Nacobre's date of sale requires the use of facts available to adjust for the universe of sales reported.

Comment 6: Treatment of Nacobre's General and Administrative Expense Ratio

According to Petitioners, the Department found at the cost verification that the general and administrative ("G&A") expense ratio submitted by Nacobre was understated because Nacobre failed to include certain corporate expenses in the numerator and incorrectly calculated the denominator.³⁴ Petitioners contend that, for the final determination, the Department should adjust Nacobre's G&A expense ratio based on its findings at the cost verification.

Nacobre contends that it appropriately calculated the submitted G&A expense ratio based on its books and records, properly taking into account all G&A expense items, except for those minor items to adjust the denominator of the ratio as described in the Nacobre Cost Verification Report. Nacobre maintains that it properly excluded the charge for corporate rent for the Vallejo plant from the G&A expenses and included the amount in the reported fixed manufacturing expenses. Nacobre requests that if the Department includes the corporate rent charge in the G&A expenses, it must also reduce the fixed manufacturing costs by an equivalent amount to avoid double counting.

Department's Position:

We agree with Petitioners that the corporate rent in question, in this case, should be included in the G&A expenses because it relates to the general operations of the company as a whole. It is the Department's well-established practice to include in the G&A expense ratio calculation those expenses that relate to the general operations of the company as a whole. See Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Carbon-Quality Steel Products from Japan, 64 FR 24329, 24350 (May 6, 1999).

In its normal books and records, Nacobre recorded the corporate rent in question as a manufacturing expense and for reporting purposes included the amount as part of fixed manufacturing overhead. See Exhibit 2SQD-5.3 of Nacobres's April 20, 2010 second supplemental section D response. However, in its audited financial statements the independent auditors reclassified this corporate rent cost from manufacturing expense to operating expense. See Exhibit 2SQD-6 of Nacobres's April 20, 2010 second supplemental section D response. Moreover, at verification, we examined the nature of this expense and found that the building associated with the rental expense contained office space for certain departments within Nacobre

³³ See Nacobre's Second Supplemental Questionnaire Response, dated March 23, 2010, at page 16.

³⁴ Petitioners cite to the Memorandum to Neal M. Halper, Director, Office of Accounting from Sheikh M. Hannan, Senior Accountant, entitled "Verification of the Cost Response of Nacional de Cobre, S.A. de C.V. in the Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from Mexico," dated July 22, 2010 ("Nacobre Cost Verification Report") at pages 2, 25 to 27.

that perform work related to the general operations of the company as a whole (e.g., corporate administration, accounting, personnel, etc.). See the Nacobre Cost Verification Report at page 26. Accordingly, because the independent auditors reclassified the expense from manufacturing to operating for financial statement presentation purposes, and the nature of the expense is related to the general operations of the company as a whole, we continue, consistent with the Preliminary Determination, to include the corporate rent cost in the G&A expenses. Further, to avoid double counting, also consistent with the Preliminary Determination, we excluded the corporate rent from the reported fixed manufacturing overhead costs.

Comment 7: Nacobre's Weight Basis

Petitioners argue that the Department should apply partial facts available because Nacobre failed to properly report ASTM theoretical weights for its U.S. sales sold on a per-piece basis. Petitioners state that it raised the issue of Nacobre's incorrect reporting of quantities several times during the instant investigation.³⁵ Furthermore, Petitioners state that in three of the Department's questionnaires issued to Nacobre, the Department instructed Nacobre regarding the correct reporting of quantities, asked Nacobre to explain its method of reporting quantities, and then repeated its instructions with clarification.³⁶

With respect to the reporting of quantities, Petitioners reference the Department's verification report and assert that Nacobre is in apparent agreement that, when sales are not invoiced on a weight basis, "both market sales should be on an ASTM standard weight basis."³⁷ In addition, the verification report indicates that "during the sales verification, company officials stated that it reported targeted actual weight basis for its home market sales but theoretical weight basis for its U.S. sales (when not invoiced on a weight basis)." Id.

Petitioners performed an analysis by reviewing all of Nacobre's product codes sold to the United States on a per piece, foot, and coil basis and calculated the ratio of Nacobre's weight per foot over the ASTM theoretical weight for the combination of OD and WALL for that product code for each sale.³⁸

Based on its examination of Nacobre's U.S. sales database, petitioners identified numerous instances where Nacobre failed to report quantities on the ASTM theoretical weight basis. Petitioners also found that there are instances of different ratios (i.e., weight per foot/ASTM theoretical weight) reported by Nacobre for the same product code. Petitioners assert that there is no reason why the aforementioned ratios should vary for the same product code.

³⁵ See Petitioners' Deficiency Comments on Nacobre's Sections B-D Questionnaire Response and Sections A-D Supplemental Questionnaire Response at 9-10, dated March 1, 2010); see also Petitioners' Deficiency Comments on Nacobre's Sections A-D Supplemental Questionnaire Response at 12-15, dated April 2, 2010; and Petitioners' Pre-Verification Comments for Nacobre at 2-4, dated June 4, 2010.

³⁶ See the Department's Questionnaire, Special Instructions at C-15,16, dated December 2, 2009; see also Department's Supplemental Questionnaire to Nacobre at 2-3, dated March 5, 2010; Department's Supplemental Questionnaire to Nacobre at 5, dated April 8, 2010.

³⁷ See Nacobre Sales Verification Report at 2.

³⁸ See Petitioners' case brief, dated August 2, 2010, at Attachment 1.

Petitioners state that, whenever the ratio is less than 1.000, Nacobre has used a conversion from pieces, feet, or coils to pounds that understates the quantity and, therefore, overstates the gross unit price. Petitioners state that they previously provided a detailed discussion of these issues, which provided Nacobre ample time to correct its database, but Petitioners assert that the time for Nacobre to submit a revised sales database has passed. Petitioners calculated the simple average of the sales records that show a ratio greater than zero and less than 1.000 for product codes sold on a per piece basis. As partial facts available for the final determination, Petitioners propose that the Department increase the U.S. sale quantity by dividing the reported quantity by the average calculated by Petitioners, and decrease the gross unit price by multiplying the reported gross unit price by this same average for all U.S. sales sold on a per piece basis (*i.e.*, where QTYUNIVU = 4).

Nacobre contends that Petitioners' arguments are contrary to the Department's findings at verification. Nacobre references the verification report stating that, United States sales were reported on an actual weight basis when invoiced on that basis and, otherwise, by using ASTM standard weight factors.³⁹ Nacobre states that the Department confirmed that all of its export price ("EP") sales were reported on an actual weight basis.⁴⁰ Furthermore, Nacobre asserts that the Department also confirmed the accuracy of the reporting of conversion factors by its U.S. affiliate, CBI, "for a sale sold in pounds (on an actual weight basis) and a conversion factor for {a} sale sold in feet (on a nominal weight basis)." *See* Nacobre Sales Verification Exhibit ("VE") 7 and Constructed Export Price ("CEP") VE 17."⁴¹

Nacobre argues that Petitioners have conceded that "most part numbers sold on a per foot basis" were converted to a unit weight basis to Petitioners' satisfaction, using "the ASTM standard." *See* Petitioners' Case Brief at 6. Nacobre contests Petitioners' arguments regarding Nacobre's other conversions (*i.e.*, sales by piece or coil), asserting that the variation for certain factors exists because the actual unit weights for individual transactions differ, in a generally consistent pattern, from the ASTM theoretical standard. Nacobre argues that such differences reflect fluctuations inherent in the production process. In sum, Nacobre argues that the overall accuracy of Nacobre's submissions has been confirmed by the Department, and Petitioners' allegations regarding incorrect weight reporting should be rejected.

Department's Position:

We disagree with Petitioners' assertion that Nacobre's reporting of its weight conversions were inaccurate. Petitioners argue that Nacobre's weight conversions and weight basis are incorrectly reported. First, the Department verified Nacobre's weight conversions through several sales traces and found that such conversions were in accordance with Nacobre's accounting records.⁴² With respect to Nacobre's reported weights, the Department verified the conversion factors reported and found that variances exist due to differences in the actual unit weights produced for the respective sale transactions.⁴³

³⁹ *See* Nacobre Sales Verification Report at 11; Nacobre VE 17.

⁴⁰ *See* Nacobre Sales Verification Report at 13; Nacobre VE 17.

⁴¹ *See* Nacobre Sales Verification Report at 13.

⁴² *See* Nacobre Sales Verification Report at pages 11-13.

⁴³ *Id.*

Second, with respect to the weight basis reported, we agree with the Petitioners' claim that certain sale transactions in both the U.S. and home market were not reported by Nacobre on the same weight basis. As stated in the verification report, company officials stated that Nacobre reported a targeted actual weight basis for its home market sales but a theoretical weight basis for its U.S. sales (when not invoiced on a weight basis).⁴⁴ Prior to the Preliminary Determination, Nacobre reported data fields in its U.S. sales database which identify the reported theoretical weight from the respective ASTM specification for each transaction. In order to prevent distortions in the Department's margin calculations and to ensure that Nacobre's home market and U.S. sales are on a consistent weight basis, we are using the aforementioned data fields and the reported targeted actual weight for each respective transaction to recalculate the home market gross unit prices and selling expenses that were reported on a weight basis.⁴⁵

The information necessary to recalculate the weight basis was provided by Nacobre prior to the sales verification and, therefore, the Department is able to accurately perform the margin calculations for the final determination. Furthermore, we do not find that the circumstances warrant the use of the partial facts available as proposed by Petitioners, because Nacobre reported its sales and costs in accordance with its normal accounting and production records and was forthcoming in disclosing the weight reporting discrepancy during the sales verification.⁴⁶

Comment 8: Treatment of the Negative Value of Other Discount for IUSA

Petitioners urge the Department to continue to zero negative values of other discount ("OTHDIS1U") reported by IUSA for the final determination as it did in the Preliminary Determination. Petitioners point out that the Department provided IUSA with an opportunity to explain its negative values for OTHDIS1U during verification, but IUSA failed to provide the requested documentation. Accordingly, the Department should continue to zero negative values of OTHDIS1U. See Petitioners' case brief at 7-8.

In rebuttal, IUSA argues that at the CEP verification, IUSA's affiliate, Cambridge Lee Industries ("CLI"), explained that the negative value for OTHDIS1U was associated with a credit and accordingly was reported as a negative value. IUSA claims that CLI did not provide support documentation requested by the Department because the documents were requested near the close of the verification, and CLI could not provide the requested information in the short time allowed. IUSA argues that there is no reason to disregard the data provided, *i.e.*, to zero negative values reported. To do so, according to IUSA, would be an unjustified application of adverse facts available.

Department's Position:

This OTHDIS1U negative value issue is one of the ministerial error allegations filed by IUSA with respect to the calculations performed in connection with the Preliminary Determination.⁴⁷ In this ministerial error allegation, IUSA asserted that when the value was negative, which

⁴⁴ Id. at 2 and 11.

⁴⁵ See "Memorandum to The File titled, Calculation Memorandum for Nacional de Cobre, S.A. de C.V. and its affiliates ("Nacobre"), for the Final Determination of Antidumping Investigation of Seamless Refined Copper Pipe and Tube from Mexico," dated September 24, 2010.

⁴⁶ Id.

⁴⁷ See IUSA's ministerial error allegation, dated May 17, 2010 at pages 2-3.

indicates an adjustment that increases sale revenue, the Department's program set it to zero and ignored the actual increase in U.S. price. IUSA contended that the Department should have corrected this error by subtracting negative values in this field, *i.e.*, increasing U.S. price. The Department disagreed and noted that IUSA had provided no reasonable explanation as to why a discount expense variable should increase U.S. price.⁴⁸ Therefore, the Department defended its decision to set the negative values of OTHDIS1U to zero at the Preliminary Determination.⁴⁹

IUSA contends that CLI did not provide supporting documentation for the negative values of OTHDIS1U because the verifiers requested the information too late, "near the close of the verification."⁵⁰ This is contrary to the record evidence. The Department provided IUSA with several opportunities to explain its negative values and provide supporting documentation. For example, in the verification agenda issued to IUSA nearly three weeks before verification, the Department specifically listed this variable and asked IUSA to prepare all support documentation for this expense field, including: (1) appropriate invoices; (2) accounts payable ledger; (3) cash disbursements journal; and (4) canceled checks and bank statements.⁵¹

The CEP verification took two days, as scheduled. On the first day of the CEP verification, the verifiers requested that CLI provide supporting documentation for certain U.S. observations, where the negative value of OTHDIS1U was reported. The verifiers requested this information after the discussion of CLI's minor corrections and reminded company officials of this outstanding item multiple times throughout the two-day verification.⁵² Nevertheless, CLI failed to provide the requested supporting documentation by the end of the CEP verification, as indicated in the Department's verification report.⁵³ The Department, therefore, considers the negative values of OTHDIS1U unverified.⁵⁴

Given that IUSA provided no reasonable explanation as why OTHDIS1U was reported as negative values, and was unable to provide documentation to support its claim that the reported negative values were associated with some kind of credit, we will continue to set the negative values of this variable to zero in the final determination.

Comment 9: Treatment of Early Payment Discounts for IUSA's Home Market Sales

Petitioners point out that, as noted by the Department in its sales verification report, IUSA inappropriately applied a uniform early payment discount ("EARLPYH") rate to all home market sales regardless of whether or not its customers paid within the payment terms. Therefore, Petitioners urge the Department to correct IUSA's mistreatment of EARLPYH by only allowing EARLPYH for those customers who were eligible (*i.e.*, paid within the payment terms).

⁴⁸ See the memorandum to Ronald K. Lorentzen from Melissa Skinner through John Andersen titled, "Ministerial Error Allegations in the Preliminary Determination of the Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from Mexico," dated June 11, 2010 at pages 4-5.

⁴⁹ Id.

⁵⁰ See IUSA's rebuttal brief at 2.

⁵¹ See the Department's verification agenda, dated May 12, 2010 at page 10-11.

⁵² See Case Hearing Transcript regarding Seamless Refined Copper Tubing from Mexico for Hearing, dated August 12, 2010, at pages 62-63.

⁵³ See the Department's Sales Verification Report for IUSA titled, "Verification of the Sales Response of IUSA, S.A. de C.V. and its affiliates ("IUSA") in the Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from Mexico," ("IUSA Sales Verification Report") dated July 21, 2010, at page 2 and 18.

⁵⁴ Id.

IUSA argues that its EARLPYH calculation was a reasonable allocation method. IUSA claims that early payment discounts are not tracked by individual invoice; therefore, IUSA calculated a weighted-average discount to all home market sales. IUSA claims that this way of reporting is “completely consistent with the early payment discount reporting for U.S. sales.”⁵⁵ IUSA further contends that to adopt the scheme proposed by Petitioners would understate the home market early payment discounts and skew the price comparisons between the home market and U.S. market. IUSA urges the Department to reject Petitioners’ proposed scheme regarding the treatment of EARLPYH.

Department’s Position:

As noted in the IUSA Sales Verification Report, we found no evidence at verification that IUSA provided early payment discounts to all of its home market customers.⁵⁶ IUSA reported EARLPYH even for the customers who had not paid up to the verification date. It was, therefore, inappropriate for IUSA to apply a uniform early payment discount rate to all home market sales, especially for those who did not pay by the payment terms and/or those who had never paid up to the verification date.

We disagree with IUSA that its home market early payment discount reporting was consistent with the U.S. early payment discount reporting. IUSA applied a uniform early payment discount rate to all home market sales regardless of whether or not its customers paid within the payment terms. In contrast, IUSA did not report early payment discount for all of its U.S. sales. In fact, the Department confirmed that IUSA reported early payment discounts only for those customers who had paid by the payment terms for its respective U.S. sales based on the Department’s review of IUSA’s sales documentation.⁵⁷

We also disagree with IUSA’s assertion that an unequal comparison between the U.S. and home markets would result if the Department does not accept IUSA’s methodology for reporting its home market early payment discounts. The allocation made by IUSA overstates its home market early payment discounts because it grants this adjustment to all of IUSA’s home market customers, regardless as to whether or not the customer paid pursuant to the payment term and actually received an early payment discount from IUSA. If the Department were to accept IUSA’s application of a discount to sales which did not qualify for the early payment discounts, it would skew the price comparisons between the home market and the U.S. market sales. Specifically, the Department’s margin calculations would overstate IUSA’s home market early payment discounts and incorrectly lower IUSA’s home market net prices in instances where the respective sales transactions did not qualify for an early payment discount. Therefore, because we found no evidence that IUSA granted and paid early payment discounts to all of its home market customers, we will only allow the early payment discounts for those transactions which were eligible and qualified for such discounts based on the payment data reported by IUSA.

Comment 10: IUSA’s Packing Costs

Petitioners argue that IUSA did not report its packing costs for certain products properly. Specifically, Petitioners allege that IUSA did not apply the factors for rigid and flexible tube

⁵⁵ See IUSA Rebuttal Brief at 4.

⁵⁶ See IUSA Sales Verification Report at page 2.

⁵⁷ See IUSA Section C Questionnaire Response, dated February 9, 2010, at C38-39.

consistently, and that the reported packing costs did not include the cost of bundling materials and labor and overhead costs. Referencing the packing materials reported by the Hailiang Group in the antidumping duty investigation of seamless refined copper pipe and tube from the People's Republic of China, which include wooden pallet, wooden diskette, paper plate diskette, paper packaging box, wooden crate, iron crate iron, iron crate plywood, plastic sack, stretching film, plastic pad, iron strapping band, iron strapping buckle, packaging lining diskette, inner paper diskette, desiccant, vapor phase moisture proof paper, pipe plug, label, tape paper, hemp rope, gunny cloth, plastic strapping band, and anti-aging master batch, Petitioners allege that IUSA failed to report all these packing materials.⁵⁸ Petitioners propose that the Department recalculate IUSA's packing costs by reference to available bill of materials ("BOM") on the record.

IUSA contends that as urged by the Petitioners in its pre-verification comments, the Department painstakingly reviewed IUSA's reported packing costs and allocation method to be sure the costs fully tied to IUSA's books and records and that the allocation method of such costs was proper. IUSA states that in its normal course of business, it separately tracks packing costs for rigid tube and flexible tube. IUSA argues that it appropriately reported separate packing costs for these two types of tubes.

Referencing IUSA cost verification exhibits, IUSA maintains that all packaging material costs associated with the structure of the product (i.e., raw materials such as carton boxes, separators, core, reinforcements and carton lids, etc.) were reported in the other material ("OTHMAT") field in the COP database, and that all materials that are included in the BOMs were included either in direct material ("DIRMAT") or OTHMAT, as applicable. IUSA maintains that it correctly reported other packing costs in the sales database.⁵⁹

Department's Position:

We agree with IUSA that it reported separate packing costs for rigid tubes and flexible tubes in the database. We verified that all materials listed in the BOMs are included either in DIRMAT or OTHMAT, as applicable in the cost database.⁶⁰ Further, the Department confirmed at verification that all packing or packaging costs were included either in the reported cost or in the sales database.⁶¹ Accordingly, we find that no adjustments to IUSA's packing costs are necessary.

Comment 11: Further Manufactured Line Sets

Petitioners argue that because IUSA excluded, as a minor correction, some sale records of line set products in its revised U.S. sales database, there is no need to adjust the sale quantity of IUSA's sales of line sets by the proportion of line sets produced in the United States from imported copper tube, as the Department did in the Preliminary Determination.

IUSA clarifies that its removal of certain sale records of line set products in its revised U.S. sales database does not make it unnecessary for line set quantity adjustments. IUSA argues that there remain in the database other line set products that were commingled in CLI's inventory and sold

⁵⁸ See Petitioners' case brief at page 12.

⁵⁹ See IUSA's Rebuttal Brief at page 5-6.

⁶⁰ See IUSA Cost Verification Exhibits 7, 8, 9, and 10.

⁶¹ Id. and IUSA Sales Verification Exhibit 27.

interchangeably and, therefore, the Department should apply the same allocation methodology adopted in the Preliminary Determination to adjust IUSA's sales quantity of line set products.

Department's Position:

We agree with IUSA that although IUSA excluded some sale records of line set products in its revised U.S. sales database as a minor correction, there remain line sets in the dataset that IUSA was unable to remove. These were line sets that were commingled in CLI's inventory and sold interchangeably.⁶² Accordingly, we will continue to apply a ratio, albeit adjusted, to adjust the line set sale quantity in the final determination.

Comment 12: "All Others" Rate

Petitioners state that, in the Preliminary Determination, the Department calculated the "all others" rate using a simple average of the dumping margins calculated for Nacobre and IUSA. See Preliminary Determination at 75 FR 26732. Citing to section 735(c)(5)(A) of the Act, Petitioners assert that the estimated "all others" rate shall be an amount equal to the weighted-average dumping margins established for investigated respondents, excluding any zero or *de minimis* margins, and any margins based entirely on facts available. However, Petitioners state that, because there are only two respondents in this investigation, calculating a weighted-average "all others" rate risks disclosure of proprietary information subject to the Administrative Protective Order ("APO"). Petitioners argue that, for purposes of the final determination, the Department should calculate the "all others" rate using a simple average of the final dumping margins calculated for Nacobre and IUSA.⁶³

Respondents did not comment on this issue.

Department's Position:

We agree with Petitioners. Consistent with the Preliminary Determination, we have calculated the "all others" rate using a simple average of the margins calculated for Respondents.

⁶² See IUSA Rebuttal Brief at page 7 and IUSA CEP Verification at Exhibit 1.

⁶³ See, e.g., Polyethylene Retail Carrier Bags from Indonesia: Preliminary Determination of Sales Less Than Fair Value and Postponement of Final Determination, 74 FR 56807, 56812 (November 3, 2009); Notice of Amended Final Determination of Sales at Less Than Fair Value: Light-Walled Rectangular Pipe and Tube from Mexico, 73 FR 45400, 45401 (August 5, 2008).

IV. Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins for the investigated firms in the Federal Register.

Agree _____ Disagree _____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

(Date)