



A-201-853

Investigation

POI: 4/1/2019-3/31/2020

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June 16, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in the Less-Than-Fair-Value Investigation of
Standard Steel Welded Wire Mesh from Mexico

I. SUMMARY

The Department of Commerce (Commerce) finds that imports of standard steel welded wire mesh (wire mesh) from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is April 1, 2019, through March 31, 2020.

After analyzing the comments submitted by interested parties, we have made certain changes to the *Preliminary Determination*.¹ 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 LTFV investigation for which we received comments from interested parties:

- Comment 1: Whether Commerce Should Apply Partial Adverse Facts Available (AFA) to Aceromex
 - A. Freight Revenue
 - B. Freight Expenses from Mexico to the United States
 - C. Certain U.S. Inland Freight Expenses
 - D. Certain Home Market Freight Expenses
- Comment 2: Indirect Selling Expenses for Sales Made by Kratos
- Comment 3: Peninsula’s Warehousing Costs in Florida

¹ See *Standard Steel Welded Wire Mesh from Mexico: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and, Extension of Provisional Measures*, 86 FR 7710 (February 1, 2021), and accompanying Preliminary Decision Memorandum (PDM).

II. BACKGROUND

On February 1, 2021, Commerce published the *Preliminary Determination* in this LTFV investigation.² On January 27, 2021, Aceromex responded to Commerce’s section A-C second supplemental questionnaire.³ On February 3, 2021, Aceromex responded to Commerce’s section D second supplemental questionnaire.⁴ On May 17, 2021, upon Commerce’s request, Aceromex submitted revised home market and U.S. sales databases.⁵ Commerce was unable to conduct on-site verification in this investigation for reasons beyond its control. However, Commerce took additional steps in lieu of on-site verification, and, on February 26, 2021, we issued a post-preliminary determination questionnaire to Aceromex, S.A. de C.V. (Aceromex) to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.⁶ On March 8, 2021, we received a response from Aceromex to our post-preliminary determination inquiry.⁷

We invited parties to comment on the *Preliminary Determination*. In March 2021, we received a case brief from Insteel Industries Inc., Mid-South Wire Company, National Wire LLC, Oklahoma Steel & Wire Co., and Wire Mesh Corp. (the petitioners) and a rebuttal brief from Aceromex.⁸

III. SCOPE OF THE INVESTIGATION

For the scope language, *see* the scope in Appendix I of the accompanying *Federal Register* notice.

IV. USE OF ADVERSE FACTS AVAILABLE

Commerce relied on “facts otherwise available,” including AFA, in the *Preliminary Determination* with respect to Deacero S.A.P.I. de C.V. (Deacero). Commerce made no changes to its use of facts otherwise available and AFA, as applied in the *Preliminary Determination*.⁹ However, because we received updated sales databases from Aceromex, we re-examined our selection and corroboration of the AFA rate for our final determination.

² *See Preliminary Determination*.

³ *See Aceromex’s Letter, “Standard Steel Welded Wire Mesh from Mexico: Submission of Aceromex 2nd Supplemental Sections A-C Response,” dated January 27, 2021 (Aceromex January 27, 2021 SSABCQR).*

⁴ *See Aceromex’s Letter, “Standard Steel Welded Wire Mesh from Mexico: Submission of Aceromex Second Supplemental Section D Response,” dated February 3, 2021.*

⁵ *See Memorandum, “Telephone Call to Counsel for Aceromex, S.A. de C.V. (Aceromex) in the Antidumping Duty Investigation of Standard Steel Welded Wire Mesh from Mexico,” dated May 17, 2021; and Aceromex’s Letter, “Standard Steel Welded Wire Mesh from Mexico: Submission of a Revised Home Market Sales and United States Sales Databases,” dated May 17, 2021.*

⁶ *See Commerce’s Letter, “In Lieu of Verification Questionnaire for Aceromex,” dated February 26, 2021.*

⁷ *See Aceromex’s Letter, “Standard Steel Welded Wire Mesh from Mexico: Submission of Aceromex’s Verification Response,” dated March 8, 2021 (Aceromex In Lieu of Verification Response).*

⁸ *See Petitioners’ Case Brief, “Standard Steel Welded Wire Mesh from Mexico: Petitioners’ Case Brief,” dated March 17, 2021 (Petitioners’ Case Brief); and Aceromex’s Rebuttal Brief, “Standard Steel Welded Wire Mesh from Mexico: Submission of Aceromex’s Rebuttal Brief,” dated March 31, 2021 (Aceromex’s Rebuttal Brief).*

⁹ *See Preliminary Determination PDM at 4-8.*

Selection and Corroboration of the AFA Rate

Relying on an adverse inference in selecting from the facts available may include reliance on information derived from the Petition, the final determination in the investigation, any previous review, or any other information placed on the record.¹⁰ Section 776(c) of the Act provides that, when Commerce relies on secondary information (such as the petition) in making an adverse inference, rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the Petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹¹ The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information used has probative value.¹² To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information upon which it is basing the AFA dumping margin, although Commerce is not required to estimate what the dumping margin of an uncooperative interested party would have been if the interested party failing to cooperate had cooperated or to demonstrate that the AFA dumping margin used for the uncooperative party reflects an “alleged commercial reality” of the party.¹³ Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of the proceeding under the applicable antidumping order when applying an adverse inference, including the highest of such margins. If Commerce is unable to corroborate the highest petition margin using individual-transaction specific margins, Commerce may use the component approach.¹⁴

In selecting an AFA rate, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. In an investigation, Commerce’s practice with respect to assignment of an AFA rate is to select the higher of: (1) the highest dumping margin alleged in the Petition; or (2) the highest calculated dumping margin of any respondent in the investigation. In this investigation, the highest dumping margin alleged in the Petition is 152.68 percent.¹⁵ In order to

¹⁰ See section 776(b)(2) of the Act.

¹¹ See SAA at 870.

¹² *Id.*

¹³ See section 776(d)(3) of the Act; and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

¹⁴ See, e.g., *Forged Steel Fittings from India: Final Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 66306 (October 19, 2020), and accompanying IDM at Section V.4.; and *Polyester Textured Yarn from India: Final Determination of Sales at Less Than Fair Value*, 84 FR 63843 (November 19, 2019), and accompanying IDM at Comment 7.

¹⁵ See *Standard Steel Welded Wire Mesh from Mexico: Initiation of Less-Than-Fair-Value Investigation*, 85 FR 45167 (July 27, 2020); AD Investigation Initiation Checklist: Standard Steel Welded Wire Mesh from Mexico, (July 20, 2020); and Petitioners’ Letter, “Standard Steel Welded Wire Mesh from Mexico – Petitioners’ Amendment to Volume II Related to Antidumping Duties from Mexico,” dated July 7, 2020 at 7 and Exhibit AD-SUPP-5-B.

determine the probative value of the dumping margin alleged in the Petition in assigning an AFA rate, we examined the information on the record. When we compared the highest calculated dumping margin alleged in the Petition to the transaction-specific dumping margins calculated for the only cooperating mandatory respondent, Aceromex, in our final determination, we found the Petition rate of 152.68 percent to be significantly higher than Aceromex's highest calculated transaction-specific dumping margin.

Because we were unable to corroborate the highest Petition margin with the calculated transaction-specific margins for Aceromex, we next applied a component approach and compared the normal values (NVs) and net U.S. prices underlying the dumping margins alleged in the Petition to the range of NVs and net U.S. prices calculated for Aceromex. We found that the highest Petition margin we could corroborate through this component approach is the Petition margin of 110.42 percent. Specifically, Commerce finds that NVs and net U.S. prices calculated for Aceromex are within the range of the NVs and net U.S. prices underlying the 110.42 percent margin alleged in the Petition.¹⁶ Accordingly, because we corroborated this Petition rate to the extent practicable within the meaning of section 776(c) of the Act, we find the 110.42 percent rate to be both reliable and relevant and, therefore, that it has probative value. Thus, we are assigning this rate to Deacero as AFA for our final determination.

V. MARGIN CALCULATIONS

We calculated constructed export price (CEP), NV, and cost of production (COP) for Aceromex using the methodology stated in the *Preliminary Determination*,¹⁷ except as follows:

1. We revised our calculations to use updated home market and U.S. sales databases.¹⁸

VI. ADJUSTMENT FOR COUNTERVAILED EXPORT SUBSIDIES

In an LTFV investigation, where there is a concurrent countervailing duty (CVD) investigation, it is Commerce's normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent's estimated weighted-average dumping margin to account for export subsidies, if any, found for each respective respondent in the concurrent CVD investigation. Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S. price shall be increased by "the amount of any countervailing duty imposed on the subject merchandise... to offset an export subsidy."¹⁹

Commerce determined in the final determination of the concurrent CVD investigation that Aceromex, Deacero, and the all-others companies benefitted from export subsidies.²⁰ Accordingly, under the CVD order, we find that an export subsidy adjustment of 1.03 percent to

¹⁶ See Memorandum, "Corroboration of the Adverse Facts Available Rate for the Final Determination," dated concurrently with this memorandum.

¹⁷ See Memorandum, "Final Determination Margin Calculation for Aceromex, S.A. de C.V.," dated June 16, 2021.

¹⁸ *Id.*

¹⁹ See, e.g., *Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 38076, 38077 (July 1, 2010), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

²⁰ See *Standard Steel Welded Wire Mesh from Mexico: Final Affirmative Countervailing Duty Determination*, 86 FR 10034 (February 18, 2021).

the estimated weighted-average dumping margin is warranted to establish Aceromex’s cash deposit rate.²¹ Because the estimated weighted-average dumping margin for all other producers and exporters is based on the rate for Aceromex, and Aceromex is the only company individually investigated in the CVD investigation, the export subsidy adjustment for all other exporters and producers is based on the lesser of Aceromex’s export subsidy rate and that of the all-others companies in the concurrent CVD investigation. Accordingly, we find that an export subsidy adjustment of 1.03 percent to the all-others’ estimated weighted-average dumping margin is warranted to determine the cash deposit rate for all other producers and exporters of subject merchandise.²² The cash deposit rate for Deacero, based on AFA, is adjusted for the lowest rate of export subsidies found for any company in the CVD investigation (*i.e.*, 1.03 percent related to the Eighth Rule Permit Program).²³

VII. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce Should Apply Partial AFA to Aceromex

A. Freight Revenue

Petitioners’ Case Brief

- Aceromex claims that neither of its U.S. affiliates, *i.e.*, Peninsula and Kratos, received freight revenue on sales and that the reported gross unit prices (*i.e.*, GRSUPRU) do not include freight revenue.²⁴ However, record evidence indicates that: (1) Peninsula charged and collected freight revenue; and (2) Aceromex reported freight revenue as part of GRSUPRU.²⁵ Thus, Aceromex impeded Commerce’s investigation by not reporting freight revenue in a separate field, as requested.
- Commerce should rely on partial AFA under sections 776(a) and (b) of the Act to cap Peninsula’s freight revenue by the freight expenses incurred and adjust the gross unit price of Peninsula’s U.S. sales. The U.S. Court of Appeals for the Federal Circuit (Federal Circuit) found that a respondent should do the maximum that it is able to do in responding to Commerce’s requests, and Aceromex did not cooperate to the best of its ability in reporting freight revenue.²⁶

²¹ See *Standard Steel Welded Wire Mesh from Mexico: Countervailing Duty Order*, 86 FR 18940 (April 12, 2021).

²² *Id.* The export subsidy rate for Aceromex and the all-others companies was the same in the concurrent CVD investigation. Further, the companies included in the all-others grouping in each investigation are identical since Aceromex was the only company individually investigated in each investigation.

²³ *Id.*

²⁴ See Petitioners’ Case Brief at 7 (citing Aceromex’s Letter, “Standard Steel Welded Wire Mesh from Mexico: Submission of Aceromex Supplemental Sections A-C Response,” dated December 22, 2020 (Aceromex December 22, 2020 SABCQR) at 33-34).

²⁵ *Id.* at 6-7 (citing Aceromex’s Letter, “Standard Steel Welded Wire Mesh from Mexico: Submission of Aceromex Section C Response,” dated October 17, 2020 (Aceromex October 17, 2020 CQR) at Exhibits C-2 and C-4; and Aceromex’s Letter, “Standard Steel Welded Wire Mesh from Mexico: Submission of Aceromex Section A Response,” dated September 16, 2020 at Exhibit A-12).

²⁶ *Id.* at 3-4 (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*)).

- It is appropriate for Commerce to use partial AFA when the missing information is central to the antidumping analysis. Applying partial AFA is appropriate in this investigation because the record contains gaps in a discrete category of information and contains useable data.²⁷
- Commerce’s practice is to cap freight revenue by the amount of freight charges incurred so that exporters cannot inflate the EP or CEP of a good by charging customers more for freight than the actual freight expenses.²⁸ Therefore, Commerce’s questionnaire instructs respondents to report freight revenue under a separate variable in the U.S. sales database.²⁹
- In response to Commerce’s in lieu of on-site verification questionnaire, Aceromex explained that “{f}reight charges, which are included as part of the price charged to customers, are booked as a revenue in an account, “Other Charges.”³⁰
- The “Other Charges” account is separate from the account from which actual freight expenses are paid. This separate account confirms that Aceromex should have separately identified and reported freight revenue in the U.S. sales database, yet it failed to do so.³¹ Thus, the record is clear that Peninsula earned freight revenue and these revenues are included in the reported gross unit prices.
- According to record evidence, Aceromex’s estimated freight expenses exceed freight revenues.³² Specifically, the total amount in the “Other Charges” account relating to sales of subject merchandise produced in Mexico sold by Peninsula is greater than the freight expenses reported (*i.e.*, INLFWCU).³³
- In the final determination, Commerce should adjust the GRSUPRU by deducting the amount of the estimated freight revenue that exceeds the reported freight expenses.

²⁷ *Id.* at 4 (citing *Fresh Garlic Producers Ass’n v. United States*, 121 F. Supp. 3d 1305, 1313, 1324-25 (CIT 2015) (quoting *Mukand, Ltd. v. United States*, 767 F.3d 1300, 1308 (Fed. Cir. 2014) (*Mukand*))).

²⁸ *Id.* (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 41949 (July 13, 2020), and accompanying IDM at Comment 15).

²⁹ *Id.* at 6 (citing Aceromex October 17, 2020 CQR at 16).

³⁰ *Id.* at 8 (citing Aceromex In Lieu of Verification Response at 5-6 and Exhibit 7.b.).

³¹ *Id.* at 5 (citing Aceromex In Lieu of Verification Response at 5-6; and Aceromex’s Letter, “Standard Steel Welded Wire Mesh from Mexico: Submission of Aceromex Supplemental Section A Response,” dated October 29, 2020 at 10).

³² *Id.* at 9. The petitioners maintain that their calculation of freight expenses that exceed freight revenues is the best calculation methodology available based on the data on the record given Aceromex’s failure to report the freight revenue separately under a different variable. *Id.*

³³ *Id.* at 9-10 (citing Aceromex October 17, 2020 CQR at Exhibit C-2; and Aceromex In Lieu of Verification Response at 5 and Exhibit 7.b.; and Aceromex January 27, 2021 SSABCQR at Exhibit S2-14).

Aceromex's Rebuttal Brief

- Commerce is authorized to invoke facts otherwise available under sections 776(a)(1) and (2) of the Act.³⁴ When relying on facts available, Commerce is not permitted to resort automatically to adverse inferences, but must find and explicitly explain how a party failed to cooperate by not acting to the best of its ability to comply with a request for information.³⁵
- In the *Preliminary Determination*, Commerce properly incorporated Aceromex's information that reflected the actual costs or expenses incurred. In addition, Aceromex responded to each questionnaire and supplemental questionnaire issued by Commerce, as well as Commerce's questionnaire in lieu of on-site verification, and did not impede the investigation.
- Commerce should not apply partial AFA in the final determination and should not cap the deduction of freight revenue by freight expenses because neither of Aceromex's U.S. affiliates charged their U.S. customers separately for U.S. freight.³⁶
- The U.S. sales listing did not include a separate field for freight revenue because all movement expenses, including U.S. inland freight, were included in the sales price.³⁷ While the order confirmation breaks out the freight charged, all sales documentation confirms that the final price is inclusive of freight charges.³⁸
- The petitioners are misunderstanding the record evidence and conflating sales documentation with internal accounting records. The account, "Other Charges" is a revenue account in which Aceromex's U.S. affiliate, Peninsula, books mostly freight costs. The account, "Domestic Sales" is where Peninsula and Kratos post sales at a target, or standard, price. The actual sales invoice value is booked as an offset, resulting in the actual sales values being reported in both accounts. Adding the two entries together equals the gross sales price that Aceromex reported in the U.S. sales listing.³⁹
- Commerce only deducts freight revenue from the U.S. price when it is separately charged to the U.S. customer and not included in the price. When the U.S. price includes freight charges, Commerce will make the appropriate deduction from the U.S. price to account for such freight charges. In this investigation, no adjustment to U.S. prices should be made to account for freight charges.

³⁴ See Aceromex's Rebuttal Brief at 1 (citing *Gerber Food (Yunnan) Co., Ltd. v. United States*, 387 F. Supp. 2d 1270, 1280 (CIT 2005)).

³⁵ *Id.* at 1-2 (citing *Borden, Inc. v. United States*, 4 F. Supp. 2d 1221, 1246 (CIT 1998), *rev'd on other grounds*, 7 Fed. App'x 938 (Fed. Cir. 2001); *Ferro Union, Inc. v. United States*, 44 F. Supp. 2d 1310, 1329 (CIT 1999); *Allegheny Ludlum Corp. v. United States*, 215 F. Supp. 2d 1322, 1341 (CIT 2000); and *Mannesmann-Werke AG v. United States*, 77 F. Supp. 2d 1302, 1314 (CIT 1999)).

³⁶ *Id.* at 4 (citing Petitioners' Case Brief at 4-11).

³⁷ *Id.* (citing Aceromex September 16, 2020 AQR at 8, 13, and Exhibit A-13 at 8-10; and Aceromex December 22, 2020 SABCQR at 34).

³⁸ *Id.* at 5 (citing Petitioners' Case Brief at 6; and Aceromex September 16, 2020 AQR at 6 and Exhibit A-12).

³⁹ *Id.* at 5-6 (citing Aceromex In Lieu of Verification Response at 5 and Exhibit 7.a.).

Commerce’s Position:

According to section 776(a) of the Act, Commerce shall use the facts otherwise available in reaching a determination if:

- 1) necessary information is not available on the record, or
- 2) an interested party or any other person –
 - (A)withholds information that has been requested by the administering authority or the Commission under this title,
 - (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782,
 - (C) significantly impedes a proceeding under this title, or
 - (D)provides such information but the information cannot be verified as provided in section 782(i).

Further, section 776(b) of the Act provides that, if Commerce 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, it may use an inference that is adverse to the interest of that party in selecting from the facts otherwise available. The “best of its ability” standard of section 776(b) of the Act means to put forth maximum effort to provide full and complete answers to all inquiries.⁴⁰ In *Nippon Steel*, the Federal Circuit clarified that, for Commerce to determine that a respondent did not act to the best of its ability, Commerce must demonstrate:

- (1) an objective showing that a reasonable and responsible importer would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations and
- (2) that the respondent under investigation not only has failed to promptly produce the requested information, but further that the failure to fully respond is the result of the respondent’s lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records.⁴¹

We disagree that the record substantiates the application of partial AFA related to this issue because Aceromex complied with Commerce’s requests for information to the best of its ability, as discussed below.

⁴⁰ See *Nippon Steel*, 337 F.3d at 1382-83.

⁴¹ *Id.*

In addition, section 772(c)(2)(A) of the Act sets out the requirements for EP and CEP adjustments:

the price used to establish export price and constructed export price shall be... reduced by... the amount, if any, included in such price, attributable to any additional costs, charges, or expenses... which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States.⁴²

Section 772(c)(2)(A) of the Act and 19 CFR 351.401(e) require these adjustments to the starting U.S. price so a proper comparison can be made with NV.

In this investigation, the petitioners argue that Aceromex's U.S. affiliate, Peninsula, charged freight revenue and included such revenue in the total gross unit price of its U.S. sales. In addition, the petitioners argue that such freight revenue exceeds the freight expenses and, therefore, Commerce should cap freight revenue to ensure profits related to freight are not included in the calculation of the final dumping margin. While Commerce has consistently stated that the statute and its regulations do not permit Commerce to raise U.S. prices for revenues in excess of the related expense,⁴³ we disagree with the petitioners that capping Aceromex's freight revenue is warranted in this investigation based on the record information.

As an initial matter, we find that Aceromex complied with Commerce's requests for information to the best of its ability. In response to Commerce's request to confirm that Aceromex reported the GRSUPRU net of freight revenue, Aceromex confirmed that "neither Peninsula nor Kratos received freight revenue on sales" and that "the reported gross unit prices do not include freight revenue."⁴⁴ Documentation on the record, including Aceromex's response to Commerce's questionnaire issued in lieu of on-site verification, corroborates the assertion that Peninsula did not separately charge customers for freight.⁴⁵ While Peninsula's order confirmation to the U.S. customer breaks out a freight component, the invoice, which lists the final terms of sale, only lists one price for the merchandise that is inclusive of freight charges.⁴⁶ Thus, while we requested that Aceromex separately report freight revenue that it separately charged to the customer, Aceromex explained why it was inappropriate for it to do so and provided evidence to support its explanation. Based on Aceromex's responses, we find that there are no gaps of information on the record; moreover, Aceromex fully cooperated in this investigation by

⁴² See *Dongguan Sunrise Furniture Co. v. United States*, 865 F. Supp. 2d at 1249-50 (CIT 2012).

⁴³ See, e.g., *Large Residential Washers from Mexico: Final Results of Antidumping Duty Administrative Review; 2018- 2019*, 85 FR 81450 (December 16, 2020), and accompanying IDM at Comment 4; *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 77 FR 61738 (October 11, 2012), and accompanying IDM at Comment 3; *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 77 FR 63291 (October 16, 2012), and accompanying IDM at Comment 6; and *Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 21634, 21637 (May 1, 2002), unchanged in *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 66110, 66,112 (October 30, 2002).

⁴⁴ See Aceromex December 22, 2020 SABCQR at 33-34.

⁴⁵ See Aceromex In Lieu of Verification Response at 5-7.

⁴⁶ See Aceromex September 16, 2020 AQR at Exhibit A-12.

responding to our requests for information. Therefore, the application of partial AFA is inappropriate.

As noted above, we find that Aceromex's charges for freight are part of the overall price to the customer for subject merchandise and are not separately invoiced to the customer. Pursuant to our practice, where a company does not separately charge the customer for freight services, we do not require the respondent to estimate an amount for freight revenue separate from the price to the customer.⁴⁷ The petitioners are correct that Aceromex maintains two separate internal accounts for booking freight charges and sales.⁴⁸ We disagree, however, that a separate internal account for freight revenue requires Aceromex to report freight revenue in a separate variable in the U.S. sales database or to report its internal accounting amount as earned. The record evidence clearly demonstrates that: (1) the final price invoiced to the customer is inclusive of freight charges; and (2) only Aceromex's internal accounting records separate the freight charges from the sales price. Because Aceromex does not separately charge the customer for freight revenue, there is no adjustment required for freight revenue pursuant to section 772(c)(2)(A) of the Act to make proper comparison of the U.S. price to NV. Thus, for the final determination, Commerce continues to accept Aceromex's GRSUPRU as reported without any adjustment for freight revenue.

B. Freight Expenses from Mexico to the United States

Petitioners' Case Brief

- Aceromex reported that it manually traced approximately 86 percent of the shipments from Aceromex to Peninsula to calculate freight expenses from Mexico to the United States, because it could not electronically link each shipment to a specific freight bill. Aceromex then divided the total freight costs of the identified shipments by the total weight of these shipments to calculate a POI average freight rate.⁴⁹ Aceromex withheld information regarding the remaining 14 percent of the shipments.
- Commerce satisfied the requirements under section 782(d) of the Act by issuing a supplemental questionnaire. Aceromex continued to report that it could not identify the remaining shipments due to miscoded freight purchase orders and that the truck rate per shipment did not vary often or significantly.⁵⁰
- Basing the calculation on only 86 percent of the shipments potentially distorts the reported inland freight from Mexico to the United States (*i.e.*, DINLFTP) because the remaining 14 percent of the shipments could be more costly. Commerce should not accept Aceromex's methodology just because there is no evidence of the remaining 14 percent of the shipments.⁵¹

⁴⁷ See *Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part*, 75 FR 50992 August 18, 2010), and accompanying IDM at Comment 26.

⁴⁸ See Aceromex In Lieu of Verification Response at 5.

⁴⁹ See Petitioners' Case Brief at 11-12 (citing Aceromex October 17, 2020 CQR at 23).

⁵⁰ *Id.* at 12 (citing Aceromex December 22, 2020 SABCQR at 37).

⁵¹ *Id.* at 12-13 (citing *Steel Authority of India, Ltd. v. United States*, 149 F. Supp. 2d 921, 928 (CIT 2001); *Pro-Team*

- Aceromex mischaracterizes the data on the record and does not base its methodological assumptions on record evidence.⁵² Commerce should not accept Aceromex’s methodology because the company did not meet the standard of cooperation required and upheld by the Federal Circuit.⁵³
- In the final determination, Commerce should adjust Aceromex’s reported DINLFTPUs by applying the highest per-unit expense of a full truck load made to Peninsula during the POI to the volume of the missing shipments. In addition, Commerce should add the estimated cost for the remaining 14 percent of shipments to the reported cost for the 86 percent of shipments and revise the DINLFTPUs expense so that Aceromex cannot benefit from its failure to provide complete freight data.⁵⁴

Aceromex’s Rebuttal Brief

- Aceromex is unable to tie specific shipments of subject merchandise to Peninsula to specific U.S. sales to unaffiliated U.S. customers because it cannot electronically link individual shipments of wire mesh to Peninsula to specific freight bills. Therefore, Aceromex manually traced 86 percent of its wire mesh shipments to Peninsula to individual freight orders and calculated an average POI domestic inland freight rate.⁵⁵
- In the *Preliminary Determination*, Commerce reasonably used Aceromex’s average freight expenses, as revised in a supplemental questionnaire response, to deduct Mexican inland freight from the U.S. price.⁵⁶
- The petitioners’ argument that Aceromex withheld data that would increase the reported freight expense is incorrect and unsupported by record evidence. In fact, Aceromex’s calculation included partial load shipments that had significantly higher per-unit shipping costs than normal loads.⁵⁷
- There is no basis for Commerce to apply partial AFA to Aceromex with respect to the reported inland freight expense. Aceromex was fully cooperative and provided Commerce all the information that was reasonably available to it. Aceromex fully explained its average freight calculation methodology, did not withhold any information, and provided the information in a timely manner.

Coil Nail Enterprise, Inc. v. United States, 419 F. Supp. 3d 1319, 1339 (CIT 2019); and *Papierfabrik August Koehler S.E. v. United States*, 7 F. Supp. 3d 1304, 1314 (CIT 2014), *aff’d* 843 F.3d 1373 (Fed. Cir. 2016).

⁵² *Id.* at 13-14 (citing Aceromex December 22, 2020 SABCQR at 37 and Exhibit S1-V.H.2; and Aceromex October 17, 2020 CQR at Exhibit C-9).

⁵³ *Id.* at 14 (citing *Nippon Steel*, 337 F.3d at 1382; and *Mukand*, 767 F.3d at 1306).

⁵⁴ *Id.* at 15-16.

⁵⁵ See Aceromex’s Rebuttal Brief at 7 (citing Aceromex October 17, 2020 CQR at 23 and Exhibit C-6).

⁵⁶ *Id.* at 8 (citing Aceromex December 22, 2020 SABCQR at 37 and Exhibit S1-V.H.4; and *Preliminary Determination PDM* at 16).

⁵⁷ *Id.* at 8-9 (citing Petitioners’ Case Brief at 12-14; and Aceromex December 22, 2020 SABCQR at 2, 4-6, 10, and Exhibit S1-V.H.2).

Commerce’s Position:

In the *Preliminary Determination*, we deducted Aceromex’s reported DINLFTPUs from the starting U.S. price, pursuant to section 772(c)(2)(A) of the Act and 19 CFR 351.401(e).⁵⁸ We disagree that these expenses are unreliable and that the application of partial AFA is warranted under sections 776(a) and (b) of the Act. In its initial section C questionnaire response, Aceromex explained that it could not electronically link each shipment from Aceromex to Peninsula’s warehouse in Laredo, Texas, to specific freight bills for U.S. sales. Further, it provided a detailed explanation of its methodology to establish and calculate a per-unit freight amount, along with supporting documentation for individual shipments that it was able to trace manually to U.S. sales. Specifically, Aceromex explained that it manually traced approximately 86 percent of the POI shipments to Peninsula containing wire mesh to freight purchase orders, and it calculated a POI average per-unit freight rate by dividing the total freight costs of the shipments identified by the total corresponding weight of the shipments.⁵⁹ In Aceromex’s response to the section A-C supplemental questionnaire, it further explained that it extracted all sales made to Peninsula during the POI from its accounting system and used the sales invoice number for all POI sales to Peninsula to tie to the freight purchase orders associated with each sale to attain the freight costs. Aceromex noted that it was not able to identify freight costs for 14 percent of the total POI shipments to Peninsula because of miscoded freight purchase orders referenced on the sales invoices or other miscoded data.⁶⁰

An examination of the record evidence demonstrates that the majority of the freight costs reported for the manually traced sales did not vary a significant amount.⁶¹ Therefore, notwithstanding that Aceromex was unable to identify the actual freight costs for 14 percent of the total POI shipments, we find that the record supports the methodology adopted by Aceromex as reasonable. In addition, Aceromex included in the calculation freight costs for partial shipments.⁶²

Based on record evidence, Commerce disagrees that Aceromex withheld information, making the reported DINLFTPUs unreliable. As stated above, Aceromex responded to each of Commerce’s requests for information regarding its calculation of DINLFTPUs. In addition, Aceromex explained why it could not tie each U.S. sale to the actual freight expenses from Mexico to the United States, provided a reasonable calculation of DINLFTPUs based on the information available to it, and did not withhold any information. While Aceromex was unable to identify the actual freight costs for 14 percent of the total POI shipments, it manually traced a large majority of the POI shipments. Thus, Commerce finds that Aceromex acted to the “best of its ability” and put forward the maximum it is able to do.⁶³

For these reasons, we disagree that the application of partial AFA is appropriate in this investigation. As noted above, we find that Aceromex’s reported freight costs are reliable, and

⁵⁸ See *Preliminary Determination* PDM at 11-12.

⁵⁹ See Aceromex October 17, 2020 CQR at 23-24 and Exhibit C-9.

⁶⁰ See Aceromex December 22, 2020 SABCQR at 37 and Exhibit S1-V.H.2.

⁶¹ *Id.* at Exhibits S1-V.H.2 and S1-V.H.4.

⁶² *Id.* at Exhibit S1-V.H.2 and Aceromex’s Rebuttal Brief at 8-9.

⁶³ See *Nippon Steel*, 337 F.3d at 1382.

there is no basis to adjust these costs for our final determination. Additionally, Aceromex did not withhold information or impede the proceeding, and it cooperated to the best of its ability in this investigation. Thus, we find that the application of partial facts available or AFA is not appropriate. For the final determination, we continue to accept Aceromex's per-unit freight expenses from Mexico to the United States (*i.e.*, DINLFTP) as reported.

C. Certain U.S. Inland Freight Expenses

Petitioners' Case Brief

- Aceromex failed to report the actual inland freight to the customer (*i.e.*, INLFWCU) for five sales in the U.S. sales database. For two sales invoices covering three U.S. sales, Aceromex could not locate the associated freight invoice. Additionally, Aceromex discovered that it incorrectly linked another sales invoice, covering two U.S. sales, to the incorrect freight invoice. Therefore, Aceromex reported the average per-kilogram freight rate for all products shipped from Laredo to Florida and from Laredo to Georgia for those affected sales.⁶⁴
- Commerce should not accept Aceromex's methodology, because it does not meet the standard of cooperation in responding to a request from Commerce for information. In addition, there is nothing on the record to suggest that the actual freight cost for the five sales is close to the average per-unit freight cost that Aceromex reported.⁶⁵
- In the final determination, Commerce should apply the highest INLFWCU freight cost reported by Aceromex to the five sales where Aceromex could not report actual freight costs.

Aceromex's Rebuttal Brief

- Aceromex was unable to report the actual U.S. inland freight expenses from Peninsula's warehouse in Laredo, Texas, to U.S. customers for five U.S. sales and informed Commerce of this fact. Peninsula could not locate two freight invoices for three of the U.S. sales and identified that two U.S. sales were linked to an incorrect freight invoice.⁶⁶ As a result, for these five U.S. sales, which were delivered to Florida and Georgia, Aceromex reported U.S. inland freight expenses equal to the average per-kilogram freight expense calculated for other products shipped from Laredo to Florida and to Georgia, respectively, during the POI.
- Commerce correctly used Aceromex's reported INLFWCU freight expenses in the *Preliminary Determination*.⁶⁷

⁶⁴ See Petitioners' Case Brief at 16 (citing Aceromex January 27, 2021 SSABCQR at 9-10).

⁶⁵ *Id.* at 17 (citing *Nippon Steel*, 337 F.3d at 1382; and *Mukand*, 767 F.3d at 1306). According to the petitioners, there is a 50 percent chance that the actual freight cost is higher than the average per-unit freight cost for these sales. *Id.*

⁶⁶ See Aceromex's Rebuttal Brief at 10 (citing Aceromex January 27, 2021 SSABCQR at 9-10).

⁶⁷ *Id.* (citing *Preliminary Determination* PDM at 16).

- Aceromex provided a truthful explanation for the missing freight expenses and a reasonable freight calculation. There is no gap in the record with respect to this issue and, therefore, the application of facts available or an adverse inference is not warranted.⁶⁸

Commerce’s Position:

In the *Preliminary Determination*, we deducted Aceromex’s reported INLFWCU from the starting U.S. price, pursuant to section 772(c)(2)(A) of the Act and 19 CFR 351.401(e). We disagree that the circumstances warrant applying partial AFA under sections 776(a) and (b) of the Act for the inland freight expenses in question. While Aceromex originally reported zero inland freight for three of the sales in question, in response to Commerce’s supplemental questionnaire, Aceromex explained that Peninsula “could not locate or identify the freight invoices for two sales invoices associated with reported sequence numbers (SEQUs) 1116, 1117, and 1052.” In addition, in preparing a second supplemental response, Aceromex discovered that SEQUs 1079 and 1080 were linked to the incorrect freight invoice.⁶⁹ As such, Aceromex provided a freight reporting methodology for these five sales, which Commerce corroborated with the evidence on the record.⁷⁰ Specifically, for the two sales shipped from Laredo to Florida for which it could not locate freight invoices, Peninsula reported the average per-kilo freight rate for all products shipped from Laredo to Florida, based on the other freight invoices for sales to the same customer.⁷¹ For the sale shipped from Laredo to Georgia, that was the only sale to that customer during the POI, so Aceromex reported the average per-kilo freight rate for products shipped from Laredo to Georgia (*i.e.*, the same destination).⁷² While the petitioners suggest that the actual freight cost for these sales may be higher than the reported freight expenses based on sales to the same customer or destination, they do not point to any evidence on the record to support this assertion, and Aceromex responded to all of our questions regarding these transactions. Furthermore, Aceromex provided the most specific estimate available, *i.e.*, based on freight to the same customer or destination. We, therefore, find Aceromex’s methodology and reported per-kilogram freight rate for the five sales in question to be reliable.

Commerce finds that Aceromex cooperated to the best of its ability and provided the most accurate inland freight expenses from the warehouse to the unaffiliated customer based on the information available. Thus, we find that the application of partial facts available or AFA is not appropriate. As such, for the final determination, we continue to accept Aceromex’s reported INLFWCU expenses for the five sales where Aceromex could not report actual freight costs.

⁶⁸ *Id.* at 11 (citing section 776(a)(1) of the Act).

⁶⁹ See Aceromex January 27, 2021 SSABCQR at 9-10.

⁷⁰ *Id.* For the two sales shipped from Laredo to Florida where Aceromex could not locate the freight invoices, we confirmed that sales to the same customer were also shipped to Florida. We also confirmed the sale shipped from Laredo to Georgia was the only sale to that customer.

⁷¹ *Id.* at 9-10.

⁷² *Id.* at 10.

D. Certain Home Market Freight Expenses

Petitioners' Case Brief

- Aceromex used its own trucks for deliveries made from the factory to two nearby distribution centers, Brisas and Linda Vista. Aceromex did not adequately explain or provide supporting documentation to substantiate why it did not report actual freight costs for shipments from the factory to the Brisas and Linda Vista distribution warehouses.⁷³
- Aceromex reported that it was not able to distinguish between the costs to deliver product from the factory to Brisas and Linda Vista from the costs to deliver the product from the distribution centers to the customer. Therefore, Aceromex reported the average freight costs for delivery to customers (*i.e.*, INLFTCH) as the freight costs for delivery from the factory to the distribution warehouses (*i.e.*, INLFTWH).⁷⁴
- Aceromex did not explain why the methodology of using an unrelated average freight per kilogram cost calculated for shipments to customers from the factory would be appropriate to report as the freight cost incurred in making shipments to the two distribution centers.⁷⁵ Further, Aceromex also did not explain why the average INLFTCH is more appropriate than its initial methodology of reporting the average freight per kilogram for shipments from the factory to customers (*i.e.*, INLFTWH).⁷⁶
- Aceromex did not provide supporting documentation to either substantiate its claim that the two distribution centers make deliveries to nearby customers or demonstrate that the INLFTCH expense amount is reflective of the freight from factory to the distribution centers.⁷⁷
- Commerce should reject Aceromex's methodology as distortive because there is no evidence on the record that the average shipping cost from the warehouses to customers is a reasonable proxy for the shipping cost from the factory to the two warehouses in question. Thus, in the final determination, Commerce should set the INLFTWH for sales made from Brisas and Linda Vista to zero.

Aceromex's Rebuttal Brief

- Aceromex is unable to tie individual home market sales from the distribution centers to individual shipments received from the factory because the product is shipped using unaffiliated freight carriers and the inventory from the factory is comingled with

⁷³ See Petitioners' Case Brief at 18 (citing Aceromex's Letter, "Standard Steel Welded Wire Mesh from Mexico: Submission of Aceromex's Section B Response," dated October 19, 2020 (Aceromex October 19, 2020 BQR) at 19).

⁷⁴ *Id.* (citing Aceromex December 22, 2020 SABCQR at 20).

⁷⁵ *Id.*

⁷⁶ *Id.* at 18-19.

⁷⁷ *Id.* at 19-20 (citing Aceromex January 27, 2021 SSABCQR at 5-6).

inventory at the distribution center. Therefore, Aceromex calculated freight from the factory to the distribution centers by dividing the invoiced freight charges for each distribution center during the POI by the corresponding weight of the shipments.⁷⁸

- Aceromex used its own trucks for infrequent deliveries from the factory to two of the smallest distribution centers that are located close to the Aceromex factory, Brisas and Linda Vista. In the initial response, Aceromex used the average per kilogram cost for shipments from the factory to customers as the per kilogram freight cost for shipments to these two distribution centers.⁷⁹
- In response to Commerce’s supplemental questionnaire, Aceromex revised the freight cost for shipments to Brisas and Linda Vista to be the total POI truck costs for operating from the factory to these two distribution centers. Since it could not distinguish between truck costs for shipments from the factory to the distribution centers and shipments from the distribution centers to the customers, Aceromex reported in the INLFTWH field for Brisas and Linda Vista the freight expenses also reported in the INLFTCH field.⁸⁰ Commerce used this reported data in the *Preliminary Determination*.⁸¹
- The petitioners’ request to set INLFTWH to zero for Brisas and Linda Vista is not supported by substantial evidence. Specifically, the petitioners argue that Aceromex provided no support to show that these two distribution warehouses are within close proximity to Aceromex’s plant. Commerce may place publicly available maps on the record at any time which will show that the distances between the factory and the two distribution centers are close in proximity.⁸²
- Commerce should not use zero as the INLFTWH for Brisas and Linda Vista, because the record evidence supports that Aceromex incurred freight expenses for deliveries from the factory to the distribution centers. The Court of International Trade has reversed decisions where Commerce applied AFA in a manner contrary to record evidence.⁸³ In the final determination, Commerce should continue to use Aceromex’s reported INLFTWH for Brisas and Linda Vista.

Commerce’s Position:

In the *Preliminary Determination*, we made a deduction to the home market price for Aceromex’s reported INLFTWH, pursuant to section 773(a)(6)(B)(ii) of the Act.⁸⁴ We disagree that it is appropriate to apply partial AFA under sections 776(a) and (b) of the Act to Aceromex

⁷⁸ See Aceromex’s Rebuttal Brief at 11-12 (citing Aceromex October 19, 2020 BQR at 19 and Exhibit B-6).

⁷⁹ *Id.* at 12 (citing Aceromex October 19, 2020 BQR at 19).

⁸⁰ *Id.* (citing Aceromex December 22, 2020 SABCQR at 21 and Exhibit S1-IV-H.1.a.; and Aceromex January 27, 2021 SSABCQR at 6).

⁸¹ *Id.* (citing *Preliminary Determination* PDM at 16).

⁸² *Id.* at 13.

⁸³ *Id.* at 14 (citing *Yama Ribbons & Bows Co. v. United States*, 419 Supp. 3d 1341 (CIT 2019) (*Yama Ribbons*); *Guizhou Tyre Co. v. United States*, 348 F. Supp. 3d 1261 (CIT 2018); and *Changzhou Trina Solar Energy Co. v. United States*, 352 F. Supp. 3d 1316 (CIT 2018)).

⁸⁴ See *Preliminary Determination* PDM at 16.

for these inland freight expenses from the plant to the distribution warehouse for Aceromex’s Brisas and Linda Vista distribution centers. Aceromex responded to all of Commerce’s requests for information with respect to INLFTWH and provided the best information available. For example, in its initial section B questionnaire response, Aceromex reported that it does “not maintain electronic links between each shipment and shipment specific freight costs” and that it is not possible to identify the cost of each shipment associated with home market sales to unaffiliated customers because the product is comingled in the distribution centers.⁸⁵ Therefore, Aceromex calculated a POI average freight expense for shipping wire mesh from the production plant to each distribution center.⁸⁶ For two distribution centers (*i.e.*, Brisas and Linda Vista), Aceromex reported using “its own trucks for these infrequent and nearby deliveries.”⁸⁷ For Brisas and Linda Vista, Aceromex initially reported the inland freight from the factory, Cienega, to the unaffiliated customer (*i.e.*, INLFTCH) as the INLFTWH for these distribution centers.⁸⁸ In response to Commerce’s first supplemental questionnaire, Aceromex explained that:

{T}here is no way to distinguish the costs of Aceromex’s own trucks to deliver product from the factory to one of these two distribution warehouses from the costs to deliver product from the two warehouses to customers.⁸⁹

Aceromex further explained that it revised the INLFTWH field for Brisas and Linda Vista to report the average freight for delivery to customers for each distribution warehouse (*i.e.*, INLFTCH) as the INLFTWH expense. In response to Commerce’s second supplemental questionnaire, Aceromex reiterated that it could not distinguish the cost of delivering product from the factory to the warehouse from the cost to deliver product from the warehouse to the customer.⁹⁰ Aceromex further stated that:

{T}he per kilo freight to customer expense is reflective of the freight to warehouse given the proximity of these distribution centers to the Trefilados manufacturing facility and the fact that these two distribution facilities sell to local customers.⁹¹

Commerce disagrees that assigning zero to the INLFTWH for the sales made from Brisas and Linda Vista is warranted. While Aceromex is unable to provide the actual per-unit cost of delivery to Brisas and Linda Vista, Commerce finds that Aceromex cooperated to the best of its ability, provided a reasonable estimate of inland freight expenses from the plant to the distribution warehouse based on the information available, and responded to all of Commerce’s requests for information related this expense. Thus, we find that the application of partial facts available or AFA is not appropriate. As such, for the final determination, we continue to accept Aceromex’s reported INLFTWH expenses for Brisas and Linda Vista. We note that we may ask additional questions concerning this methodology in future reviews, should this investigation result in the imposition of an order.

⁸⁵ See Aceromex October 19, 2020 BQR at 19.

⁸⁶ *Id.* at 19 and Exhibit B-6.

⁸⁷ *Id.* at 19.

⁸⁸ *Id.* at 19 and Exhibit B-8.

⁸⁹ See Aceromex December 22, 2020 SABCQR at 20-21.

⁹⁰ See Aceromex January 27, 2021 SSABCQR at 5.

⁹¹ *Id.* at 5-6.

Comment 2: Indirect Selling Expenses for Sales Made by Kratos

Petitioners' Case Brief

- As noted above, Aceromex sold subject merchandise in the United States during the POI through its two U.S. affiliates, Peninsula and Kratos. For the Kratos sales, Aceromex stated that Kratos issues purchase orders to Peninsula based on Kratos' customers' purchase orders and Aceromex delivers subject merchandise directly to Kratos' customers.⁹²
- For Kratos' sales to unaffiliated U.S. customers, Aceromex only reported indirect selling expenses incurred by Kratos, even though Kratos purchases these products from Peninsula, and Peninsula is the importer of record for all sales of subject merchandise during the POI.⁹³
- Pursuant to 19 CFR 351.402(b), Commerce is required to account for the indirect selling expenses of each affiliated reseller in the sales process.⁹⁴ Therefore, the indirect selling expenses of both U.S. affiliates should be taken into account for those U.S. sales that Kratos purchased from Peninsula and then sold to unaffiliated U.S. customers.
- Aceromex failed to report indirect selling expenses incurred by Peninsula for sales made by Kratos.⁹⁵ In the final determination, for sales made by Kratos, Commerce should apply both Kratos' reported indirect selling expenses and the indirect selling expenses reported for Peninsula's Laredo location.⁹⁶

Aceromex's Rebuttal Brief

- All U.S. sales made by Kratos during the POI were purchased from Peninsula. Kratos issues purchase orders to Peninsula based on its customers' purchase orders, and Aceromex delivers the product directly to Kratos' customers. Kratos does not take physical possession of the product purchased from Peninsula. Aceromex reported indirect selling expenses for all of Kratos' sales based on indirect selling expenses incurred by Kratos.⁹⁷

⁹² See Petitioners' Case Brief at 21 (citing September 16, 2020 AQR at 6 and 13-14).

⁹³ *Id.* at 21-22 (citing Aceromex January 27, 2021 SSABCQR at acerus03).

⁹⁴ *Id.* at 22 (citing 19 CFR 351.402(b); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea*, 71 FR 29310 (May 22, 2006), and accompanying IDM at Comment 20, remanded *Diamond Sawblades Mfrs. Coal. v. United States*, 37 C.I.T. 1501 (2013); *Redetermination on Remand in Diamond Sawblades Manufacturers Coalition v. United States*, Ct. No. 06-00248 (Commerce June 18, 2014) (*Diamond Sawblades Redetermination*) at 5-9, *aff'd Diamond Sawblades Mfrs. Coal. v. United States*, Slip. Op. 14-127 (CIT October 29, 2014), *aff'd* 809 F.3d 626 (Fed. Cir. 2015)). The *Diamond Sawblades Redetermination* is available at <https://enforcement.trade.gov/remands/13-130.pdf>.

⁹⁵ *Id.* at 23 (citing Aceromex December 22, 2020 SABCQR at acerus02; and Aceromex January 27, 2021 SSABCQR at acerus03).

⁹⁶ *Id.* (citing Aceromex January 27, 2021 SSABCQR at Exhibit S2-III.B.1).

⁹⁷ See Aceromex's Rebuttal Brief at 15-16 (citing Aceromex September 16, 2020 AQR at 14 and Exhibit A-13; and Aceromex October 17, 2020 CQR at 36 and Exhibit C-19).

- In the *Preliminary Determination*, Commerce correctly deducted Kratos’ indirect selling expenses as reported in field INDIRS2U from the U.S. price calculation for Kratos’ sales.⁹⁸
- The petitioners’ argument that Commerce should deduct both Kratos and Peninsula’s indirect selling expenses from the U.S. price calculation for sales made by Kratos is untenable.⁹⁹ While Peninsula was the importer of record for subject merchandise purchased by Kratos, Peninsula did not incur any indirect selling expenses on behalf of Kratos. All indirect selling expenses incurred for Kratos’ sales were incurred only by Kratos and reported in the field INDIRS2U.¹⁰⁰
- Since Kratos and Peninsula are affiliates, Peninsula did not perform any selling activities to obtain or maintain Kratos as a customer.¹⁰¹ Peninsula and Kratos’ operating expenses and selling activities are performed with respect to sales to their respective unaffiliated U.S. customers.¹⁰²
- Commerce should reject the petitioners’ request to combine Peninsula and Kratos’ indirect selling expenses for Kratos’ sales because doing so would erroneously include expenses attributable exclusively to Peninsula’s unaffiliated U.S. customers for Kratos’ sales.
- The petitioners’ request to apply both affiliates’ indirect selling expenses to Kratos’ sales would result in double counting the indirect selling expenses related to selling to Peninsula’s unaffiliated customers and should therefore be rejected.

Commerce’s Position:

We disagree that it is appropriate to apply Peninsula’s indirect selling expense ratio to Kratos’ sales to unaffiliated U.S. customers. In calculating indirect selling expenses, Commerce’s practice is to base these expenses, as closely as possible, on the experience of the company that actually made the sales of subject merchandise.¹⁰³ Pursuant to 19 CFR 351.402(b), when establishing the CEP, Commerce makes adjustments “for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid.” In this case, Aceromex reported that all of its U.S. sales during the POI were made through one channel of distribution, *i.e.*, direct sales to customers. Specifically, Aceromex explained that all of Kratos’ POI sales to unaffiliated U.S. customers were purchased from Peninsula, produced by Aceromex, and shipped directly to Kratos’ customers.¹⁰⁴

⁹⁸ *Id.* (citing Aceromex December 22, 2020 SABCQR at 46; and *Preliminary Determination* PDM at 16).

⁹⁹ *Id.* at 16 (citing Petitioners’ Case Brief at 23).

¹⁰⁰ *Id.* at 16.

¹⁰¹ *Id.* at 17 (citing Aceromex September 16, 2020 AQR at 10-12).

¹⁰² *Id.* (citing Aceromex October 17, 2020 CQR at Exhibit C-18 and C-19).

¹⁰³ See *Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Spain*, 67 FR 35482 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 12.

¹⁰⁴ See Aceromex October 17, 2020 CQR at 12; and Aceromex September 16, 2020 AQR at 14. Kratos never takes physical possession of the subject merchandise purchased from Peninsula.

According to Kratos’ sales process, Kratos receives its customer’s purchase order by email, enters the order into its system, and sends an acknowledgement to its customer that it will fill the order. Kratos issues a purchase order to Peninsula, which then prepares a bill of lading. Then, Aceromex ships the order to the customer, and Kratos bills the customer, sends the invoice to the customer, and receives payment.¹⁰⁵ Finally, Peninsula issues an invoice for the intracompany transfer.

Since purchase orders are sent to Peninsula based on Kratos’ purchase orders from the unaffiliated customer,¹⁰⁶ we find that the sale has already been made when Peninsula receives the purchase order from Kratos. Peninsula’s role in Kratos’ sales is limited to receiving a purchase order via email, preparing a bill of lading, and invoicing Kratos for the intracompany transfer.¹⁰⁷ Peninsula’s minimal role in Kratos’ sales process demonstrates that Peninsula merely serves as a pass-through entity for Kratos’ sales to unaffiliated U.S. customers and incurs minimal expenses, if any.

We also find that the facts in this investigation vary significantly from *Diamond Sawblades from Korea* in that Peninsula performs minimal, if any, selling functions for Kratos’ sales to unaffiliated U.S. customers. In the *Diamond Sawblades Redetermination*, we explained that, with respect to indirect selling expenses, “{Commerce} will analyze the expenses associated with commercial activity occurring in the United States that relate to a sale to an unaffiliated purchaser, including expenses incurred by upstream affiliates, *who transfer subject merchandise to downstream affiliated parties, who sell it to unaffiliated purchasers.*”¹⁰⁸ We further explained that we revised our “{indirect selling expense} calculations to reflect that {indirect selling expenses} were incurred by the various affiliates involved in selling the merchandise to an unaffiliated customer.”¹⁰⁹ Here, however, Peninsula does not transfer any subject merchandise to Kratos. Instead, Kratos makes the sale prior to any involvement by Peninsula, and the merchandise is shipped from Aceromex to the ultimate customer. Moreover, while there is some minimal paperwork between Kratos and Peninsula regarding the merchandise, Peninsula is not involved in selling the merchandise to the unaffiliated customer.

We disagree that Aceromex failed to report Peninsula’s indirect selling expenses for Kratos’ sales to its unaffiliated customers. Aceromex did not report such expenses because, as stated above, Peninsula did not perform selling functions for Kratos’ sales to its unaffiliated U.S. customers other than preparing the bill of lading. Moreover, consistent with Commerce’s practice, we requested that Aceromex report a separate indirect selling expense ratio for each U.S. affiliate in order to reflect accurately the expenses incurred for sales made by each entity to their respective unaffiliated customers in the United States, and Aceromex complied with this request for information.¹¹⁰ Therefore, given that Commerce finds that Peninsula did not incur

¹⁰⁵ *Id.* at Exhibit A-13.

¹⁰⁶ See Aceromex September 16, 2020 AQR at 14.

¹⁰⁷ *Id.* at Exhibit A-13.

¹⁰⁸ See *Diamond Sawblades Remand* at 8 (emphasis added).

¹⁰⁹ *Id.* at 9.

¹¹⁰ See Aceromex December 22, 2020 SABCQR at 46; and *Structural Beams from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 69 FR 7200 (February 13, 2004), and accompanying IDM at Comment 4.

indirect selling expenses for Kratos’ sales to its unaffiliated customers, it would be inappropriate to apply Peninsula’s indirect selling expenses to such sales. In fact, including Peninsula’s indirect selling expenses for Kratos’ sales would result in double counting the indirect selling expenses by duplicating expenses for selling functions, *i.e.*, we would be applying additional expenses from Peninsula that were actually incurred by Kratos for these sales and already captured in Kratos’ indirect selling expense ratio. Therefore, we will continue to apply Peninsula’s indirect selling expenses to sales made by Peninsula to its unaffiliated customers and Kratos’ indirect selling expenses to sales made by Kratos for the final determination.

Comment 3: Peninsula’s Warehousing Costs in Florida

Petitioners’ Case Brief

- Aceromex failed to report Florida warehousing costs in the U.S. sales database, either as part of indirect selling expenses (*i.e.*, INDIRS3U), warehousing expenses (*i.e.*, USWAREHU), or a new variable.¹¹¹
- Record evidence indicates that Peninsula sold subject merchandise during the POI from its Florida location that had been shipped there from its Laredo location. Aceromex identified warehousing costs incurred at Peninsula’s Florida location; however, it left these expenses out of the revised reported indirect selling expenses for the Florida location.¹¹²
- Warehousing costs incurred at Peninsula’s Florida location should be treated the same as warehousing costs incurred at Peninsula’s Laredo, Texas, location and be deducted from the U.S. gross unit price as a movement expense.¹¹³ However, Commerce’s Section C questionnaire instructs that for USWAREHU, “{t}he cost of warehousing reported in this field should include only expenses incurred at a warehouse not located at the distribution facility that sold the merchandise.” Therefore, the Florida warehousing costs should, instead, be classified as part of the Florida indirect selling expenses.
- Peninsula’s Florida warehousing costs should be included in the calculation of Florida’s indirect selling expense (*i.e.*, INDIRS3U) ratio.¹¹⁴ In the final determination, Commerce should revise the INDIRS3U ratio to include the Florida warehousing costs to be applied to all sales made from the Florida warehouse.

¹¹¹ See Petitioners’ Case Brief at 23 (citing Aceromex January 27, 2021 SSABCQR at 11-13, Exhibit S2-III.B.1., and aceru03).

¹¹² *Id.* at 24-25 (citing Aceromex December 22, 2020 SABCQR at 3, and 12; *see also* Aceromex January 27, 2021 SSABCQR at Exhibit S2-III.B.1.).

¹¹³ *Id.* at 24 (citing pursuant to 19 CFR 351.401(e)(2)).

¹¹⁴ *Id.* at 24-25 (citing Aceromex October 17, 2020 CQR at 27; *see also* Aceromex January 27, 2021 SSABCQR at Exhibit S2-III.B.1.).

Aceromex's Rebuttal Brief

- Aceromex reported Peninsula's warehousing expenses incurred in Laredo, Texas, in the field USWAREHU and all other operational expenses as indirect selling expenses. Peninsula's Florida location manufactures steel products and does not operate a separate warehouse. Finished product along with any product sent to Florida from Laredo is temporarily stored in the production plant.¹¹⁵
- The warehousing expense calculated for Peninsula's Florida location cannot be reported in the field USWAREHU, because the location is a manufacturing facility rather than a distribution facility. By definition, warehousing costs are not indirect selling expenses and cannot be classified as such.¹¹⁶
- Warehousing expenses incurred at a manufacturing facility are general and administrative expenses, a component of manufacturing costs that is not recognized in the U.S. price calculation. This approach is consistent with Aceromex's reporting methodology related to product shipped from the factory directly to home market customers; no warehousing costs were reported.¹¹⁷
- Thus, for these reasons, Commerce should reject the petitioners' request to increase the Florida indirect selling expenses.¹¹⁸

Commerce's Position:

We disagree with the petitioners that it would be appropriate to include warehousing costs in the calculation of Florida's indirect selling expense ratio (*i.e.*, INDIRS3U). In our questionnaire, we instructed Aceromex to report the "opportunity cost incurred from the time of arrival in the United States until the time of shipment from the warehouse or other intermediate location in the United States to the first unaffiliated customer" as inventory carrying costs.¹¹⁹ Aceromex reported in its section A-C supplemental questionnaire that:

Peninsula's Florida plant sells domestically produced product, including wire mesh that it produces, and does not ordinarily sell product produced in Mexico. Wire mesh imported from Mexico is delivered to Peninsula's Laredo warehouse and sold from that warehouse. When a customer of Peninsula's Florida plant needed product that was not immediately available in Florida, wire mesh product in the Laredo warehouse was sold by the Florida plant.¹²⁰

¹¹⁵ See Aceromex's Rebuttal Brief at 18 (citing Aceromex October 17, 2020 CQR at 27-28 and Exhibit C-18; Aceromex September 16, 2020 AQR at Exhibit A-13; and Aceromex January 27, 2021 SSABCQR at 11 and Exhibit S2-III.B.1).

¹¹⁶ *Id.* at 18-19 (citing Aceromex January 27, 2021 SSABCQR at 6, 11-12, and Exhibit S2-III.B.1).

¹¹⁷ *Id.* at 19 (citing December 22, 2020 SABCQR at 24).

¹¹⁸ *Id.* at 19-20 (citing Petitioners' Case Brief at 24-25).

¹¹⁹ See Aceromex October 17, 2020 CQR at 37-38.

¹²⁰ See Aceromex December 22, 2020 SABCQR at 12.

For such sales, Aceromex reported freight expenses from Laredo to Florida, indirect selling expenses for Florida, and inventory carrying costs for the time the subject merchandise spent at the Florida location.¹²¹ Thus, the costs associated with the subject merchandise temporarily being at the Florida plant are already reported in the U.S. sales database as inventory carrying costs and deducted pursuant to section 772(d)(1) of the Act. As these costs are already accounted for in Aceromex's reporting of inventory carrying costs (*i.e.*, INVCAR2U), there is no need to apply an additional expense to INDIRS3U. For these reasons, we will continue to use INDIRS3U as reported for the Florida location for our final determination.

VIII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, then we will publish the final determination and the final, estimated weight-average dumping margins in the *Federal Register*.

Agree

Disagree

6/16/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

¹²¹ *Id.* at 12-13 and Exhibit S1-II.2.a. For such sales, Aceromex also reported warehousing expenses, inventory carrying costs, and indirect selling expenses incurred at Laredo.