

**FINAL RESULTS OF REDETERMINATION
PURSUANT TO REMAND
Binational Panel Review of Light-Walled Rectangular Pipe and Tube from Mexico,
USA-MEX-2011-1904-02 (December 5, 2012)**

SUMMARY

This remand determination is issued in accordance with the December 5, 2012, decision and order of the Binational Panel (Panel). *See Binational Panel Review of Light-Walled Rectangular Pipe and Tube From Mexico*, USA-MEX-2011-1904-02 (Dec. 5, 2012) (Panel Report). The Panel Report concerns the U.S. Department of Commerce's (the Department's) final results of the 2008-2009 antidumping duty administrative review in *Light-Walled Rectangular Pipe and Tube From Mexico*, 76 FR 9547 (Feb. 18, 2011) (*Final Results*), and accompanying Issues and Decision Memorandum (Decision Memorandum).

Pursuant to the Panel's remand order, the Department has provided a thorough explanation of its statutory interpretation underlying its decision to deny offsets for non-dumped sales in the context of this administrative review when using average-to-transaction comparisons while granting such offsets in the context of original investigations when using average-to-average comparisons. The Department explains below how the language of section 771(35) of the Tariff Act of 1930, as amended (the Act), permissibly may be construed to permit application of the zeroing methodology in antidumping administrative reviews using average-to-transaction comparisons and to also permit application of an "offsetting" methodology in antidumping duty investigations using average-to-average comparisons. Accordingly, the Department has not changed its calculation of the weighted-average dumping margin for the final results of review on remand with respect to the application of the zeroing methodology.

BACKGROUND

In the *Final Results*, the Department applied its zeroing methodology – in which the Department does not permit non-dumped sales to offset the amount of dumping found with respect to other sales – in calculating a weighted-average dumping margin for the plaintiff, Maquilacero S.A. de C.V. (Maquilacero). See Decision Memorandum at Comment 1. Before the panel, Maquilacero challenged the Department’s application of its standard calculation methodology, pursuant to which it did not offset Maquilacero’s dumped sales with its non-dumped sales (a methodology commonly referred to as “zeroing”).¹ With respect to zeroing, Maquilacero had argued before the Department that the practice of “zeroing” in administrative reviews was not required by statute and had been found to be inconsistent with the World Trade Organization (WTO) Anti-Dumping Agreement. See Decision Memorandum at Comment 1; see also Maquilacero Case Brief (Oct. 13, 2010), at 14-18. In its *Final Results*, the Department addressed and explained why it was not persuaded by Maquilacero’s arguments. See Decision Memorandum at Comment 1. Although it contested several aspects of the Department’s decision to apply zeroing, Maquilacero did not argue that the use of zeroing in the 2008-2009 administrative review was unlawful or unreasonable because it was inconsistent with how the Department treated non-dumped sales in original investigations. Consequently, the Department’s Decision Memorandum does not include a response that addresses this argument.

Relying on the U.S. Court of Appeals for the Federal Circuit’s (Federal Circuit’s) decisions in *Dongbu Steel Co. v. United States*, 635 F.3d 1363 (Fed. Cir. 2011) (*Dongbu*) and *JTEKT Corp. v. United States*, 642 F.3d 1378 (Fed. Cir. 2011) (*JTEKT*), Maquilacero argued before the Panel that the Department impermissibly interpreted the statutory definition of

¹ Maquilacero also challenged the Department’s application of the statutory cap provision to Maquilacero’s entries during the provisional-measures period. As the Panel affirmed the Department’s decision, this issue is not before the Department on remand.

dumping margin or weighted-average dumping margin (section 771(35) of the Act) differently in antidumping duty investigations and administrative reviews. The Department argued that Maquilacero failed to exhaust its administrative remedy with respect to this argument because it did not raise the issue before the Department. The Department further reiterated its position that binding Federal Circuit decisions supported its interpretation of section 771(35) of the Act in the context of administrative reviews.

Although the Panel agreed that Maquilacero failed to exhaust its administrative remedies, it excused Maquilacero's failure, finding that the Federal Circuit decisions in *Dongbu* and *JTEKT* constituted intervening judicial decisions on the zeroing issue. The Panel remanded to the Department for further administrative proceedings and an explanation "for why its decision to continue zeroing in administrative reviews is not arbitrary," in light of the agency's change in practice with regard to investigations. Panel Report at 38.

On January 14, 2013, the Department released the Draft Results of Redetermination (Draft Results) to Maquilacero, the only interested party to appear in this segment. On January 23, 2013, Maquilacero submitted its comments on the Draft Results (Maquilacero Comments).

ANALYSIS

In numerous proceedings, the Federal Circuit squarely addressed the reasonableness of the Department's zeroing methodology in administrative reviews and unequivocally held that the Department reasonably interpreted the relevant statutory provisions as permitting zeroing. *See, e.g., Koyo Seiko Co. v. United States*, 551 F.3d 1286, 1290-91 (Fed. Cir. 2008); *NSK Ltd. v. United States*, 510 F.3d 1375, 1379-1380 (Fed. Cir. 2007) (*NSK*); *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007) (*Corus II*); *Corus Staal BV v. United States*, 395 F.3d 1343, 1347 (Fed. Cir. 2005) (*Corus I*); *Timken v. United States*, 354 F.3d 1334, 1341-45

(Fed. Cir. 2004) (*Timken*). Notwithstanding this precedent, in accordance with the Panel's Remand Order, the Department provides further explanation concerning its interpretation of the statute to allow zeroing with respect to average-to-transaction comparisons in the underlying administrative review, while also allowing the Department not to apply zeroing with respect to average-to-average comparisons in antidumping duty investigations.

A. Background Behind The Perceived Inconsistency Identified In *JTEKT*

Section 771(35)(A) of the Act, which authorizes the Department to apply zeroing in antidumping duty proceedings, states that “{t}he term ‘dumping margin’ means the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise.” The Federal Circuit repeatedly found section 771(35)(A) of the Act ambiguous as to whether the statute *requires* zeroing, stating that “Congress’s use of the word ‘exceeds’ {in section 771(35) of the Act} does not unambiguously require that dumping margins be positive numbers.” *Timken*, 354 F.3d at 1342; *see also United States Steel Corp. v. United States*, 621 F.3d 1351, 1361 (Fed. Cir. 2010) (*U.S. Steel Corp.*) (“{T}he statute is silent as to what to do when the ‘amount’ calculated by Commerce pursuant to {section 771(35)(A) of the Act} is negative.”). In so doing, the Department interpreted section 771(35) of the Act to permit zeroing in both administrative reviews and antidumping duty investigations. *See, e.g., Timken*, 354 F.3d at 1340 (in a challenge to the Department’s use of zeroing in administrative reviews, the United States argued that “the plain meaning of the antidumping statute calls for Commerce to zero negative margin transactions, and that the legislative history confirms this reading.”); *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (December 27, 2006) (*Final Modification for Investigations*) (wherein the Department modified its prior practice of zeroing

in investigations using average-to-average comparisons). The Federal Circuit upheld this interpretation separately in the context of both antidumping duty investigations and administrative reviews as a reasonable resolution of statutory ambiguity concerning the treatment of comparison results that show normal value does not exceed export price or constructed export price. *See, e.g., SKF USA Inc. v. United States*, 630 F.3d 1365, 1375 (Fed. Cir. 2011) (*SKF*) (upholding use of zeroing in an administrative review for which final results issued after *Final Modification for Investigations* took effect); *Corus I*, 395 F.3d at 1347-49 (upholding use of zeroing in an investigation); *Timken*, 354 F.3d at 1345 (upholding use of zeroing in an administrative review).

In 2005, a WTO dispute settlement panel found that the United States did not act consistently with its obligations under Article 2.4.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (1994) when it employed the zeroing methodology in average-to-average comparisons in certain challenged antidumping duty investigations.² *See* Panel Report, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins (“Zeroing”)*, WT/DS294/R (Oct. 31, 2005) (*EC-Zeroing Panel*). In light of the adverse WTO dispute settlement decision and the ambiguity that the Federal Circuit found inherent in the statutory text, the Department abandoned its prior litigation position – that no difference between antidumping duty investigations and administrative reviews exists for purposes of using zeroing in antidumping proceedings – and departed from its longstanding and consistent practice by ceasing the use of zeroing in the limited context of average-to-average comparisons in antidumping duty investigations. *See generally Final Modification for Investigations*. The Department did not change its practice of zeroing when using other types of

² An average-to-average comparison involves a comparison of “the weighted average of the normal values to the weighted average of the export prices (and constructed export prices) for comparable merchandise.” *See* section 777A(d)(1)(A)(i) of the Act.

comparisons, including average-to-transaction comparisons in administrative reviews. *See id.*, 71 FR at 77724.

The Federal Circuit subsequently upheld the Department's decision to cease zeroing when using average-to-average comparisons in antidumping duty investigations while recognizing that the Department limited its change in practice to certain investigations and continued to use zeroing when using average-to-transaction comparisons in administrative reviews. *See U.S. Steel Corp.*, 621 F.3d. at 1355 n.2, 1362-63. In upholding the Department's decision to cease zeroing when using average-to-average comparisons in antidumping duty investigations, the Federal Circuit accepted that the Department likely would have different zeroing practices between average-to-average and other types of comparisons in antidumping duty investigations. *Id.* at 1363 (stating that the Department indicated an intention to use zeroing in average-to-transaction comparisons in investigations to address concerns about masked dumping). The Federal Circuit's reasoning in upholding the Department's decision relied in part on differences between various types of comparisons in antidumping duty investigations and the Department's limited decision to cease zeroing only with respect to one comparison type. *Id.* at 1361-63. The Federal Circuit acknowledged that section 777A(d) of the Act permits different types of comparisons in antidumping duty investigations, allowing the Department to make average-to-transaction comparisons where certain patterns of significant price differences exist. *See id.* at 1362 (quoting sections 777A(d)(1)(A) and (B) of the Act, which enumerate various comparison methodologies that the Department may use in investigations); *see also* section 777A(d)(1)(B) of the Act. In summarizing its understanding of the relationship between zeroing and the various comparison methodologies the Department may use in antidumping duty investigations, the Federal Circuit recognized that resolution of the ambiguity in section 771(35)

of the Act may reasonable depend on the context in which the definition is applied, stating that “{b}y enacting legislation that specifically addresses such situations, Congress may just as likely have been signaling to Commerce that it need not continue its zeroing methodology in situations where such significant price differences among the export prices do not exist.” *Id.*

Therefore, to the extent that the Department resolves the ambiguity in section 771(35)(A) of the Act differently for antidumping duty investigations using average-to-average comparisons than for investigations using other comparison methodologies and administrative reviews using average-to-transaction comparisons, the Department did not create an inconsistency in this administrative review, but rather adhered to its position adopted in the *Final Modification for Investigations* and continued to apply its pre-existing methodology.³

B. The Department Reasonably Interprets Section 771(35) of the Act

The Department’s interpretation of section 771(35) of the Act reasonably resolves the ambiguity inherent in the statutory text for multiple reasons. First, the Department has, with one limited exception, maintained a long-standing, judicially-affirmed interpretation of section 771(35) of the Act in which the Department does not consider a sale to the United States as dumped if normal value does not exceed export price. Pursuant to this interpretation, the Department assigns such sale a “dumping margin” of zero, which reflects that no dumping has occurred, when calculating the aggregate weighted-average dumping margin. Second, the limited exception to this interpretation does not amount to an arbitrary departure from

³ On February 14, 2012, in response to several WTO dispute settlement reports, the Department adopted a revised methodology which allows for offsets when making average-to-average comparisons in reviews. *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*). The *Final Modification for Reviews* makes clear that the revised methodology will apply to antidumping duty administrative reviews where the preliminary results are issued after April 16, 2012. Because the preliminary results in the administrative review at issue in this dispute were completed prior to April 16, 2012, any change in practice with respect to the treatment of non-dumped sales pursuant to the *Final Modification for Reviews* does not apply to this case.

established practice because the Executive Branch adopted and implemented the approach in response to a specific international obligation pursuant to the procedures established by the Uruguay Round Agreements Act for such changes in practice. This included full notice, comment, consultations with the Legislative Branch, and explanation. Third, the Department's interpretation reasonably resolves the ambiguity in section 771(35) of the Act in a way that accounts for the inherent differences between the result of an average-to-average comparison, on the one hand, and the result of an average-to-transaction comparison, on the other. The Department's interpretation resolves the ambiguity in section 771(35) of the Act by drawing meaning from the context of the comparison method being applied to determine the dumping margin.

1. The Department Relies Upon a Reasonable and Judicially-Affirmed Interpretation of Section 771(35) of the Act

For decades, the Department and various federal courts have considered the use of zeroing as a reasonable tool in calculating dumping margins. *See, e.g., Timken*, 354 F.3d at 1341-45; *PAM, S.p.A. v. United States*, 265 F. Supp. 2d 1362, 1370 (CIT 2003) (*PAM*) (“Commerce’s zeroing methodology in its calculation of dumping margins is grounded in long-standing practice.”); *Bowe Passat Reinigungs-Und Waschereitechnik GmbH v. United States*, 926 F. Supp. 1138, 1149-50 (CIT 1996) (*Bowe Passat*); *Serampore Indus. Pvt. Ltd. v. U.S. Dep’t of Commerce*, 675 F. Supp. 1354, 1360-61 (CIT 1987) (*Serampore*). During that time, courts repeatedly held that the statute does not speak directly to the issue of zeroing. *See PAM*, 265 F. Supp. 2d at 1371 (“{The} gap or ambiguity in the statute requires the application of the *Chevron* step-two analysis and compels this court to inquire whether Commerce’s methodology of zeroing in calculating dumping margins is a reasonable interpretation of the statute.”); *Bowe Passat*, 926 F. Supp. at 1150 (“The statute is silent on the question of zeroing negative margins.”);

Serampore, 675 F. Supp. at 1360 (“A plain reading of the statute discloses no provision for Commerce to offset sales made at {less than fair value} with sales made at fair value. . . . Commerce may treat sales to the United States market made at or above prices charged in the exporter’s home market as having a zero percent dumping margin.”). In view of the statutory ambiguity, courts consistently upheld as reasonable the Department’s interpretation of the statute to permit the use of zeroing. *See, e.g., Timken*, 354 F.3d at 1341-45; *PAM*, 265 F. Supp. 2d at 1370; *Bowe Passat*, 926 F. Supp. at 1149-50; *Serampore*, 675 F. Supp. at 1360-61. In so doing, courts relied upon the rationale offered by the Department for the continued use of zeroing, *i.e.*, to address the potential for foreign companies to undermine the antidumping laws by masking dumped sales with higher priced sales: “Commerce has interpreted the statute in such a way as to prevent a foreign producer from masking its dumping with more profitable sales. Commerce’s interpretation is reasonable and is in accordance with law.” *Serampore*, 675 F. Supp. at 1361 (citing *Certain Welded Carbon Steel Standard Pipe and Tube From India; Final Determination of Sales at Less Than Fair Value*, 51 FR 9089, 9092 (March 17, 1986)); *see also Timken*, 354 F.3d at 1343; *PAM*, 265 F. Supp. 2d at 1371.

2. The Executive Branch’s Limited Implementation of an Adverse Finding of the WTO Dispute Settlement Body Results in a Reasonable Interpretation of Section 771(35) of the Act

The initial WTO dispute settlement report was limited to the Department’s use of zeroing in average-to-average comparisons in antidumping duty investigations. *See generally EC-Zeroing Panel*. The Executive Branch determined to implement this report pursuant to the authority provided in Section 123 of the Uruguay Round Agreements Act (19 U.S.C. § 3533(f), (g)) (Section 123). *See generally Final Modification for Investigations*. Notably, with respect to the use of zeroing, the panel found the United States acted inconsistently with its WTO

obligations only in the context of average-to-average comparisons in antidumping duty investigations. The panel did not find fault with the use of zeroing by the United States in any other context. In fact, the panel rejected the European Communities' arguments that the use of zeroing in administrative reviews did not comport with the WTO Agreements. *See, e.g., EC-Zeroing Panel* at ¶¶ 7.284, 7.291. Without an affirmative inconsistency finding by the panel, the Department did not propose to alter its zeroing practice in other contexts, such as administrative reviews. As the Federal Circuit has recognized, the Department reasonably may decline, when implementing an adverse WTO report, to take any action beyond that necessary for compliance. *See ThyssenKrupp Acciai Speciali Terni S.p.A. v. United States*, 603 F.3d 928, 934 (Fed. Cir. 2010).

The Department's *Final Modification for Investigations* to implement the WTO panel's limited finding does not disturb the reasoning offered by the Department, and affirmed by the Federal Circuit in several prior, precedential opinions upholding the use of zeroing in average-to-transaction comparisons in administrative reviews as a reasonable interpretation of section 771(35) of the Act. *See, e.g., SKF USA, Inc. v. United States*, 537 F.3d 1373, 1382 (Fed. Cir. 2008); *NSK*, 510 F.3d at 1379-1380; *Corus II*, 502 F.3d at 1372-1375; *Timken*, 354 F.3d at 1343. That the Department altered its interpretation of the statute in one limited context to implement a similarly limited finding supports the conclusion that the Panel should affirm the Department's resolution of statutory ambiguity in that limited context as consistent with the *Charming Betsy* doctrine.⁴ Even where the Department resolves the ambiguity differently in other contexts, the

⁴ According to *Murray v. Schooner Charming Betsy*, 6 U.S. 64, 118 (1804), "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains, and consequently can never be construed to violate neutral rights, or to affect neutral commerce, further than is warranted by the law of nations as understood in this country." The principle emanating from the quoted passage, known as the *Charming Betsy* doctrine, supports the reasonableness of the Department's interpretation of the statute in the limited context of average-to-average comparisons in antidumping duty investigations because the Department's interpretation of the domestic law accords with international obligations as understood in this country.

Charming Betsy doctrine bolsters the ability of the Department to resolve the ambiguity in the narrow context of average-to-average comparisons in antidumping duty investigations in such a way that the United States may comply with its international obligations. Neither Section 123 nor the *Charming Betsy* doctrine require the Department to modify its long-standing interpretation of section 771(35) of the Act for all scenarios when a more limited modification will address the adverse WTO finding that the Executive Branch has determined to implement. Furthermore, the wisdom of the Department's legitimate policy choices in this case – *i.e.*, to abandon zeroing only with respect to average-to-average comparisons in investigations – is not subject to judicial review. *See Suramerica de Aleaciones Laminadas, C.A. v. United States*, 966 F.2d 660, 665 (Fed. Cir. 1992). These reasons alone sufficiently justify and explain why the Department reasonably resolved the ambiguity in section 771(35) of the Act differently when using average-to-average comparisons in antidumping duty investigations relative to all other contexts.

3. The Department's Interpretation Reasonably Accounts for Inherent Differences Between The Results of Distinct Comparison Methodologies

Additional justifications exist that demonstrate the reasonableness of the Department's interpretation of section 771(35) of the Act. As a result of the Department's *Final Modification for Investigations*, the Department currently resolves the ambiguity in section 771(35) of the Act reference to the type of comparison methodology applied in the particular proceeding. The Department posits that, among other effects, its interpretation reasonably accounts for the inherent differences between the result of an average-to-average comparison, on the one hand, and the result of an average-to-transaction comparison, on the other.

The use of the verb "exceeds" in section 771(35)(A) of the Act allows the Department to reasonably construe the term in the context of the average-to-average comparisons made in

antidumping duty investigations to permit negative comparison results to offset or reduce positive comparison results when calculating “aggregate dumping margins” within the meaning of section 771(35)(B) of the Act.⁵ When using an average-to-average comparison methodology, the Department usually divides the export transactions into groups, by model and level of trade (averaging groups), and compares an average export price or constructed export price of transactions within one averaging group to an average normal value for the comparable model of the foreign like product at the same or most similar level of trade. In calculating the average export price or constructed export price, the Department averages together all prices, both high and low, for each averaging group. The Department then compares the average export price or constructed export price for the averaging group with the average normal value for the comparable merchandise. This comparison yields an average amount of dumping for the particular averaging group because the high and low prices within the group have been averaged together prior to the comparison. Importantly, under this comparison methodology, the Department does not calculate the extent to which an exporter or producer dumped a particular sale into the United States because the Department does not determine dumping on the basis of individual U.S. prices, but rather makes the determination “on average” for the averaging group within which higher prices and lower prices offset each other. The Department then aggregates the results from each of the averaging groups to determine the aggregate dumping margins for a specific producer or exporter. At this aggregation stage, negative averaging group comparison results offset positive averaging group comparison results. This approach maintains consistency with the Department’s average-to-average comparison methodology, which permits export prices or constructed export prices above normal value to offset export prices or constructed export

⁵ Section 771(35)(B) of the Act defines a weighted-average dumping margin as “the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer.”

prices below normal value within each individual averaging group. Thus, by permitting offsets in the aggregation stage, the Department determines an “on average” aggregate amount of dumping for the numerator of the weighted-average dumping margin ratio consistent with the manner in which the Department determined the comparison results being aggregated.

In contrast, when applying an average-to-transaction comparison methodology, as the Department did in the administrative review at issue, the Department determines dumping on the basis of individual U.S. sales prices. Under the average-to-transaction comparison methodology, the Department compares the export price or constructed export price for a particular U.S. transaction with the average normal value for the comparable model of foreign like product. This comparison methodology yields results specific to the selected individual export transactions. The result of such a comparison evinces the amount, if any, by which the exporter or producer sold the merchandise at an export price or constructed export price less than its normal value. The Department then aggregates the results of these comparisons – *i.e.*, the amount of dumping found for each individual sale – to calculate the weighted-average dumping margin for the period of review. To the extent the average normal value does not exceed the individual export price or constructed export price of a particular U.S. sale, the Department does not calculate a dumping margin for that sale or include an amount of dumping for that sale in its aggregation of transaction-specific dumping margins.⁶ Thus, when the Department focuses on transaction-specific comparisons, as it did in this administrative review, the Department reasonably construes the word “exceeds” in section 771(35)(A) of the Act as including only those comparisons that yield positive results. Consequently, in the context of administrative

⁶ The Department does account, however, for the sale in its weighted-average dumping margin calculation. The value of any non-dumped sale is included in the denominator of the weighted-average dumping margin while no dumping amount for non-dumped transactions is included in the numerator. Therefore, a greater amount of non-dumped transactions results in a lower weighted-average dumping margin.

reviews using average-to-transaction comparisons, the Department reasonably does not permit negative comparison results to offset or reduce other positive comparison results when determining the “aggregate dumping margins” within the meaning of section 771(35)(B) of the Act.

Put simply, following the Department’s *Final Modification for Investigations*, the Department has understood the application of average-to-average comparisons to contemplate a dumping analysis that examines the on average pricing behavior of an exporter or producer with respect to the subject merchandise, whereas under the average-to-transaction comparison methodology the Department continues to undertake a dumping analysis that examines the pricing behavior of an exporter or producer with respect to individual export transactions. The offsetting approach described in the average-to-average comparison methodology allows for a reasonable examination of on average pricing behavior. However, the need to account for on average pricing behavior does not arise when the Department examines an exporter’s or producer’s sales on an individual export transaction basis.

In sum, on the issue of how to treat negative comparison results in the calculation of the weighted-average dumping margin pursuant to section 771(35)(B) of the Act, for the reasons explained, the Department reasonably may accord dissimilar treatment to negative comparison results in the aggregation stage of the weight-average dumping margin calculation depending on whether the result in question flows from an average-to-average comparison or an average-to-transaction comparison. We note that neither the U.S. Court of International Trade (CIT) nor the Federal Circuit has rejected the above reasons. The Federal Circuit, in *Dongbu* and *JTEKT*, did not reject the Department’s practice with regard to zeroing but requested a further explanation of the Department’s interpretation of section 771(35) of the Act. The Department, as included here,

provided the explanation in these and other cases before the Court. In fact, the CIT has recently sustained the Department's explanation for using zeroing in administrative reviews using average-to-transaction comparison while not using zeroing in investigations using average-to-average comparisons. See *Thai Plastic Bags Indus. Co. v. United States*, 2013 Ct. Intl. Trade LEXIS 25, Slip Op. 2013-21 (Ct. Int'l Trade Feb. 11, 2013) (*Thai Plastic Bags*); see also *Union Steel v. United States*, 823 F. Supp. 2d. 1346 (CIT 2012) (*Union Steel*); *Grobest & I-Mei Indus. (Vietnam) Co., Ltd. v. United States*, 823 F. Supp. 2d. 1346 (2012) (*Grobest*); *Far E. New Century Corp. v. United States*, 867 F. Supp. 2d 1309 (Ct. Int'l Trade 2012) (*New Century Corp.*); *Camau Frozen Seafood Processing Imp. Exp. Corp. v. United States*, 880 F. Supp. 2d 1348 (Ct. Int'l Trade November 15, 2012) (*Camau*); and *Fischer S.A. Comercio, Industria v. United States*, 34 Int'l Trade Rep. (BNA) 2288 (Ct. Int'l Trade Dec. 6, 2012) (*Fischer*). In *Thai Plastic Bags*, the CIT considered the Department's explanation, as provided here, and held that the Department's "approach to, and explanation for, distinguishing among [statutory] comparison methods - based on the differences between an analysis of overall pricing behavior and an analysis of individual export transactions - is reasonable." *Thai Plastic Bags*, Slip Op. 2013-21 at *20. Accordingly, the Department's interpretation of section 771(35) of the Act to permit zeroing when using average-to-transaction comparisons as in the underlying administrative review, while also permitting offsetting when using average-to-average comparisons (as the Department does in antidumping duty investigations) reasonably accounts for the differences inherent in distinct comparison methodologies.

Maquilacero Comments

Maquilacero argues that: 1) the Federal Circuit's prior judicial decisions do not expressly or implicitly endorse opposite interpretations of section 771(35) of the Act for investigations and

administrative reviews; 2) the Federal Circuit has already rejected the Department's argument that implementation of adverse WTO Dispute Settlement Body findings justifies inconsistent interpretations of section 771(35) of the Act; and 3) the Department's claim of "inherent differences" between investigations and administrative reviews does not support interpreting the statute inconsistently with respect to zeroing.

First, Maquilacero disagrees with the Department's assertion that "{i}n upholding the Department's decision to cease zeroing in average-to-average comparisons in antidumping duty investigations, the Federal Circuit accepted that the Department likely would have different zeroing practices between average-to-average and other types of comparisons in antidumping duty investigations." Draft Results, at 6, *citing U.S. Steel Corp.*, 621 F.3d. at 1363 (stating that the Department indicated an intention to use zeroing in average-to-transaction comparisons in investigations to address concerns about masked dumping). Maquilacero claims the Federal Circuit has never accepted the Department's varying zeroing practice in original investigations versus administrative reviews. Citing *Timken*, *PAM*, and *U.S. Steel Corp.* Maquilacero argues that "in all such cases where the Federal Circuit or the CIT upheld its zeroing practices, the Department was still using the *same* zeroing methodology and the same interpretation of 19 U.S.C. § 1677(35) in administrative reviews and investigations." Maquilacero Comments at 4 (emphasis in original). To the contrary, Maquilacero argues the Federal Circuit in *Dongbu* rejected the assertion that prior case law amounts to an endorsement of the Department's inconsistent interpretations and, further, argues that prior case law forecloses the Department's inconsistent interpretations. Maquilacero Comments at 4-5. Citing *Dongbu* and *JTEKT*, Maquilacero argues that the Federal Circuit "has stated that the *Timken* line of cases . . . does not

apply to the current legal issue where the Department inconsistently uses zeroing in some situations but not others.” Maquilacero Comments at 5.

Second, Maquilacero argues the Federal Circuit has already rejected the Department’s argument that implementation of adverse WTO Dispute Settlement Body findings justifies inconsistent interpretations of section 771(35) of the Act. Maquilacero argues that the Federal Circuit in *Dongbu* rejected the Department’s position that its limited implementation of an adverse WTO dispute settlement report “does not mean that it is lawful to give inconsistent constructions to the same statutory language.” Maquilacero Comments at 6, *citing Dongbu*, 635 F.3d at 1372 (citations omitted). Maquilacero also disagrees with the Department’s reliance on the *Charming Betsy* doctrine as support for its position. Maquilacero argues that the *Charming Betsy* doctrine is inapplicable in this case because “there is no conflict with international law if the Department were to adopt a consistent interpretation of 19 U.S.C. § 1677(35) that results in no zeroing in both investigations and reviews.” Maquilacero Comments at 6.

Third, Maquilacero argues the Department’s claim of “inherent differences” between investigations and administrative reviews does not support interpreting the statute inconsistently with respect to zeroing. Maquilacero argues that the Federal Circuit considered and rejected the argument that the different methods of comparing U.S. price to normal value support a distinction between investigations and administrative reviews with respect to zeroing. Maquilacero Comments at 8, *citing JTEKT*, 642 F.3d at 1384. Maquilacero argues that in *Corus I*, the Federal Circuit held that “under both methodologies the results of the two types of comparisons are treated equally by the Department.” Maquilacero Comments at 7. Maquilacero argues that in *JTEKT* the court acknowledged that the Department uses different margin calculation methods between administrative reviews and investigations but concluded that such

differences alone were not sufficient to justify the Department's inconsistent statutory interpretation with respect to zeroing. Maquilacero Comments at 7. Maquilacero concludes that the Department's explanation for why the differences in comparison methodologies make it reasonable to continue zeroing in administrative reviews but not in investigations is inadequate, and that the agency has cited to "no explanation in the statute, legislative history or statutory construction principles that could support its inconsistent interpretation of the same legal text." Maquilacero Comments at 8.

Department Position

After reviewing the comments received from Maquilacero, the Department continues to find that it has provided sufficient explanation and justification to deny offsets when aggregating the results of the average-to-transaction comparisons at issue in this antidumping duty administrative review, while continuing to interpret the same provision as allowing it to grant offsets in the limited context of antidumping duty investigations when aggregating the results of average-to-average comparisons.

Contrary to Maquilacero's arguments, the Department's interpretation of section 771(35) of the Act is not unreasonable. Rather, the Department has applied its long-standing and judicially affirmed interpretation of that provision in this case. The central issue in this remand is whether this resolution of statutory ambiguity continues to be reasonable in light of the fact that, in one limited context involving antidumping duty investigations using average-to-average comparisons, the Department has resolved the same ambiguity differently. In this regard, it is important to recognize that the Department has maintained a well-established interpretation of section 771(35) of the Act and that no exception to that interpretation applies to the instant case.

The Department considers that the additional explanation and justification provided in this remand reasonably accounts for the difference between its long-standing interpretation of the ambiguous term “exceeds” and the circumstances in which the Department will resolve the ambiguity differently based on the context of the applicable comparison method. We note that this explanation was recently affirmed in a decision by a NAFTA Panel in *Wire Rod from Canada*. See *In the Matter of: Binational Panel Review of Carbon and Certain Alloy Steel Wire Rod from Canada*, USA-CDA-2008-1904-02 (October 25, 2012). The Department also understands the Federal Circuit to have affirmed this difference in interpretation in *U.S. Steel Corp.* and *SKF*, inclusive of its limited application to investigations using average-to-average comparisons.

Despite Maquilacero’s claim to the contrary, the Department views the decision in *U.S. Steel Corp.* to provide guidance in this case. In that decision, the Federal Circuit upheld the Department’s reasoning for the adoption of the exception to the general interpretation of section 771(35)(A) of the Act, the meaning afforded to the term ‘exceeds’ under such an exception, and the narrow application of the exception to investigations using average-to-average comparisons. See generally *U.S. Steel Corp.*, 621 F.3d at 1351. In doing so, the Federal Circuit tacitly acknowledged that the exception would represent the lone departure from the Department’s continuing practice of denying offsets for non-dumped sales in all proceedings, except investigations involving average-to-average comparisons. See *id.* at 1361-63. Further, as early as *Corus II*, the Federal Circuit expressly recognized that, when the Department abandoned the use of zeroing in investigations involving average-to-average comparisons, “it stated that the new policy did not apply to any other type of proceeding, including administrative reviews.”

Corus II, 502 F.3d 1374 (citation omitted). On that basis, the Federal Circuit concluded that “{the Department’s} new policy has no bearing on the present appeal” *Id.*

The exception, however, has not become the rule. If a court were to hold that the limited application of the exception was unlawful, there is no reason to conclude that the Department would be required to allow that exception to swallow the rule. In other words, Maquilacero errs if it assumes that the lone remaining legal option is to expand the exception to apply in all contexts. Instead, among other things, the Department could reconsider its decision to create the exception. Accordingly, the Department’s explanation and justification for the different resolution of the ambiguity in section 771(35)(A) of the Act appropriately begins with an explanation that the resolution of the ambiguity in this administrative review is the Department’s well-established interpretation of that provision and not the newer, limited exception.

The Department generally interprets the word “exceeds” in section 771(35)(A) of the Act as not encompassing “greater than in a negative amount.” Put simply, 3 exceeds 2, and 2 does not exceed 3. Recognizing that the Federal Circuit has found the meaning of the word “exceeds” to be ambiguous, the Department considers that, as a general matter, its interpretation of the word “exceeds” is reasonable and the Federal Circuit has agreed. On numerous occasions, the Federal Circuit has accepted this permissible construction of section 771(35)(A). *See Timken*, 354 F.3d at 1342 (upholding the use of zeroing in an administrative review) and *Corus I*, 395 F.3d at 1347 (upholding the use of zeroing in an investigation).

Recognizing again that there is ambiguity in the meaning of “exceeds,” however, at the time of the underlying administrative review, the Department, adopted a limited exception to its interpretation only for investigations using average-to-average comparisons. As described above, the Department adopted this exception pursuant to the statutory process set forth in

Section 123. In the *Final Modification for Investigations*, the Department explicitly limited the scope of applicability of the exception. See *Final Modification for Investigations*, 71 FR at 77724. In providing this background and explanation, the Department has explained how its interpretation of section 771(35) of the Act as applied in the instant administrative review fits into the larger picture of how the Department reasonably interprets this provision of the statute. Accordingly, as described above, the Department considers that its long-standing interpretation of section 771(35) of the Act remains reasonable, both for the same reasons that it has long held this same interpretation and for the reasons that the courts repeatedly have upheld the Department's interpretation both in the contexts of administrative reviews and investigations.

The tenets of statutory construction do not prevent the Department from resolving ambiguity present in a statutory term differently by reference to the context in which the term is to be applied. The Federal Circuit has already held that the relevant statutory provision is ambiguous. See, e.g., *Timken*, 354 F.3d at 1342 (“Because we find that the statute does not directly speak to the issue of negative-value dumping margins, we evaluate whether Commerce’s interpretation is based on a permissible statutory construction.”). Thus, the Department simply must provide a reasonable explanation for its interpretation, which it did here. *Id.* (“Under this second step of *Chevron* analysis, “[a]ny reasonable construction of the statute is a permissible construction.”) (quoting *Torrington v. United States*, 82 F.3d 1039, 1044 (Fed. Cir. 1996)).

Moreover, the U.S. Supreme Court and Federal Circuit have held that an agency may interpret the same statutory provision differently. For example, the Supreme Court has upheld the Federal Communication Commission’s (FCC’s) interpretation of a statute over challenges that the FCC’s interpretation was inconsistent with past practice. See *National Cable &*

Telecommunications Association v. Brand X Internet Services, 545 U.S. 967, 981 (2005). The Supreme Court stated,

[a]gency inconsistency is not a basis for declining to analyze the agency's interpretation under the *Chevron* framework. Unexplained inconsistency is, at most, a reason for holding an interpretation to be an arbitrary and capricious change from agency practice under the Administrative Procedures Act. For if the agency adequately explains the reasons for a reversal of policy, "change is not invalidating, since the whole point of *Chevron* is to leave the discretion provided by the ambiguities of a statute with the implementing agency."

Id. (internal citations omitted). The Federal Circuit has held that, based upon a reasonable explanation, the Department may interpret the same statutory term differently depending on the context in which the Department interprets that term. *See FAG Kugelfischer Georg Schafer AG v. United States*, 332 F.3d 1370, 1373 (Fed. Cir. 2003) (upholding the Department's different interpretations within the same proceeding of the term "foreign like product" contained in section 771(16) of the Act). Accordingly, where an agency adequately explains its reasons, as the Department did in these remand results, it may adopt different interpretations of the same statutory provision.

Furthermore, as recognized by the Federal Circuit, the Department has previously identified real differences between investigations and administrative reviews. *See JTEKT*, 642 F.3d at 1384-1385 (where the Department pointed to differences between investigations and administrative reviews). In *JTEKT* and *Dongbu*, the Federal Circuit did not invalidate the Department's different interpretations of section 771(35) of the Act, as Maquilacero argues.

Rather, it has sought a further explanation as to why the differences between investigations and administrative reviews are meaningful for purposes of the Department's interpretation of its statute. *See id.* In this remand determination, the Department provides a further explanation to support its interpretation of the statute, as sought by the Federal Circuit in *Dongbu* and *JTEKT* and by this Panel in its remand order. This explanation has already been provided to the CIT in the course of the *JTEKT* and *Union Steel* litigations, and has been affirmed by the CIT multiple times, including in *Thai Plastic Bags* and *Union Steel*.⁷ Therefore, we disagree with Maquilacero that the Department did not provide sufficient explanation and reasoning to support its conclusion.

Contrary to Maquilacero's assertions, the Department has demonstrated that it is reasonable to continue to aggregate average-to-transaction comparison results in administrative reviews without offsets, while simultaneously, in the limited context of investigations using average-to-average comparisons, to aggregate average-to-average comparison results with offsets. When aggregating comparison results, it is reasonable to take account of what is being aggregated.

When an overall weighted-average dumping margin is based on average-to-average comparisons in investigations, offsets are implicitly granted in the calculation of the average export price (or constructed export price), and offsets are explicitly granted through implementation of the *Final Modification for Investigations*. An average-to-average comparison inherently permits transaction-specific export prices above the average normal value to offset transaction-specific export prices below the average normal value within the same averaging group because all transaction-specific export prices are averaged prior to the comparison for each averaging group. Similarly, once the average export price is compared to the average normal

⁷ See also *Grobest*, *New Century Corp.*, *Camau*, and *Fischer*.

value for each averaging group, the results from all such comparisons are aggregated allowing offsets for comparisons where the average export price exceeds the average normal value between different averaging groups. Therefore, where the calculation of the overall weighted-average dumping margin is based upon average export prices, the “average” characteristic (1) implicitly includes offsets when calculating the average export prices, and (2) explicitly includes offsets when aggregating averaging-group comparisons.

In contrast, an overall weighted-average dumping margin based upon transaction-specific export prices (*i.e.*, average-to-transactions comparisons) includes no implicit offsets. With average-to-transaction comparisons, there are no inherent offsets within an averaging group because transaction-specific export prices, not average export prices, are used to compare with the average normal value. Consistent with the absence of implicit offsets, the Department’s aggregation of the results of average-to-transaction comparisons excludes explicit offsets as well. When the results of the transaction-specific comparisons are aggregated, the amounts by which the average normal value exceeds (*i.e.*, is greater than) the transaction-specific export prices are totaled and divided by the total value of all U.S. sales. Therefore, where the calculation of the overall weighted-average dumping margin is based upon the transaction-specific export prices, no offsets are granted for sales where the transaction-specific export price exceeds (*i.e.*, is greater than) the comparable average normal value.

This explanation was not provided in the Department’s prior explanations of its use of different comparison methodologies in investigations and administrative reviews. The Department’s explanation connects the statutory provisions that discuss the use of average-to-average and average-to-transaction comparison methods (section 777A(d) of the Act) with the statutory provision that defines dumping margin and weighted-average dumping margin

(sections 771(35)(A) and (B) of the Act). The statute itself provides for these different comparison methodologies and the Department has demonstrated that resolving the ambiguity in section 771(35) of the Act by reference to the context of the comparison method used is reasonable. Therefore, we disagree with Maquilacero's assertions that the Department has not provided sufficient additional explanation in support of its interpretation.

We further disagree that the Federal Circuit has rejected, in *Dongbu*, *JTEKT*, *Corus I*, or any other case, the explanation presented in these remand results. The holdings in *Dongbu* and *JTEKT* were limited to finding that the Department had not adequately explained the different interpretations of section 771(35) of the Act in the context of antidumping duty investigations versus administrative reviews, but the Federal Circuit did not hold that these differing interpretations were contrary to law. Importantly, the panels in *Dongbu* and *JTEKT* did not overturn prior Federal Circuit decisions affirming zeroing in administrative reviews, including *SKF*, in which the court affirmed zeroing in administrative reviews notwithstanding the Department's change in practice with respect to original investigations. *See SKF*. Unlike the determinations examined in *Dongbu* and *JTEKT*, the Department, in these remand results, provides additional explanation for its changed interpretation of the statute subsequent to the *Final Modification for Investigations*.

In *Corus I*, the Federal Circuit did not consider (and could not have considered) the explanation the Department has presented here. In that case, the plaintiff challenged the Department's use of zeroing in an investigation and attempted to persuade the court that zeroing was prohibited by the statute under the first step of the *Chevron* analysis. *Corus I*, 395 F.3d at 1346-47. The Court held the statute *equally ambiguous* for both administrative reviews and investigations. It said nothing about whether the Department must change its practice for

administrative reviews once it does so for investigations. Nor did *Corus I* discuss averaging groups and comparison results to support its challenge. Moreover, the Federal Circuit acknowledged in *Dongbu* that it has never considered the reasonableness of interpreting {section 771(35) of the Act} in different ways depending on whether the proceeding is an investigation or an administrative review. *Dongbu*, 635 F.3d at 1370.

Maquilacero's reliance on *Corus I* to suggest that administrative reviews and investigations are not different for purposes of zeroing is misplaced. See Maquilacero Comments at 7. *Corus I* did not hold that the Department must always treat investigations and administrative reviews identically. Rather, the Federal Circuit held that the statute *permits* the Department to treat them the same. *Corus I*, 395 F.3d 1347 (holding that "the Court of International Trade was correct to find Commerce's zeroing methodology permissible in the context of administrative investigations.").

We disagree with Maquilacero's interpretation of the *Charming Betsy* doctrine. See Maquilacero Case Brief at 6. The *Charming Betsy* doctrine provides simply that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains . . ." *Charming Betsy*, 6 U.S. at 118. With respect to WTO reports, "{o}nly Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it." See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1, at 659 (1994) (SAA) at 659. See also 19 U.S.C. §§ 3533(g) and 3538 (establishing processes for the executive branch to implement an adverse WTO report). Therefore, the *Charming Betsy* doctrine supports the reasonableness of the Department's resolution of statutory ambiguity in the limited context of average-to-average comparisons in antidumping duty investigations because this resolution of

ambiguity in the domestic law accords with international obligations as understood in this country. The Department's position in prior cases has been that *Charming Betsy* is inapplicable because Congress has specified that WTO reports do not change domestic law and prescribed a specific statutory scheme in which international obligations will be implemented, if at all. See 19 U.S.C. § 3512(a)(1) ("No provision of any of the Uruguay Round Agreements, nor the application of any such provision to any person or circumstance, that is inconsistent with any law of the United States shall have effect."); SAA at 659 ("WTO dispute settlement panels will not have any power to change U.S. law or order such a change.").

In light of Congress' clear statements, the *Charming Betsy* doctrine cannot, and does not, create a right for private parties to force the Executive Branch to change its actions to come into compliance with adverse WTO decisions. Thus, private parties have no right to challenge an agency action, or inaction based on a WTO report. 19 U.S.C. § 3512(c)(1)(A)-(B) ("No person other than the United States – (A) shall have any cause of action . . . under any of the Uruguay Round Agreements. . . , or (B) may challenge, in any action brought under any provision of law, any action or inaction by a department, agency, or other instrumentality of the United States, . . . on the ground that such action or inaction is inconsistent with such agreement."). Accordingly, *Charming Betsy* does not *require* the Department to bring its actions that are otherwise in accordance with the antidumping and countervailing duty statute into compliance with a WTO report. See, e.g., *Corus I*, 395 F.3d at 1347-1348. However, once the Executive Branch decides to bring the Department's actions into compliance with a WTO report, the Department properly relies upon *Charming Betsy* to *support* its decision to implement an adverse WTO report by creating a narrow exception to its longstanding practice of zeroing.⁸

⁸ We note that Congress further recognized that implementation of a WTO report might result in inconsistent actions. SAA at 1027 ("Since implemented determinations under section 129 may be appealed, it is possible that

The Department's reliance on *Charming Betsy* to support its narrow application of a different resolution of statutory ambiguity than its longstanding interpretation of section 771(35) of the Act is congruous with Congress' anticipation of potentially inconsistent determinations resulting from the implementation of a WTO report. Furthermore, even if the courts were to hold that the Department cannot simultaneously resolve statutory ambiguity by reference to the relevant context as it relates to zeroing, there is no reason to conclude that the Department would be required to allow the exception to swallow the rule. In other words, there is no reason to assume that the Department's only legal option is to expand the exception to apply in all contexts, as the Department could also reconsider its decision to create the exception.

Maquilacero disputes the Department's distinction between investigations and administrative reviews because "under both methodologies the results of the two types of comparisons are treated equally by the Department." Maquilacero Comments at 7. The Federal Circuit has consistently found the statute to be "silent or ambiguous" as to the zeroing methodology and has further found that there "remains a 'gap'" in section 777A of the Act that Congress has chosen not to fill. *U.S. Steel Corp.*, 621 F.3d at 1361-62. The type of comparison methodology used in a given proceeding is meaningful to the Department's interpretation of the statute. The Department applies an average-to-average comparison methodology in investigations to examine an exporter's or manufacturer's overall pricing behavior on average, which is relevant to whether to make an affirmative dumping determination in an investigation. See section 777A(d)(1)(A)(i) of the Act. At the time of the underlying administrative review, the

Commerce or the {International Trade Commission} may be in a position of simultaneously defending determinations in which the agency reached difference conclusions."}. With respect to inconsistent conclusions, Congress stated that "the Administration expects that courts . . . will be sensitive to the fact that under the applicable standard of review, as set forth in statute and case law, multiple permissible interpretations of the law and the facts may be legally permissible in any particular case. . ." *Id.*

Department consistently relied on the average-to-transaction comparison methodology to determine the pricing behavior with respect to individual transactions. *See* 19 CFR § 351.414(c)(2).⁹ Unlike investigations, where section 777A(d) of the Act establishes conditions for using average-to-transaction comparisons, the statute places no such conditions on the use of average-to-transaction comparisons in administrative reviews. The fact that the Department aggregates the results of either methodology does not render it unreasonable to account for the differences between the two methods or the different contexts in which they are employed in the aggregation phase.

We further disagree with Maquilacero's claim that the statute compels an identical methodology in both comparison methodologies because the statutory elements of the dumping calculation apply equally to both investigations and administrative reviews. Under the statute, the elements of the dumping margin are different under different methods. *See* section 777A(d) of the Act. They are either transaction-specific or they are averages. It is reasonable for the Department to look to that context in resolving the ambiguity in the statute so as to account for those differences when aggregating the results of the comparisons.

Finally, the Department has not interpreted section 771(35)(A) and (B) of the Act as having opposite meanings in investigations and administrative reviews. The Department interprets subparagraph (A) and (B) such that the aggregation of comparison results performed pursuant to subparagraph (B) takes into account, and is consistent with, the comparison method used to produce those comparison results pursuant to subparagraph (A). Thus, the Department's different interpretations of section 771(35) of the Act reflect the comparison methodology that

⁹ In the *Final Modification for Reviews*, the Department changed this practice, however as explained in fn 3, *supra*, this change became effective as to administrative reviews for which the preliminary results are issued after April 16, 2012. Thus, the new practice does not apply to these remand results.


the Department uses in each proceeding, and reasonably interprets the statute such that offsets are granted, or denied, on the basis of the comparison methodology employed.

Because the Department is now providing a further reasonable explanation for its interpretation of the statute to support the Department's use of its zeroing methodology when applying an average-to-transaction comparison methodology in administrative reviews, such as it did in the administrative review at issue in this case, while not using its zeroing methodology when applying an average-to-average comparison methodology in investigations, the Department is not changing its decision to use zeroing in this administrative review. Accordingly, the Department is not recalculating Maquilacero's weighted-average dumping margin without the use of zeroing. Because the Department has provided a reasonable explanation for its different interpretations of section 771(35) of the Act, it has complied with the Panel's remand order.

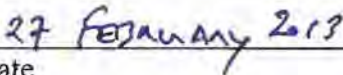
FINAL RESULTS OF REDETERMINATION

In accordance with the Panel's remand order, and consistent with the Department's interpretation of the Act described above, the Department on remand continues to apply its zeroing methodology in calculating weighted-average dumping margin for Maquilacero and has made no changes to the weighted-average dumping margin calculated for Maquilacero in the *Final Results*.

These results of redetermination are pursuant to the remand order of the Panel's decision and order *In the Matter of: Binational Panel Review of Light-Walled Rectangular Pipe and Tube From Mexico*, USA-MEX-2012-1904-02 (Dec. 5, 2012).



Paul Piquado
Assistant Secretary
for Import Administration



Date