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Investigation
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DATE: March 29, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate 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 Certain Carbon and Alloy Steel Cut-To-Length Plate from France

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I. Summary

We analyzed the comments of the interested parties in the less-than-fair-value (LTFV) investigation of certain carbon and alloy steel cut-to-length plate (CTL plate) from France. As a result of our analysis, and based on our findings at verification, we made changes to the margin calculations for Dillinger France S.A. (Dillinger France), one of the mandatory respondents in this investigation. Moreover, after considering the facts on the record, as well as comments received, we are basing the final margin for Industeel France, S.A. (Industeel) on adverse facts available (AFA). 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: Differential Pricing Methodology for Dillinger France

Comment 2: Application of Adverse Facts Available for Industeel

Comment 3: Moot Arguments for Industeel

Comment 4: Level of Trade for Dillinger France

Comment 5: Home Market Affiliated Service Center Sales for Dillinger France

Comment 6: Resale of Canceled U.S. Sale for Dillinger France

Comment 7: Capping Freight Revenue for Berg Steel Pipe Corp.'s (BSPC's) Sales

Comment 8: Capping BSPC's Revenues for Further Manufacturing by Associated Expenses

Comment 9: Corrections to Dillinger France's Data to Account for Verification Findings

Comment 10: Provision Expenses for Dillinger France

Comment 11: Non-Prime Product Costs for Dillinger France

Comment 12: Cost of Production for Inputs Purchased from Affiliates for Dillinger France

Comment 13: Income Offsets to General and Administrative (G&A) Expenses for Dillinger France

Comment 14: Further Manufacturing Verification Corrections for BSPC

Comment 15: Further Manufacturing Scrap Offset for BSPC

Comment 16: Further Manufacturing G&A Ratio Denominator for BSPC

Comment 17: Further Manufacturing G&A Expense Ratio Calculation and Application for BSPC

II. Background

On November 14, 2016, the Department of Commerce (the Department) published the *Preliminary Determination* of sales of CTL plate from France at LTFV.[1] On December 2, 2016, we amended our *Preliminary Determination*.[2] The period of investigation (POI) is April 1, 2015, through March 31, 2016.

In October 2016 and November 2016, we received scope case briefs and scope rebuttal briefs. On November 29, 2016, we issued a final memorandum in response to these scope comments in which we did not change the scope of this investigation.[3]

[1] *See Certain Carbon and Alloy Steel Cut-to-Length Plate From France: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 79437 (November 14, 2016) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum, "Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate From France" (Preliminary Decision Memorandum).

[2] *See Certain Carbon and Alloy Steel Cut-to-Length Plate From France: Amended Preliminary Determination of Sales at Less Than Fair Value*, 81 FR 87019 (December 2, 2016). *See also Certain Carbon and Alloy Steel Cut-to-Length Plate From France: Correction to the Amended Preliminary Determination of Sales at Less Than Fair Value*, 81 FR 90780 (December 15, 2016).

[3] *See* Memorandum, "Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Final Scope Comments Decision Memorandum," dated November 29, 2016 (Final Scope Memorandum).

In November and December 2016, we conducted verification of the sales and cost of production (COP) data reported by Dillinger France and Industeel, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). In January 2017, we requested that: 1) Industeel submit revised home market and U.S. sales databases; and 2) Dillinger France submit a revised U.S. sales database for sales made by BSPC. We received these databases in the same month.

We invited parties to comment on the *Preliminary Determination*. In December 2016, we received comments on the *Preliminary Determination* from the European Commission. In February 2017, one of the petitioners,[4] Dillinger France, and Industeel submitted case and rebuttal briefs.

Based on our analysis of the comments received, as well as our verification findings, we revised the weighted-average dumping margins for Dillinger France and Industeel from those calculated in the *Preliminary Determination*.

III. Use of Adverse Facts Available

Section 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.[5]

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner," the Department shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the

[4] The petitioners in this investigation are ArcelorMittal USA LLC, Nucor Corporation (Nucor), and SSAB Enterprises, LLC. Only Nucor filed comments for consideration in the final determination, and is referred to throughout as "the petitioner."

[5] On June 29, 2015, the Trade Preferences Extension Act of 2015 was signed into law and made numerous amendments to the antidumping and countervailing laws were made, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act. *See* Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments to section 771(7) of the Act, which relate to determinations of material injury by the U.S. International Trade Commission. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. Therefore, the amendments apply to this investigation.

person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the SAA explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[6] Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.[7]

Section 776(c) of the Act provides that, in general when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate 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. Further, and under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an adverse facts available (AFA) margin, the Department is not required to estimate

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[6] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA), at 870.

[7] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.

As noted above, section 776(a)(1) and (a)(2)(D) of the Act provides that if necessary information is not available on the record or an interested party provides information but the information cannot be verified, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Moreover, section 776(b) of the Act provides that, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the SAA explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[8]

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (CAFC) noted that while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort."[9] Thus, according to the CAFC, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The CAFC indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best of its ability. While the CAFC noted that the "best of its ability" standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.[10] The "best of its ability" standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" its ability to do so.[11]

Selection and Corroboration of the AFA Rate

In an investigation, the Department's practice is to select, as an AFA rate, 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.[12] In selecting a facts available margin, we sought a margin

[8] *See* SAA at 870; *see also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

[9] *See Nippon Steel*, 337 F.3d at 1382-83.

[10] *Id*., at 1382.

[11] *Id.*

[12] *See, e.g., Certain Uncoated Paper From Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016), and accompanying Issues and Decision Memorandum (IDM) at Comment 1; *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015), and accompanying IDM at Comment 20; *Certain Stilbenic Brightening Agents From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17436, 17438 (March 26, 2012).

that is sufficiently adverse so as to effectuate the statutory purposes of the AFA rule, which is to induce respondents to provide the Department with complete and accurate information in a timely manner.[13]

In order to determine the probative value of the dumping margin alleged in the petition for assigning an AFA rate, we examined the information on the record. We compared the highest petition dumping margin of 148.02 percent to the transaction-specific margins calculated for Dillinger France, which were not calculated using total AFA. We find that the 148.02 percent petition margin falls within the range of the highest transaction-specific margins calculated for Dillinger France, which appear to be sales whose terms were normal, when compared with other sales in Dillinger France's database.[14] Thus, in accordance with section 776(c)(1) of the Act, we have corroborated the highest dumping margin contained in the petition,148.02 percent, as AFA, using transaction-specific margins from the mandatory respondent Dillinger France.

Application of Total AFA for Industeel

As described below, the Department determines that the use of facts otherwise available with an adverse inference is appropriate for the final determination with respect to Industeel.

As discussed further in Comment 2 below, at verification we discovered multiple deficiencies in Industeel's reporting. In this case, we find that the application of total facts available is appropriate under sections 776(a)(1) and (a)(2)(D) of the Act because, as evidenced by its ability at verification to identify the correct information, it is clear that Industeel possessed the necessary records to provide a complete and accurate U.S. sales database, including the product characteristics for chromium and nickel content, at the time of its questionnaire response submission.[15] However, Industeel did not provide this information to the Department, and as a result, information necessary to calculate Industeel's dumping margin is not on the record. In addition, we find that Industeel's failures to report the requested information accurately, using the records over which it maintained control, indicates that it did not act to the best of its ability to comply with our requests for information. Hence, we find that the application of total AFA to Industeel is appropriate under section 776(b) of the Act.

As total AFA, we assigned Industeel the highest margin contained in the petition of 148.02 percent. In accordance with section 776(c)(1) of the Act, we corroborated the petition rate using transaction-specific margins from the mandatory respondent Dillinger France, which were not calculated using total AFA (*see* above at "Selection and Corroboration of the AFA Rate").

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[13] *See* SAA at 870. *See also, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from the Republic of Korea*, 77 FR 75988, 75990 (December 26, 2012).

[14] *See* Memorandum, "Analysis for the Final Determination in the Less-Than-Fair Value Investigation of Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium for Industeel Belgium S.A.," dated March 29, 2017 (Industeel Final Calculation Memorandum), at Attachment III.

[15] *See, e.g.*, Industeel's September 19, 2016 Supplemental Sections B & C Questionnaire Response at 5 and 16; Industeel Sales Verification Report at Exhibits VE-10 and VE-32.

IV. Scope of the Investigation

The products covered by this investigation are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief), and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above, the following rules apply:

> (1) except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above; and
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> (2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, *etc.*), the measurement at its greatest width or thickness applies.
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> Steel products included in the scope of this investigation are products in which: (1) iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

Subject merchandise includes cut-to-length plate that has been further processed in the subject country or a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, beveling, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cut-to-length plate.

All products that meet the written physical description, are within the scope of this investigation unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of this investigation:

(1) products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;

(2) military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:

- MIL-A-12560,
- MIL-DTL-12560H,
- MIL-DTL-12560J,
- MIL-DTL-12560K,
- MIL-DTL-32332,
- MIL-A-46100D,
- MIL-DTL-46100-E,
- MIL-46177C,
- MIL-S-16216K Grade HY80,
- MIL-S-16216K Grade HY100,
- MIL-S-24645A HSLA-80;
- MIL-S-24645A HSLA-100,
- T9074-BD-GIB-010/0300 Grade HY80,
- T9074-BD-GIB-010/0300 Grade HY100,
- T9074-BD-GIB-010/0300 Grade HSLA80,
- T9074-BD-GIB-010/0300 Grade HSLA100, and
- T9074-BD-GIB-010/0300 Mod. Grade HSLA115,

except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual- or multiple-certified to any other non-armor specification that otherwise would fall within the scope of this investigation;

(3) stainless steel plate, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(4) CTL plate meeting the requirements of ASTM A-829, Grade E 4340 that are over 305 mm in actual thickness;

(5) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:

(a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):

- Carbon 0.23-0.28,
- Silicon 0.05-0.20,
- Manganese 1.20-1.60,
- Nickel not greater than 1.0,

- Sulfur not greater than 0.007,
- Phosphorus not greater than 0.020,
- Chromium 1.0-2.5,
- Molybdenum 0.35-0.80,
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:

(i) 270-300 HBW,
(ii) 290-320 HBW, or
(iii) 320-350HBW;

(c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;

(6) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.23-0.28,
- Silicon 0.05-0.15,
- Manganese 1.20-1.50,
- Nickel not greater than 0.4,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.20-1.50,
- Molybdenum 0.35-0.55,
- Boron 0.002-0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;

(c) Having the following mechanical properties:

(i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75ksi min and UTS 95ksi or more, Elongation of 18% or more and Reduction of area 35% or more; having charpy V at -75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs (single value) and equal or greater than 20 ft. lbs (average of 3 specimens) and conforming to the requirements of NACE MR01-75; or

(ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at -40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301;

(7) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.25-0.30,
- Silicon not greater than 0.25,
- Manganese not greater than 0.50,
- Nickel 3.0-3.5,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.0-1.5,
- Molybdenum 0.6-0.9,
- Vanadium 0.08 to 0.12
- Boron 0.002-0.004,

- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm.

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);

(c) Having the following mechanical properties: A Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145ksi or more and UTS 160ksi or more, Elongation of 15% or more and Reduction of area 35% or more; having charpy V at -40 degrees F in the transverse direction equal or greater than 20 ft. lbs (single value) and equal or greater than 25 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578-S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.0000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7226.11.1000, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

V. Scope Comments

During the course of this investigation, the Department received numerous scope comments from interested parties. Prior to the *Preliminary Determination*, the Department modified the language of the scope to clarify the exclusion for stainless steel plate, correct two misidentified

HTSUS item numbers, and modify language pertaining to existing steel plate and hot-rolled flat-rolled steel orders.[16]

In October and November 2016, we received scope case and rebuttal briefs. On November 29, 2016, we issued a final scope memorandum in response to these comments in which we did not change the scope of this investigation.[17]

VI. Margin Calculations

We calculated export price (EP), constructed export price (CEP), and normal value (NV) using the same methodology as stated in the *Preliminary Determination*,[18] except as follows:[19]

- We revised Dillinger France's margin calculations to take into account our findings from the sales verification. *See* Comment 9.

- We revised our calculations to use Dillinger France's net, rather than gross, sales quantities reported on a theoretical weight basis. *See* Dillinger France Final Sales Calculation Memorandum.

- We revised our treatment of the downstream home market sales made by Dillinger's affiliate to exclude from our analysis the portion of each transaction made from Dillinger Germany- or third party-supplied CTL plate. *See* Comment 5.

[16] *See* Memorandum, "Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations," dated September 6, 2016, and Memorandum, "Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Additional Scope Comments Preliminary Decision Memorandum and Extension of Deadlines for Scope Case Briefs and Scope Rebuttal Briefs," dated October 13, 2016.

[17] *See* Final Scope Memorandum.

[18] *See Preliminary Determination*, and accompanying Preliminary Decision Memorandum, at 8 and 9.

[19] For Dillinger France, *see* Memorandum, "Final Determination Margin Calculations for Dillinger France S.A.," dated March 29, 2017 (Dillinger France Final Calculation Memorandum), and Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Dillinger France S.A.," dated March 29, 2017 (Dillinger France Cost Calculation Memorandum); *see also* Memorandum, "Verification of the Sales Response of Dillinger France S.A. in the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate From France," dated December 22, 2016 (Dillinger France Sales Verification Report); Memorandum, "Verification of Berg Steel Pipe Corp. in the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate From France," dated December 30, 2017 (BSPC Cost Verification Report); Memorandum, "Verification of Dillinger France S.A. in the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate From France," dated January 12, 2017 (Dillinger France Cost Verification Report); and Memorandum, "Verification of the Sales Response of Berg Steel Pipe Corp. in the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate From France," dated January 25, 2017 (BSPC Sales Verification Report).

- We used Berg Steel Pipe Corp (BSPC's) revised U.S. sales database incorporating verification corrections submitted in January 2017 in our margin calculations. *See* Dillinger France Final Sales Calculation Memorandum.

- We removed a canceled U.S. sale from and added the subsequent U.S. resale of this merchandise to our margin calculations. *See* Comment 6, below.

- We assigned Dillinger France's highest non-aberrational downstream net price to all downstream sales for which Dillinger France did not report the manufacturer of the CTL plate. *See* Comment 5.

- In applying the major input rule to Dillinger's France's steel slab purchases from its parent company AG der Dillinger Hüttenwerke (Dillinger Germany), we corrected a mathematical error in the slab cost calculation. In addition, we revised Dillinger Germany's G&A expense ratio included in the cost of production calculation to reflect corrections to the cost of G&A services received from an affiliated entity at arm's-length prices. As a result of these changes, we increased Dillinger France's total cost of manufacturing (TOTCOM). *See* Dillinger France Final Cost Calculation Memorandum.

- We revised Dillinger France's G&A expense ratio calculation to exclude amounts related to the provision for loss on completion. We also revised the cost of goods sold denominator of the G&A expense ratio to reflect the changes to the major input adjustment for steel slabs. *See* Comment 10, below.

- We revised Dillinger France's margin calculations to take into account our findings from BSPC's further manufacturing verification. *See* Comment 14, below.

- We adjusted the cost of goods sold denominator used to calculate BSPC's G&A expense ratio so that it is on the same basis as the costs to which it is applied. We also adjusted the denominator to reflect BSPC's full scrap offset. *See* Comments 15 and 17, below.

VII. Discussion of Issues

Comment 1: Differential Pricing Methodology for Dillinger France[20]

Dillinger France's and the European Commission's Arguments

- In the *Preliminary Determination*, the Department applied its differential pricing methodology in the margin calculations for both Dillinger France and Industeel. Dillinger France and the European Commission note that in *US – Washing Machines (Korea)*, the Appellate Body of the World Trade Organization (WTO) determined that the Department's differential pricing methodology is inconsistent "as such" with Article

[20] While Industeel also submitted comments on this issue, those arguments are moot because we have applied total AFA to it in the final determination. *See* Comments 2 and 3, *infra*.

2.4.2 of the WTO Antidumping Agreement.[21] Therefore, Dillinger France and the European Commission argue that the differential pricing methodology used in this investigation is not in accordance with the WTO Antidumping Agreement.

- Specifically, Dillinger France contends that:

    - The language of Article 2.4.2 of the Antidumping Agreement is nearly identical to that of section 777A(d)(l) of the Act. According to Dillinger France: 1) the WTO Agreements constitute treaty obligations of the United States.; and 2) the *Charming Betsy Doctrine* (*Charming Betsy*) states that U.S. statutes should never be interpreted to conflict with international obligations, absent language from Congress to the contrary.[22] Thus, Dillinger France contends that, because the language of the Act and the Antidumping Agreement are the same, the Department should find that its differential pricing methodology is not in accordance with the Act.

    - The WTO Appellate Body struck down the Department's use of zeroing in calculating weighted-average dumping margins.[23] According to Dillinger France, it is the application of zeroing in the differential pricing methodology which accounts for the different results in the average-to-average (A-A) and average-to-transaction (A-T) methods. Dillinger France contends that the Department's differential pricing methodology does not provide a real explanation of why price differences cannot be taken account by the A-A (or transaction-to-transaction (T-T)) method. Dillinger France states that, in the absence of zeroing, its dumping margin would have been *de minimis* under either the A-A or the A-T method.[24]

    - The WTO Appellate Body found that the Department's differential pricing methodology fails to compare a pool of sales suspected of having a pattern of prices that differs significantly to a distinct pool of sales not suspected of having such a pattern.[25] Dillinger France contends that, while the Department found that

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[21] *See* Dillinger France Case Brief, at 23, and the European Commission Case Brief, at 3 (citing *United States Antidumping and Countervailing Measures on Large Residential Washers from Korea*, Report of the Appellate Body, WT/DS464/AB/R (September 7, 2016) (*US--Washing Machines (Korea)*).

[22] *See* Dillinger France Case Brief, at 24 (citing *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 81, 2 L. Ed. 208 (1804) (stating that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains") (*Charming Betsy*); and *Federal Mogul Corp. v. United States*, 63 F.3d 1572, 1581 (Fed. Cir. 1995) (stating, "Absent express Congressional language to the contrary, statutes should not be interpreted to conflict with international obligations")).

[23] *See* Dillinger France Case Brief, at 24 (citing *US--Washing Machines (Korea)*), at paras. 5.152-5.155).

[24] Dillinger France claims that the Department's application of zeroing to it in this proceeding goes against the purpose of an investigation. *See* Dillinger France Case Brief, at 25 (citing *Union Steel v. United States*, 823 F. Supp. 2d 1346, 1358-1359 (CIT 2012) ("The parties who are marginally dumping or not dumping may be excluded from the order pursuant to the looser standards of the investigation, particularly after zeroing is eliminated.") (*Union Steel*); *aff'd Union Steel v. United States*, 713 F. 3d 1101 (2013) (*Union Steel CAFC*)).

[25] *See* Dillinger France Case Brief, at 25 (citing *US--Washing Machines (Korea)* at para. 5.1.3), and the European

89.13 percent of its sales passed the Cohen's *d* test in the *Preliminary Determination*, this result does not demonstrate a pattern. Instead, Dillinger France argues that it reflects the random price variations inherent in its made-to-order sales and individual negotiations with its customers.[26] Thus, Dillinger France argues that unless the Department revises its differential pricing methodology to isolate a distinct subset of its sales to compare to all other sales, it should use the A-A method to calculate its weighted-average dumping margin for the final determination.

- The WTO Appellate Body found that the Department's pattern must identify prices that are significantly lower than other export prices.[27] However, Dillinger France notes that in the *Preliminary Determination,* the Department included sales in its pattern analysis that are both higher and lower than NV. Nonetheless, Dillinger France argues that the U.S. antidumping law is concerned with dumped merchandise, not high-priced goods. Thus, Dillinger France contends that the Department should revise its pattern analysis to consist exclusively of sales that are lower than NV.

- Dillinger France argues that the ratio test is also WTO inconsistent because it combines sales by purchaser, region, and time period that pass the Cohen's *d* test.[28] Thus, Dillinger France claims that the Department cannot determine whether actual prices differences exist or arise from sales made to purchasers in different regions or at different time periods. As a result, Dillinger France contends that the Department should only apply the A-T methodology if it finds a pattern applicable to a particular purchaser, a particular region, or a particular time period.

- Dillinger France argues that, in the *Preliminary Determination,* the Department failed to provide an explanation of why differences in prices among purchasers, regions, or time cannot be taken into account by the A-A method because the only difference between the A-A and A-T methods is the use of zeroing. Further, Dillinger France notes that the

Commission Case Brief, at 3.

[26] Dillinger France notes that it produces products to multiple grades and specifications. However, according to Dillinger France, the Department's model match methodology collects these products, which are technically and commercially different, into broad quality baskets. Dillinger France notes that the Department's differential pricing methodology does not account for these differences within CONNUMs when making comparisons across purchasers, regions, or time periods.

[27] *See* Dillinger France Case Brief, at 29 (citing *US--Washing Machines (Korea)* at para. 5.29), and the European Commission Case Brief, at 2.

[28] *See* Dillinger France Case Brief, at 30 (citing *US--Washing Machines (Korea)* at para. 5.32), and the European Commission Case Brief, at 2.

Department did not provide an explanation: 1) regarding the T-T method[29]; or 2) of why applying the A-A method using shorter averaging periods, as permitted by 19 CFR 351.414(d)(3), would not take the differences into account.[30]

Petitioner's Arguments

- The petitioner disagrees with Dillinger France's arguments regarding the differential pricing analysis, asserting that the Department should continue to apply its normal methodology for the following reasons:

    - The WTO Appellate Body's decision in *US--Washing Machines (Korea)* has no effect on the Department's differential pricing methodology in this proceeding. According to the petitioner, WTO reports are not self-executing and only apply once they have been adopted by the statutory scheme provided by the Uruguay Round Agreement Act (URAA).[31]

    - The Department's differential pricing analysis addresses the statutory criteria required by the Act.

    - The Department has addressed and rejected Dillinger France's claim that it has no legal authority to apply zeroing in previous cases. Moreover, the petitioner notes that the courts have upheld the Department's authority to apply zeroing.[32] According to the petitioner, Dillinger France provided no new arguments on this issue in this investigation.

    - The Department has previously addressed and rejected all of the differential pricing arguments Dillinger France raises, including arguments regarding the

[29] *See* Dillinger France Case Brief, at 31 (citing *US--Washing Machines (Korea)* at para. 5.76 (stating that an investigating authority must explain why both the W-W and T-T comparison methodologies cannot appropriately take into account the differences in export prices that form the pattern).

[30] *See* Dillinger France Case Brief, at 31 (citing its Submission of New Factual Information on Differential Pricing (Oct. 5, 2016)) for additional documentation on the deficiencies in the differential pricing methodology.

[31] *See* Petitioner's Case Brief, at 28 (citing *Corus Staal BV v. U.S. Dep't of Commerce*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005) (*Corus Staal 2005*)*; accord Corus Staal BV* v. *United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007) (*Corus Staal 2007*); *NSK Ltd.* v. *United States*, 510 F.3d 1375, 1379-80 (Fed. Cir. 2007); and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Changed Circumstances Review and Reinstatement of Shanghai General Bearing Co., Ltd. in the Antidumping Duty Order*, 82 FR 4853 (January 17, 2017), and accompanying IDM at Comment 5).

[32] *See* Petitioner's Case Brief, at 27 (citing *Union Steel CAFC*, 713 F.3d at 1106; *Diamond Sawblades and Parts Thereof From the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32344 (June 8, 2015), and accompanying IDM at Comment 11; *Stainless Steel Plate in Coils From Belgium: Antidumping Duty Administrative Review, 2010-2011*, 77 FR 73013 (December 7, 2012), and accompanying IDM at Comment 2; and *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea; Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 16247 (March 14, 2013), and accompanying IDM at Comment 1).

inclusion of high priced sales as part of the pattern.[33] According to the petitioner, the Department should continue to reject such arguments here.

- In the *Preliminary Determination*, the Department explained that the price differences identified by the Cohen's *d* test were not accounted for using the A-A method because the weighted-average dumping margin moved across the *de minimis* threshold. The petitioner notes that, in *Apex*, the Court of International Trade (CIT) upheld a similar determination by the Department, finding lawful the Department's meaningful difference analysis using zeroed and non-zeroed comparison methods.[34]

Department's Position:

The Department disagrees with the European Commission's and Dillinger France's comments on its differential pricing analysis. As an initial matter, we note that there is nothing in section 777A(d) of the Act that mandates how the Department measures whether there is a pattern of prices that differs significantly or explains why the A-to-A method or the transaction-to-transaction (T-to-T) method cannot account for such differences. On the contrary, carrying out the purpose of the statute here is a gap filling exercise properly conducted by the Department.[35] As explained in the *Preliminary Determination*, as well as in various other proceedings,[36] the Department's differential pricing analysis is reasonable, including the use of the Cohen's *d* test as a component in this analysis, and not contrary to the law.

In carrying out the statutory objective, the Department determines whether "there is a pattern of

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[33] *See* Petitioner's Case Brief, at 21–24 (citing *Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 54264 (September 11, 2014), and accompanying IDM at Comment 1; *Certain Steel Nails From the People's Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014), and accompanying IDM at Comment 7; and *Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013), and accompanying IDM at Comment 4).

[34] *See* Petitioner's Case Brief, at 25 (citing *Apex Frozen Foods Private Ltd.* v. *United States*, 37 F. Supp. 3d 1286, 1299 (CIT 2014) (*Apex*) ("Because A-T would yield some duties but A-A would yield none, {the Department} reasonably decided that the difference between the rates was "meaningful," and that A-A could not account for dumping from targeted sales.) (citing *Beijing Tianhai Indus.* v. *United States*, 7 F. Supp. 3d 1318, 1331-32 (CIT 2014) (holding explanation invalid where the Department provided no basis to conclude that A-A could not account for targeting)).

[35] *See Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984) (recognizing deference where a statute is ambiguous and an agency's interpretation is reasonable); *see also Apex*, 37 F. Supp. 3d at 1302 (applying *Chevron* deference in the context of the Department's interpretation of section 777A(d)(1) of the Act).

[36] *See, e.g., Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*Line Pipe from Korea*) and the accompanying IDM at Comment 1; *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32937 (June 10, 2015), and the accompanying IDM at Comments 1 and 2; and *Welded ASTM A–312 Stainless Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013–2014*, 81 FR 46647 (July 18, 2016), and accompanying IDM at Comment 4.

export prices (or constructed export prices) for comparable merchandise that differs significantly among purchasers, regions, or periods of time, and . . . explains why such differences cannot be taken into account using {the A-to-A or T-to-T comparison method}."[37] The Department finds that the purpose of section 777A(d)(1)(B) of the Act is to evaluate whether the A-to-A method is the appropriate method to determine whether, and if so to what extent, a given respondent is dumping the merchandise at issue in the U.S. market.[38]

The Department disagrees with the entire basis of the arguments set forth by both the European Commission and Dillinger France regarding the effect that the WTO Appellate Body's findings in *US – Washing Machines (Korea)* has on the Department's methodology utilized in this investigation. As a general matter, U.S. Court of Appeals for the Federal Circuit (CAFC) has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act.[39] In fact, Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.[40] Indeed, the Statement of Administrative Actions (SAA) noted that "WTO dispute settlement panels will have no power to change U.S. law or order such a change. Only Congress and the Administration can decide whether to implement a WTO panel recommendation and, if so, how to implement it."[41] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute.[42] The United States not adopted changes to its methodology pursuant to the URAA's implementation procedure. And, as described in detail below, the Department has not revised its use of the differential pricing methodology for this final determination.

Dillinger France's reliance on *Charming Betsy* is misplaced. To follow Dillinger France's logic, interpretation of U.S. law would be left to the hands of the WTO simply because the text of U.S. law reflects the language of a WTO agreement. However, as discussed above, the URAA specifies a statutory process for implementing an adverse WTO report adopted by the Dispute Settlement Body.

For Dillinger France in this final determination, based on the results of the differential pricing analysis, the Department finds that 95.78 percent of the value of U.S. sales pass the Cohen's *d* test,[43] and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the A-to-A method cannot account for such differences because the weighted-average dumping margin between the A-to-A method and the appropriate alternative method (*i.e.*, the A-to-T method) crosses the *de minimis*

[37] *See* section 777A(d)(1)(B) of the Act.

[38] *See* 19 CFR 351.414(c)(1).

[39] *See Corus Staal 2005, cert. denied* 126 S. Ct. 1023 (2006); *accord Corus Staal 2007*.

[40] *See, e.g.*, 19 U.S.C. § 3533, 3538 (sections 123 and 129 of the URAA).

[41] *See* SAA at 659.

[42] *See, e.g.*, 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary).

[43] *See* Dillinger France Final Calculation Memorandum at Attachment II Margin Calculation SAS Program Output (SAS Output) page 129.

threshold. Thus, for this final determination, the Department finds that there is a meaningful difference between using the different comparison methods, and is applying the A-to-T method to all U.S. sales to calculate the weighted-average dumping margin for Dillinger France.

1. Zeroing

Dillinger France's argument that zeroing is not permitted according to WTO jurisprudence fails. As discussed above, the URAA provides a statutory process by which adverse WTO reports are implemented under U.S. law.

The Department agrees with Dillinger France's assertion that without zeroing, the calculated weighted-average dumping margins will, in every situation, be identical between application of the A-to-A method and application of the A-to-T method. This is also true when applying the "mixed" comparison method where the A-to-T method is applied to the U.S. sales which constitute the pattern of prices that differ significantly (pattern) and the A-to-A method is applied to the U.S. sales which are not part of the pattern. Therefore, if the T-to-T method is not appropriate[44] and the A-to-A method is the standard comparison method, then the application of an alternative comparison method pursuant to section 777A(d)(1)(B) of the Act will be rendered *inutile* without zeroing.

Dillinger France's reference to *Union Steel* is misplaced. This litigation involved the sixteenth administrative review of certain corrosion-resistant carbon steel flat products from Korea.[45] At issue in that litigation was whether the Department was permitted to view "dumping margin" and "weighted average dumping margin," pursuant to section 771(35) of the Act, in two different ways, which the CAFC affirmed. In the review underlying *Union Steel*, the Department calculated Union Steel's dumping margins and weighted-average dumping margin using the A-to-T method, with zeroing. However, in a less-than-fair-value investigation, the Department's normal practice was to calculate a respondent's dumping margins and weighted-average dumping margin using the A-to-A method without zeroing.[46] Dillinger France points to the court's discussion where it states that in an investigation the Department "focuses on the overall pricing behavior of an exporter"[47] to support its claim that the Department should not be zeroing in the instant investigation because "{s}pecificity is less important in investigations."[48] However, Dillinger France fails to recognize the Department's general practice at that time and now. The Department was permitted at that time, and continues to be permitted now, to resort to the A-to-T method in an investigation to address "targeted dumping" when the two requirements of section 777A(d)(1)(B) of the Act had been satisfied.[49] Further, the CAFC recognized that the

[44] *See* 19 CFR 351.414(c)(2); *see also* SAA at 843.

[45] *See generally Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review*, 76 FR 15291 (March 21, 2011).

[46] *See* section 777A(d)(1)(A) of the Act.

[47] See Dillinger France Case Brief, at 25 (citing to *Union Steel*, 823 F. Supp. 2d 1346 at 1358-59).

[48] *Id.*

[49] *See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 59223 (September 27, 2010).

Department may use zeroing when applying the A-to-T method where patterns of significant price differences are found.[50] Since the time of the administrative review underlying *Union Steel*, the Department has also revised its practice to normally apply the A-to-A method in administrative reviews.[51] Accordingly, Dillinger France's argument that the use of zeroing based on a selected quotation from *Union Steel* is baseless.

Finally, Dillinger France's assertion that its weighted-average dumping margin would be *de minimis* when either the A-to-A method or the A-to-T method is applied without zeroing is a tautology, and, therefore, meaningless. From Dillinger France's Final Calculation Memorandum,[52] the sums of the Positive Comparison Results and the Negative Comparison Results are each identical for the three potential comparison methods *(i.e.*, A-to-A method, A-to-T method, "mixed" method).[53] This simply demonstrates that the calculated results, without zeroing, are identical, and will render the alternative comparison method inutile. Therefore, to assert that the Department cannot use zeroing because then Dillinger France's weighted-average dumping margin would be *de minimis* is self-serving.

2. The Differential Pricing Analysis Identifies a Pattern of Prices that Differ Significantly

The Department agrees with Dillinger France's assertion that "{p}rice differences by themselves do not constitute a pattern or the 'masking of dumping.'"[54] First, as Dillinger France highlights, there can be various commercial and economic factors behind a company's pricing behavior which may change depending on the circumstances. Nonetheless, what section 777A(d)(1)(B)(i) of the Act requires (the pattern requirement), is that the Department identify a "pattern of {prices} for comparable merchandise that differ significantly." Accordingly, the Department does not seek to identify just *any* price differences but, rather, prices that differ significantly. As discussed below, this is precisely what the Cohen's *d* test does. Further, the pattern requirement necessitates only that there exist significant differences in prices. It is not incumbent upon the Department to determine why these prices differences are exhibited by the respondent's pricing behavior in the U.S. market.[55]

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[50] *See U.S. Steel Corp v. United States*, 621 F. 3d 1351, 1363 (Fed. Cir. 2010) (*U.S. Steel Corp.*)

[51] *See 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).

[52] *See* Dillinger France Final Calculation Memorandum at 5.

[53] *See* Attachment II of Dillinger France Final Calculation Memorandum (pages 290-292 of the SAS Output), where the calculation results of the A-to-A method, the A-to-T method and the "mixed" method are summarized. The sum of the "Positive Comparison Results" and the "Negative Comparison Results" for each of the three comparison methods are identical, *i.e.*, with offsets for all non-dumped sales (*i.e.*, negative comparison results), the amount of dumping is identical. As such, the difference between the calculated results of these comparison methods is whether negative comparison results are used as offsets or set to zero (*i.e.*, zeroing).

[54] *See* Dillinger France Case Brief, at 26.

[55] *See JBF RAK LLC v United States*, 991 F Supp. 2d 1343, 1355 (CIT 2014); *aff'd by JBF RAK LLC v. United States*, 790 F.3d 1358 (Fed. Cir. 2015); *see also Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. v. United States*, 608 F. App'x 948 (Fed. Cir. 2015).

Second, when it is considering whether there is a pattern of prices that differ significantly, the Department is considering U.S. sales and, therefore, not evaluating whether particular sales are dumped at this stage of its analysis. The pattern requirement examines prices within the U.S. market and does not require a comparison with normal value. The purpose of the pattern requirement is to determine whether conditions exist in the U.S. market where "targeted" or masked dumping might exist.

The Department disagrees with Dillinger France's assertion that the results of its Cohen's *d* test in the preliminary determination, in which 89.13 percent of Dillinger France's U.S. sales exhibit significant price differences, is only a reflection of "random price variations based upon Dillinger's made-to-order business and its individual negotiations with each separate customer."[56] First, the Department finds unreasonable Dillinger France's claim that these price differences represent random price variations. Companies are responsive to economic, legal, business, and other forces, and as such differences in prices reflect each company's priorities and goals through its pricing behavior. Thus, Dillinger France's excuse that its price differences are merely random are meritless.

Third, Dillinger France's claim that its specific business practices render the Cohen's *d* and ratio tests invalid is equally meritless. It is not abnormal for a company to not inventory stock and to produce to specific customer purchase orders. Likewise, the Department does not find that sale negotiations which are conducted with individual customers to be abnormal. Certainly, a company may offer more or less favorable terms to any given customer for any number of reasons, all of which could be reflective of the business, legal, economic, and other forces noted above which are the foundation for establishing a company's pricing behavior.

Fourth, Dillinger France's inference that the magnitude of its U.S. sales passing the Cohen's d test (in this case 89.13 percent) may be indicative of the unreasonableness of the Cohen's *d* test is also baseless. Mere reliance on Dillinger's numerical result from the test does not demonstrate how or that the Cohen's d test is unreasonable and, therefore, the Department does not find Dillinger's argument in this respect persuasive. For example, a company sells a single product to two customers, A and B. The prices to customer A differ significantly from the prices to customer B, and logically then the prices to customer B differ significantly from the prices to customer A. Thus, in this example, all of the company's sales are at prices that differ significantly. The Department finds this result to be reasonable. Likewise, if the prices to customer A do not differ significantly with the prices to customer B, then the prices to customer B will not be significantly different that the prices to customer A, and no sales will be found to differ significantly. While either of these situations may be at the outer range of potential results (i.e., 100 percent or 0 percent), neither are unreasonable simply because of the numerical result. Similarly, the fact that 64.06 percent of Dillinger's U.S. sale prices differ significantly is abnormal simply because of the numerical result.

Similar to its argument above, Dillinger France further asserts that its made-to-order products are inferably so unique and embrace such a wide range of grades within a given product control number (CONNUM) that any comparison of U.S. prices on a CONNUM basis must take into

[56] *See* Dillinger France Case Brief, at 26.

account these inter-CONNUM variations. The Department disagrees. The CONNUM and its constituent physical characteristics are all subject to notification and comment during this investigation.[57] Dillinger France provided comments,[58] and Dillinger France's arguments have been fully considered. The established CONNUMs are the foundation for reporting not only comparison and U.S. market sales, but also Dillinger France's costs of production, and are the basis for comparison of U.S. prices with normal value. Since the purpose of the differential pricing analysis is to consider whether the A-to-A method is appropriate to calculate Dillinger France's weighted-average dumping margin, and the comparisons on which this calculation is based is defined by CONNUMs, the Department therefore finds that it is appropriate, and reasonable, to use these same CONNUMs as the basis for the comparisons of U.S. prices in the differential pricing analysis.

Dillinger France also basis arguments as to the inappropriateness of the Department analysis to satisfy the pattern requirement on WTO jurisprudence. As discussed above, such arguments are inapposite.

3. Both Higher- and Lower-Priced U.S. Sales May Contribute to a Pattern

The Department disagrees with Dillinger France's assertion that higher-priced U.S. sales cannot contribute to a pattern of prices that differ significantly. Dillinger France does not understand the term "targeted dumping" and how price differences may result in "targeted" or masked dumping. The SAA states that "targeted dumping" is where "an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions."[59] For "targeted" or masked dumping to exist, there must be both lower-priced U.S. sales which evidence dumping as well as higher-priced, non-dumped U.S. sales which "conceal,"[60] mask, hide this evidence of dumping. Therefore, since the purpose of section 777A(d)(1)(B) is to provide a remedy for "targeted dumping," pursuant to which the Department must satisfy the pattern requirement to demonstrate that the respondent's pricing behavior in the U.S. market exhibits characteristics "where targeted dumping may be occurring,"[61] the Department continues to find reasonable and logical its approach of including both lower-priced and higher-priced U.S. sales as part of a potential pattern of prices that differ significantly. Whether "targeted" or masked dumping is occurring is considered under the second statutory requirement, section 777A(d)(1)(B)(ii) of the Act, which is addressed below.

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[57] *See Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria, Belgium, Brazil, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the People's Republic of China, South Africa, Taiwan, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations*, 81 FR 27089, 27090 (May 5, 2016); and Department Letter re: Request for Comments on Product Characteristics, dated May 19, 2016.

[58] *See* Dillinger France Letter re: Comments on Proposed List of Product Characteristics, dated June 2, 2016; and Dillinger France Letter re: Product Matching Criteria Rebuttal Comments, dated June 8, 2016.

[59] *See* SAA at 842.

[60] *Id.*

[61] *Id.*, at 843.

4. Price Differences Are Correctly Examined by Purchaser, Region, or Time Period

The Department disagrees with Dillinger France that it has improperly compared U.S. prices among purchasers, regions, and time periods. The Cohen's *d* test compares the U.S. sale prices sequentially to each purchaser, region, and time period, with all other U.S. sale prices (*i.e.*, the U.S. sales to all other purchasers, regions, or time periods, respectively) of comparable merchandise. What appears to be the concern of Dillinger France, for example with purchasers, is that the U.S. sales to each purchaser may not be evenly distributed across the other two types of groups, regions, and time periods. Thus, Dillinger France posits that the "Department therefore cannot determine whether a price difference is actually due to real differences between purchasers or simply due to the fact that the sales are to purchasers in different regions or during different time periods."[62]

The Department finds that this is neither a flaw in the Cohen's *d* test and nor a distortion of the results, nor that there are flaws related to the other two groups (*i.e.*, U.S. sales to a particular region that are equally distributed across all purchasers and time periods or U.S. sales in a particular time period that are equally distributed across all purchasers and regions). The one possible distortion that could arise, for example that each purchaser is located in a specific region, is that similar results would occur when comparing prices by purchaser and by region. However, the ratio test does not double-count the sales value when a given U.S. sale price is found to be significantly different by purchaser and region. There is no assumption about correlated distribution of sales between purchasers, regions, or time periods, and indeed a given U.S. sale price may be found to be significantly different by all three categories. Yet the ratio test ensures that any such correlation between purchasers, regions and/or time periods does not distort the results of the test and result in a finding that a larger proportion of the U.S. sale value is at prices which differ significantly.

5. The Differential Pricing Analysis Explains Why the A-to-A Method Cannot Account for Such Differences

As an initial matter, the use of shorter averaging periods pursuant to 19 CFR 351.414(d)(3) has not been raised in this investigation by Dillinger France until this case brief. There is no record evidence or prior argument for this change in the Department's dumping analysis, and as such, at this stage of this investigation, there is neither evidence to support such a claim, nor the time to permit the Department to analysis such a claim, nor for interested parties to comment on such a change in the Department's standard practice.[63]

As a second matter, the Department is not required to also examine whether the T-to-T method, in addition to the A-to-A method can account for the significant price differences. The Department's regulations state that

[62] *See* Dillinger France Case Brief, at 30.

[63] *See* 19 CFR 351.414(d)(3) ("When applying the average-to-average method in an investigation, the Secretary normally will calculate weighted-averages for the entire period of investigation.").

> In an investigation or review, the Secretary will use the average-to-average method unless the Secretary determines another method is appropriate in a particular case.[64]

Both the regulations[65] and the SAA[66] describe situation where application of the T-to-T method would be appropriate. No interested party has argued in this investigation or provided evidence on the record which would support the use of the T-to-T method to calculate the weighted-average dumping margin for Dillinger France. Thus, the appropriate, standard comparison method[67] for this final determination for Dillinger France is the A-to-A method. Accordingly, the appropriate standard comparison method which must be considered in section 777A(d)(1)(B)(ii) of the Act – the A-to-A method "or"[68] the T-to-T method – is the A-to-A method. Lastly, Dillinger France's reliance again on WTO precedence, as discussed above, is inapposite.

The Department disagrees, in part, with Dillinger France that the difference in the weighted-average dumping margins, calculated using the A-to-A method and the appropriate alternative comparison method based on the A-to-T method, "are not the result of the difference between the A-to-A and the A-to-T methodology."[69] The Department does agree with Dillinger France that this difference is due to zeroing, because, as stated above, weighted-average dumping margins calculated using the A-to-A method without zeroing and the A-to-T method without zeroing will yield the identical results. This is evidenced above with the calculation results for Dillinger France in this final determination.[70]

The difference in the calculated results specifically reveals the extent of the masked, or "targeted," dumping which is being concealed when applying the A-to-A method.[71] The difference in these two results is caused by higher U.S. prices offsetting lower U.S. prices where the dumping, which may be found on lower priced U.S. sales, is hidden or masked by higher U.S. prices,[72] such that the A-to-A method would be unable to account for such differences.[73]

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[64] *See* 19 CFR 351.414(c)(1).

[65] *See* 19 CFR 351.414(c)(2).

[66] *See* SAA at 842-843.

[67] *See* section 777A(d)(1)(A) of the Act.

[68] *See* section 777A(d)(1)(B)(ii) of the Act.

[69] *See* Dillinger France Case Brief, at 31.

[70] *See* above at footnote 53.

[71] *See Koyo Seiko Co., Ltd. v. United States*, 20 F.3d 1156, 1159 (Fed. Cir. 1994) ("The purpose of the antidumping statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at less-than-fair value with higher priced sales. {The Department} refers to this practice as 'masked dumping.' By using individual U.S. prices in calculating dumping margins, {the Department} is able to identify a merchant who dumps the product intermittently—sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result." (internal citations omitted)).

[72] *See* SAA at 842.

[73] *See Union Steel CAFC*, 713 F.3d at 1108 ("{the A-to-A} comparison methodology masks individual transaction

Such masking or offsetting of lower prices with higher prices may occur implicitly within the averaging groups or explicitly when aggregating the A-to-A comparison results. Therefore, in order to understand the impact of the unmasked "dumping," the Department finds that the comparison of each of the calculated weighted-average dumping margins using the standard and alternative comparison methodologies exactly quantifies the extent of the unmasked "targeted dumping."

The simple comparison of the two calculated results belies the complexities in calculating and aggregating individual dumping margins (*i.e.*, individual results from comparing export prices, or constructed export prices, with normal values). It is the interaction of these many comparisons of export prices or constructed export prices with normal values, and the aggregation of these comparison results, which determine whether there is a meaningful difference in these two calculated weighted-average dumping margins. When using the A-to-A method, lower-priced U.S. sales (*i.e.*, sales which may be dumped) are offset by higher-priced U.S. sales. Congress was concerned about offsetting and that concern is reflected in the SAA which states that "targeted dumping" is a situation where "an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions."[74] The comparison of a weighted-average dumping margin based on comparisons of weighted-average U.S. prices that also reflects offsets for non-dumped sales, with a weighted-average dumping margin based on comparisons of individual U.S. prices without such offsets (*i.e.*, with zeroing) precisely examines the impact on the amount of dumping which is hidden or masked by the A-to-A method. Both the weighted-average U.S. price and the individual U.S. prices are compared to a normal value that is independent from the type of U.S. price (*i.e.*, individual or weighted-average) used for comparison, and the basis for normal value will be constant because the characteristics of the individual U.S. sales[75] remain constant whether weighted-average U.S. prices or individual U.S. prices are used in the analysis.

Consider the simple situation where there is a single, weighted-average U.S. price, and this average is made up of a number of individual U.S. sales which exhibit different prices, and the two comparison methods under consideration are the A-to-A method with offsets (*i.e.*, without zeroing) and the A-to-T method with zeroing.[76] The normal value used to calculate a weighted-average dumping margin for these sales will fall into one of five scenarios with respect to the range of these different, individual U.S. sale prices:

1) the normal value is less than all U.S. prices and there is no dumping;

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prices below normal value with other above normal value prices within the same averaging group.").

[74] *See* SAA at 842.

[75] These characteristics include may include such items as product, level-of-trade, time period, and whether the product is considered as prime- or second-quality merchandise.

[76] The calculated results using the A-to-A method with offsets (*i.e.*, no zeroing) and the calculated results using the A-to-T method with offsets (*i.e.*, no zeroing) will be identical. Accordingly, this discussion is effectively between the A-to-T method with offsets and the A-to-T method with zeroing. *See* footnote 53 above which identifies the specific calculation results for Dillinger France in this final determination.

2) the normal value is greater than all U.S. prices and all sales are dumped;

3) the normal value is nominally greater than the lowest U.S. prices such that there is a minimal amount of dumping and a significant amount of offsets from non-dumped sales;[77]

4) the normal value is nominally less than the highest U.S. prices such that there is a significant amount of dumping and a minimal amount of offsets generated from non-dumped sales;

5) the normal value is in the middle of the range of individual U.S. prices such that there is both a significant amount dumping and a significant amount of offsets generated from non-dumped sales.

Under scenarios (1) and (2), either there is no dumping or all U.S. sales are dumped such that there is no difference between the weighted-average dumping margins calculated using offsets or zeroing and there is no meaningful difference in the calculated results and the A-to-A method will be used. Under scenario (3), there is a minimal (*i.e.*, *de minimis*) amount of dumping, such that the application of offsets will result in a zero or *de minimis* amount of dumping (*i.e.*, the A-to-A method with offsets and the A-to-T method with zeroing both result in a weighted-average dumping margin which is either zero or *de minimis*) and which also does not constitute a meaningful difference and the A-to-A method will be used. Under scenario (4), there is a significant (*i.e.*, non-*de minimis*) amount of dumping with only a minimal amount of non-dumped sales, such that the application of the offsets for non-dumped sales does not change the calculated results by more than 25 percent or cause the weighted-average dumping margin to be *de minimis*, and again there is not a meaningful difference in the weighted-average dumping margins calculated using offsets or zeroing and the A-to-A method will be used. Lastly, under scenario (5), there is a significant, non-*de minimis* amount of dumping and a significant amount of offsets generated from non-dumped sales such that there is a meaningful difference in the weighted-average dumping margins calculated using offsets or zeroing. Only under the fifth scenario can the Department consider the use of an alternative comparison method.

Only under scenarios (3), (4) and (5) are the granting or denial of offsets relevant to whether dumping is being masked, as there are both dumped and non-dumped sales. Under scenario (3), there is only a *de minimis* amount of dumping such that the extent of available offsets will only make this *de minimis* amount of dumping even smaller and have no impact on the outcome. Under scenario (4), there exists an above-*de minimis* amount of dumping, and the offsets are not sufficient to meaningfully change the results. Only with scenario (5) is there an above-*de minimis* amount of dumping with a sufficient amount of offsets such that the weighted-average dumping margin will be meaningfully different under the A-to-T method with zeroing as compared to the A-to-A / A-to-T method with offsets. This difference in the calculated results is meaningful in that a non-*de minimis* amount of dumping is now masked or hidden to the extent where the dumping is found to be zero or *de minimis* or to have decreased by 25 percent of the

[77] As discussed further below, note that scenarios 3, 4, and 5 imply that there is a wide enough spread between the lowest and highest U.S. prices so that the differences between the U.S. prices and NV can result in a significant amount of dumping and/or offsets, both of which are measured relative to the U.S. prices.

amount of the dumping with the applied offsets.

This example demonstrates that there must be a significant and meaningful difference in U.S. prices in order to resort to an alternative comparison method. These differences in U.S. prices must be large enough, relative to the absolute price level in the U.S. market, where not only is there a non-*de minimis* amount of dumping, but there also is a meaningful amount of offsets to impact the identified amount of dumping under the A-to-A method with offsets. Furthermore, the normal value must fall within an even narrower range of values (*i.e.*, narrower than the price differences exhibited in the U.S. market) such that these limited circumstances are present (*i.e.*, scenario (5) above). This required fact pattern, as represented in this simple situation, must then be repeated across multiple averaging groups in the calculation of a weighted-average dumping margin in order to result in an overall weighted-average dumping margin which changes to a meaningful extent.

Further, for each A-to-A comparison result which does not result in the set of circumstances in scenario (5), the "meaningfulness" of the difference in the weighted-average dumping margins between the two comparison methods will be diminished. This is because for these A-to-A comparisons which do not exhibit a meaningful difference with the A-to-T comparisons, there will be little or no change in the amount of dumping (*i.e.*, the numerator of the weighted-average dumping margin) but the U.S. sales value of these transactions will nonetheless be included in the total U.S. sales value (*i.e.*, the denominator of the weighted-average dumping margin). The aggregation of these intermediate A-to-A comparison results where there is no "meaningful" difference will thus dilute the significance of other A-to-A comparison results where there is a "meaningful" difference, which the A-to-T method avoids.

Therefore, the Department finds that the meaningful difference test reasonably fills the gap in the statute to consider why, or why not, the A-to-A method (or T-to-T method) cannot account for the significant price differences in Dillinger France's pricing behavior in the U.S. market. Congress's intent of addressing "targeted dumping," when the requirements of section 777A(d)(1)(B) of the Act are satisfied,[78] would be thwarted if the A-to-T method without zeroing were applied since this will always produce the identical results when the standard A-to-A method without zeroing is applied. Under that scenario, both methods would inherently mask dumping. It is for this reason that the Department finds that the A-to-A method cannot take into account the significantly different U.S. prices for Dillinger France, *i.e.*, the Department identified conditions where "targeted" or masked dumping "may be occurring" in satisfying the pattern requirement, and the Department demonstrated that the A-to-A method could not account for the significant price differences, which are exemplified by those differences found when satisfying the pattern requirement. Thus, the Department continues to find that application of the A-to-T method, with zeroing, is an appropriate tool to address masked or "targeted dumping,"[79] and has applied an alternative comparison method based on the A-to-T method to calculate the weighted-average dumping margin for Dillinger France in this final determination.

[78] *See* SAA at 842-843.

[79] *See Apex*, 37 F. Supp. 3d at 1296.

Comment 2: Application of Adverse Facts Available for Industeel

Petitioner's Arguments

- The petitioner argues that the Department should apply total AFA to Industeel or, in the alternative, partial AFA based on the significant errors that were discovered during the sales and cost verifications.

- According to the petitioner, willful intent is not a necessary condition for the Department to find that a party has not acted to the best of its ability.[80]

- The petitioner asserts that Industeel's various errors in reporting its CONNUMs and other fields of data in its sales and cost databases preclude the Department from making adjustments or having confidence in the accuracy of the non-examined parts of Industeel's sales and cost databases for the final determination.

- Regarding Industeel's CONNUM reporting, the petitioner notes that the Department discovered during the sales verification that Industeel made significant errors in both the home market and U.S. sales databases in reporting the product characteristics for chromium and nickel content, which are listed third and fourth in the product characteristic hierarchy. Additionally, the petitioner points out that the record does not contain information to permit the Department to correct Industeel's reporting of these product characteristics for the final determination.[81]

- The petitioner notes that this product characteristic error also affects Industeel's cost CONNUMs. In addition, the petitioner states that the Department found two additional errors late in the cost verification:

    - Industeel omitted certain production orders from its weight averaging of costs by CONNUM, which resulted in certain CONNUMs not containing Industeel's total POI production activity;[82] and

    - Industeel may have excluded production orders for abrasion products from its weight averaging of costs by CONNUM.[83]

- The petitioner maintains that Industeel's CONNUM reporting error, which affected significant portions of the home market and U.S. sales databases, will cause sales not to be properly matched and result in the Department calculating inaccurate dumping margins.

[80] *See* Petitioner's Case Brief, at 6 (citing *Nippon Steel*, 337 F.3d at 1383).

[81] *Id.*, at 18.

[82] *Id.*

[83] *Id.*, at 20-21.

- Further, the petitioner asserts that the Department found an unacceptably high error rate when examining Industeel's selected home market and U.S. sales. According to the petitioner, these do not appear to be systematic errors that the Department can correct in its margin calculations for the final determination. Further, the petitioner contends that this high error rate undermines Industeel's claim, below, that it acted to the best of its ability in this proceeding.

- The petitioner argues that, if the Department does not apply total AFA to Industeel for the reasons set forth above, it should apply partial AFA to the following areas of Industeel's databases by:

    - Assigning the highest reported U.S. brokerage and handling expense to all U.S. sales;

    - Assigning the highest cost from the universe of products with the same quality product characteristic where Industeel reported the chromium and nickel product characteristics as "1" (*i.e.*, indicating a minimum chromium or nickel content of less than 0.30 percent (or that no minimum chromium or nickel content was specified in the grade)) instead of "2" (*i.e.*, indicating a minimum chromium content of 0.30 percent, but less than 1.75 percent or a minimum nickel content of 0.30 percent, but less than 2.00 percent);

    - Assigning the highest cost to CONNUMs with missing production orders from the universe of products with the same quality product characteristic; and

    - Using the highest TOTCOM on the record to value abrasion products that may have been excluded from the weight averaging of costs by CONNUM.

- The petitioner argues that, contrary to Industeel's claim, below, its reporting errors are not "limited and discernable," and, therefore, the Department should find that Industeel did not act to the best of its ability in responding to the Department's requests for information.

- The petitioner maintains that Industeel's claim, below, that it is a first-time respondent is without merit because Industeel is: 1) affiliated with companies that have participated in prior antidumping duty investigations; and 2) represented by counsel experienced in such cases.

- The petitioner argues that Industeel's claim, below, that the products excluded from its CONNUM cost reporting had a negative impact on its margin is undermined by the fact that the average cost of the excluded products was higher than the cost of the products used in its CONNUM cost reporting.

- The petitioner argues that, even if the Department finds that Industeel acted to the best of its ability, there is no means to apply neutral facts available because there are no data on

the record to fix Industeel's CONNUM reporting errors and the Department has no way of knowing which sales transactions were affected by errors.

Industeel's Arguments

- Industeel argues that the Department should not apply AFA to correct the errors that it discovered at verification. However, Industeel contends that if the Department concludes that some form of facts available is warranted, it should not be adverse because Industeel acted to the best of its ability during the course of the investigation.[84]

- Industeel contends that, despite the errors discovered at verification, it acted to the best of its ability given that:

    - It was a first-time respondent that provided timely responses to the Department's initial and supplemental questionnaires;

    - It fully participated in the sales and cost verification and, with limited exceptions, reconciled the information reported in its cost and sales databases to its books and records; and

    - The errors discovered by the Department resulted from coding and inadvertent data processing errors in systems that were developed solely for this AD investigation.

- Moreover, Industeel claims that the CIT has made it clear that the "best of its ability" standard does not require perfection and that the Department should not apply AFA when a respondent's mistakes constitute inadvertent omissions.[85]

- Industeel argues that the quantity of CTL plate excluded from its per-CONNUM weighted-average cost of production was small in comparison to its total production quantity of CTL plate during the POI. Moreover, Industeel claims that, while it did not identify the omitted production orders as CTL plate, it nevertheless assigned these production orders a cost. As a result, Industeel claims that it correctly allocated its overall pool of costs to its sales orders.

- According to Industeel, the average cost of the production orders it submitted and excluded for the majority of its unreported production is virtually the same. Industeel argues that it likely disadvantaged itself by not including these production orders in its cost of production because the merchandise was produced when the cost of alloys and

[84] *See* Industeel Case Brief, "Antidumping Duty Investigation of Carbon and Alloy Steel Cut-to-Length Plate from France: Case Brief of Industeel France S.A.," dated February 6, 2017 (Industeel Case Brief), at 3 (citing *KYD, Inc. v. United States*, 704 F. Supp. 2d 1323, 1332 n.12 (CIT 2010)).

[85] *Id.* (citing *Husteel Co. v. United States*, 98 F. Supp. 3d 1315, 1356 (CIT 2015) (*Husteel*); and *Mannesmannrohren Werke AG & Mannesmann Pipe & Steel Corp. v United States*, 77 F. Supp. 2d 1302, 1316-17 (CIT 1999)).

scrap were declining, which would have lowered Industeel's per CONNUM weighted-average cost of production.[86]

- Industeel argues that the Department should use the data provided at verification to correct the CONNUMs with misreported product characteristics for chromium and nickel content. According to Industeel, for those CONNUMs where the information is not on the record to correct this error, the Department should apply facts available to make its corrections.[87]

- Industeel argues that the CIT has held that when information is on the record, timely filed, and not deficient, the Department is precluded by law from applying AFA.[88]

- Industeel claims that the petitioner exaggerates the extent of the errors the Department found at its verifications. Specifically, Industeel argues that:

    - Because the Department declined to accept information during the sales verification to correct the errors with its CONNUM reporting, Industeel was unable to offer further information during the cost verification to fix this error, other than bringing the issue to the attention of the cost verifiers. Nonetheless, Industeel contends that the Department can largely correct the CONNUMs reported in its cost database using the same information presented at the sales verification.

    - The petitioner raises concerns about cost shifting because it misunderstands Industeel's cost methodology. Industeel notes that it calculated a cost of production for all sales orders (*i.e.*, subject and non-subject merchandise) during the POI and, thus, it would be unable to shifts costs as suggested by the petitioner. Industeel points to the Department's cost verification report, which does not indicate that Industeel's cost calculation methodology differed between subject and non-subject merchandise.[89]

    - Industeel provided a list of the CONNUMs affected by the excluded production order error. Therefore, Industeel argues that if the Department finds it necessary to adjust Industeel's production costs, it should limit this adjustment to these CONNUMs (only seven of which were for products sold in the United States, and three of these seven were products also sold in the home market).

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[86] *Id.*, at 5-6.

[87] *See* Industeel Case Brief, at 7.

[88] *Id.*, at 2-3 (citing *Gerber Food (Yunnan) Co. v. United States*, 387 F. Supp. 2d 1270, 1287-88 (CIT 2005) (*Gerber*); *China Kingdom Imp. & Exp. Co. v. United States*, 507 F. Supp. 2d 1337, 1360-61 (Fed. Cir. 2007)).

[89] *See* Industeel Rebuttal Brief, at 10 (citing Memorandum, "Verification of the Cost Response of Industeel France S.A. in the Antidumping Duty Investigation of Carbon and Alloy Steel Cut-To-Length Plate from France," dated January 17, 2017 (Industeel Cost Verification Report), at 3).

- The errors identified by the Department in the sales traces do not undermine the accuracy of its home market and U.S. databases because they are not "systematic errors" that call into question the integrity of the entire database. Rather, Industeel notes that these errors are merely data input errors that affected only a small portion of the reported information.[90] Industeel notes that, while the petitioner suggests that data input errors are present in the raw data from the accounting system, the Department at verification identified no errors or discrepancies with the data in Industeel's SAP system.

- The Department did not find errors in the most significant aspects of Industeel's sales responses (*e.g.*, the sales reconciliation and completeness tests). Further, Industeel argues that these errors were on balance more harmful than helpful to it. Thus, Industeel argues that the miscellaneous errors identified by the Department at verification should be corrected using the information on the record.

- When applying AFA, Industeel argues that the Department must limit its selection of adverse inferences to the deficiency in the information and use the information on the record that that was not affected by the error(s).[91]

- Industeel argues that the CIT has held that when a respondent has not withheld information that is necessary for margin calculation purposes, the Department should not use total AFA to calculate the margin.[92]

- Industeel notes that in *Husteel Co. v. United States*, the Department refused to apply total AFA to a party who responded to every request of the Department during the course of the proceeding, but was found to be have submitted incomplete information at verification.[93] Therefore, the Department should refuse to apply to total AFA to Industeel because Industeel responded to every request by the Department in a timely manner, fully cooperated during verification, and, as a result, acted to the best of its ability.

[90] *See* Industeel Case Brief, at 12-13 (citing Memorandum, "Verification of the Sales Response of Industeel France S.A. (Industeel France) in the Antidumping Duty Investigation of Certain Carbon and Alloy Steel Cut-To-Length Plate from France," dated January 19, 2017 (Industeel Sales Verification Report), at 12).

[91] *See* Industeel Rebuttal Brief, "Antidumping Duty Investigation of Carbon and Alloy Steel Cut-to-Length Plate from France: Rebuttal Brief of Industeel France S.A.," dated February 13, 2017 (Industeel Rebuttal Brief), at 3 (citing *Zhejiang Dunan Hetain Metal Co. v. United States*, 652 F.3d 1333, 1348 (Fed Cir. 2011) (stating that "{t}otal AFA is appropriate 'where *none* of the reported data is reliable or useable because, for example, all of the submitted data exhibited pervasive and persistent deficiencies that cut across all aspects of the data")).

[92] *See* Industeel Rebuttal Brief, at 4 (citing *Steel Authority of India v. United States*, 149 F. Supp. 2d 921, 928 (CIT 2001) (*Steel Authority of India*)).

[93] *Id.*, at 5 (citing *Husteel*, 98 F. Supp. 3d at 1356).

- Industeel maintains that the petitioner's argument for applying total AFA to calculate its margin is primarily based on *Nippon Steel*, which is inapplicable to this case because the respondent in that case intentionally withheld information in its possession from the Department on numerous occasions.[94]

- Finally, Industeel argues that the petitioner's reliance on *Nippon Steel* for the proposition that parties are presumed to the know the facts of their own files and to look beyond those files if necessary is irrelevant because there has been no indication that Industeel did not know the information in its files or go beyond the information readily available to it. Industeel contends that its errors occurred in taking information from its files and placing it in the form required by the Department, which is not how Industeel maintains the information in the normal course of business.

Department's Position:
We determine that the application of total facts available with an adverse inference is warranted for Industeel in the final determination. In the *Preliminary Determination*, we based Industeel's margin on the record evidence; we did not apply facts available. However, as detailed below, after the preliminary determination the Department discovered that, among other things, Industeel: (1) misreported the product characteristics for chromium and nickel content for a significant percentage of its home market and U.S. sales, as well as in the costs for these products; (2) made numerous errors in the data reported in numerous expense fields for the home market and U.S. sales examined at verification; and (3) failed to include certain production orders, including certain orders for abrasion products, when weight averaging its costs by CONNUM. As a consequence, we find that necessary information is not on the record and Industeel provided information that could not be verified.[95] The pervasive misreporting of the product characteristics for chromium and nickel content prevent Industeel's home market and U.S. sales databases, and its cost database, from serving as a reliable basis to calculate an accurate dumping margin in the final determination.[96]

During the sales verification, we found that Industeel misreported the product characteristics for chromium and nickel content for a significant portion of Industeel's home market and U.S. sales.[97] Chromium and nickel content are listed third and fourth on the product characteristics hierarchy, and as such constitute important physical qualities of CTL plate in our model matching criteria. We also found numerous errors in more than half of the home market and U.S. sales selected for examination at verification affecting the following data fields: brokerage and handling expenses, international freight expenses, inland freight expenses, payment dates, and early payment discounts.[98] While the errors in the preselected home market and U.S. sales examined at verification do not appear to be systematic errors, they cut across many areas of Industeel's home market and U.S. sales databases, including the reporting of significant product

[94] *See* Industeel Rebuttal Brief, at 6 (citing *Nippon Steel*, 337 F.3d at 1383).

[95] *See* sections 776(a)(1) and (a)(2)(D) of the Act.

[96] *See* section 782(e)(3) of the Act.

[97] *See* Industeel Sales Verification Report, at 1.

[98] *Id.*, at 3 and 11-14.

characteristics for CTL plate that are used in the Department's margin calculation. When the high error rate of the sample of preselected sales examined at verification is coupled with the cost issues, described below, we find that the sales and cost databases are unreliable in calculating a dumping margin for Industeel. While Industeel argues that the Department is required to limit its application of adverse inferences and use the data on the record that are not affected by these errors, we find that the pervasiveness and significance of the errors in Industeel's sales and cost databases render the application of partial AFA unfeasible in this case to calculate an accurate dumping margin for Industeel, as described below.[99] Accordingly, in this case, the Department has determined that the record is missing accurate and necessary information to calculate a dumping margin for Industeel, warranting the application of facts available under section 776(a) of the Act.

In addition, during the cost verification, we found that Industeel omitted certain production orders from the weight-averaging of costs reported for certain CONNUMs in its cost database.[100] As a result, Industeel's reported costs for the affected CONNUMs do not include this production. Industeel did not report this issue to the Department until the last day of verification. As a result, we were unable to perform a detailed analysis of this omission to verify its impact.[101] In addition, the Department identified a second issue of misclassified subject abrasion products from the reported costs.[102] In its case brief Industeel purports that these misclassified abrasion products and the omitted production orders reported to the Department on the last day of verification were substantially one and the same. However, we could not confirm this assertion by evidence on the record. While, as Industeel argues, the overall quantity of omitted production orders may not be large, and supposedly affect only the COMMUMs identified by Industeel, we note that considering also the issue of misclassified abrasion products, we could not confirm which CONNUMs were affected by the misclassified production orders or the effect of such misclassification. Thus, contrary to Industeel's contention, we were unable to confirm whether Industeel correctly allocated its overall pool of costs to its subject and non-subject sales orders. Moreover, we disagree with Industeel's claim that the average costs of the reported and excluded products are virtually the same.[103] While Industeel argues that the inclusion of the unreported production would have lowered its costs because such products were produced at the end of the POI, during a period of declining raw material prices, the record contains no information regarding when such products may have been produced. Accordingly, the Department has no way of determining the impact that the omitted production orders had on Industeel's reported CONNUM-specific costs. Industeel failed to timely report all of its production activity during the POI; thus, the Department was unable to verify the information that Industeel reported, consistent with sections 776(a)(1) and (a)(2)(D) of the Act.

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[99] *See Steel Authority of India, Ltd. v. United States*, 149. F. Supp.2d 921 (CIT 2001); *see also Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 47355, (July 21, 2016), and IDM at Comment 1.

[100] *See* Industeel Cost Verification Report, at 2.

[101] *Id.*

[102] *Id.*, at 10.

[103] *See* Industeel Case Brief, at 5.

Contrary to Industeel's assertions, we do not have information on the record to fix the misreported product characteristics for nickel and chromium content, and the corresponding CONNUMs, in the sales and cost databases. Although Industeel provided information at verification which quantifies the impact of the misreported CONNUMs on the home market and U.S. sales databases, the information submitted by Industeel does not enable the Department to correct the misreported CONNUMs.[104] In particular, the errors with Industeel's misreported CONNUMs are linked to information that is not reported in the home market and U.S. sales databases on a transaction-specific basis. As a result, the information Industeel provided at verification does not allow the Department to correct the information for each of the misreported CONNUMs. As a result of Industeel's extensive misreporting of these product characteristics, its home market and U.S. sales databases are unreliable and unusable for the purposes of calculating a margin because they will result in inappropriate product matching in the Department's program by either: 1) matching products that would not otherwise be comparable; or 2) preventing the matching of identical or similar products. This inappropriate product matching undermines the integrity of the margin calculation.

With respect to Industeel's argument that its errors occurred in taking information from its files and placing it in the form required by the Department, Industeel did not notify the Department that it was unable to submit the requested information in the form and manner requested.[105] Industeel did not inform the Department of discrepancies on the record until verification.[106] Without notification to the Department, including a full explanation and alternative forms in which to provide this information, consistent with section 782(c)(1) of the Act, the Department could not know to provide additional assistance practicable to Industeel.

Therefore, for the reasons discussed above, we find that Industeel also did not cooperate to the best of its ability to respond to the Department's requests for information in this investigation because of the pervasive misreporting of the sales and costs data that was in Industeel's possession. Consequently, we disagree with Industeel's contention that it acted to the best of its ability throughout the course of the investigation. Affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference. In *Nippon Steel*, the Federal Circuit held that "{t}he statutory trigger for Commerce's consideration of an adverse inference is simply a failure to cooperate to the best of respondent's ability, regardless of motivation or intent."[107] Accordingly, we find that Industeel failed to cooperate to the best of its ability to comply with a request for information by the Department, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), and determine that it is appropriate to use an adverse inference when selecting from among the facts otherwise available.

[104] *See* Sales Verification Report, at VE-41.

[105] *See* section 782(c)(1) of the Act

[106] *See* Sales Verification Report, at 1.

[107] *See Nippon Steel*, 337 F.3d at 1383.

Moreover, we disagree with Industeel that CIT cases support not applying total AFA to it here. Regarding *Husteel*, the Department did not apply AFA to a respondent that submitted timely responses to the Department's requests for information, but, rather, to a respondent that was found, at verification, to have omitted certain warehousing expenses that it incurred outside of the POR, information which the Department did not include in its margin calculations.[108] However, in this case, Industeel's pervasive misreporting of the product characteristics for chromium and nickel content and its cost reporting errors compromises the Department's margin calculations. Specifically, Industeel's failure to accurately report the chromium and nickel product characteristics, and thus the CONNUMs, affected the Department's ability to calculate a margin.

Additionally, Industeel cites *Gerber* to support the proposition that the Department is precluded from applying total AFA when information is on the record, has been verified, and is not deficient.[109] However, unlike in *Gerber*, we find that there exists information on the record, provided by Industeel, that is deficient and unverified, as described above, such that we cannot rely on the data in the final determination. Similarly, we find Industeel's reliance on *Steel Authority of India* misplaced, when it argues that Department is precluded from using total AFA if a respondent has not withheld information that is necessary for calculating an antidumping duty margin.[110] We note that, in *Steel Authority of India*, the Court found that the Department's rejection of a respondent's submission which contained pervasive and persistent errors was supported by substantial evidence.[111] However, the Court noted that, once the Department decides to apply adverse inferences, it must explicitly state why a respondent failed to meet the "best of its ability" standard.[112] As previously discussed, we find that in the instant case Industeel failed to act to the best of its ability because of the pervasive misreporting of the sales and costs data that were in Industeel's possession.

Finally, we disagree with Industeel that *Nippon* is not applicable to this case. Pursuant to section 776(a) of the Act, the Department has determined that necessary facts are missing from the record and that we were unable to verify Industeel's reported data because of pervasive errors on the record. Thus, the Department is using facts available to determine Industeel's margin. However, before applying adverse inferences to derive a respondent's margin, the Department must determine whether a respondent has failed to act to the best of its ability.[113] Industeel argues that it acted to the best of its ability given that it responded to the Department's initial and supplemental questionnaires and fully participated in verification.[114] However, in *Nippon*, the Court held that there is no *mens rea*, "willfulness," or "reasonable respondent" criteria in the

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[108] *See Husteel*, 98 F. Supp. at 1355-56.

[109] *See Gerber*, 387 F. Supp. 2d at 1287-88.

[110] *See Steel Authority of India*, 149 F. Supp. 2d at 928.

[111] *Id.*

[112] *Id.*

[113] *See* section 776(b) of the Act.

[114] *See* Industeel Case Brief, at 3.

assessment of whether a respondent has acted to the best of its ability.[115] Compliance with the "best of its ability" standard requires that a respondent put forth its maximum effort in providing the Department with full and complete answers, and that a respondent has not exhibited inattentiveness, carelessness, or inadequate record keeping.[116] In this case we find that Industeel has failed to meet the "best of its ability" standard due to its inattentiveness and/or carelessness in responding to our requests for information. Industeel misreported the product characteristics for chromium and nickel content for a substantial number of its home market and U.S. sales despite appearing to have adequate records necessary to provide us with this information.[117] Additionally, Industeel misreported data in numerous fields of its home market and U.S. sales databases. Furthermore, Industeel omitted production orders for subject merchandise from the weight-averaging of costs for certain CONNUMs in its cost database. Accordingly, when we consider the significant and widespread errors in Industeel's sales and cost databases, we find that Industeel has failed to act to the best of its ability, which warrants the application of total AFA.

Therefore, for the foregoing reasons, we conclude that Industeel failed to cooperate to the best of its ability to comply with the Department's requests for information in accordance with section 776(b) of the Act and 19 CFR 351.308(a), and determine that it is appropriate to use an adverse inference when selecting from among the facts otherwise available. As AFA, we have assigned a rate of 148.02 percent, which is the highest dumping margin contained in the petition. For a discussion of the selection and corroboration of this rate, *see* the "Use of Adverse Facts Available" section, above.

Comment 3: Moot Arguments for Industeel

Industeel raised a number of issues related to its margin calculations, including differential pricing and the COP for inputs purchased from affiliated parties.

Department's Position:
Because we determined Industeel's final dumping margin band entirely on AFA and we did not calculate a final dumping margin for Industeel based on the data it submitted, these issues are moot and we do not address them here.

Comment 4: Level of Trade for Dillinger France

Dillinger France's Arguments

- In the *Preliminary Determination*, the Department found that Dillinger France made home market and U.S. sales at a single level of trade (LOT) and this LOT was the same in both markets.[118] Dillinger disagrees, arguing the Department should have recognized

[115] *See Nippon*, 337 F.3d at 1383.

[116] *Id.*, at 1382.

[117] *See* Industeel Sales Verification Report, at Exhibits VE-10 and VE-32.

[118] *See Preliminary Determination*; and accompanying Preliminary Decision Memorandum, at 12.

that it made sales at four LOTs in the home market and accepted Dillinger's LOT classification of its home market sales in its margin calculations.

- Dillinger France describes its four home market LOTs as follows:

    - LOT 1.1 represents direct sales from the mill to end users. According to Dillinger France, each order is unique and requires extensive consultations to ensure the final product meets the customer's needs. Therefore, Dillinger France argues that these orders require a number of highly trained sales and technical personnel who are familiar with Dillinger's production capabilities as well as the needs of the customer.

    - LOT 1.2 represents direct sales from the mill to distributors. According to Dillinger France, these orders are not unique and require fewer consultations with the customer and thus, fewer sales personnel. Dillinger contends that its sales to distributors are made at a different marketing stage than sales to end users because the distributors resell the purchased products to end users.

    - LOT 2.0 represents sales by affiliated service centers to down-stream customers. According to Dillinger France, the Department has previously found that sales by affiliated service centers to downstream customers are at a different LOT than direct sales by mills.[119] Therefore, Dillinger France argues that the Department should find that downstream sales by its affiliated service center, Eurodécoupe (EDC), are at a different marketing stage than Dillinger's sales from the mill to end users. Dillinger France points out that not only does EDC incur substantial processing costs, but it also performs warehousing and service center functions which are not performed for sales in other LOTs.

    - LOT 3.0 represents sales of non-prime merchandise. Dillinger France notes that it has a few regular customers who purchase non-prime merchandise and Dillinger France performs minimal sales activities to make these sales. According to Dillinger France, it performs few freight and delivery arrangements for non-prime sales and does not perform technical assistance or warranty service

[119] *See* Dillinger France Case Brief, at 18 (citing *Notice of Final Determination of Sales at Less than Fair Value: Certain Cold-Rolled Steel Flat Products From the United Kingdom*, 81 FR 49929 (July 29, 2016) (*Cold-Rolled Steel*), and accompanying IDM at Comment 1 (where the Department found that "direct sales from the mill and sales through a distribution center represent two different stages in the marketing process" and therefore constituted different LOTs); *Notice of Final Determination of Sales at Less than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002) (*Steel Beams*), and accompanying IDM at Comment 3 (where the Department found that warehouse sales by affiliated resellers occur at a more advanced stage of distribution, and are consequently at a different LOT, than sales by mills); and *Stainless Steel Bar From Germany: Final Results of Antidumping Duty Administrative Review*, 69 FR 32982 (June 14, 2004) (*Steel Bar*), and accompanying IDM at Comment 1 (where the Department found that the presence of "service center selling functions" shows a separate LOT)).

activities because it sells this merchandise without any warranty. Dillinger France points out that the Department did not analyze this channel of distribution in the *Preliminary Determination* because Dillinger France did not report U.S. sales of non-prime merchandise. Nonetheless, Dillinger France argues that the Department should analyze this LOT because it may affect other calculations such as the arm's-length test.

Petitioner's Arguments

- The petitioner disagrees with Dillinger France, noting that the Department correctly found that Dillinger France's home market and U.S. sales were made at the same LOT. According to the petitioner, Dillinger France's description of its selling activities and reporting of its LOTs and channels of distribution for home market and U.S. sales have been inconsistent and contradictory.

- The petitioner states that the narrative description of Dillinger France's LOT categories by customer type differs between Dillinger France's case brief and its selling functions chart. The petitioner notes that the Department verified Dillinger France's reported selling activities and found nothing to contradict its analysis in the *Preliminary Determination*.[120]

- The petitioner points out that Dillinger France reported its home market and U.S. sales in LOT 1 as two separate categories but failed to provide anything to distinguish them beyond customer category. According to the petitioner, a mere difference in customer category is not sufficient for the Department to find that sales are made at separate LOTs.

- According to the petitioner, Dillinger France attempts to highlight differences in the selling activities it performed for its direct sales from the mill (reported as LOT 1) and downstream sales by its affiliated service center (reported as LOT 2). However, the petitioner asserts that, with the exception of providing rebates, inventory maintenance, and personnel training/exchange, there are no significant differences in the levels of selling activities Dillinger France performed for sales to these channels.[121]

- The petitioner contends that, regarding Dillinger France's claim that its home market sales of non-prime merchandise represent a separate LOT, the Department only examines the selling functions and selling activities performed to make sales to different customer categories. Therefore, the petitioner asserts that the Department should not examine

[120] *See* Petitioner's Rebuttal Brief, "Certain Carbon and Alloy Steel Cut-to-Length Plate from France: Rebuttal Brief of Nucor Corporation," dated February 13, 2017 (Petitioner's Rebuttal Brief), at 7 (citing Dillinger France Sales Verification Report, at 6 and Exhibit 3).

[121] *Id.* (citing Dillinger France and BSPC's October 24, 2016 Second Supplemental Sections A, B & C Response (Dillinger France October 24, 2016 SSABCQR), at Appendix SA-16).

Dillinger France's home market sales of non-prime merchandise as part of its LOT analysis.

Department's Position:

We continue to find that Dillinger France's home market channels of distribution constitute one LOT. Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate normal value based on sales at the same level of trade as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).[122] The Department's regulations at 19 CFR 351.412(c)(2) outline the Department's policy regarding differences in the LOT as follows:

> The Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). *Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing*.[123]

In the *Preliminary Determination*, we analyzed Dillinger France's home market selling functions, and we organized them into the following four categories for analysis: 1) sales and marketing; 2) freight and delivery; 3) inventory maintenance and warehousing; and 4) warranty and technical support. Dillinger France reported that it made sales through two channels of distribution in the home market and reported performing the following selling functions:

> ….{F}or its made-to-order sales: advertising; direct sales personnel, sales promotion; freight and delivery arrangements; order input/processing; packing; commissions; rebates; sales forecasting, strategic economic planning, market research; sales/marketing support; technical assistance, after-sales services, engineering services; guarantees/warranty services; and personnel training/ exchange.[124] For sales by affiliated service centers, Dillinger France reported that in addition to the selling functions listed above, the service centers performed inventory maintenance, but did not provide rebates or personnel training/exchange.[125,126]

For Dillinger France's home market sales, we found that:

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[122] *See* 19 CFR 351.412(c)(2).

[123] *Id.* (emphasis added).

[124] *See* Dillinger France's September 2, 2016 Supplemental Section A Response, at Appendix SA-2.

[125] As noted in the *Preliminary Determination*, Dillinger France identified its home market sales of non-prime merchandise as a third channel of distribution, but Dillinger France did not report U.S. sales of non-prime merchandise. Therefore, these home market sales will not be used for comparison purposes in the Department's margin calculation and, as a result, we did not analyze this channel of distribution. *See Preliminary Determination*, and accompanying Preliminary Decision Memorandum, at 12.

[126] *See* Preliminary Decision Memorandum, at 12.

> ….Dillinger France performed sales and marketing, freight and delivery services, and warranty and technical support for all of its home market sales, and its affiliated service centers also performed inventory maintenance for home market sales. Because we find that there were no significant differences in selling activities performed by Dillinger France to sell to its home market customers, we determine that there is one LOT in the home market for Dillinger France.[127]

As described above in its case brief, Dillinger France stated that it sold CTL plate in the home market at four different channels of distribution, which it claims constitute different LOTs: 1) direct sales from the mill to end users (LOT 1.1); 2) direct sales from the mill to distributors (LOT 1.2); 3) sales by affiliated service centers to downstream customers (LOT 2); and 4) sales of non-prime merchandise (LOT 3).[128] For the reasons discussed below, we disagree and continue to find one LOT in the home market.

First, we disagree with Dillinger France's contention that there are substantial differences in the selling activities it performed between its proposed LOTs 1.1 and 1.2. In its case brief, Dillinger France contends that these proposed LOTs differ because: 1) they involve different numbers of sales personnel; and 2) sales to LOT 1.2 are sales to distributors, which are resold to end users. As an initial matter, in its most recently submitted selling functions chart, we note that Dillinger did not distinguish between its proposed LOTs 1.1 and 1.2, but instead treated them as a single channel of distribution.[129] We disagree with Dillinger's claim that the fact that these proposed LOTs involve different numbers of sales personnel is sufficient to distinguish these LOTs. To support this claim, Dillinger provided in Appendix SA-15 a series of organizational charts.[130] These charts do not indicate the selling activities Dillinger performed to make sales at its proposed LOTs; instead, they simply provide the number of employees by corporate division for several Dillinger companies. Therefore, we find that the information contained in Appendix SA-15 is insufficient to establish substantial differences in selling activities, as is required to established separate LOTs.[131] Similarly, we disagree with Dillinger France that, because sales at these two proposed LOTs are made to different customer categories, this demonstrates that they are at different marketing stages. A difference in customer categories between proposed LOTs 1.1 and 1.2 does not demonstrate a substantial difference in selling activities. Thus, because Dillinger did not perform substantially different selling activities to make these sales, we continue to find that they are at the same LOT.

However, in its most recently submitted selling functions chart, Dillinger France did not distinguish between its proposed LOTs 1.1 and 1.2. Instead, Dillinger France treated them as a single channel of distribution, indicating that LOTs 1.1 and 1.2 are not different.[132] Therefore, we do not find Dillinger France's claims regarding the number of sales personnel involved for

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[127] *Id.*

[128] *See* Dillinger France Case Brief, at 16-20.

[129] *See* Dillinger France October 24, 2016 SSABCQR, at Appendix SA-16.

[130] *Id.*, at Exhibit SA-15.

[131] *See* 19 C.F.R. 351.412(c)(2).

[132] *See* Dillinger France October 24, 2016 SSABCQR, at Appendix SA-16.

such sales sufficient to distinguish them as separate LOTs. Similarly, we disagree with Dillinger France that, because sales at these two proposed LOTs are made to different customer categories, they are at different marketing stages. As noted above, 19 CFR 351.412(c)(2) provides that, "Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing." Thus, because Dillinger France did not perform different selling activities to make these sales, we continue to find that they are at the same LOT.

With respect to Dillinger France's proposed LOT 2.0, sales by affiliated service centers to downstream customers, we continue to find that the additional selling activities Dillinger France performed for these sales are insufficient to determine that they constitute a separate LOT. While EDC performed inventory maintenance for certain downstream sales, and Dillinger France did not perform this function for its other home market sales, we continue to find that this alone is not a substantial difference in selling activities that warrants finding such sales to be at a separate LOT.[133] Dillinger France also points to the fact that EDC incurred processing costs and performed service center functions to make downstream sales; however, these items (*i.e.*, cutting, sawing, drilling and, bending) are not selling functions and, thus, they are not contained in the list provided in the Department's standard section A questionnaire or in the categories the Department uses in its analysis of LOT, listed above.[134] Instead, we find that these items are performed in connection with the further processing of the merchandise, which are part of the cost to produce the downstream product. Therefore, we did not consider them in our LOT analysis for Dillinger France in the final determination.

Further, we disagree that the cases Dillinger France cites require that we find sales by affiliated service centers to constitute a separate LOT. In *Cold-Rolled Steel*, the Department found that the respondent made home market sales at two different LOTs because, after analyzing the facts in that case, it determined that direct sales from the mill and sales through a distribution center represented two different stages in the marketing process.[135] Specifically, in that case, we found significant differences in numerous selling functions performed between the two home market channels of distribution.[136] However, in this case, as noted above, we find that the only additional selling function Dillinger France performed for sales in its proposed LOT 2 is inventory maintenance. Otherwise, Dillinger France performed significantly the same selling functions for sales to all of its home market customers.

[133] As noted in the *Preliminary Determination*, Dillinger France's affiliated service center did not perform rebates or personnel training/exchange for its downstream sales, while Dillinger France reported performing these functions for its home market sales. We found these differences insufficient to warrant finding separate LOTs in the home market. *See Preliminary Determination*; and accompanying Preliminary Decision Memorandum, at 12. Moreover, we note that Dillinger France did not report any rebates in its home market sales listing.

[134] *See* Letter from the Department "Questionnaire," dated May 26, 2016, at A-6 – A-16

[135] *See Cold-Rolled Steel* IDM at Comment 1.

[136] *Id.*

In *Steel Beams* and *Steel Bar*, the Department found sales by resellers to be at a more advanced LOT.[137] However, at the time those cases were decided, the Department's LOT analysis was substantially different. Specifically, the Department did not group the respondents' reported selling functions into four selling function categories for analysis, as described above. Further, in these cases, the Department found sales by resellers to be at a more advanced LOT because the resellers performed further processing activities. Under our current analytical framework, as discussed above, we find it inappropriate to consider further processing as a selling function relevant to our LOT analysis. We note that the CIT has upheld the Department's use of this analytical framework.[138] Therefore, based on the facts and circumstances of this case, as well as the Department's current analytical framework, we continue to find that the differences between Dillinger's proposed home market LOTs 1 and 2 are insufficient to find that they represent separate LOTs.

Finally, we continue to disagree with Dillinger France that it is necessary to analyze its home market sales of non-prime merchandise as a separate channel of distribution and determine that they are at a different LOT.[139] As we noted in the *Preliminary Determination*, Dillinger France made no U.S. sales of non-prime merchandise and, as a result, its home market non-prime sales will not be used for comparison purposes.[140] We also disagree with Dillinger France's contention that by not analyzing its non-prime sales as a separate LOT, we are affecting the results of the arm's-length test. Specifically, because the arm's-length test already considers prime and non-prime sales separately, we find it unnecessary to also analyze such sales as a separate LOT. Moreover, Dillinger France did not cite any cases where the Department analyzed non-prime sales as a separate channel of distribution in the home market in support of its argument. Therefore, we did not analyze this channel of distribution for purposes of the final determination.

Comment 5: Home Market Affiliated Service Center Sales for Dillinger France

Dillinger France's Arguments

- In the *Preliminary Determination*, the Department included downstream home market sales by Dillinger France's affiliated reseller, EDC, in its analysis because Dillinger France's sales to EDC failed the arm's length test.[141] Dillinger France disagrees with this

[137] *See Steel Beams* IDM at Comment 3; and *Steel Bar* IDM at Comment 1.

[138] *See Alloy Piping Products, Inc. v. United States,* Slip Op. 2008-30, at 19 (CIT March 13, 2008), where the Court rejected the plaintiffs argument that the Department had failed to consider certain selling activities in its LOT analysis, stating that "Commerce, however, explicitly states that it 'examined the selling activities reported for each channel of distribution and organized the reported selling activities into the following four selling functions: sales process and marketing support, freight and delivery, inventory maintenance and warehousing, and warranty and technical services".

[139] *See* Dillinger France Case Brief, at 19-20.

[140] *See* Preliminary Decision Memorandum, at 12.

[141] In our analysis, we assumed that all of EDC's downstream sales consisted entirely of Dillinger France-produced CTL plate. *See* Preliminary Decision Memorandum, at 10.

approach, arguing that the Department should use its home market sales to EDC in the margin calculations for the final determination.

- According to Dillinger France, the Department found that its sales to EDC failed the arm's-length test in the *Preliminary Determination* because it did not consider home market LOT differences in its analysis.[142]

- Further, Dillinger France notes that EDC's home market sales of its CTL plate represent only a small quantity of Dillinger France's total home market sales during the POI. Thus, Dillinger France argues that, pursuant to 19 CFR 351.403(d), EDC's downstream sales are insignificant and should not be used in the Department's margin calculations.

- However, Dillinger France states that, if the Department continues to use EDC's downstream sales, it should make the following changes:

    - The Department should not treat all of EDC's downstream sales as Dillinger France-produced CTL plate, but instead rely on the data Dillinger France provided indicating the amount of CTL plate Dillinger France supplied for each EDC sales transaction.

    - The Department should not use the POI per-unit average further processing cost for EDC, as it did in the *Preliminary Determination*, but instead use Dillinger France's reported processing cost ratio applied to the gross unit price of each EDC sale. According to Dillinger France, calculating the further processing cost as a percentage of price is more accurate than assigning a single per-unit average processing cost because higher sales prices normally correlate with higher levels of processing, and thus higher processing costs.

Petitioner's Arguments

- The petitioner asserts that the Department should continue to use EDC's downstream sales in its calculations for the final determination.

- The petitioner disagrees with Dillinger France's contention that EDC's sales are insignificant when compared to Dillinger France's sales to unaffiliated customers, noting that Dillinger France incorrectly compared the quantity of EDC's downstream sales to the quantity of Dillinger France's sales to unaffiliated home market customers. According to the petitioner, the percentage of Dillinger France's sales to EDC which failed the arm's-length test is significant. The petitioner asserts that, as a result, the Department appropriately used EDC's downstream sales in its analysis, in accordance with its practice.

- Finally, the petitioner maintains that the Department should continue to use EDC's average further processing cost, rather than Dillinger France's processing cost ratio, in its calculations for the final determination.

[142] For further discussion of this LOT issue, *see* Comment 4, above.

Department's Position:
We continue to rely on EDC's downstream sales in our margin calculations for the final determination.

Section 351.403(c) of the Department's regulations directs that:

> If an exporter or producer sold the foreign like product to an affiliated party, the Secretary may calculate normal value based on that sale only if satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller.

Moreover, 19 CFR 351.403(d) states that:

> If an exporter or producer sold the foreign like product through an affiliated party, the Secretary may calculate normal value based on the sale by such affiliated party. However, the Secretary normally will not calculate normal value based on the sale by an affiliated party if sales of the foreign like product by an exporter or producer to affiliated parties account for less than five percent of the total value (or quantity) of the exporter's or producer's sales of the foreign like product in the market in question or if sales to the affiliated party are comparable, as defined in paragraph (c) of this section.

In our final determination margin calculations, Dillinger France's sales to EDC continue to fail the arm's-length test.[143] Therefore, pursuant to 19 CFR 351.403(c), we may not rely on these sales to calculate NV. Furthermore, because Dillinger France's sales to EDC exceed five percent of its total reported home market sales during the POI, the exemption provided in 19 CFR 351.403(d) to not include EDC's downstream sales in our analysis does not apply.

Nonetheless, we agree with Dillinger France's assertion that we should not treat all of EDC's downstream sales as Dillinger France produced-CTL plate. Dillinger France provided the percentage of each downstream sale that was sourced from CTL plate produced by: 1) Dillinger France itself; 2) Dillinger Germany; 3) either Dillinger France or Dillinger Germany; 4) unaffiliated third parties; or 5) unknown manufacturers.[144] Therefore, for the final determination, we included the portion of each sale which Dillinger France reported as produced by itself, either Dillinger France or Dillinger Germany, or unknown manufacturers, because this merchandise is either certainly or possibly produced by Dillinger France. Similarly, we excluded the portion of EDC's sales which were sourced from either Dillinger Germany or unaffiliated third party suppliers from our analysis.

[143] As explained in Comment 4, above, we continue to find that Dillinger France made sales at only one LOT in the home market.

[144] Dillinger France and BSPC's September 22, 2016 Supplemental Sections B & C Response (Dillinger France September 22, 2016 SBCQR), at 3.

Moreover, regarding the CTL plate produced by unknown manufacturers, we find that pursuant to sections 776(a) and (b) of the Act, the use of facts otherwise available with an adverse inference is warranted.

We asked Dillinger France to identify the manufacturers of the CTL plate it identified as "unknown" in the EDC downstream sales database and revise its reporting to: 1) include sales of CTL plate manufactured by Dillinger France; and 2) exclude merchandise produced by other manufacturers.[145]

Dillinger France responded that, while it attempted to identify the manufacturers identified as "unknown," there was insufficient information in the automated material records to determine the manufacturers' identities for these sales and the total quantity of these transactions was small.[146]

In light of the above, the application of facts available is appropriate pursuant to sections 776(a)(1) and (2)(A) and (B) of the Act because necessary information, *i.e.*, the names of the manufacturers of the CTL plate at issue is not on the record, and Dillinger France withheld that information and failed to provide this information in a timely manner. As evidenced by its supplemental questionnaire response,[147] Dillinger France possessed the necessary information but did not put forth its maximum effort to conduct the necessary investigation of its records to provide the information that was in its possession.

Moreover, when selecting from the facts available, the use of an adverse inference (AFA) pursuant to section 776(b) of the Act is appropriate because Dillinger France did not act to the best of its ability in attempting to provide the requested manufacturer information for these downstream sales. In determining whether a company has cooperated to the best of its ability and whether AFA is warranted, the Department follows the guidance set forth in *Nippon Steel*:

> Before making an adverse inference, Commerce must examine respondent's actions and assess the extent of respondent's abilities, efforts, and cooperation in responding to Commerce's requests for information. Compliance with the "best of its ability" standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. It assumes that importers are familiar with the rules and regulations that apply to the import activities undertaken and requires that importers, to avoid a risk of an adverse inference determination in responding to Commerce's inquiries: (a) take reasonable steps to keep and maintain full and complete records documenting the

[145] *See* Letter from the Department to Dillinger France dated October 19, 2016.

[146] *See* Dillinger France's Third Supplemental Section B&C Questionnaire Response, dated November 2, 2016, (Dillinger France Third Supplemental Response) at 4.

[147] *See* Dillinger France Third Supplemental Response at 5.

> information that a reasonable importer should anticipate being called upon to produce; (b) have familiarity with all of the records it maintains in its possession, custody, or control; and (c) conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of the importers' ability to do so.[148]

The information in question (*i.e.*, the identity of the manufacturers of the CTL plate at issue that was resold by Dillinger France's affiliate, EDC) is the type of information that a large steel manufacturer such as Dillinger France should reasonably be able to provide, in order to provide its customers with the mill test certificates for the CTL plate they purchase. Dillinger France's supplemental questionnaire responses demonstrate that it was familiar with all of the records that EDC maintained, and EDC possessed information about the manufacturers of the CTL plate at issue,[149] yet reported the producers of only some of the CTL plate, but not all. Thus, we find that Dillinger France would have been able to provide this information if it had made the appropriate effort when it received the Department's antidumping duty questionnaire and was notified that it was required to report EDC's downstream sales.[150] Therefore, we find that Dillinger France's failure to report the requested manufacturer information, accurately and in the manner requested, using the records over which it maintained control, indicates that Dillinger France did not act to the best of its ability to comply with our requests for information. Consequently, in accordance with section 776(b) of the Act, we find that it is appropriate to apply partial AFA to those downstream EDC sales where Dillinger France did not identify the manufacturer of the CTL plate.[151] We note that, in accordance with section 782(d) of the Act, the Department provided Dillinger France with the opportunity to remedy the deficiencies in reporting the manufacturer for all of EDC's downstream sales.[152]

Therefore, as partial AFA, we determined the highest non-aberrational net price among Dillinger France's downstream home market sales, and assigned that price to all of these sales where Dillinger France failed to report the manufacturer of the CTL plate in our margin calculations for the final determination.

Finally, we disagree with Dillinger France that it is more accurate to rely on EDC's ratio applied to sales prices than using the POI per-unit average further processing cost to calculate the cost of further processing. While Dillinger France contends that higher sales prices normally correlate

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[148] *See Nippon Steel*, 337 F.3d at 1382 (internal citation omitted).

[149] *See* Dillinger France Third Supplemental Response at 5.

[150] *See* the Department's antidumping duty questionnaire issued to Dillinger France, dated May 25, 2016, at page B-5 ("If you had sales to an affiliated party that consumed all or some of the merchandise …, then report all of your sales to that affiliate, whether the merchandise was consumed or resold by the affiliate…. If you cannot demonstrate that your sales to the affiliate were at arm's-length prices, then you must also report the affiliate's sales to unaffiliated customers; however, in any case you must report your sales to the affiliate.").

[151] *See, e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold Rolled Carbon Steel Flat Products From Germany*, 67 FR 62116 (October 3, 2002), and accompanying IDM at Comment 1 (where the downstream sales information reported was not complete, the Department determined that the respondent did not cooperate to the best of its ability and that AFA was warranted.)

[152] *See* Letter from the Department to Dillinger France, dated October 19, 2016.

with higher processing costs, there is no record evidence to support this argument. Accordingly, we find it reasonable to continue to use EDC's weighted-average further processing cost for the final determination.

Comment 6: Resale of Canceled U.S. Sale for Dillinger France

Dillinger France's Arguments

- At verification, Dillinger France explained that: 1) one of its reported U.S. sales was cancelled because the customer never paid for it (and, thus, it should not be included in the Department's analysis for the final determination); and 2) this merchandise was resold to another U.S. customer and then inadvertently reported as a sale in Dillinger Germany's U.S. sales database.[153]

- Dillinger France notes that the total quantity of this transaction is very small as a percentage of its total U.S. sales during the POI.

- Dillinger France argues that this resale was essentially a distressed sale; as a result, the Department should find it to be outside the ordinary course of trade, pursuant to 19 CFR 351.102(35), and should not include this sale in the final margin calculation.

- Dillinger France contends that the circumstances of this sale are extraordinary. Specifically:

    - While Dillinger France's sales are normally made to order, for this sale the customer had to accept the merchandise as produced.

    - While Dillinger France's sales are normally shipped directly to the customer after production, the new customer picked up the merchandise related to this sale from the original customer's U.S. location, where it had been for months.

    - The large price reduction in this sale given to the new customer demonstrates its extraordinary circumstances, and renders its total price aberrational.

- However, Dillinger France states that, if the Department decides to include the resale in its final determination, it has all the necessary information on the record to do so.

The petitioner did not comment on this issue.

Department's Position:

We disagree with Dillinger France that it would be appropriate to exclude its U.S. resale from our analysis because it is outside the ordinary course of trade. Section 771(15) of the Act, which

[153] *See* Dillinger France Sales Verification Report, at 2.

defines the ordinary course of trade, applies only to sales made in the comparison market.[154] Thus, we find that Dillinger France's reliance on this provision of the Act as a basis to disregard its U.S. resale is misplaced.

Consequently, because the record contains information regarding the details of Dillinger France's U.S. resale, we included it in our margin calculations for the final determination. We also removed Dillinger France's cancelled U.S. sale from our analysis.[155]

Comment 7: Capping Freight Revenue for BSPC's Sales

Dillinger France's Arguments

- In the Preliminary Determination, the Department capped BSPC's reported freight revenue by the amount of U.S. inland freight from warehouse to customer expenses incurred on each applicable sale. Dillinger France disagrees with this methodology, arguing that the Department should not cap BSPC's freight revenue in the final determination.

- Dillinger France claims that that freight revenue is part of each sale in BSPC's normal course of business; BSPC knows what it will charge and collect for freight, but it does not know what its true costs will be until it procures freight services, and BSPC may lose or gain revenue on a sale as a result of delivery. Thus, Dillinger France disagrees with the Department's interpretation of 19 CFR 351.102(b)(38), arguing that its freight revenue is part of the "purchaser's net outlay" as claims posted as post-sale freight adjustments.

- Dillinger France contends that the Department's decision to cap BSPC's freight revenue artificially dissects each of BSPC sales into two parts (*i.e.*, the sale of pipe and freight) and artificially treats BSPC as two companies (a producer and a delivery service provider), despite no basis on the record or in BSPC's commercial reality to do so. According to Dillinger France, these artificial distinctions impermissibly elevate form over substance.[156]

- Dillinger France argues that the Department should only cap revenues for services that are separately provided and charged, not for those revenues for services that are within

[154] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands*, 66 FR 50408 (October 3, 2001), and accompanying IDM at Comment 3 (where the Department found that "the ordinary course of trade provision of the Act is applicable only to sales made in the home market...").

[155] For further discussion, *see* the Dillinger France Final Calculation Memorandum at 3.

[156] *See* Dillinger France Case Brief, at 40-41 (citing *Certain Orange Juice From Brazil: Final Results of Antidumping Administrative Review and Final No Shipment Determination*, 77 FR 63291 (October 16, 2012), and accompanying IDM at Comment 6; *United States v. Eurodif SA*, 555 U.S. 305, 318 (2009) (*Eurodif*); and *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967) (*Tcherepnin*)).

the terms of sale.[157] Dillinger France states that BSPC is a pipe manufacturer, not a delivery services company. Dillinger France claims that delivery is part of BSPC's terms of sale and an essential part of the sales contract between BSPC and its customers, not a separate service, and thus, the Department should not cap it.

- Dillinger France contends that the Department's regulations intend to limit revenues by expenses only when price adjustments are made after the commercial invoice is issued, unlike BSPC's delivery services that are provided as part of the terms of sale.

Petitioner's Arguments

- The petitioner disagrees, and asserts that the Department should continue to cap freight revenue by the corresponding freight expenses, in accordance with its long-standing practice which has been upheld by the CIT.[158]

- The petitioner maintains that it is irrelevant whether a customer negotiates delivery at the same time it purchases CTL plate. According to the petitioner, this fact pattern does not support Dillinger France's argument that the price of the merchandise and the delivery charge cannot be separated in the Department's calculations.

Department's Position:

We continue to cap BSPC's reported freight revenue in each instance where it exceeds the amount of expenses for "U.S. inland freight from warehouse to customer" expenses, in accordance with our practice.[159]

The Department adjusts for U.S. movement expenses under section 772(c)(1) of the Act. Further, the Department's regulations at 19 CFR 351.401(c) direct the Department to use, in calculating U.S. price, a price which is net of any price adjustment that is reasonably attributable to the subject merchandise. The term "price adjustment" is defined under 19 CFR 351.102(b)(38) as "a change in the price charged for subject merchandise or the foreign like

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[157] *Id.*, at 42 (citing *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Revocation of an Order in Part*, 74 FR 44813 (August 31, 2009) (*Ball Bearings 2009*), and accompanying IDM at Comment 12).

[158] *See* Petitioner's Rebuttal Brief, at 17-18 (citing *Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 76 FR 64318 (October 18, 2011) (*Wood Flooring from PRC*), and accompanying IDM at Comment 39; *Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) (*OJ from Brazil 2010*), and accompanying IDM at Comment 2; *Circular Welded Carbon-Quality Steel Pipe From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 81 FR 75042 (October 28, 2016), and accompanying IDM at Comment 7; *Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; *2014-2015*, 81 FR 62088 (September 8, 2016), and accompanying IDM at Comment 15; *Dongguan Sunrise Furniture Co., Ltd. v. United States*, 865 F. Supp. 2d 1216, 1249-50 (CIT 2012) (*Dongguan*)).

[159] *See, e.g., Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 64170 (October 28, 2014) (*Pipes and Tubes from Thailand*), and accompanying IDM at Comment 4; *Wood Flooring from PRC* IDM at Comment 39; and *OJ from Brazil* IDM at Comment 2.

product, such as discount, rebate, or other adjustment, including, under certain circumstances, a change that is made after the time of sale, that is reflected in the purchaser's net outlay." Thus, it would be inappropriate to treat the revenues associated with BSPC's freight expenses as price adjustments under 19 CFR 351.401(c) because these revenues do not represent "changes in the price for subject merchandise," such as discounts, rebates, and post-sale price adjustments. Therefore, the fact that Dillinger France's freight revenue is part of the purchaser's net outlay is immaterial.

In past cases, the Department has declined to treat freight-related revenues as additions to U.S. price under section 772(c) of the Act or as price adjustments under 19 CFR 351.102(b). Rather, we incorporated freight-related revenues as offsets to movement expenses because they relate to the movement and transportation of subject merchandise.[160] Moreover, we find that it would be inappropriate to increase the gross unit price for subject merchandise because of profits earned on the provision or sale of freight; such profits should be attributable to the sale of the freight service, not to the subject merchandise. Therefore, we continue to treat these revenues as an offset to the underlying expenses. In so doing, we set BSPC's expenses for "U.S. inland freight from warehouse to the unaffiliated customer" expenses to zero where the corresponding revenue exceeded the expenses, in accordance with our past practice.

We disagree that our practice of limiting freight revenue to the amount of the related expense creates artificial distinctions, elevates form over function, or ignores BSPC's economic reality. Instead, our practice "accords with the statutory language, allows {us} to accurately account for freight expenses that a respondent actually incurred, and ensures that a respondent's U.S. price is not overstated by profit earned from freight services."[161] Our practice is consistent with BSPC's reality because BSPC reports freight separately on its invoices and records freight revenue in a separate account.[162] BSPC's "approach of charging separately for freight demonstrates separate strategies for collecting for freight and the good sold"[163] and supports treating BSPC's freight revenue separately from revenue earned from sales of subject merchandise.

We disagree with Dillinger France's contention that the Department in *Ball Bearings 2009* capped revenues for transportation and insurance services because they were separately provided and charged and not included in the terms of sale. The Department's determination to cap revenues and transportation services was not based on whether such services are included in the terms of sale or separately invoiced by the respondent.[164] Rather, our focus in *Ball Bearings 2009*, as well as the instant case, is whether the respondent realized revenue for services it performed that are unrelated to the gross unit price of subject merchandise.

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[160] *See, e.g.*, *Pipes and Tubes from Thailand* IDM at Comment 4; *Wood Flooring from PRC* IDM at Comment 39; and *OJ from Brazil* IDM at Comment 2.

[161] *See Dongguan*, 865 F.Supp.2d at 1248.

[162] *See* Dillinger France September 22, 2016 SBCQR, at 16-17.

[163] *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, *affirmed by Dongguan*, 865 F. Supp. 2d at 1250.

[164] *See Ball Bearings 2009* IDM at Comment 12.

Finally, we disagree that it is the Department's practice to limit its capping of freight revenue to situations where a respondent charges for freight revenue after it has issued the commercial invoice. Rather, we find that it is appropriate to cap movement-related revenue by the corresponding expense because "a proper 'apples-to-apples' comparison should not include profit earned from the sale of a service (freight) as opposed to profit earned from the sale of the subject merchandise."[165] Consequently, we did not consider when in its sales process BSPC charges its customer for freight services when capping its reported freight revenue.

Comment 8: Capping BSPC's Revenues for Further Manufacturing by Associated Expenses

Petitioner's Arguments

- The petitioner argues that the Department should apply its revenue cap methodology to revenue Dillinger France reported for further manufacturing, including internal lining of pipe, external coating of pipe, girthwelding pipes, and testing, because if not capped by the costs associated with these items, these revenues will distort the U.S. prices of the merchandise under investigation.

- The petitioner asserts that profits earned on ancillary elements of a sale should not be shifted to the price of the merchandise under investigation; rather, the Department should limit any adjustment for these revenues to the amount of the associated expenses for these elements.[166]

- The petitioner contends that the Department has limited adjustments for revenue to the amount of the associated expenses for items such as freight, import-related services, testing services, tooling, and port expenses.[167]

- The petitioner argues that testing, like freight, is clearly an ancillary service that should be capped according to the Department's standard methodology. In addition, the petitioner contends that the further processing services (*i.e.*, internal lining, external coating, and girthwelding) are not related to the subject merchandise, but rather relate to the downstream pipe product. Thus, the petitioner claims that these items are no different than additional services such as delivery offered by BSPC and, as a result, they should also be capped.

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[165] *See Dongguan*, 865 F. Supp. 2d at 1250; *see also Sucocitrico Cutrale LTDA & Citrus Products Inc. v. United States*, Slip Op. 12-71, at 7-8 (CIT June 1, 2012) ("{T}he fees that Cutrale contests constitute a service charge rather than a charge for the subject merchandise. Commerce properly determined that it was inappropriate to treat the fees as adjustments to U.S. price under section 1677a(c) or Commerce's regulations because these fees 'related to the movement of subject merchandise and were attributable to the sale of movement services, not to the subject merchandise.'").

[166] *See* Petitioner's Case Brief, at 3-4 (citing *Pipes and Tubes From Thailand* IDM at Comment 4).

[167] *Id.*, at 4 (citing *Pipes and Tubes From Thailand* IDM at Comment 4; *OJ from Brazil* IDM at Comment 2; and *Large Power Transformers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2013-2014, 81 FR 14087 (March 16, 2016) (*LPT from Korea*), and accompanying IDM at Comment 3).

- According to the petitioner, not capping these revenue items distorts the U.S. price.[168] Therefore, the petitioner argues that, in order to eliminate this distortion, the Department should use the price of the bare pipe (reported in the field "PIPE"), as the starting gross unit price for BSPC's further manufactured sales and cap additional revenues by their associated costs before including them as adjustments.

Dillinger France's Arguments

- Dillinger France disagrees with the petitioner's suggested approach, noting that the petitioner cites to no authority which supports capping any revenues other than movement expenses.

- Dillinger France notes that its manufacturing operations at issue here are required by contract. As a result, Dillinger France asserts the identified manufacturing operations are integrally part of CEP.

- Dillinger France points out that BSPC did not separately itemize its testing charges in its U.S. sales database and, thus, there is no need for the Department to cap it.

- Dillinger France asserts that capping revenues merely because the customer requested an itemized list of such charges on the invoice is arbitrary and capricious.[169] According to Dillinger France, BSPC's economic reality is that it contracts to deliver pipe manufactured to specific specifications, and the Department should not artificially break up its pipe sales into their component parts with revenues capped by expenses.

Department's Position:

We find it is inappropriate to cap BSPC's revenues from further manufacturing operations.[170] In the Department's position in Comment 7, above, we explain our practice of capping movement-related revenues realized by respondents. We find that further manufacturing relates directly to the price of subject merchandise or, in this instance, to the production of the downstream product from subject merchandise. In *Woven Ribbons*, we declined to cap revenues that a respondent "charge{d} its customers for the expenses incurred in meeting the customer's special requirements in product design or color, such as dyeing fee, printing fee, molding fee, etc." where the "additional processing charges {were} associated directly with the production of merchandise under consideration."[171] We find BSPC's revenues for internal lining, external

[168] The petitioner provides numerical examples of its arguments on page 5 of its case brief; however, because these examples are business proprietary information, we cannot discuss them here.

[169] *See* Dillinger France Rebuttal Brief, at 8-9 (citing *Eurodif*, 555 U.S. at 318; *Tcherepnin*, 389 U.S.at 336; sections 772(b) & (c) of the Act).

[170] Regarding testing revenues, Dillinger France did not report testing revenues, and thus, we do not have any reported testing revenues to cap, even if we were to find capping them to be appropriate.

[171] *See Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 41808 (July 19, 2010), and accompanying IDM at Comment 3 (*Woven Ribbons*).

coating, and girthwelding to be analogous because these revenues also relate to customers' special requirements and are directly associated with the production and price of further manufactured CTL plate. While the revenues in question in *Woven Ribbons* pertained to the sale of subject merchandise, not further manufacturing revenues associated with production of a downstream product, the concept is the same; the revenues were directly related to the price of the subject merchandise.

We also note that the petitioner does not to cite to any case where we have capped revenues for further manufacturing operations.[172] Accordingly, we find it inappropriate to cap these revenues by related costs.

Comment 9: Corrections to Dillinger France's Data to Account for Verification Findings

Petitioner's Arguments

- The petitioner states that the Department should correct Dillinger France's reported data to account for omitted bank charges; incorrect inland freight amounts; incorrect early payment discounts; and account for newly reported freight revenue credits, based on its findings at verification.

Dillinger France's Arguments

- Dillinger France claims that the minor discrepancies noted by the Department in its sales verification report are either inconsequential or can be easily corrected based on information on the record.

- Dillinger France argues that if the Department revises its margin calculations based on its findings at verification for items like bank charges that result in reductions to EP, it should also revise items that result in reductions to NV.

Department's Position:

We revised Dillinger France's reported home market and U.S. sales data based on each of our findings at verification and we incorporated these revisions in our margin calculations for the final determination.[173]

Comment 10: Provision Expenses for Dillinger France

Dillinger France's Arguments

- Dillinger France argues that it properly excluded various provision expenses from the calculation of its reported costs because they do not relate to the cost of producing the merchandise under consideration (MUC) during the cost reporting period.[174] Specifically, Dillinger France claims that the Department should exclude the following:

[172] In *LPT from Korea*, the Department applied a cap to installation revenue, but not to any further manufacturing operations. *See LPT from Korea* IDM at Comment 3.

[173] For a detailed list of these changes, *see* Dillinger France Final Calculation Memorandum.

[174] *See* Dillinger France Case Brief, at 31-36.

- The provision for loss on completion, because it relates to the sale of the MUC, rather than to manufacturing or G&A expenses. According to Dillinger France, this provision is a method of allocating the loss on the sale of merchandise to the proper accounting period.[175]

- The provision for the write-down of old slabs, because it is a way of moving the loss on product sales from one period to another and that the write-down in value has no effect on the reported costs.

- The provision for disagreements with the social administration, because it relates to an ongoing administrative action and that it is not certain that Dillinger France will owe any amount because of it.

- The provision for the slow rotation of spare parts, because it is not charged to the cost centers in the current period, but it will be charged in future periods when the spare parts are consumed; thus, including the provision expense recorded during the current period in the reported costs would result in double-counting.

- The provisions for pensions, retirement bonuses, and medals, because they all relate to obligations for future periods and the expenses recorded in the current period are fully accounted for in the reported COP.

- Dillinger France argues that, to the extent that the Department includes any of these provisions in its reported G&A expenses, the Department should not cap the amount of any corresponding reversals because it would be inconsistent to claim these expenses resulting from provision accruals relate to general operations and then disallow the full offset resulting from the reversal of the same provisions. Further, Dillinger France claims that allowing reversals to provisions is analogous to the Department's practice of allowing offsets to the G&A expense ratio for income related to general operations.[176]

Petitioner's Arguments

- The petitioner argues that the Department should continue to adjust Dillinger France's G&A expense ratio to account for provision expenses.

- According to the petitioner, at the cost verification, the Department examined each provision in detail and indicated its intention to use the verified amounts at the final determination.[177]

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[175] *Id.*, at 32 (citing section 773(b)(3) of the Act; and the WTO Antidumping Agreement, art. 2.2.1)

[176] *Id*., at 36 (citing *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 37284 (July 1, 2014), and accompanying IDM at Comment 2 (*CWP from Korea*)).

[177] *See* Petitioner's Rebuttal Brief, at 12-15 (citing Dillinger France Cost Verification Report; *Certain Oil Country Tubular Goods From the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014) and accompanying IDM at Comment 19; and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances*

- The petitioner contends that Dillinger France's primary argument to exclude these provisions, because they do not relate to the cost of producing the MUC, is unfounded and that the Department has explained in several cases that G&A expenses are not supposed to be related to the production of subject merchandise.[178]

- The petitioner asserts that the provision for loss on completion should be included because it is not related to a particular product or production process, but is related to the general operations of the company as a whole and should be treated as a G&A expense.

- The petitioner argues that the provision for the write-down of old slabs should be included because it is the Department's long-established practice to include write-downs of raw material and work-in-process inventories in G&A expenses.

- The petitioner states that Dillinger France makes contradictory remarks about the provisions for pensions, retirement bonuses, and medals by stating that the expenses have been fully included in COP and then stating that certain provisions were properly excluded that relate to future periods; furthermore, the petitioner states that the Department concluded at verification that these expenses should have been included.

- The petitioner argues that the Department documented at verification that the provision for slow rotation is related to obsolete or broken supplies and spare parts and that the Department always treats write-offs as G&A expenses in the year in which they are incurred. According to the petitioner, because these expenses were included in the 2015 audited financial statements, they are properly treated as G&A expenses in this investigation and they would never be double-counted in future reviews because those segments would rely on a different year's financial statements.

- The petitioner contends that the provision of disagreements with the social administration represent certain liabilities that the company's auditors quantified and included in the audited income statement. The petitioner claims that this provision relates to fiscal year 2015 and should be included in the G&A expense ratio.

- The petitioner states that, while it could not find anything in the verification report regarding the capping of provision reversals, the Department stated that the provisions in question are

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Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea, 77 FR 17413 (March 26, 2012) and accompanying IDM at Comment 33 (*BMRFs From Korea*); *Silicomanganese From India: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination*, 67 FR 15531 (April 2, 2002) and accompanying IDM at Comment 7).

[178] *See* Petitioner's Rebuttal Brief at 12-15 (citing *Certain Oil Country Tubular Goods From the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014) and accompanying IDM at Comment 19; and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea*, 77 FR 17413 (March 26, 2012) and accompanying IDM at Comment 33 (*BMRFs From Korea*)).

net of related reversals and that there is no basis to proceed differently than suggested in the verification report.

Department's Position:
We included the provision expenses in question in the calculation of Dillinger France's reported costs, except for the provision for loss on completion discussed below, in our calculations for the final determination. In calculating the G&A expense ratio, the Department normally includes certain expenses and offsetting revenues that relate to the general operations of the company as a whole and to the accounting period, as opposed to including only those expenses that directly relate to the production of the merchandise under consideration.[179] If the Department identifies expenses that are directly related to a particular production process or product, we normally consider those expenses to be product-specific manufacturing costs. In contrast, G&A expenses are by nature indirect expenses incurred by the company as a whole and are not directly related to a process or product.[180]

While Dillinger France does not separately classify its costs as manufacturing costs or G&A expenses in its audited financial statements, it does not include the provision expenses and related reversals in the cost of manufacturing in its cost accounting system,[181] and there is no evidence on the record to indicate that these expenses are not general in nature. Further, it is our practice to include normal recurring provision items and related reversals in the G&A expense ratio calculation.[182] In this case, the provision expenses and related reversals booked by Dillinger France constitute the type of normal, recurring entries that businesses make each year in carrying out their operations.[183] Each amount represents an actual, quantifiable obligation that must be recorded in the current year to ensure a proper matching of revenues and expenses.

Regarding the provision for loss on completion, this amount is related to expected losses on the sale of finished goods. Our practice is to exclude inventory write-downs that are attributable to finished goods from a respondent's COP because we consider the write-down of finished goods to be more closely related to the sale of merchandise rather than to its production.[184] Therefore, in accordance with our practice, we excluded the amounts booked to the provision for loss on completion from Dillinger France's total G&A expenses in our calculations for the final determination.

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[179] *See, e.g., BMRFs From Korea* IDM at Comment 33.

[180] *Id*.

[181] *See* Dillinger France Cost Verification Exhibit 4.

[182] *See, e.g., Steel Concrete Reinforcing Bar From Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 21986 (September 15, 2014), and accompanying IDM at Comment 9 (*Rebar from Turkey*).

[183] *See* Dillinger France Cost Verification Report, at 10-11.

[184] *See, e.g., Polyethylene Retail Carrier Bags From Thailand: Final Results of Antidumping Duty Administrative Review*, 76 FR 12700 (March 8, 2011) and accompanying IDM and *Stainless Steel Wire Rod From the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 19153 (April 12, 2004), and accompanying IDM at Comment 7.

Regarding the provision for the write-down of old slabs and the provision for the slow rotation of spare parts, neither of these amounts is actually a write-down of inventory values, but rather both are related to the write-off of obsolete or unusable items.[185] Such amounts do not relate directly to the production of any merchandise, but are appropriately captured as period expenses spread proportionately over all merchandise produced during a specific period. Accordingly, we consider these write-offs to be related to the general operations of the entire company and include them in a respondent's total G&A expenses.

Further, we disagree with Dillinger France's attempts to characterize provisions for pensions, retirement bonuses, and medals as related to future periods and, thus, items we should exclude from our calculations. However, each amount was accrued as a current period expense in Dillinger France's 2015 audited financial statements which are consistent with French generally accepted accounting principles (GAAP). Costs incurred related to employee pensions, retirement bonuses, and medals are labor costs associated with the general operations of the company as a whole.[186] Because each amount is an essential component of the total current period costs recorded under French GAAP in each respective category and there is no evidence that such treatment is unreasonable, we continue to include these amounts and their related reversals in the reported costs for the final determination.

Dillinger France argues that the provision for disagreement with the social administration should be excluded because the amount that will actually be owed is uncertain, but under French GAAP, the accrual amount was recognized and recorded as a current expense in the 2015 audited financial statements when it became probable and reasonably estimable. In such instances, our consistent practice is to follow the financial statement treatment and include the costs as current year expenses.[187]

Accordingly, except for the provision for loss on completion, we continued to include the provision expenses and related reversals in Dillinger France's total G&A expenses as we did in the *Preliminary Determination*.

Comment 11: Non-Prime Product Costs for Dillinger France

Dillinger France Arguments

- Dillinger France argues that the Department erred in the *Preliminary Determination* by shifting costs from non-prime to prime products.

- According to Dillinger France, the COP for prime products already bears the full cost of producing that CTL plate, and the non-prime CTL plate must also bear its full share of the POI costs. Dillinger France states that non-prime plate undergoes the same production process as prime plate and that it is not less costly to produce simply because it cannot be sold at full price.

[185] *See* Dillinger France Cost Verification Report, at 11 and Cost Verification Exhibit 4.

[186] *Id.*

[187] *See, e.g., CWP from Korea* IDM at Comment 4.

- Dillinger France contends that in *HWR from Korea*,[188] the Department found that it was not appropriate to shift costs of production from non-prime to prime products because, although the non-prime products were downgraded, they remained within the scope of the proceeding. Dillinger France further asserts that in both *HWR from Korea*[189] and the instant proceeding, non-prime plate was found to be useable in applications that do not require product quality certification.

Petitioner's Arguments

- The petitioner disagrees, arguing that the Department should continue to adjust the cost of non-prime products as it did at the *Preliminary Determination*.

- The petitioner asserts that it is the Department's practice to consider whether the downgraded, non-prime product can be used in the same general applications as its prime counterparts. According to the petitioner, in *HWR from Korea*, the Department found that prime and non-prime products could be used in the same applications, had no significant difference in their respective sales values, and had very similar reported costs.[190] The petitioner contends that the instant case differs from *HWR from Korea* because the Department determined that Dillinger France's non-prime and prime products cannot be used in the same end use applications and Dillinger France did not assign full costs to non-prime products in the normal course of business.

Department's Position:

In its accounting system, Dillinger France values non-prime plate at the likely selling price based on current market conditions and uses this amount to offset the cost of prime plates. For purposes of reporting costs to the Department, however, Dillinger France revalued the cost of non-prime products to reflect the full cost of prime plates.[191] Therefore, consistent with the *Preliminary Determination*, we adjusted Dillinger France's reported costs for non-prime CTL plate to reflect the sales values recorded in Dillinger France's normal books and records, and we then allocated the difference between the reported and adjusted costs for non-prime CTL plate to the costs for prime CTL plate.

It is the Department's practice to analyze products sold as non-prime on a case-by-case basis to determine how such products are costed in the respondent's normal books and records, whether they remain in scope, and whether they can still be used in the same applications as prime

[188] *See* Dillinger France Case Brief at 37-38 (citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 47347 (July 21, 2016), and accompanying IDM at Comment 3 (*HWR from Korea*)).

[189] *Id*. (citing *HWR from Korea* IDM at Comment 3).

[190] *See* Petitioner's Rebuttal Brief, at 15-17 (citing *HWR from Korea* IDM at Comment 3).

[191] *See* Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Dillinger France S.A.," dated November 4, 2016 (Dillinger France Preliminary Cost Memorandum), at 2.

merchandise.[192] Sometimes the downgrading is minor, and the product remains within a product group. Other times the downgraded product differs significantly, no longer belongs to the same group, and cannot be used for the same applications as the prime product. If the product cannot be used for the same applications, the product's market value is usually significantly impaired to a point where its full cost cannot be recovered. In such cases, assigning full costs to that product could be unreasonable.[193] Therefore, instead of attempting to judge the relative values and qualities between grades of products, the Department has adopted the reasonable practice of looking at whether the downgraded product can still be used in the same general applications as its prime counterparts.[194]

In accordance with this practice, we reviewed the information on the record of this investigation regarding Dillinger France's downgraded merchandise. Further, Dillinger France explained that non-prime products are sold without certification as to grade, type, or chemistry and that they cannot be used for the same end-use applications as prime CTL plate. Prime merchandise is used in applications that require these types of certifications, while non-prime merchandise is used in applications such as counterweights for cranes and steel road planks.[195] Accordingly, we find there is no evidence that Dillinger France's non-prime merchandise can be used in the same general applications as its prime counterparts. Thus, contrary to Dillinger France's contention, this fact pattern is the opposite of *HWR from Korea*, where we determined that prime and non-prime products could be used for the same applications.[196]

Further, we note that section 773(f)(1)(A) of the Act mandates that a respondent's costs should be based on the company's normal books and records, if such records are kept in accordance with the GAAP of the exporting country and reasonably reflect the costs associated with the production of the merchandise. In its normal books and records, Dillinger France values non-prime products at their likely selling price and uses this value as an offset to its prime production.[197] This value is significantly lower than the average value of prime production that Dillinger France assigned for purposes of reporting costs to the Department.[198] This lower cost reflects the lower market value and different end uses for non-prime products compared to prime products. As such, we find Dillinger France's normal treatment of non-prime products to be reasonable and consistent with GAAP and the lower of cost or market principle. Therefore, we find no basis for departing from Dillinger France's normal treatment of these products in its books and records, and, consistent with the *Preliminary Determination*, we continue to adjust Dillinger France's reported costs to reflect Dillinger France's normal treatment of non-prime and prime CTL plate.

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[192] *See Welded Line Pipe from Korea* IDM at Comment 9. *See also Rebar from Turkey* IDM at Comment 15.

[193] *See Welded Line Pipe From Korea* IDM at Comment 9.

[194] *Id.*

[195] *See* Dillinger France's August 17, 2016 Supplemental Section D Response (Dillinger France August 17, 2016 SDQR), at 4.

[196] *See HWR From Korea* IDM at Comment 3.

[197] *See* Dillinger France August 17, 2016 SDQR, at 4.

[198] *See* Dillinger France Preliminary Cost Memorandum, at 2.

Comment 12: Cost of Production for Inputs Purchased from Affiliates for Dillinger France[199]

Petitioner's Arguments

- The petitioner argues that the COP for inputs from affiliated parties should include the affiliated party's financial expenses. The petitioner states that the Department instructed Dillinger France to include interest expenses in the affiliate's per-unit COP,[200] but neither included these interest expenses in their calculations,[201] and, thus, both companies departed from the Department's normal practice.

- The petitioner asserts that Dillinger France did not explain why it excluded these expenses and that this approach is inconsistent with the Department's instructions, as well as the intent and purpose of the major input rule. [202]

- The petitioner claims that in the context of the major input rule, the transfer and market prices cover the full COP, including interest expense and profit; therefore, to be comparable, the affiliate's COP should be on the same basis.

- The petitioner further contends that the major input rule already provides a conservative measure of the COP by ignoring profit, and there is no justification for ignoring interest expenses as well.

- The petitioner argues that the objective of the major input rule is to value inputs purchased from affiliates based on what the value would be if the input were purchased from unaffiliated parties and that such an amount should allow the seller to recover its financial costs. The petitioner claims that whether the respondent and its affiliated supplier are members of the same consolidated group is irrelevant to the value of an input.

Dillinger France's Arguments

- Dillinger France argues that the issue of interest expenses had no bearing on how the Department applied the major input rule to its slab purchases. Dillinger France states that the COP for slab exceeded both the transfer price and the market price, and increasing the COP for slab to include interest expenses would not change these results.[203]

- According to Dillinger France, Dillinger France and Dillinger Germany are part of the same consolidated group, and the interest expenses reported by Dillinger France already includes Dillinger Germany's interest expenses. Dillinger France contends that including the same

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[199] While Industeel also submitted comments on this issue, those arguments are moot because we applied total AFA to it in the final determination. *See* Comments 2 and 3, *supra*.

[200] *See* Petitioner's Case Brief at 31-32 (citing Dillinger France's July 15, 2016 Section D Response at 7).

[201] *Id.*, at 32 (citing Dillinger France Preliminary Cost Memorandum).

[202] *Id.*, at 32-33 (citing section 773(f)(2) and (3) of the Act; 19 CFR 351.407(b)).

[203] *See* Dillinger France Rebuttal Brief, at 4-5.

interest expense in the COP of slabs and in Dillinger France's financial expense rate would amount to double-counting.

Department's Position:
The COP for inputs purchased from affiliated suppliers generally should include the affiliated suppliers' financial expenses, and in instances when the supplier is not consolidated with the respondent, we include the supplier's financial expense in the COP. However, when a supplier is consolidated with the respondent and the same set of consolidated financial statements is used to calculate both the supplier's COP and the respondent's COP, the inclusion of financial expenses in the supplier's COP results in double counting. Thus, in such instances, to avoid double counting when making an adjustment to the supplier's COP under the major input rule, we exclude the supplier's financial expenses.[204] Accordingly, for the final determination, we continued to exclude financial expenses from the COP of Dillinger France's affiliated suppliers whenever that supplier is a part of the same consolidated entity.

Comment 13: Income Offsets to G&A Expenses for Dillinger France

Petitioner's Arguments
- The petitioner argues that the Department should not include profit earned by Dillinger France for ancillary activities in the company's total G&A expenses for purposes of the final determination. Further, the petitioner claims that the Department should limit the revenue offset for these activities to the costs incurred during the POI.

Dillinger France's Arguments
- Dillinger France notes that the other revenue listed in the Department's cost verification report is not related to the calculation of G&A expenses but to the reconciliation and to the variance calculation. Dillinger France states that the G&A expenses were calculated directly from the G&A cost centers and did not include separate revenue offsets.

- Dillinger France contends that the profit referred to by the petitioner is inconsequential in relation to the POI total cost of manufacturing.

- Dillinger France also states that the petitioner cites no authority supporting its argument that its profit should be added to G&A expenses. On the contrary, Dillinger France notes that it is the Department's long-standing practice to reduce G&A expenses for income related to the general operations of the company.[205] Dillinger France points out that it does not know of any determination where the Department has reduced the G&A income offset to deduct for profits.

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[204] *See Sugar From Mexico: Final Determination of Sales at Less Than Fair Value*, 80 FR 57341 (September 23, 2015), and accompanying IDM at Comment 9; and *Certain Cold-Rolled Steel Flat Products From the Russian Federation: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 49950 (July 29, 2016), and accompanying IDM at Comment 9.

[205] *See, e.g., CWP from Korea* IDM at Comments 3 and 4.

Department's Position:
We continue to allow the revenue from ancillary activities as an offset to Dillinger France's COP. It is the Department's practice to include income offsets to G&A, if they relate to the general operations of the company as a whole and not to a separate line of business. The offsets do not have to be related directly to the production of subject merchandise.[206] Based on the evidence in this proceeding, we find that the revenue offsets claimed by Dillinger France are a part of the company's normal business operations[207] and that none of the underlying activities constitutes a major line of business. Further, as we noted in our cost verification report, the costs associated with the revenue earned from these activities are fully included in the calculation of the reported costs.[208] Accordingly, we find no reason to exclude any of these amounts from our G&A ratio calculation for the final determination.

Comment 14: Further Manufacturing Verification Corrections for BSPC

Dillinger France's Arguments

- Dillinger France states that the Department should make the various adjustments from the further manufacturing cost verification in its calculations for the final determination.

    - First, the Department should reverse its preliminary finding that BSPC double-counted its scrap offset According to Dillinger France, the Department evaluated this issue at verification and determined that the scrap revenue was not applied twice in its calculations.

    - Second, the Department should accept BSPC's correction of wall thickness classifications for two item numbers.

    - Third, the Department should accept BSPC's correction to include foreign exchange gains in the calculation of the financial expense ratio because these gains fully offset BSPC's financial expenses and thus, BSPC's resulting financial expense ratio is zero.

The petitioner did not comment on this issue.

Department's Position:
In the *Preliminary Determination*, we adjusted BSPC's reported scrap offset to correct for double-counting. However, we determined at the cost verification that BSPC's scrap offset was not applied twice in its calculation of the cost of further manufacturing.[209] Accordingly, we reversed the adjustment made at the *Preliminary Determination* for BSPC's scrap offset.

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[206] *See, e.g., Certain Cold-Rolled Carbon Steel Flat Products From Taiwan: Notice of Final Determination of Sales at Less Than Fair Value*, 67 FR 62104 (October 3, 2002), and accompanying IDM at Comment 6; *see also CWP From Korea* IDM at Comment 2.

[207] *See* Dillinger France Cost Verification Report, at 12.

[208] *Id.*

[209] *See* BSPC Cost Verification Report, at 7-8.

We also incorporated the minor corrections submitted at the further manufacturing cost verification in our calculation of BSPC's reported costs. We noted at verification that the correction regarding wall thickness classifications was the result of a clerical error, and that the revised data was accurate and supported by source documents. With regard to the second correction, we noted that the foreign exchange gains in BSPC's parent company's financial statements had been mistakenly omitted from the calculation of the financial expense ratio.[210] Our practice is to include the total net foreign exchange gain or loss reported in the financial statement of the same entity used to compute a respondent's net financial expenses in the financial expense ratio calculation.[211] Consequently, in accordance with this practice, we included the total foreign exchange gains in the financial expense ratio calculation for the final determination.

Comment 15: Further Manufacturing Scrap Offset for BSPC

Petitioner's Arguments

- The petitioner argues that BSPC's scrap offset must be limited to the verifiable quantity of scrap generated, and the Department should not grant a scrap offset for turnings and tab pieces because it did not verify the amount of these pieces generated by BSPC.

- According to the petitioner, the Department's practice limits the scrap offset to the quantity of generated scrap valued at the average sale price[212] and emphasizes the verifiability of information when determining the quantity of scrap generated. The petitioner states that in *CWP from Thailand 2013*,[213] the Department did not accept the scrap offset based on the respondent's POR scrap revenues, even though the company supported the quantity of scrap generated during the fiscal year. The petitioner argues that, in that case, the Department looked to record evidence to determine the quantity of scrap that could have reasonably been generated and limited the scrap offset to that amount.[214]

- The petitioner contends that the only verifiable quantity of scrap generated by BSPC is the quantity of cut-offs, because there is no record evidence of the quantity of turnings and tab pieces generated. Therefore, the petitioner claims that the Department should continue to limit Dillinger France's scrap offset as it did in the *Preliminary Determination*.

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[210] *Id.*, at 2.

[211] *See, e.g.*, *Magnesium Metal From the Russian Federation: Final Determination of Sales at Less-than-Fair Value*, 70 FR 9041 (February 24, 2005), and accompanying IDM at Comment 12.

[212] *See* Petitioner's Case Brief, at 6-7 (citing, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From Taiwan*, 65 FR 16877 (March 30, 2000), and accompanying IDM at Comment 38; and *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products From India*, 71 FR 45012 (August 8, 2006), and accompanying IDM at Comment 4).

[213] *See* Petitioner's Case Brief, at 7-8 (citing *Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 65272 (October 31, 2013), and accompanying IDM at Comment 11 (*Pipes and Tubes from Thailand 2013*)).

[214] *Id*. (citing *CWP from Thailand 2013* IDM at Comment 11).

Dillinger France's Arguments

- Dillinger France asserts that the Department should grant BSPC's full reported scrap revenue offset and that it witnessed the generation of turnings and the temporary use of tabs during the verification factory tour. Dillinger France argues that it was clear that turnings and tabs are generated as scrap for every plate in the production of downstream pipe products and that the turnings and tabs it generated in the normal course of production were weighed and sold at regular monthly intervals.

Department's Position:

Our practice is to allow for a scrap offset related to the quantity of scrap generated during the POI.[215] When the quantity sold exceeds the quantity generated, we limit the scrap offset to the quantity generated during production because it would be unreasonable to offset the POI costs for scrap produced prior to the POI.[216]

While BSPC does track the quantity of cut-offs generated during production in its normal books and records, it does not track the quantity of tab pieces and turnings generated, which are only weighed at the time they are sold. Thus, because BSPC is not able to determine the total quantity of scrap generated during the POI inclusive of turnings and tab pieces, we looked to available record evidence to determine the total quantity of scrap that could have reasonably been generated during production, in accordance with our practice.[217] Our review of the record indicates that, based on its verified yield loss ratio, BSPC could have reasonably generated more scrap than it sold during the POI.[218] Accordingly, we find BSPC's quantity of scrap sold during the POI to be a reasonable approximation of the quantity generated and, thus, allowed BSPC's full scrap offset for the final determination.

Comment 16: Further Manufacturing G&A Ratio Denominator for BSPC

Dillinger France's Arguments

- Dillinger France argues that the Department should adjust the denominator of BSPC's G&A expense ratio upward to account for yield loss expenses. According to Dillinger France, these expenses are directly related to the cost of goods sold for further manufacturing and there is no basis for excluding them simply because they were not initially recorded in the cost of goods sold account.

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[215] *See, e.g., CWP from Thailand 2013* IDM at Comment 11; *Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Final Results of the Thirteenth Administrative Review*, 73 FR 14220 (March 17, 2008) and accompanying IDM at Comment 5; and *Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman: Final Determination of Sale at Less Than Fair Value*, 77 FR 64480 (October 22, 2012) and accompanying IDM at Comment 3 (*CWP From Oman*); *see also Mid Continent Nail Corp. v. United States*, 34 C.I.T. 498, 510-12 (CIT 2010) (*Mid Continent*) (affirming the Department's practice concerning the scrap offset).

[216] *See, e.g., CWP from Oman* IDM at Comment 3.

[217] *See CWP From Thailand 2013* IDM at Comment 11.

[218] *See* Dillinger France Cost Calculation Memorandum.

Petitioner's Arguments

- The petitioner disagrees that it would be appropriate to adjust the denominator of BSPC's G&A expense ratio in the manner Dillinger France suggests. The petitioner notes that BSPC's cost of goods sold reflects the total amount of plate consumed, inclusive of all yield losses resulting from further processing. Thus, the petitioner asserts that adding yield loss expenses to the cost of goods sold would result in double counting.

- Further, the petitioner argues that the Department correctly excluded outbound freight expenses from the denominator of BSPC's G&A expense ratio at the *Preliminary Determination*, and it should continue to do so in the final determination.

Department's Position:

We did not adjust the denominator of BSPC's G&A expense ratio to account for its calculated yield loss expenses in the final determination. The denominator of BSPC's G&A expense ratio reflects the full cost of materials consumed during production as captured in the company's audited financial statements, inclusive of all yield losses. As a result, adding the calculated yield loss to an already fully yielded cost would result in double counting.

In addition, the further manufacturing costs and COP to which we applied BSPC's G&A expense ratio do not reflect the cost of outbound freight. Our practice is to calculate the G&A and financial expense ratios on a basis that is consistent with the figures to which they are applied.[219] Accordingly, we continued to exclude outbound freight expenses from the denominator of BSPC's G&A expense ratio for the final determination.

Comment 17: Further Manufacturing G&A Expense Ratio Calculation and Application for BSPC

Petitioner's Arguments

- In the *Preliminary Determination*, the Department calculated BSPC's G&A expense ratio using its full cost of sales in the denominator and we then applied this ratio to the reported further cost of manufacturing of each CONNUM plus the COP of the underlying CTL plate used to produce the CONNUM. The petitioner disagrees with this approach, which it claims does not conform to the Department's normal practice and results in an understatement of costs.

- The petitioner states that section E of the Department's questionnaire directs that further manufacturing G&A expenses should be calculated as a ratio of the company's total G&A expenses divided by its cost of sales (less the cost of the imported subject merchandise).[220]

[219] *See, e.g., Certain Pasta From Italy: Notice of Final Results of the Thirteenth Administrative Review*, 75 FR 81212 (December 27, 2010), and accompanying IDM at Comment 4 (*Pasta from Italy*).

[220] *See* Petitioner's Case Brief, at 9 (citing Letter from Dillinger France's July 15, 2016 Section C & E Response, at E-22).

- According to the petitioner, the Department only uses a denominator inclusive of the cost of the imported subject merchandise where a company engages in manufacturing and reselling activities. However, the petitioner argues that, according to Dillinger France, BSPC only engages in further manufacturing, not reselling activities.[221]

- The petitioner argues that, if we were to include the cost of imported subject merchandise in the denominator of the G&A expense ratio, the ratio will be distorted because it will be based on transfer prices, but then applied to the COP.[222] The petitioner notes that, although the difference between the transfer price and COP may be minimal in some cases, the difference is material here and would cause a large distortion. Accordingly, the petitioner claims that the Department should exclude the cost of CTL plate consumed from the G&A expense ratio and only apply the ratio to the further manufacturing cost of each product.

Dillinger France's Arguments

- Dillinger France argues that the Department should continue to calculate and apply the further manufacturing G&A expense ratio in the same manner as the *Preliminary Determination,* because the Department found at verification that BSPC purchased a significant amount of merchandise for resale during the POI.[223] Thus, Dillinger France points out that BSPC engaged in both manufacturing and reselling activities.

- Dillinger France states that the petitioner's estimate of the transfer price of subject merchandise is unreasonable because it includes a mixed bag of plate products from different sources, including non-subject plate.

Department's Position:

The record evidence indicates that BSPC engages in both further manufacturing and reselling activities.[224] Therefore, consistent with our decisions in *Cold-Rolled Steel from Brazil*,[225] *Line Pipe from Korea*,[226] and *Hot-Rolled Steel from Brazil*,[227] we find that it is appropriate to allocate G&A expenses to all company activities. In such instances, it is appropriate that the denominator of the G&A expense ratio be revised to include not only the further processing costs, but also the cost of the imported subject merchandise that was further processed and the

[221] *See* Petitioner's Case Brief, at 9-10 (citing *Certain Cold-Rolled Steel Flat Products From Brazil: Final Determination of Sales at Less Than Fair Value*, 81 FR 44946 (July 29, 2016), and accompanying IDM at Comment 7 (*Cold-Rolled Steel from Brazil*)).

[222] *See* Petitioner's Case Brief, at 11 (citing *Line Pipe from Korea* IDM at Comment 20).

[223] *See* Dillinger France's Rebuttal Brief, at 11-13 (citing BSPC Cost Verification Report, at 4, 8, and exhibits 1, 36-44).

[224] *See* BSPC Cost Verification Report, at 8.

[225] *See Cold-Rolled Steel from Brazil* IDM at Comment 7.

[226] *See Line Pipe from Korea* IDM at Comment 20.

[227] *See Certain Hot-Rolled Steel Flat Products From Brazil: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 53424 (August 12, 2016), and accompanying IDM at Comment 5.

cost of all non-further manufactured products (*i.e.*, the total cost of goods sold) because the G&A expenses incurred relate to all of the company's operations. Further, to ensure that the denominator of the ratio and the per-unit cost to which it is applied are on the same basis, we apply the G&A expense ratio to the per-unit further manufacturing cost plus the COP of the underlying subject merchandise.

We agree with the petitioner that, in some instances, this methodology could result in a theoretical distortion because the total cost of goods sold includes the cost of the imported subject merchandise (in this case, CTL plate) at the transfer price and the per-unit costs to which the ratio is applied include the same merchandise at COP. While we found in *Line Pipe from Korea* that this difference was negligible,[228] for BSPC the difference is significant enough to represent a potential distortion. Therefore, we adjusted the cost of the subject plate consumed included in the cost of goods sold denominator to reasonably reflect the COP, rather than the transfer price.[229] We also revised the cost of goods sold denominator to reflect the changes made to BSPC's scrap offset adjustment as described in Comment 15 above. As a result of these changes, the denominator of the G&A expense ratio and the per-unit costs to which it is applied are stated on a consistent basis, in accordance with our practice,[230] and any theoretical difference has been negated.

[228] *See Line Pipe from Korea* IDM at Comment 20.

[229] *See* Dillinger France Cost Calculation Memorandum, Attachment 4 for the details of this calculation, showing the significance of such distortion.

[230] *See, e.g., Pasta from Italy* IDM at Comment 4.

VIII. Recommendation

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

☒	☐
_____	_____
Agree	Disagree

3/29/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

_____

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance