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DATE: September 22, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Less Than Fair Value Investigation of Welded Stainless
Pressure Pipe from India

I. SUMMARY

We analyzed the case and rebuttal briefs submitted by interested parties in the less than fair value (“LTFV”) investigation of welded stainless pressure pipe (“WSPP”) from India. As a result of our analysis, we made changes to the *Preliminary Determination*.¹ We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum.

II. BACKGROUND

On May 10, 2016, the Department of Commerce (“Department”) published its *Preliminary Determination* in the instant investigation, preliminarily finding that welded stainless pressure pipe (“WSPP”) from India is, or is likely to be, sold in the United States at LTFV, as provided in section 733 of the Tariff Act of 1930, as amended (“the Act”), for the mandatory respondents, Steamline Industries Limited (“Steamline”) and Sunrise Stainless Pvt. Ltd. and Sun Mark Stainless Pvt. Ltd. (“collectively, “Sunrise”), and the non-individually examined companies receiving the all-others rate.

¹ See *Welded Stainless Pressure Pipe from India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 28824 (May 10, 2016) (“*Preliminary Determination*”) and accompanying Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, “Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Welded Stainless Pressure Pipe from India,” dated May 3, 2016 (“*Preliminary Decision Memo*”).



Subsequent to the *Preliminary Determination*, we issued a cost supplemental questionnaire to Steamline on May 5, 2016² and a sales supplemental questionnaire to Steamline and Sunrise on May 13, 2016.³ Steamline and Sunrise responded to the Department's sales and cost supplemental questionnaires on May 27, 2016.⁴

On May 13, 2016, Steamline filed a ministerial error allegation with respect to the Department's *Preliminary Determination*.⁵ On June 6, 2016, the Department issued a memorandum stating that a ministerial error had not occurred.⁶

On June 8, 2016, Petitioners⁷ filed comments in advance of the Department's onsite verification.⁸ On June 14, 2016, Steamline submitted pre-verification corrections to its questionnaire response.⁹ As provided in section 782(i) of the Act, we conducted verifications of Steamline's sales responses from June 13, 2016, through June 17, 2016,¹⁰ and Sunrise's sales responses from June 20, 2016 through June 24, 2016.¹¹ We conducted verifications of Steamline's cost responses from July 4, 2016, through July 8, 2016,¹² and Sunrise's cost responses from July 11, 2016 through July 15, 2016.¹³ We followed standard verification

² See letter from the Department, "Antidumping Duty Investigation of Welded Stainless Pressure Pipe from India," dated May 5, 2016.

³ See letter from the Department, "Antidumping Duty Investigation on Welded Stainless Pressure Pipe from India: Supplemental Questionnaire Regarding Theoretical Versus Actual Reported Weights in the Steamline Industries Limited Questionnaire Response," dated May 13, 2016; see also letter from the Department, "Antidumping Duty Investigation on Welded Stainless Pressure Pipe from India: Supplemental Questionnaire Regarding Theoretical Versus Actual Reported Weights in the Sunrise Stainless Private Limited Questionnaire Response," dated May 13, 2016.

⁴ See letter from Steamline, "Welded Stainless Pressure Pipe from India: Response to Supplemental Questionnaire Regarding Theoretical Versus Actual Reported Weights in Sales Database and Cost Database of the AD Investigation," dated May 27, 2016, ("Steamline's Supplemental Weight Response"); letter from Sunrise, "Welded Stainless Pressure Pipe from India: Response to 2nd Section B and C Supplemental Questionnaire on Standard or Nominal Weight," dated May 27, 2016 ("Sunrise's Supplemental Weight Response"); and, letter from Steamline, "Welded Stainless Pressure Pipe from India: Response to Third Supplemental Questionnaire to Section D of the AD Investigation," dated May 27, 2016.

⁵ See letter from Steamline, "Welded Stainless Pressure Pipe from India Submission in the Proceeding of Preliminary Determination of AD Investigation," dated May 13, 2016 ("Steamline's Ministerial Error Allegation").

⁶ See Memorandum to Eric B. Greynolds, "Antidumping Duty Investigation of Welded Stainless Pressure Pipe from India: Ministerial Error Allegation Memorandum Concerning the Preliminary Determination," dated June 6, 2016.

⁷ Petitioners consist of Bristol Metals, LLC, Felker Brothers Corporation, Outokumpu Stainless Pipe, Inc., and Marcegaglia USA Inc. (collectively, "Petitioners").

⁸ See letter from Petitioners, "Welded Stainless Pressure Pipe from India: Pre-Verification Comments," dated June 8, 2016.

⁹ See letter from Steamline, "Welded Stainless Pressure Pipe from India: Pre Verification Minor Error Correction Submitted at the Beginning of Verification (Ex-1)," dated June 14, 2016.

¹⁰ See letter from the Department, "Antidumping Duty Investigation on Welded Stainless Pressure Pipe from India: Verification Outline for Steamline Industries Limited," dated June 7, 2016 ("Steamline Sales Verification Outline").

¹¹ See letter from the Department, "Antidumping Duty Investigation on Welded Stainless Pressure Pipe from India: Verification Outline for Sunrise Stainless Private, Limited," dated June 13, 2016 ("Sunrise Sales Verification Outline").

¹² See letter from the Department, "Antidumping Duty Investigation of Welded Stainless Steel Pressure Pipe from India," dated June 24, 2016 ("Steamline Cost Verification Agenda").

¹³ See letter from the Department, "Antidumping Duty Investigation on Welded Stainless Pressure Pipe from India," dated June 28, 2016 ("Sunrise Cost Verification Agenda").

procedures, including an examination of relevant accounting and production records, and original source documents provided by the two respondents. We issued Sunrise's Cost Verification Report on August 3, 2016,¹⁴ and Sunrise's Sales Verification Report on August 12, 2016.¹⁵ Similarly, we issued Steamline's Cost Verification Report on August 15, 2016,¹⁶ and Steamline's Sales Verification Report on August 12, 2016.¹⁷

None of the parties to the proceeding requested a hearing or filed comment on the scope of the investigation.

On August 22, 2016, Petitioners, Steamline, and Sunrise submitted case briefs.¹⁸ On August 29, 2016, all three parties filed rebuttal briefs.¹⁹ On September 13, 2016, we instructed Steamline to amend its home market sales database to include certain home market transactions reported at verification in the minor corrections to the response.²⁰ Steamline submitted its revised home market sales database on September 14, 2016.²¹

III. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. For purposes of this scope, references to size are in nominal inches and include all products within tolerances allowed by pipe specifications. This merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A-312 or ASTM A-778 specifications, or comparable domestic or foreign

¹⁴ See Memorandum to the File, "Verification of the Cost of Production Response of Sunrise Stainless Private Limited in the Antidumping Duty Investigation of Welded Stainless Pressure Pipe from India," dated August 3, 2016 ("Sunrise's Cost Verification Report").

¹⁵ See Memorandum to the File, "Verification of the Sales Response of Sunrise Stainless Private Limited in the Antidumping Duty Investigation on Welded Stainless Pressure Pipe from India," dated August 12, 2016 ("Sunrise's Sales Verification Report").

¹⁶ See Memorandum to the File, "Verification of the Cost Response of Steamline Industries Limited in the Investigation of Welded Stainless Steel Pressure Pipe from India," dated August 15, 2016 ("Steamline's Cost Verification Report").

¹⁷ See Memorandum to the File, "Verification of the Sales Response of Steamline Industries Limited in the Antidumping Duty Investigation of Welded Stainless Pressure Pipe from India," dated August 12, 2016 ("Steamline's Sales Verification Report").

¹⁸ See letter from Petitioners, "Welded Stainless Pressure Pipe from India: Case Brief," dated August 22, 2016 ("Petitioners' Case Brief"); letter from Steamline, "Welded Stainless Pressure Pipe from India: Case Brief," dated August 22, 2016 ("Steamline's Case Brief"); and, letter from Sunrise, "Welded Stainless Pressure Pipe from India: Case Brief of Sunrise Stainless Pvt. Limited.," dated August 22, 2016 ("Sunrise's Case Brief").

¹⁹ See letter from Petitioners, "Welded Stainless Pressure Pipe from India: Rebuttal Brief," dated August 29, 2016 ("Petitioners' Rebuttal Brief"); letter from Steamline, "Welded Stainless Pressure Pipe from India: Submission of Rebuttal Brief," dated August 29, 2016 ("Steamline's Rebuttal Brief"); and, letter from Sunrise, "Welded Stainless Pressure Pipe from India: Rebuttal Brief of Sunrise Stainless Pvt. Limited," dated August 29, 2016 ("Sunrise's Rebuttal Brief").

²⁰ See letter from the Department, "Antidumping Duty Investigation on Welded Stainless Pressure Pipe from India: Request for Addendum to the Home Market Sales Database of Steamline Industries Limited," dated September 13, 2016.

²¹ See letter from Steamline, "Welded Stainless Pressure Pipe from India: An Addendum to Home Market Sales Database," dated September 14, 2016 ("Steamline's Home Market Database Addendum").

specifications. ASTM A-358 products are only included when they are produced to meet ASTM A-312 or ASTM A-778 specifications, or comparable domestic or foreign specifications.

Excluded from the scope are: (1) welded stainless mechanical tubing, meeting ASTM A-554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A-249, ASTM A-688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A-269, ASTM A-270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also enter under HTSUS subheadings 7306.40.1010, 7306.40.1015, 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of this investigation is dispositive.

IV. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on our verification of Sunrise and Steamline, and our analysis of the case and rebuttal briefs, we have made the following changes since the *Preliminary Determination*:

- We revised Steamline's home market sales database for warehouse sales to apply the highest price observed for each CONNUM to all warehouse sales of that CONNUM. *See Comment 1.*
- We revised the cost and sales databases for both respondents to reflect reported theoretical weights as the basis for the margin calculations, as opposed to actual weights. *See Comment 2.*
- We revised Steamline's reported raw material cost to reflect the POI weighted-average cost for the grade of the input coil. *See Comment 3.*
- We revised Steamline's home market sales database to identify an affiliated party, and to conduct an affiliated party test. *See Comment 4.*
- We revised Steamline's U.S. sales database to correct a data entry error for one U.S. transaction. *See Comment 5.*
- We revised Steamline's U.S. and home market sales databases to account for minor corrections to the response reported at verification. *See Comment 8.*
- We revised the allocation of common overhead costs to welded and seamless pipe based on the total POI production quantity of welded and seamless pipe. *See Comment 10.*
- We calculated warranty expenses ("WARRU") in the U.S. market for Sunrise in dollars. *See Comment 13.*
- We treated all direct selling expenses ("DIRSELU") for Sunrise's constructed export price ("CEP") sales as indirect selling expenses ("INDIRSU"). *See Comment 14.*
- We used the quantity variable for net sales including returns ("QTYNETU") instead of the gross sales ("QTYU") in the final margin calculation for Sunrise. *See Comment 15.*
- We used the revised U.S. home market sales and cost databases submitted by both Steamline and Sunrise on May 27, 2016.

- We incorporated the minor corrections from the Steamline cost verification and incorporated these corrections and the updated U.S. sales and COP databases in our affiliated input analysis and duty drawback analysis performed in the Preliminary Determination.
- If an antidumping order is issued, because a *de minimis* margin has been calculated for Sunrise, subject merchandise produced and exported by Sunrise will be excluded from the order.

V. LIST OF COMMENTS

- Comment 1: Whether Certain Home Market Sales Constitute Sub-Prime Merchandise
- Comment 2: The Use of Theoretical or Actual Weight
- Comment 3: Calculation of Direct Material (Coil) Cost
- Comment 4: Steamline's Home Market Sales to an Affiliated Party
- Comment 5: Steamline's Data Error for One U.S. Sale
- Comment 6: Steamline's Inventory Carrying Costs ("ICC")
- Comment 7: Steamline's Packing Material Usage Rate
- Comment 8: Steamline's Minor Corrections to Response Presented at Verification
- Comment 9: Steamline's Arm's-Length Prices from Affiliated Parties for Direct Materials
- Comment 10: Steamline's Allocation of Conversion Costs
- Comment 11: Steamline's Director's Remuneration
- Comment 12: Steamline's Cost Reconciliation and Scrap
- Comment 13: Conversion of Sunrise's Warranty Expenses
- Comment 14: Treatment of Indirect Selling Expenses for Sunrise's CEP Sales
- Comment 15: Use of Net Quantity in the Calculation of Sunrise's U.S. Sales

VI. DISCUSSION OF THE ISSUES

Comment 1: Whether Certain Home Market Sales Constitute Sub-Prime Merchandise

Petitioners' Case Brief²²

- Most home market sales may be of WSPP with defects; the verification report for Steamline clearly lays out that many home market sales were of defective or sub-prime merchandise. It is common to sell pipe that does not pass inspection on the basis of weight at discounted prices. Thus, it is plausible, as Steamline explains at verification, that the "defective" pipe meets the standards for ASTM A312, but has a flaw that a U.S. customer would reject. However, there is no way for the Department to determine which of Steamline's home market sales are of defective merchandise that cannot be accurately compared to its U.S. sales.
- For Sunrise, it is unlikely that Sunrise has no production of defect-free merchandise, though Sunrise may not have recorded that information on its invoices like Steamline did. Further, Sunrise has not provided supporting documentation for how the home market sales process works prior to the invoicing stage. It was evasive when asked whether it

²² See Petitioners' Case Brief at 3-9.

made sales of merchandise in the home market that would have been rejected by a U.S. customer.²³

- Petitioners claim that in the recent investigation of *CORE from Italy*,²⁴ the Department applied partial adverse facts available (“AFA”) to Arvedi’s home market sales because it did not comply with the Department’s request to report the control numbers (“CONNUMs”) for its non-prime home market sales based on the Department’s reporting requirements and provide full, accurate information regarding these non-prime sales. Therefore, as in *CORE from Italy*, Petitioners’ claim that the Department should use the highest net unit price of Steamline’s and Sunrise’s home market sales to unaffiliated customers for all sales.

Steamline’s Case and Rebuttal Brief²⁵

- The merchandise produced and sold to unaffiliated customers in the home market were not sub-prime, secondary or defective. On some intra-company invoices used for internal business purposes, only the merchandise was identified as “secondary/defective” because the pipes were of random length or not approved for export, as the pipes may have minor flaws. The merchandise is not sub-prime, secondary, or defective, and Steamline does not state that the merchandise is subprime, secondary or defective on its invoice to the unaffiliated customer, which was verified by the Department. Thus, Steamline reported all home market sales correctly in the home market sales database.
- Steamline refutes Petitioners’ citation to *CORE from Italy* because, in that case, the respondent sold sub-prime merchandise. Steamline reiterates that it does not sell defective or sub-prime merchandise. Also, unlike the respondent in *CORE from Italy*, Steamline asserts that it reported all product characteristics accurately, which was verified by the Department. In *CORE from Italy*, the Department found that there was no evidence that the respondent misclassified its sales as prime or sub-prime, and thus, the use of AFA was not warranted, similar to the situation here.
- The Department has previously found merchandise to be comparable for dumping margin purposes that had minor differences in physical characteristics.²⁶
- Finally, Petitioners provided no evidence to support their argument that selling WSPP by weight is unusual, and maintain that all respondents in India sell by weight. Additionally, Steamline argues that Petitioners’ claim that it is not uncommon to sell defective merchandise at below cost is unsupported by record evidence. However, if that were the

²³ *Id.*, at 5-8. Petitioners’ discussion of this issue contained an extensive amount of information and argument that was bracketed as proprietary. See Analysis Memorandum for the Final Determination of the Antidumping Duty Investigation of Welded Stainless Pressure Pipe (“WSPP”) from India: Sunrise Stainless Pvt Ltd (“Sunrise”), dated concurrently with this memorandum (“Sunrise’s Final Analysis Memorandum”).

²⁴ See *Certain Corrosion-Resistant Steel Products From Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35320 (June 2, 2016) (“*CORE from Italy*”).

²⁵ See Steamline’s Case Brief at 5 and Steamline’s Rebuttal Brief at 4-5.

²⁶ See Steamline’s Rebuttal Brief at 5 (citing *Pesquera Mares Australes Ltda. v. United States*, 266 F.3d 1372, 1383 (Fed. Cir. 2001) (“*Pesquera Mares*”), *Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Final Results of Antidumping Duty Administrative Review*, 70 FR 8072 (February 17, 2005) (“*PET Film*”), and *Stainless Steel Wire Rod from Korea*, 63 FR 40404, 40414 (July 29, 1998) at Comment 7 (“*Wire Rod from Korea*”).

case, this would be remedied because those sales would fail the cost test and would not be compared to U.S. sales.

Sunrise's Rebuttal Brief²⁷

- All of Sunrise's home market sales represent prime material.
- The invoicing practices of a particular product in a particular market may not always be the same in all countries. Thus, there is no evidence to support Petitioners' contention that because a product is sold in feet in the U.S. market but in kilograms in the home market that the product sold in kilograms must be defective. There is also no evidence to support Petitioners' contention that sales that fail the cost test must be of defective merchandise.
- The lack of documentation prior to the invoice for certain home market sales does not mean that such sales are made from defective merchandise. It is not always possible to produce the same quantity as ordered. Sunrise also explains reasons for the differences in the quantity ordered and sold cited by Petitioners and maintains that these differences are not due to defective merchandise sold in the home market.
- If, occasionally, there is a slight quality defect in the production, Sunrise "would cut off the portion of the weld that failed and re-test the pipe to ensure it passed, in which case certain customers in the domestic market would purchase non-standard lengths."²⁸ As this merchandise meets ASTM standards (because the ASTM standards do not specify length), the merchandise still qualifies as prime product. The Department verified Sunrise's mill test certificates and found that its home market sales meet ASTM standards. Thus, AFA is not warranted.

Department's Position: Pursuant to sections 776(a) and (b) of the Act, application of partial facts available with adverse inferences is warranted for Steamline's sales of defective or sub-prime merchandise in the home market that the company made out of its warehouse. As an adverse inference resulting from Steamline's failure to identify differences in the quality of merchandise it sold, we will assign the highest price reported for each CONNUM sold out of warehouse in the home market to all home market warehouse sales of that CONNUM.

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all

²⁷ See Sunrise's Rebuttal Brief at 6-10.

²⁸ See Sunrise's Rebuttal Brief at 9, citing Sunrise's Sales Verification Report at 7.

or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides 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 applicable requirements established by the administering authority” if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as AFA information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act (“TPEA”), which made numerous amendments to the antidumping (“AD”) and countervailing duty (“CVD”) law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.²⁹ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.³⁰

In applying an adverse inference pursuant to section 776(b), and under new section 776(d)(3) of the Act, as added by 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.”³¹ Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.³² It is the Department’s practice to consider, in

²⁹ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). 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 contained to section 771(7) of the Act, which relate to determinations of material injury by the 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) (“Applicability Notice”).

³⁰ *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

³¹ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Rep. 103-316, Vol. 1, 103d Cong. at 870 (1994), as reprinted in 1994 U.S.C.C.A.N. 4040, 4199 (“SAA”).

³² 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) (“Preamble”); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (“Nippon Steel”).

employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.³³

Section 776(c) of the Act provides that, 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, the final determination concerning the subject merchandise, or any previous review conducted under section 751 of the Act concerning the subject merchandise. Further, under the TPEA's addition of new section 776(c)(2) of the Act, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding. Finally, the TPEA also makes clear that when selecting an adverse facts available margin, the Department is not required to estimate 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.³⁴

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 "ones maximum effort," as in "do your best."³⁵ 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."³⁶ 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.³⁷ While the CAFC noted that the "best of its ability" standard "does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping."³⁸ The "best of its ability" standard 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.³⁹

In the Department's original questionnaire, we requested that Steamline and Sunrise report whether the merchandise they sold in the home market was prime or non-prime (secondary).⁴⁰ The questionnaire also asked respondents to describe in detail how secondary merchandise is categorized internally and marketed.⁴¹ In their questionnaire responses, both respondents

³³ See, e.g., *Steel Threaded Rod From Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum at page 4, unchanged in *Steel Threaded Rod From Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

³⁴ Section 776(d)(3) of the Act.

³⁵ See *Nippon Steel*, 337 F.3d at 1382-83.

³⁶ *Id.* at 1382.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See the Department's November 23, 2015, Initial Questionnaire addressed to Steamline and Sunrise at B-8, Field Number 2.2.

⁴¹ *Id.*

reported that they only sold prime merchandise in the home market.⁴² At the verification of Steamline, however, the Department found for certain home market sales made out of warehouse that merchandise was designated as “secondary/defective” on internal company invoices. Specifically, the Department stated:

The Department also noted that for certain home-market sales traces, particularly for merchandise sold out of the Mumbai warehouse, the product sold was identified as “S.S. Secondary/Defective Welded Pipe” on the tax invoice created for transferring the merchandise from Steamline to its warehouse. See VE-6(b),(c), and (e). We noted that Steamline did not identify any sales in the home or U.S. market as defective, non-prime, secondary, etc. in its underlying submissions. Steamline officials stated that defective means anything less than perfect quality and that these products were otherwise up to tested standards, but may have a small defect (using the comparison of a loose thread on a shirt). When pressed for further explanation, company officials explained that Steamline does not sell this category of goods in the U.S. market, stating that U.S. customers are likely to return a product with even small defects, even if otherwise up to standard. When Department officials inquired as to why these products were not otherwise identified as secondary merchandise in the database, Steamline noted that the Indian tariff system only has classifications for welded pipe products, *i.e.*, first quality/normal finished merchandise and scrap, but does not have a non-prime category. Because the merchandise is up to testing standards and is not scrap, Steamline thus reasoned that the merchandise is of first quality in the home market since a classification of secondary merchandise is not a consideration in the home market. Department officials pressed Steamline on the types of defects contained in the merchandise, and Steamline officials responded that these are very small non-consequential flaws, but did not provide further detail. When we asked company officials about the frequency of this occurrence within its sales records, they responded that they have no idea of the number of home market sales containing the discrepancy and would be unable to calculate it without manually checking each invoice. Steamline informed the Department that these goods were marked secondary/defective on the invoice from the factory to the warehouse, but were identified only as “S.S. Pipe” on the tax invoice to the downstream customer.⁴³

Though Steamline argues that this merchandise still meets ASTM standards and thus is not sub-prime or defective, the evidence examined at verification (the internal transfer invoices) denotes that some of the merchandise being sold out of Steamline’s warehouse in the home market is considered by the company in the normal course of business as “secondary/defective.” Steamline had multiple opportunities to report that it sold defective or secondary merchandise or,

⁴² See letter from Steamline, “Welded Stainless Pressure Pipe from India: Response to Section B of the Questionnaire” dated January 20, 2016, (“Steamline’s Original Section B Questionnaire Response”); letter from Sunrise, “Welded Stainless Pressure Pipe from India: Response to Section B of the Questionnaire”, dated January 20, 2016 (“Sunrise’s Original Section B Questionnaire Response”).

⁴³ See Steamline’s Sales Verification Report at 13-14.

at the very least, seek clarification regarding these sales, given that the Department issued multiple supplemental questionnaires to Steamline regarding its relevant sales in accordance with section 782(d) of the Act.⁴⁴ Thus, we determine, based on our findings at the sales verification, in accordance with sections 776(a)(2)(A), (B), (C) and (D) of the Act that Steamline withheld requested information, failed to submit the requested information within the applicable time limits, failed to provide information that could be verified, and that failure to provide the necessary information significantly impeded the proceeding. Specifically, based on our discussion with company officials at verification and documentation examined at verification (internal transfer invoices), it is apparent that Steamline did not provide the Department with correct information regarding its home market sales of secondary/defective merchandise out of warehouse.⁴⁵ Accordingly, we also concluded that in not providing this information to the Department, Steamline failed to act to the best of its ability, in accordance with section 776(b) of the Act. The Department has previously found such failings in reporting, first discovered at verification, to be a deficiency, and has relied upon AFA as appropriate.⁴⁶

Furthermore, we are unpersuaded by Steamline's suggestion that it was compliant with the Department's request for information on this issue since the merchandise in question met the relevant ASTM standard and because Indian HTS classification does not recognize sub-prime merchandise,⁴⁷ thus insinuating that any failure to report was due to lack of clarity in the questionnaire or lack of basic understanding on behalf of Steamline as to the nature of secondary/non-prime merchandise. This claim is belied by Steamline's own acknowledgement that its quality control department does not approve merchandise with even small flaws for export since the merchandise may be rejected by the customer.⁴⁸ Indeed, the entire purpose of requesting the information in Section B of the initial questionnaire is for comparing identical or

⁴⁴ See, e.g., letter to Steamline from the Department, "First Supplemental Questionnaire for the Section A Questionnaire Responses of Steamline Industries Limited," dated January 28, 2016; letter to Steamline from the Department, "First Supplemental Questionnaire for the Section {B and C} Questionnaire Responses of Steamline Industries Limited," dated February 10, 2016.

⁴⁵ See Steamline's Sales Verification Report at 13-14.

⁴⁶ See *Certain Hot-Rolled Carbon Steel Flat Products From Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 33396 (June 12, 2008) ("*Hot-Rolled Steel from Thailand*") and accompanying Issues and Decision Memorandum at Comment 1. See also *Xanthan Gum From Austria: Final Determination of Sales at Less Than Fair Value*, 78 FR 33354 (June 4, 2013) ("*Xanthan Gum from Austria*") and accompanying Issues and Decision Memorandum at Comment 1; *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From France*, 58 FR 37125 (July 9, 1993) ("*Carbon Steel From France*") at Comment 17 ("With regard to the product coding errors in both the home market and the U.S. market in the hot-rolled steel investigation, we have reason to conclude, based on our findings at verification, that Usinor incorrectly assigned product codes for an entire grade of steel in each market. Therefore, because these errors were not limited in nature, we are assigning, as BIA, to the product control numbers for all the U.S. products of the miscoded grade of steel the higher of the average margin in the petition, or the highest non-aberrant calculated margin in the appropriate investigation. In the case of the miscoded grade of steel in the home market, for the same reasons described above, we are assigning all U.S. sales matched to those home market sales the higher of the average margin in the petition or the highest non-aberrant calculated margin in the investigation").

⁴⁷ See Steamline's Sales Verification Report at 13-14 and Case Brief at 4.

⁴⁸ See Steamline's Sales Verification Report at 13, which states, "Steamline does not sell this category of goods in the U.S. market, stating that U.S. customers are likely to return a product with even small defects, even if otherwise up to standard."

comparable merchandise sold in the home market to merchandise sold in the United States. That Steamline recognized a basic difference in certain merchandise sold in the home market that would disqualify it for sale in the U.S. market plainly indicates that sales of such merchandise are not comparable and appropriate for comparison, regardless of how minor the defect.

With respect to Steamline's rebuttal to Petitioners' claims (applicable to both respondents) that it is normal to sell WSPP by weight in India and that it is common to sell defective merchandise in India, we agree with Steamline that Petitioners did not support these assertions. However, with respect to Steamline's claim that these sales would otherwise fail the cost test, we note that the findings in this case are based on the clear factual information that the home market sales secondary/defective merchandise should not be compared to prime quality merchandise sold to the United States and, regardless of the veracity of Steamline's claims, they are inapposite to the plain fact that the Department requested Steamline identify secondary/defective/non-prime merchandise at the outset and the respondent failed to cooperate to the best of its ability in reporting this information.

In other words, we do not disagree that in a given investigation, the Department might initially request that a respondent report information that might not ultimately matter to the resulting margin calculation. This fact in no way absolves a respondent of its statutory and regulatory obligations to timely and accurately report such information in the first place; and, that aspects of reporting may ultimately be irrelevant to a final determination does not likewise render moot underlying issues regarding failure to cooperate regarding such reporting.⁴⁹ Further, we note that Steamline's argument that the inclusion of these sales in the existing database is inconsequential because they fail the cost test (and thus the result is essentially the same as if they had been initially reported as sub-prime and excluded from reporting) may be apparent for these final results, but was unknown to the Department at the time the relevant information was requested, and therefore that claim is no defense to a failure to report requested information.

In *CORE from Italy*, the Department found it appropriate to apply partial AFA because the Department discovered at verification that the respondent Arvedi failed to accurately report two of its seven physical characteristics for both its prime and non-prime sales in the home market.⁵⁰ Steamline asserts that since it did not sell non-prime merchandise, *CORE from Italy* is inapposite. We disagree. Steamline failed to report that it sold non-prime merchandise in the home market even though the Department requested in its initial questionnaire that Steamline report this information in its questionnaire responses. Rather, the Department discovered Steamline's sales of non-prime merchandise during the POI at verification. Similarly, the respondent in *CORE from Italy* failed to report information concerning its home market sales, which was information that the Department had requested that the company report in its

⁴⁹ See, e.g., *Pure Magnesium From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012*, 79 FR 94 (January 2, 2014) and accompanying Issues and Decision Memorandum at Comment 4 ("The record contains usable statements from producers of comparable merchandise in the primary surrogate country and, therefore, it is not necessary to evaluate the viability of the Vtormet statement for the calculation of surrogate financial ratios for the final results margin calculation. However, as a result of Petitioner's allegations with respect to TMM's failure to cooperate, the Department must evaluate the record with respect to the purported mistranslation and omission of translation for salient material.")

⁵⁰ See *CORE from Italy* and accompanying Issues and Decision Memorandum at Comment 3.

questionnaire responses, and this information was discovered at verification. While the failures on the part of both respondents concern somewhat different information regarding the respective companies' home market sales, both respondents withheld information that had been requested by the Department, failed to provide the information by the deadlines for submission of the information, failed to provide information that could be verified, and significantly impeded the proceeding. Thus, the Department properly resorted to the use of facts available, pursuant to section 776(a)(2) of the Act.

Further, we disagree with Steamline that the facts of *PET Film* are applicable here. In *PET Film*, the Department found that the respondent's U.S. sales of shorter rolls of PET film were prime merchandise, rather than non-prime as the respondent requested. The respondent had classified shorter rolls of PET film sold in the home market as prime, and the Department confirmed that this merchandise was not defective.⁵¹ Here, Steamline clearly noted on its internal invoice that these warehouse sales at issue pertained to sales of "secondary/defective" merchandise. In addition, *PET Film* did not pertain to a verification failure on the part of a respondent, like the instant case.

Similarly, we find Steamline's citation to *Wire Rod from Korea* to be inapposite. In *Wire Rod from Korea*, the respondent reported that it sold two types of prime merchandise and coded it as such in the normal course of business, and the Department verified that information and found no discrepancies.⁵² Thus, in *Wire Rod from Korea* the respondent noted a distinction between two types of merchandise that it considered to be prime in a supplemental questionnaire and openly discussed this distinction at verification, allowing the Department to make a decision based on information that was accurately reported and verified. In contrast, in this case, Steamline did not identify any distinction between goods (regardless of whether it considered them both to be "prime") prior to the Department's discovery of internal invoicing of "secondary/defective" merchandise at verification, which precluded the Department from investigating whether it would be appropriate to compare its products that had minor differences in physical characteristics.

Further, as noted in the verification report, the Department questioned Steamline about the types of defects contained in the merchandise upon learning about the previously unreported distinction for the first time at verification, and Steamline did not provide further detail, other than stating that they consisted of small non-consequential flaws.⁵³ Because Steamline did not previously report the information in question, as requested, the Department was deprived of the opportunity to evaluate and verify record information submitted in discovering information regarding the non-prime nature of certain merchandise sold in the home market for the first time at verification. Thus, unlike in *Wire Rod from Korea*, the degree to which the products in question are physically differentiated is not established on the instant record. Moreover, though Steamline purports that the Department found the two types of prime merchandise at issue in *Wire Rod from Korea* to be comparable for dumping margin purposes despite minor differences in physical characteristics, in fact, the Department "found no physical differences between the

⁵¹ See *PET Film* and accompanying Issues and Decision Memorandum at Comment 5.

⁵² See *Wire Rod from Korea*, 63 FR at 40414 (Comment 7).

⁵³ See Steamline's Sales Verification Report, at 13-14.

two prime products” in that case.⁵⁴ Indeed, while the relevant products discussed in *Wire Rod from Korea* and the instant case similarly meet chemical content tolerances and internationally-recognized grade standards, unlike in *Wire Rod from Korea*, where the different prime products were verified to have no physical differences that would indicate a difference in price or cost, by Steamline’s own admission, the products in question in this case contain physical flaws (however minor) that indeed disqualify them from sale in the U.S. market, as discussed above.

In the proceeding under review in *Pesquera Mares*, the Department determined that minor differences in physical characteristics between premium and super-premium salmon did not “warrant separate classification in an antidumping analysis.”⁵⁵ There, similar to *Wire Rod from Korea*, the Department had an opportunity to consider the information submitted on the record by the respondents to determine whether the two types of merchandise were identical for purposes of matching and calculating a dumping margin. Again, Steamline’s failure to disclose that it sold defective or second merchandise in the home market in a timely manner prior to verification precluded the Department from investigating this issue and determining whether it would be appropriate to find this merchandise identical for matching purposes.

Therefore, we find that, for the reasons discussed above, application of facts available, with adverse inferences, is warranted because Steamline did not act to the best of its ability and failed to report that it had sales of defective merchandise out of the warehouse in the home market based on the information the team discovered at verification.

With respect to Sunrise, we disagree that the application of adverse facts available is warranted. We found no evidence at verification that Sunrise had sales of non-prime or defective merchandise in the home market. We thoroughly reviewed the process by which Sunrise produced and made sales in the home market at verification,⁵⁶ and find that Petitioners’ allegations regarding the reasons for the differences between the quantity ordered by Sunrise’s customers and the quantity sold by Sunrise to be unsupported by record evidence.⁵⁷

Comment 2: The Use of Theoretical or Actual Weight

Petitioners’ Case Brief⁵⁸

- The margin should be calculated using theoretical weights as opposed to actual weights, since this standardizes the basis of reporting on the same nominal basis for which the merchandise is purchased (whereas actual weight may be distortive and is only used for the purposes of freight costs in the normal course of business).
- All U.S. invoices for each respondent, and certain home market sales, are all on the basis of length rather than weight, and actual weights are only used for freight costs.
- In recently completed investigations, the Department determined that theoretical weight is the more appropriate basis for a price comparison, reasoning that product CONNUM,

⁵⁴ See *Wire Rod from Korea*, 63 FR at 40414 (Comment 7).

⁵⁵ See *Pesquera Mares*, 266 F.3d at 1377.

⁵⁶ See Sunrise’s Sales Verification Report at 12-13.

⁵⁷ See full proprietary discussion and analysis in Sunrise’s Final Analysis Memorandum.

⁵⁸ See Petitioners’ Case Brief at 1-3.

which is used to match sales in the home and U.S. markets, is created from the nominal product dimensions reported by the respondents, as is theoretical weight, and that in the WSPP industry, U.S. customers purchase on the basis of length, given the uses of WSPP, which is the basis of theoretical, and not actual, weight.⁵⁹

- The purpose of the anti-dumping law is to determine whether U.S. sales are being sold at less than fair value. Thus, the basis of comparison should be the unit in which U.S. sales were made.

Steamline's Case Brief⁶⁰

- Steamline generally sells subject merchandise in the home market on the basis of actual weight and actual length for these sales in many cases was not recorded.
- Theoretical weights reported are only reliable when exact length of the pipe was available.
- For instances where actual length was not recorded, Steamline used a standard length 6.1 meter (20') estimate, but actual length can range from 5-7 meters (16'4"3/4 – 23').
- Since theoretical weight is dependent on actual length recorded, theoretical weight may not be precise.

Steamline's Rebuttal Brief⁶¹

- Use of actual weight is more accurate because raw material is purchased on an actual weight basis and sold in the home market on an actual weight basis. Additionally, all U.S. sales documents include actual weights.
- Steamline uses actual weights for production costs and sales purposes. Theoretical weight is not priced, invoiced or recorded any sales documents.
- In home market sales, length is not always recorded. Thus, theoretical weight cannot accurately be calculated.
- In other welded stainless steel pipe cases, the Department has made its sales comparisons for purpose of calculating the dumping margin on an actual weight basis where, like Steamline, the respondent did not maintain theoretical weight in its cost or sales records.⁶²
- In Petitioners' cited case *HWR Mexico*, the Department used actual weight for respondent Maquilacero for the purpose of calculating the dumping margin, and this methodology did not demonstrate distortions.

⁵⁹ See Petitioners' Case Brief at 2 (citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Final Determination of Sales at Less Than Fair Value*, 81 FR 47352 (July 21, 2016), and accompanying Issues and Decision Memorandum at 10 ("*HWR Mexico*"). See also *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 Issues and Decision Memorandum at 12 ("*HWR Korea*"); *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 accompanying Issues and Decision Memorandum at 15 ("*HWR Turkey*").

⁶⁰ See Steamline's Case Brief at 5.

⁶¹ See Steamline's Rebuttal Brief at 3.

⁶² See Steamline's Rebuttal Brief at 3 (citing *Final Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes From Taiwan*, 57 FR 53705, 53711 (November 12, 1992) ("*WSSP Taiwan*").

Sunrise's Rebuttal Brief⁶³

- In the recent investigation of *HWR Korea*, *HWR Mexico*, and *HWR Turkey* the Department noted: "There are several bases which form the Department's rationale for electing to use theoretical weight in this investigation. In previous pipe cases, the Department based price comparisons on theoretical or actual weight, depending on the particular facts of each case."⁶⁴
- Sunrise weighs its products on an actual weight basis and reports this in sales records.⁶⁵ Furthermore, in its Section D Supplemental response, Sunrise stated, "Sunrise hereby clarifies that actual weights reflect scaled weight and not calculated actual weight." Further, on the same page, Sunrise clarified that "Sunrise confirms that the home market sales quantities, U.S. market sales quantities and cost of production quantities reported in Sunrise's sales and cost filing are on same basis *i.e.* scaled actual weight."⁶⁶
- Sunrise records actual scaled weight for its sales (invoice and packing list), as well as production records, and it has reported these actual scaled weights in its responses. Hence, for the final determination, Department should continue to calculate Sunrise's margin based on the actual weight.

Department's Position: In their initial and supplemental questionnaire responses, both respondents stated that whereas pricing for U.S. sales was made on the basis of length (U.S. Dollars ("USD") per foot), pricing for domestic sales is set on a weight basis (Indian Rupees ("INR") per Kilogram ("Kg")) and that, because actual weights for each sale are kept in the normal course of business, the sales quantity for both markets, as well as all relevant price adjustments, expenses, and cost information, were reported on the basis of actual weight.⁶⁷ The Department used the information reported on an actual weight basis for the *Preliminary Determination*.⁶⁸ The Department verified the reported information, noting the following with respect to recordkeeping for actual weight in the normal course of business, in our verification reports.

For Steamline:

For purposes of antidumping duty investigation reporting, Steamline reported its product using kilograms, though it uses various units of measure in the normal course of business (including sales per foot for export sales). Steamline confirmed that, regardless of the unit of measure for the sale, it weighs all products at the time of final production and records weight in kilograms and, as such, all reported weights are actual weights, as

⁶³ See Sunrise's Rebuttal Brief at 3-6.

⁶⁴ See Sunrise's Rebuttal Brief at 4 (citing *HWR Turkey* at 15).

⁶⁵ See letter from Sunrise, "Welded Stainless Pressure Pipe from India: Response to Section A of the Original Antidumping Questionnaire," dated December 22, 2015 ("Sunrise AQR") at page 3.

⁶⁶ See letter from Sunrise, "Welded Stainless Pressure Pipe from India: Response to Section D Supplemental Questionnaire," dated March 18, 2016 ("Sunrise SDQR") at 1.

⁶⁷ See Sunrise's Section B Questionnaire response at 22 and Section C Questionnaire Response at 22. See Steamline's Section B Questionnaire response at 23, Section C Questionnaire Response at 21. See also, e.g., letter from Steamline, "Response to First Supplemental Questionnaire to Section B and C of the AD Investigation," dated March 2, 2016 ("Steamline's Supplemental BCQR") at 2 and Sunrise SDQR at 1.

⁶⁸ See Preliminary Decision Memo at 8-9.

shipped. We reviewed the weighing process during our factory tour on the second day of verification and noted the method used for weighing and recording the weight of each product (weighed in bundles for larger orders, depending on the size of the pipes, and with the totals for all bundles of the same product in the same production run summed up) after the testing phase and prior to packing on a crane scale accurate to the nearest kilogram. We observed the actual weight recorded for each sale and transmitted to the accounting department for invoicing in the ordinary course of business.⁶⁹

For Sunrise:

{Department officials} reviewed the weighing process during our factory tour on the second day of verification and noted the method used for weighing and recording the weight of each product (weighed in bundles for larger orders, depending on the size of the pipes, and with the totals for all bundles of the same product in the same production run summed up) after the testing phase and prior to packing on a crane scale accurate to the nearest kilogram. We observed how the company officials recorded the actual weight for each sale and how it was transmitted to the accounting department for invoicing in the ordinary course of business. Production officials noted that each coil is weighed prior to processing and then once an entire coil is converted into pipe, they re-weigh the resulting pipe and confirm that the weight is the same (i.e., the welding does not have any effect on the weight).

Department officials noted and observed that the actual rolling is a continuous process wherein the input coil is fed in and the manner in which it is rolled is a set process controlled by the rolling elements on the machine that are swapped in and out based on the necessary specifications of the end product. As such, we confirmed that the process performed by Sunrise's machines is essentially identical for different runs of the same product (i.e., the machines are not set up to roll to lighter or heavier thickness). Officials explained that the only variations between theoretical and actual weight would result from variations in the input coil used (i.e., if the input coil is slightly thicker or more dense than standard), but that that variation is not directed towards production of merchandise for any particular market by Sunrise since they do not track the physical properties of input coils in that manner nor separate them out for import and export sales since their customers do not care about thickness or size so long as the pipe is within the proper dimensions as ordered, contains the correct grade of steel, and is tested to the proper ASTM standard.⁷⁰

Petitioners have argued throughout this proceeding and for these final results that because the purpose of the anti-dumping law is to determine whether U.S. sales are being sold at less than fair value, the basis of comparison should be the unit in which U.S. sales were purchased and sold. U.S. customers use WSPP in a manner that is entirely dependent on the length of the products. Therefore, U.S. sales are made on the basis of length. Because of this, Petitioners argued that calculated theoretical weight based on nominal dimensions is the most appropriate

⁶⁹ See Steamline's Sales Verification Report at 9.

⁷⁰ See Sunrise's Sales Verification Report at 8-9.

basis for a price comparison in this case. Subsequent to the *Preliminary Determination*, we requested,⁷¹ and both respondents provided,⁷² sales and cost databases revised to include an additional informational field that identifies the nominal weight.

Upon further consideration of the facts in this case, for this class or kind of merchandise, we determine that theoretical weight is the most appropriate basis for price comparisons. As an initial matter, we are able to compare sales and costs on a consistent weight basis for Steamline and Sunrise, as they both provided theoretical weight data for their home market and U.S. sales, and cost databases based upon those theoretical weights,⁷³ consistent with our practice to make all price comparisons using the same weight basis.⁷⁴ Further, it is the Department's preference in an investigation to consider the industry at issue, the expectations of the customers purchasing the merchandise subject to the investigation in the United States, and to make sales comparisons on the same basis as that on which subject merchandise is purchased and sold.⁷⁵ The record reflects that, in the WSPP industry, the length of the investigated product is the key basis on which U.S. purchases are made, given the uses of WSPP as articulated in the Petition and record information regarding the sales process.⁷⁶ We note that, as nominal dimensions, the ratio between the standard length upon which U.S. sales are invoiced and the theoretical weight reported remains constant regardless of the unit in which merchandise is sold (*i.e.*, length, actual weight, pieces, *etc.*); thus, we find theoretical weight to be the most consistent basis on record from which to evaluate U.S. sales (and, thus, home market sales). Further, as discussed below, the product control number ("CONNUM"), which matches sales in each market, is similarly created from nominal dimensions.

⁷¹ See the Department's letters to Sunrise and Steamline, "Antidumping Duty Investigation on Welded Stainless Pressure Pipe from India: Supplemental Questionnaire Regarding Theoretical Versus Actual Reported Weights in the {Steamline Industries Limited/Sunrise Stainless Private Limited} Questionnaire Response," dated May 13, 2016.

⁷² See Sunrise's letter and database submission, "Welded Stainless Pressure Pipe from India: Response to 2nd Section B and C supplemental Questionnaire on standard or nominal Weight," dated May 27, 2016 and Steamline's letter and database submission, "Welded Stainless Pressure Pipe from India: Response to Supplemental Questionnaire regarding Theoretical Versus Actual Reported Weights in sales database and cost database of the AD Investigation," dated May 27, 2016.

⁷³ *Id.*

⁷⁴ See, e.g., *HWR Korea* and accompanying Issues and Decision Memorandum at Comment 12; *HWR Mexico* and accompanying Issues and Decision Memorandum at Comment 10; *HWR Turkey* and accompanying Issues and Decision Memorandum at Comment 15. See also *Certain Cut-to-Length Carbon-Quality Steel Plate Products From Italy: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 4779 (January 29, 2010) at 4780.

⁷⁵ *Id.* See also, e.g., *Circular Welded Stainless Steel Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 57 FR 53693 (November 12, 1992) ("CWP Korea") at Comment 3 ("Given the Department's general preference for making sales comparisons on the basis on which U.S. sales were made, we made comparisons on the basis of theoretical weight").

⁷⁶ See Volume I of the Petition at 6-7 ("{S}ubject {WSPP} is of circular cross-section, produced in relatively few standard sizes, designated by nominal diameter and wall thickness, and is designed for use with standard pipe fittings. Pressure pipe is used to convey fluids at high temperatures, high pressures, or both. The subject pipe is produced to exact outside diameters and wall thicknesses and to specifications A-312 and A-778 of the ASTM or to similar specifications, either foreign or domestic... WSPP is used by a variety of end use industries including petrochemicals, oil and gas, manufacturing, chemical fluid handling, and water treatment."). See also, e.g., Steamline's Section AQR at 19 ("Normally pipes are wrapped in printed HDPE cover in the home market as well as in US market all pipes are wrapped in printed HDPE cover also. In home market pipes are mostly sold in 6.1 meter length as well as in US market pipes are mostly sold in 6.1 meter length.").

We disagree with respondents that actual weights are preferable in this case. First, we take issue with respondents' underlying claim that the basis for sales in the home market is actual weight. Though certain sales in the home market are indeed *invoiced* based on actual weight, we note that this is not typically the basis for the sales negotiation and expectations of the customer, which are – as in the U.S. market – orders for a specified number of pipes at varying sizes and grades. Though both respondents state that home market sales are typically negotiated and confirmed via telephone or mobile messaging apps, in the instance where purchase order information was available and provided to the record for Sunrise, this information demonstrates that customers specify an approximate quantity of pieces requested in their order, with corresponding theoretical weight also identified.⁷⁷ Moreover, we note that Sunrise makes extensive use of theoretical weight in the normal course of business, with theoretical weights listed on work orders and packing lists.⁷⁸ With respect to Steamline, we note that, as discussed below, our review of sales trace information at verification demonstrated that a substantial amount of home market sales are indeed invoiced based on a nominal per meter length basis, not the exclusively weight-based invoicing purported in Steamline's initial response.⁷⁹ In other words, whereas actual weight may be the basis for the pricing on the resulting invoice in the home market, regardless of the market of the sale, the quantity of merchandise subject to the actual terms of sale agreed upon by each party is a specified number individual pipe products or target/theoretical quantity thereof, and actual quantity is a result of and not the basis for the initial terms of the sale.

Most importantly, the record shows that the wall thickness is a theoretical thickness that can vary within the industry tolerances established by the product specifications.⁸⁰ Because the actual thickness of input coils may differ among identical WSPP pipe and tube products (*i.e.*, WSPP categorized within the same CONNUMs), the use of actual weight creates a mismatch between the weights used to calculate per-unit prices, expenses, and costs and the dimensions used to construct the CONNUM. In other words, if we relied on the actual weight, the thickness of the input coils that would be used to compute per-unit prices, expenses, and costs for WSPP within a given CONNUM would differ from the nominal wall thickness (based on the “pure” theoretical thickness) used to construct those CONNUMs. The resulting cost differences within a given CONNUM are attributable solely to a physical characteristic (*i.e.*, input coil thickness), which is not one of the Department's product characteristics comprising the CONNUM. Further, we also note that using actual weight, as advocated by respondents, results in different thicknesses of input coil being used in the weight calculation for the cost of production (“COP”), U.S. price,

⁷⁷ See Sunrise AQR at Exhibit A-7(c), where the home market customer's purchase order indicates a requested theoretical weight and corresponding approximate number of pieces of each type of pipe ordered. Regarding Steamline, purchase order information demonstrates that customers order on the basis of a target weight quantity.

⁷⁸ See Sunrise's Sales Verification Report at 13 and, *e.g.*, VE-4.B. Sales Trace #2.

⁷⁹ See Steamline's Sales Verification Report at VE-6F, G, and H. To the extent that limited home market purchase order information exists on the record with respect to Steamline (*see, e.g.*, Steamline's VE-6D), this information demonstrates that customers indeed submit order requests identifying a specified amount of WSPP on a per kilogram basis; however, these figures appear to be target quantities to be fulfilled over a period of time and do not necessarily correlate to the actual weights provided in a given sales transaction.

⁸⁰ See ASTM Standards, provided at Sunrise's VE-3 “Products Subject to the Scope”. The Department also reviewed the relevant ASTM standard during the Steamline verification.

and home-market price for the same CONNUM. As a result, the calculated per-unit COP for each CONNUM uses a different conversion factor from that used to compute the per-unit sales prices for the same CONNUM. Accordingly, consistent with the same finding in recently complete pipe cases, we find that it is less distortive to use the theoretical weights.⁸¹

Respondents acknowledge that the Department utilized reporting on the basis of theoretical weight in various prior proceedings involving pipe products, particularly where actual weight is not kept in the normal course of business, but note that the Department indeed has accepted reporting based on actual weight if the case-specific considerations allow. Specifically, respondents note that in the recent *HWR Mexico* determination the Department found the use of theoretical weight most appropriate for one respondent, but, due to case-specific factors similar to those in the instant proceeding (*i.e.*, record-keeping of actual weight in the normal course of business for sales in all markets), the Department based the margin calculation on reported actual weights with regard to the other respondent, Maquilacero.

The Department recognizes certain similarities between the recordkeeping and reporting with respect to actual weight between Maquilacero in *HWR Mexico* and the instant respondents. However, in the same determination, immediately following the finding with respect to Maquilacero, the Department noted our intent to reevaluate reporting requirements and take parties' comments regarding application of a uniform theoretical weight (and reporting information necessary to calculate theoretical weight) into consideration for future pipe and tube cases.⁸² In fact, we are not claiming that using actual weight is not an option available to the Department or one that we have not considered in this case – which is clear from the fact that we used actual weight in the *Preliminary Determination*. However, for purposes of this final determination we have determined that in selecting between theoretical and actual weight we must be sensitive as to the industry at issue for the merchandise being investigated, the use of the product, and the terms on which that product is purchased and sold. Accordingly, in this case, we reconsidered this issue in light of those factors, and determined that it was more appropriate to use theoretical weight for purposes of our comparisons.⁸³ For the reasons discussed *supra*, the Department will use theoretical weight in the instant case, and we have thus utilized the post-preliminary databases reported on the basis of theoretical weight for both respondents for the purposes of calculating the AD margin in this final determination.⁸⁴

With respect to Steamline's assertion that, for sales in the home market, length is not always recorded and, thus, theoretical weight cannot accurately be calculated, we recognize potential concerns with appropriate matching.⁸⁵ However, we view this in the context of the fact that, as

⁸¹ See, e.g., *HWR Korea* and accompanying Issues and Decision Memorandum at Comment 12.

⁸² See *HWR Mexico* and accompanying Issues and Decision Memorandum at Comment 1.

⁸³ See *Hynix Semiconductor Inc. v. United States*, 391 F.Supp.2d 1337, 1342 (CIT 2005), which states: “[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence.”

⁸⁴ See Memorandum to the File, “Analysis Memorandum for the Final Determination of the Antidumping Duty Investigation of Welded Stainless Pressure Pipe (“WSPP”) from India: Steamline Industries Limited (“Steamline”),” dated concurrently with this memorandum (“Steamline’s Final Analysis Memorandum”). See also Sunrise’s Final Analysis Memorandum.

⁸⁵ We note, however, that for many such sales these concerns are rendered effectively moot as a result of the

Petitioners note, contrary to statements on the record and at verification that sales in the home market are generally made on the basis of weight, even in the home market three out of eight sales traces reviewed for Steamline (and, indeed, three out of four direct-to-customer home market sales reviewed) were made on the basis of length, not weight.⁸⁶ That is a substantial amount of home market sales which were verified to be made on a length-specific basis. As such, we find that the commercial issues and concerns we've described which lead us to use a theoretical weight in this case, as well as the sales observed at Steamline's verification which support such concerns, outweigh the unsubstantiated possibility that there may be a potential for a variance in the home market due an unspecified amount of sales of non-standard lengths.

Comment 3: Calculation of Direct Material (Coil) Costs

Petitioners' Case Brief⁸⁷

- The Department should revise the reported coil costs to reflect only the grade and hot-or-cold finish of the input coils.
- Any other coil cost differences are not a reflection of varying physical characteristics, but rather an artifact of the timing and source of the purchased coils.⁸⁸

Steamline's Case Brief⁸⁹

- Certain reported coil costs are incorrect, as the underlying weight-averaging coil consumption worksheets contain an error in the weight-averaging formula.
- Regardless, Steamline's coil cost allocation methodology should be revised to reflect consumption at the POI weighted-average, grade-specific coil cost rather than the grade and dimensional coil costs.

Sunrise's Rebuttal Brief⁹⁰

- Petitioners are confusing Sunrise's direct material reporting with Steamline's direct material reporting.
- The Department's cost verification clearly notes that Sunrise's direct material costs reflect the cost differences associated with the grade and the hot-or-cold finish of the input coil, not the dimensions of the coil. Therefore, no adjustment is necessary.⁹¹

Department's Position: For the final determination, we have revised Steamline's reported raw material costs to reflect the POI weighted-average cost for the grade of the input coil.⁹² For Sunrise, no revision was necessary, as the company reported its raw material costs on the basis of the input grade and the hot-or-cold finishing of the input coil.⁹³

application of partial AFA to the prices of Steamline's home market warehouse sales discussed in Comment 1, above.

⁸⁶ See Steamline's Sales Verification Report at VE-6F, G, and H.

⁸⁷ See Petitioners' Case Brief at 10-11.

⁸⁸ *Id.*

⁸⁹ See Steamline's Case Brief at 7.

⁹⁰ See Sunrise's Rebuttal Brief at 10-12.

⁹¹ *Id.*

⁹² We note that during the POI, Steamline only purchased and consumed coil that was hot-finished.

⁹³ See Sunrise's Cost Verification Report at 15, stating, "Sunrise calculated the per-unit direct materials consumption

First, we note that in their normal books and records, neither Steamline nor Sunrise calculate product-specific costs.⁹⁴ Therefore, for purposes of reporting to the Department, each respondent developed a methodology to calculate costs that apply to the physical characteristics defined by the Department for this proceeding, *i.e.*, 1) grade; 2) specification; 3) hot or cold finished (relates to the coil consumed); 4) nominal pipe size; 5) wall thickness schedule; and, 6) end finish. At verification, we reviewed the reasonableness of each respondent's cost allocation methodology. In reviewing raw material costs, we found that the purchase cost of the coils varied by grade and by hot-or-cold-finish, but not by dimension or any other coil attribute.⁹⁵ Because the input coil consumed determines the grade and the hot-or-cold finish physical characteristic for the finished product, the reported costs should reflect the cost differences associated with the grade and hot-or-cold finish of the coil consumed.

At verification, the Department reviewed Steamline's methodology for calculating costs that reflect each product's physical characteristics. Our testing of the weighted-average direct material cost for selected CONNUMS revealed a clerical error in the formula used in the calculation. We also found that the price of hot-rolled coils in India purchased by Steamline differed by grade but not by dimension. Given that grade is the only determining factor for the purchase price of hot-rolled coil in India, we are revising Steamline's reported raw material costs to utilize a POI weighted-average, grade-specific coil cost. In doing so we have addressed the clerical error noted at verification in the calculation. Please see the Steamline Final Cost Memorandum for more information.⁹⁶

Comment 4: Steamline's Home Market Sales to an Affiliated Party

Steamline's Case Brief⁹⁷

- The Department observed at verification and noted in its verification report that Steamline failed to identify certain reported transactions as sales to an affiliated party.
- Steamline properly reported that this company was an affiliated customer in its Section A response⁹⁸ and properly reported sales to this affiliate in its database submitted in Annexure B-1. As such, all underlying information was correctly reported, and there was no intention to hide the fact that the relevant sales were to an affiliate. Rather, this was simply an oversight.
- Moreover, sales of subject merchandise to this affiliated customer during the POI were less than five percent of sales of subject merchandise in home market and may thus be disregarded pursuant to the Department's standard practice.

cost for each grade and finish of coil."

⁹⁴ See Steamline's Cost Verification Report at 7 and Sunrise's Cost Verification Report at 5.

⁹⁵ See Steamline's Cost Verification Report at 2 and Sunrise's Cost Verification Report at 14.

⁹⁶ See Memorandum to Neal Halper from Milton Koch, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Steamline Industries Limited," dated concurrently with this memorandum ("Steamline Final Cost Memorandum").

⁹⁷ See Steamline's Case Brief at 4 and 9.

⁹⁸ See letter from Steamline, "Welded Stainless Pressure Pipe from India: Response to Section A of the AD Questionnaire," dated December 15, 2015 ("Steamline's AQR") at Annexure A-3.

No other party provided comments on this issue.

Department's Position: Upon review of Steamline's sales journal and list of affiliated parties at verification, Department officials noted that despite Steamline's initial claim that it did not have sales to affiliates, Steamline appeared to have made sales to an affiliated party during the POI.⁹⁹

Pursuant to section 351.403(d) of the Department's regulations, when sales of the foreign like product are made through an affiliated company, we require that the affiliated company report the resales of the product to its first unaffiliated customer unless (1) the sales 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 or (2) the sales were made at a price comparable to the price at which the exporter or producer sold the foreign like product to an unaffiliated customer (*i.e.*, made at arm's length).

Accordingly, despite the oversight in not identifying that the customer for the reported sales in question as an affiliate, Steamline properly reported these transactions and we agree with Steamline that because these sales represent less than five percent of the sales quantity recorded on the home market sales database, there was no obligation to report the downstream sales by the affiliate for these transactions.¹⁰⁰ As a result, we revised our final margin program to define the reported transactions between Steamline and its affiliated party as affiliated party transactions.¹⁰¹ Following our normal practice, we applied the arm's length test to the sales at issue and found that none of them were made at arm's length.¹⁰² As a consequence, we did not use these transactions in the determination of normal value.¹⁰³

Comment 5: Steamline's Data Error for One U.S. Sale

Steamline's Case Brief¹⁰⁴

- Steamline admits that it made a data entry error with respect to two line items on one invoice recorded in the U.S. sales database. However, the sales trace provided at verification shows that Steamline accurately reported the overall invoice quantity and value, and that both line items referred to same CONNUM.

⁹⁹ See Steamline's Sales Verification Report at 3. See also Steamline's AQR, at Annexure A-3.

¹⁰⁰ See, e.g., *Stainless Steel Sheet and Strip in Coils from France: Final Results of Antidumping Administrative Review*, 70 FR 7240 (February 11, 2005) and the accompanying Issues and Decision Memorandum at Comment 4. See also the Department's initial questionnaire issued on November 23, 2015, at page B-4 (stating, "If your aggregate sales to all affiliated customers in the comparison market constitute less than five percent of your total sales in the comparison market, report your sales to the affiliated customers rather than the affiliates' resales to unaffiliated customers"). Indeed, as these were sales to an affiliate for consumption, not resale, Steamline and its affiliate would be otherwise unable to report downstream sales.

¹⁰¹ See Memorandum to the File, "Analysis Memorandum for the Final Determination of the Antidumping Duty Investigation of Welded Stainless Pressure Pipe ("WSPP") from India: Steamline Industries Limited ("Steamline")," dated concurrently with this memorandum ("Steamline's Final Analysis Memorandum").

¹⁰² See, e.g., *Stainless Steel Sheet and Strip in Coils from Mexico; Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 73729 (December 13, 2005) and accompanying Issues and Decision Memorandum at Comment 2.

¹⁰³ See Steamline's Final Analysis Memorandum

¹⁰⁴ See Steamline's Case Brief at 5.

No other party provided comments on this issue.

Department's Position: At verification of Steamline, Department officials noted that for one U.S. market sales trace, the quantity and value recorded on the original invoice did not tie to the information reported in the U.S. sales database.¹⁰⁵ However, as noted at the time (*see* footnote 15 of Steamline's Sales Verification Report), we agree with Steamline that, although it made minor data entry errors on the U.S. sales database with respect to the one invoice, the total quantity and value of sales was properly reported, and reconciled with Steamline's accounting records.¹⁰⁶ Therefore, we confirm that the discrepancy noted in the report was not indicative of a wider concern, and we have corrected the quantity and value information for this invoice in our margin calculations for the final determination.¹⁰⁷

Comment 6: Steamline's Inventory Carrying Costs ("ICC")

Steamline's Case Brief¹⁰⁸

- Steamline did not report ICC for any home market sales because it understood that ICC applied only to finished goods inventory maintained at the factory. Rather, Steamline reported that it stores finished goods only in its Mumbai warehouse, for which it reported warehouse expenses in the home market sales database.
- Steamline argues that if the Department wishes to calculate ICC for home market sales, the Department can do so using the average length of the inventory period for the invoices reviewed at verification and the short-term lending rate used for the credit expenses calculation.

No other party provided comments on this issue.

Department's Position: We note that our standard questionnaire requires respondents to report ICC for all home market and U.S. sales.¹⁰⁹ The verification report notes that Steamline did not report ICC for home market sales from warehouse (which necessarily included time in inventory), as requested in the questionnaire.¹¹⁰

Section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 provide that normal value shall be adjusted to take into account any difference between the U.S. price and normal value that is due to differences in the circumstances of sale.¹¹¹ 19 CFR 351.410(b) explains that, with the exception of the allowance concerning commissions paid in only one market, the Department will make circumstances of sale adjustments under section 773(a)(6)(C)(iii) of the Act only for direct selling expenses and assumed expenses.¹¹² Steamline did not report any U.S. or home

¹⁰⁵ See Steamline's Sales Verification Report at 13 and Exhibit VE-7(a).

¹⁰⁶ *Id.*

¹⁰⁷ See Steamline's Final Analysis Memorandum.

¹⁰⁸ See Steamline's Case Brief at 5.

¹⁰⁹ See the Department's initial questionnaire issued on November 23, 2015, at B-28 and C-30.

¹¹⁰ See Steamline's Sales Verification Report at 1, 16-17.

¹¹¹ See section 773(a)(6)(C)(iii) of the Act.

¹¹² See also SAA, H.R. Doc. No. 103-316, vol. 1, at 828 ("The Administration intends Commerce's current practice

market commissions, or any other direct expenses that require circumstance-of-sales adjustments.¹¹³ Accordingly, despite the Department's inquiry regarding ICC verification, we agree with Steamline that it was not necessary to report ICC for home market sales from warehouse and we have made no adjustment to Steamline's margin calculations in this respect, consistent with the authorities cited above.

Comment 7: Steamline's Packing Material Usage Rate

Steamline's Case Brief¹¹⁴

- Steamline provided sample invoices for the cost of each packing material at verification, but reported that it was not able to provide more detailed packing costs because: 1) there was no variation in the price of packing material during the POI; 2) this is only the second year of Steamline's manufacturing operations; 3) the packing department does not keep detailed records for packing material usage and packing labor. As a consequence, Steamline reported its packing usage rate based on the experience of the packing department. The Department has accepted that approach in other cases.
- However, if the Department wishes, it can take packing cost as reported by other participants in this investigation. The Department has the inherent authority to take information from other participating respondent in the investigation and use it to calculate accurate dumping margin (including adjusting BPI figures plus or minus 10 percent from actual figures, as required to do in public versions).

No other party provided comments on this issue.

Department's Position: At verification, we reviewed the methodology used to derive Steamline's reported per kilogram packing costs for subject merchandise.¹¹⁵ We examined the invoices that Steamline provided for each type of packing material used in the packing of merchandise sold in the export and domestic markets.¹¹⁶ We confirmed that Steamline based its packing expenses on the price of these purchases of each packing material and traced such purchases to Steamline's accounting records.¹¹⁷ We examined Steamline's usage rates for each packing material consumed per metric ton of merchandise produced,¹¹⁸ and its estimated wage

with respect to this adjustment to remain unchanged, except with respect to the "constructed export price offset" (discussed below). Thus, Commerce will continue to employ the circumstance-of-sale adjustment to adjust for differences in direct expenses and differences in selling expenses of the purchaser assumed by the foreign seller, between normal value and both export price and constructed export price."); *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27368 (May 19, 1997) (revising Commerce's proposed regulations to make clear that the Department will make a circumstance-of-sale adjustment only for direct selling expenses and assumed expenses, as opposed to indirect selling expenses).

¹¹³ See letter from Steamline, "Welded Stainless Pressure Pipe from India: Response to Section B and C of the AD Questionnaire," dated January 19, 2016 ("Steamline's BQR" and "Steamline's CQR") at page B-31 of the BQR and page C-34 of the CQR.

¹¹⁴ See Steamline's Case Brief at 5-6.

¹¹⁵ See Steamline's Sales Verification Report at 17.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

rate for packing each metric ton of merchandise.¹¹⁹ We noted that Steamline was not able to fully substantiate its packing usage rates as it based them on the experience of its warehouse but did not have further information underlying the specific usage figures.¹²⁰ We otherwise noted no discrepancies or inconsistencies with information reported in Steamline's questionnaire responses with respect to packing.¹²¹ Therefore, for the final determination, we have continued to value Steamline's U.S. and home market packing expenses as reported, because Steamline acted to the best of its ability to comply with the Department's requests for information in this investigation, and adverse inferences are otherwise not warranted with respect to this expense.

Comment 8: Steamline's Minor Corrections to Response Presented at Verification

We made changes to Steamline's U.S. and home market databases for the following items presented and verified as minor corrections to the response.¹²²

- **Foreign Inland Freight:** Steamline misreported the denomination for its foreign inland freight charges as denominated in U.S. dollars ("USD"), when they were actually incurred in rupees. Following the *Preliminary Determination*, Steamline alleged that the Department made a ministerial error by treating U.S. inland freight expenses as if they were incurred in U.S. dollars, when they were actually incurred in rupees.¹²³ Steamline requested the Department to revise its *Preliminary Determination* to correct this error.¹²⁴ On June 6, 2016, the Department issued a memorandum stating that Steamline's allegation did not constitute a ministerial error, because Steamline did not accurately identify the currency of its foreign inland freight expenses in its questionnaire response.¹²⁵ Thus, the Department concluded that it did not make an error "in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any similar type of unintentional error which the Secretary considers ministerial" in accordance with 19 CFR 351.224(f).¹²⁶ As a result, the Department did not make any changes to the calculations in the *Preliminary Determination*, but instructed Steamline to present its arguments at verification and during the briefing process.¹²⁷

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*, at 2. None of the parties to the proceeding provided comments in their case and/or rebuttal briefs on any of these matters.

¹²³ See letter from Steamline, "Welded Stainless Pressure Pipe from India Submission in the Proceeding of Preliminary Determination of AD Investigation," dated May 13, 2016 ("Steamline's Ministerial Error Allegation").

¹²⁴ *Id.*

¹²⁵ See Memorandum to Eric B. Greynolds, Acting Director, Office III, Antidumping and Countervailing Duty Operations, "Antidumping Duty Investigation of Welded Stainless Pressure Pipe from India: Ministerial Error Allegation Memorandum Concerning the Preliminary Determination," dated June 6, 2016 ("Department's Ministerial Error Memorandum"), at 2, 3.

¹²⁶ *Id.*, at 2.

¹²⁷ *Id.*, at 3.

We examined these expenses at verification, and determined that they were both incurred in and accurately reported as rupees.¹²⁸ Therefore, we have made the appropriate currency conversions in our margin calculations for the final determination.¹²⁹

- **Misclassification of Subject Merchandise:** Steamline revised its home market database to include the transactions pursuant to an invoice which it had originally determined to be non-subject merchandise.¹³⁰ We have incorporated these additional home market transactions into the programming for the final margin calculation.¹³¹
- **Data Entry Error:** We revised the home market database to reflect a correction that Steamline reported in the price and quantity for a specific invoice number in the home market database.¹³²
- **Unreported Billing Adjustments:** We revised the home market database to reflect a previously unreported billing adjustment for packing charges recovered on a specific invoice in the home market, reported as a minor correction at verification.¹³³

Comment 9: Steamline's Arm's-Length Prices from Affiliated Parties for Direct Materials

Steamline's Case Brief¹³⁴

- The Department verified that the prices of Steamline's raw materials purchases from Steamline's affiliate, Al Asdeqaa, were set at arm's length. The Department's adjustment for arm's length prices is unwarranted. Compared to other imports from unaffiliated parties in the same time horizon, the prices from Al Asdeqaa reflect arm's length transactions.

Petitioners' Rebuttal Brief¹³⁵

- The Department only confirmed the reported prices at verification were accurately reported, but did not conclude that the prices from Al Asdeqaa were arm's length in nature. For the *Preliminary Determination*, the Department undertook its standard analysis and found the transfer price for hot-rolled coils from Al Asdeqaa was not representative of an arm's length transaction. While Steamline's case brief argues a comparison with other imports from unaffiliated parties would establish the transaction was at arm's length, Steamline did not provide any supporting documentation to substantiate this conclusion. The Department should continue to make the affiliated purchases adjustment for the final determination.

¹²⁸ See Steamline's Sales Verification Report at 15-16.

¹²⁹ See Steamline's Final Analysis Memorandum.

¹³⁰ See letter from Steamline, "Welded Stainless Pressure Pipe from India: Pre Verification Minor Error Correction Submitted at the beginning of Verification (EX-1)," dated Jun 14, 2016 ("Steamline's Minor Correction Letter") at Exhibit 1. See also Steamline's Home Market Database Addendum.

¹³¹ See Steamline's Final Analysis Memorandum.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ See Steamline's Case Brief at 9.

¹³⁵ See Petitioners' Rebuttal Brief at 4-5.

Department's Position: Consistent with the *Preliminary Determination*, we analyzed Steamline's affiliated party purchases of hot-rolled coil in accordance with the transactions disregarded rule, section 773(f)(2) of Act. Under section 773(f)(2) of the Act, the Department's established practice is to value the input at the higher of the transfer price or the market price for the input when a respondent purchases inputs from an affiliated supplier.¹³⁶ Based on our analysis of record evidence, we determined that the market price was higher than the transfer price. Therefore, we adjusted Steamline's materials cost for the difference between the transfer price and the market price.

Steamline argues that the Department verified that the purchases of raw materials from its affiliate were at arm's length. We disagree that any such conclusion was made in the cost verification report. The Department verified that the purchase prices reported for purchases of grade 316 hot rolled coils from affiliates matched the purchase prices Steamline recorded in its books and records in the ordinary course of business. The cost verification report for Steamline does not include any discussion of whether or not the prices qualified as arm's length transactions, only that the prices reported tied to invoices, customs documentation, and transportation invoices.¹³⁷

As Petitioners noted, the Department conducted an arm's length analysis of affiliated purchases for the *Preliminary Determination*. The arm's length analysis compared the purchase prices from affiliates to the purchase prices from unaffiliated parties during the POI. The analysis done for the *Preliminary Determination* found that the prices reported were not arm's length transactions. Steamline's Case Brief suggests that an analysis shows the prices are in fact at arm's length, but references no supporting analysis based on record evidence to substantiate its conclusion. Accordingly, for the final determination, we have continued to apply the affiliated party purchase adjustment made in the *Preliminary Determination* as adjusted for the minor corrections identified at verification and the updated cost database presented to the Department prior to verification on May 27, 2016.

Comment 10: Steamline's Allocation of Conversion Costs

Steamline's Case Brief¹³⁸

- Steamline allocated common conversion costs between welded and seamless pipe on the basis of weighted production and a weight factor. The weight factor is based on a study conducted by Steamline.¹³⁹ Seamless pipe production requires processes to be repeated multiple times to make the desired product, while welded pipe production requires each process be completed once. The repeated processes consume more labor, power, consumables, and usage of common machinery.

¹³⁶ See *Chlorinated Isocyanurates from Japan: Final Determination at Less Than Fair Value*, 79 FR 56059 (September 18, 2014) and accompanying Issues and Decision Memorandum at Comment 4.

¹³⁷ See Steamline's Cost Verification Report at 22-23.

¹³⁸ See Steamline's Case Brief at 8.

¹³⁹ At verification, Steamline explained that it conducted a "time in motion" study when setting up its factory, which concluded that seamless pipe production took longer than welded pipe production and formed the basis for Steamline's standards matrix, which differentiates products by their physical characteristics. See Steamline's Cost Verification Report at 20-22.

Petitioners' Rebuttal Brief¹⁴⁰

- The verification report refers to the time in motion study, but there is no documentation to support Steamline's claims regarding the difference in costs between seamless and welded pipes. The purchase prices reported in the cost verification exhibits also do not support Steamline's claims. The Department should adjust Steamline's conversion costs for the final determination to allocate costs equally between seamless and welded pipe.

Department's Position: For the final determination, we reallocated the common conversion costs between welded and seamless pipe based on the total POI production quantity of welded and seamless pipe.

In evaluating a company's reported costs, the Department is directed by section 773(f)(1)(A) of the Act to consider whether the costs are based on a respondent's normal books and records in accordance with home country Generally Accepted Accounting Principles ("GAAP") and reasonably reflect the costs to produce the product under investigation. We note that in its normal books and records Steamline does not calculate product-specific costs.¹⁴¹ Therefore, for purposes of reporting to the Department, Steamline developed a methodology to calculate product-specific costs. As explained in the cost verification report, Steamline allocated common conversion costs between welded and seamless pipe production using a proprietary weight factor to increase the production quantity of seamless pipe used in the allocation calculations.

According to Steamline, the increased weight given to seamless pipe production through this proprietary weight factor reflects the additional processing time required for each workshop found in a time in motion study. The result of using the proprietary weight factor is that a significant additional amount of common conversion costs are allocated to seamless pipe, which is not merchandise under consideration. Since, as explained below, there is not a meaningful relationship between the proprietary weight factor used in the allocation methodology and the common costs being allocated, the use of a proprietary weight factor results in costs that do not reasonably reflect the costs to produce the products under investigation (*i.e.*, welded pipe).

That a time in motion study shows that seamless pipe production requires more processing time per unit of production than welded pipe production does not necessarily mean that it results in an increase in other common conversion costs. All direct conversion costs related to the production of either product have already been assigned directly to either welded or seamless pipe production. As such, direct electricity usage, direct labor costs, and depreciation associated with the machinery and equipment used to produce each product are already assigned to each product based on the required usage. If seamless pipe production requires more time in production per unit than welded pipe production, the increased electricity, labor and depreciation associated with the increased time is already captured in the reported costs.

However, it is important to remember that it is common conversion costs that are at issue which, by their very nature, cannot be directly associated with either product. Common conversion costs are overhead expenses such as depreciation of the factory building and common offices

¹⁴⁰ See Petitioners' Rebuttal Brief at 3-4.

¹⁴¹ See Steamline's Cost Verification Report at 7.

attached to the factory, quality control testing expenses, or energy and labor associated with the quality control testing equipment and procedures, *etc.* In other words, for example, a ten percent increase in processing time for seamless pipe products versus welded pipe products does not mean that quality control testing expenses should also increase by ten percent for seamless pipe production. We agree with Petitioners that there is no documentation for the time in motion study on the record to enable the Department to support this proprietary weight factor. There is no record evidence showing that the time spent in production has anything to do with the time and costs incurred by the quality control department. Similarly, depreciation for the factory building is unrelated to relative processing times. Welded and seamless products are produced using two different production processes with different machinery and equipment. The fact that it takes longer to produce a seamless pipe product than a welded pipe product does not necessarily translate into it incurring more factory building depreciation. Instead, it would appear that factory building depreciation is more closely related to the square footage used by each production division.

Accordingly, we do not find Steamline's additional allocation of common conversion costs to seamless pipe through its proprietary weight factor to be reasonable, as it is unrelated to the common conversion costs being allocated, and it results in an understatement of the costs allocated to welded pipe products. As such, for the final determination we have not used the proprietary weight factor when allocating the common conversion costs between seamless and welded pipe production. Please see the Steamline Final Cost Memorandum for more information regarding the revised allocation of common conversion costs for the final determination.

Comment 11: Steamline's Director's Remuneration

Steamline's Case Brief¹⁴²

- Steamline has allocated each director's remuneration between cost of manufacturing, general and administrative expenses, and selling expenses according to their relative responsibilities. One director is in charge of manufacturing, one is in charge of sales and marketing, and one is in charge of administrative work. Director's compensation is correctly classified based on their functional responsibilities and should not be revised.
- If the Department does revise the allocation to treat director's compensation as a general and administrative expense, then director's compensation should be excluded in the calculation of the allocation rate.

Department's Position: We agree with Steamline that director's compensation is correctly classified because Steamline has reasonably allocated this expense based on the functional responsibilities of the directors in the normal course of business. Accordingly, we have made no changes to the reported allocation for the final determination.

¹⁴² See Steamline's Case Brief at 7-8.

Comment 12: Steamline's Cost Reconciliation and Scrap

Steamline's Case Brief¹⁴³

- The Department found there was an unreconciled difference between Steamline's cost reconciliation and its reported extended cost of production D database. Steamline notes that the COP database includes a deduction for scrap sales while the reconciliation does not. Removing the cost of scrap from the reconciliation reduces the difference to *de minimis*.

No other party provided comments on this issue.

Department's Position: We have analyzed Steamline's claim that the reconciliation did not include an adjustment for scrap that was included in the COP database and revised the reconciliation accordingly. For the *Preliminary Determination*, we adjusted Steamline's COP database for an unreconciled difference between Steamline's normal books and records and the total cost of manufacturing reported to the Department, and we agree with Steamline that at that time, the necessary adjustment for scrap was not included in the reconciliation. However, we recognized in the Steamline Cost Verification Report that there was a difference between the total costs recorded in Steamline's accounting system and the total costs that were reported to the Department, and for this final determination have made additional adjustments to the reconciliation and the COP database, noted in the Steamline Final Cost Memorandum. As a result of those adjustments, we find there is no longer an unreconciled difference. Therefore, for the final determination, we have not included an unreconciled difference adjustment to Steamline's reported cost of manufacturing ("COM").

Comment 13: Conversion of Sunrise's Warranty Expenses

Sunrise's Case Brief¹⁴⁴

- Sunrise had reported the warranty ("WARRU") in Indian rupees in the U.S. sales database. However, in the *Preliminary Determination*, the Department did not convert WARRU into USD.
- The Department should convert WARRU to USD for the final determination.

No other party provided comments on this issue.

Department's Position: We agree that we inadvertently calculated WARRU using USD for the *Preliminary Determination*.¹⁴⁵ Sunrise reported that its warranty expense was incurred in rupees in its supplemental response,¹⁴⁶ and we verified that it was incurred in rupees.¹⁴⁷ Therefore, we have revised our calculations for the final determination to convert WARRU to USD.¹⁴⁸

¹⁴³ See Steamline's Case Brief at 8-9.

¹⁴⁴ See Sunrise's Case Brief at 3-4.

¹⁴⁵ See Memorandum to the File, "Analysis for the Preliminary Determination of the Less-Than-Fair Value Investigation of Welded Stainless Pressure Pipe from India for Sunrise Stainless Private Limited," dated May 3, 2016, at 3.

¹⁴⁶ See letter from Sunrise, "Welded Stainless Pressure Pipe from India: Response to Section B & C supplemental

Comment 14: Treatment of Indirect Selling Expenses for Sunrise's CEP Sales

Sunrise's Case Brief¹⁴⁹

- Sunrise initially reported all sales to the U.S. market as export price ("EP") sales; however, the Department requested that certain sales made through a U.S. affiliate, Sunshine Stainless LLC, USA ("Sunshine"), be treated as CEP sales.
- In treating those sales as CEP sales, Sunrise reported INDIRSU in its revised U.S. sales database.
- Accordingly, as expenses incurred by Sunshine have been reported as INDIRSU, Sunrise asserts that the Department should not consider the invoicing price difference reported as direct selling expenses ("DIRSELU") as an expense for the dumping margin calculation for CEP sales, as doing so would result in double counting of the same expenses (once as INDIRSU and again as DIRSELU).

No other party provided comments on this issue.

Department's Position: In the initial U.S. sales database, Sunrise reported all sales as EP sales.¹⁵⁰ For sales involving Sunrise's U.S. affiliate Sunshine, Sunrise created a column DIRSELU to report the difference in pricing between Sunrise and Sunshine and between Sunshine and the first unaffiliated customer.¹⁵¹ The Department subsequently asked Sunrise to re-categorize sales made through Sunshine as CEP sales.¹⁵² Sunrise submitted a revised U.S. sales database in response to the Department's request.¹⁵³ In that database, Sunrise included a column for INDIRSU which included all of Sunshine's indirect selling expenses.¹⁵⁴ The Department considers sales made through Sunshine to be CEP sales. Therefore, for the final determination, we have calculated the margin for Sunrise's CEP sales using the field INDIRSU rather than the field DIRSELU.¹⁵⁵

Questionnaire" dated March 18, 2016 ("Sunrise SBCQR") at 19-20.

¹⁴⁷ See Sunrise's Sales Verification Report at 15.

¹⁴⁸ See Sunrise's Final Analysis Memorandum.

¹⁴⁹ See Sunrise's Case Brief at 4-5.

¹⁵⁰ See Sunrise's CQR at 1.

¹⁵¹ See Sunrise CQR at 43.

¹⁵² See Letter from the Department, "Antidumping Duty Investigation on Welded Stainless Pressure Pipe from India: First Supplemental Questionnaire for the Section B-C Questionnaire Responses of Sunrise Stainless Private Limited," dated February 23, 2016 ("Sunrise SQBC questionnaire") at 4-5.

¹⁵³ See Sunrise SBCQR Revised Export Sales Database.

¹⁵⁴ *Id.*, at 7-8.

¹⁵⁵ See Sunrise's Final Analysis Memorandum.

Comment 15: Use of Net Quantity in the Calculation of Sunrise's U.S. Sales

Sunrise's Comments¹⁵⁶

- During the POI, Sunrise reported one merchandise return. However, in the *Preliminary Determination*, the Department based the margin calculations on gross quantity, QTYU rather than net quantity, QTYNETU.
- For the final determination, the Department should base the calculations on net quantity.

No other party provided comments on this issue.

Department's Position: We agree with Sunrise that it is the Department's practice to use the quantity of the specific shipment or invoice line, net of returns where possible.¹⁵⁷ Sunrise reported the transactions in its U.S. sales database net of returns, as requested.¹⁵⁸ Therefore, for the final determination, we have used net quantity as the basis for quantity in the final margin calculations.¹⁵⁹


VII. 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 margin in the *Federal Register*.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

22 September 2016

Date

¹⁵⁶ *Id.*, at 6.

¹⁵⁷ See letter from the Department to Sunrise "Investigation of Certain Welded Stainless Pressure Pipe Products from India: Antidumping Investigation Questionnaire," dated November 23, 2015 ("Sunrise's WSPPQ") at page B-16 and page C-14.

¹⁵⁸ See Sunrise SBCQR Revised Export Sales Database.

¹⁵⁹ See Sunrise's Final Analysis Memorandum.