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January 9, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Welded Carbon Steel Standard Pipes and Tubes from India: Issues
and Decision Memorandum for the Final Results of Antidumping
Duty Administrative Review; 2017/18

I. SUMMARY

We analyzed the comments filed by interested parties in the administrative review of the antidumping duty order on welded carbon steel standard pipes and tubes (pipe and tube) from India covering the period of review (POR), May 1, 2017 through April 30, 2018. described in the “Discussion of the Issue” section of this memorandum. Below are the issues for which we have received comments from interested parties:

- Comment 1: Particular Market Situation
- Comment 2: Partial Adverse Facts Available for Non-Cooperative Unaffiliated Suppliers’ Costs
- Comment 3: Particular Market Situation Adjustment for Purchases from Certain Unaffiliated Suppliers
- Comment 4: Adjustment to Direct Material Costs
- Comment 5: Establishing Normal Value Based on Constructed Value
- Comment 6: General and Administrative Expenses
- Comment 7: Quantifying a Particular Market Situation Adjustment

II. BACKGROUND

On July 16, 2019, the Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review and invited interested parties to comment.¹ On August 27, 2019, Independence Tube Corporation and Southland Tube, Incorporated, the domestic interested

¹ See *Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 33916 (July 16, 2019) (*Preliminary Results*) and accompanying Decision Memorandum (Preliminary Decision Memorandum).



parties (DIPs) submitted a case brief and, also on August 27, 2019, the respondent, Garg Tube Export LLP and Garg Tube Limited (collectively, Garg Tube) submitted its case brief.² On September 3, 2019, the DIPs and Garg Tube submitted respective rebuttal briefs.³ On October 24, 2019, Commerce extended the deadline for the final results by 57 days to January 9, 2020.⁴

III. SCOPE OF THE ORDER

The merchandise covered by the order is pipe and tube with an outside diameter of 0.375 inch or more but not over 16 inches. These products are commonly referred to in the industry as standard pipes and tubes produced to various American Society for Testing Materials (ASTM) specifications, most notably A-53, A-120, or A-135.

The AD order on pipe and tube from India, published on May 12, 1986, included standard scope language which used the import classification system as defined by Tariff Schedules of the United States, Annotated (TSUSA). The United States developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted from the TSUSA to the Harmonized Tariff Schedule (HTS).⁵ As a result of this transition, the scope language we used in the 1991 Federal Register notice is slightly different from the scope language of the original final determination and AD order.

Until January 1, 1989, such merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the TSUSA. This merchandise is currently classifiable under HTS item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090. As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

IV. CHANGES SINCE THE PRELIMINARY RESULTS

We made the following changes to our calculations since the *Preliminary Results*:

- We recalculated the particular market situation (PMS) adjustment by (1) using an implied capacity utilization rate of 80 percent, (2) relying on the results of the DIPs' alternative regression model that uses domestic prices, instead of import average unit

² See DIP's Letter, "Certain Welded Carbon Steel Standard Pipes and Tubes from India: Case Brief," dated August 27, 2019 (DIPs' Case Brief); see also Garg Tube's Letter, "Garg Tube's Administrative Case Brief: Administrative Review of the Antidumping Duty Order on Certain Welded Carbon Steel Standard Pipes and Tubes from India," dated August 27, 2019 (GT's Case Brief).

³ See DIP's Letter, "Certain Welded Carbon Steel Standard Pipes and Tubes from India: Rebuttal Brief," dated September 3, 2019 (DIPs' Rebuttal Brief); see also Garg Tube's Letter, "Garg Tube's Rebuttal Brief: Administrative Review of the Antidumping Duty Order on Certain Welded Carbon Steel Standard Pipes and Tubes from India," dated September 3, 2019 (GT's Rebuttal Brief).

⁴ See Memorandum, "Welded Carbon Steel Standard Pipes and Tubes from India: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated October 24, 2019.

⁵ See, e.g., *Certain Welded Carbon Steel Standard Pipes and Tubes from India; Preliminary Results of Antidumping Duty Administrative Reviews*, 56 FR 26650, 26651 (June 10, 1991).

values, as the dependent variable, and (3) relying solely on the regression coefficient for one explanatory variable, the uneconomic capacity, generated by the alternative model.

- We recalculated general and administrative (G&A) expenses by disallowing a certain income item that was used as an offset.

V. DISCUSSION OF THE ISSUES

Comment 1: Particular Market Situation

Garg Tube's Arguments

Based on the introductory comments contained in its case brief, the following presents the synopsis of Garg Tube's arguments concerning Commerce's preliminary finding of the existence of a PMS in India concerning hot-rolled coil (HRC).⁶

The PMS provision of the Trade Preferences Extension Act of 2015 (TEPA), amending Section 773(e) of the Tariff Act of 1930 (as amended) (the Act), is triggered only if both "a particular market situation" exists and the respondent's "costs of materials and fabrication or other processing" do not "accurately reflect the cost of production in the ordinary course of trade." Commerce's established practice dictates that a finding of a PMS is reserved for limited circumstances and must be based on substantial evidence that the alleged distortion is so significant that it creates an inability to compare normal value and U.S. prices. The record evidence fails to establish that a PMS existed in the Indian HRC market during the POR. To the contrary, record evidence demonstrates that, as a general matter, the import and domestic prices of HRC in India were consistent with independent, reliable and well established global benchmark prices; even assuming *arguendo* that a PMS existed in the Indian steel market, there is no record evidence to support a finding that Garg Tube's costs do not accurately reflect the cost of production (COP) in the ordinary course of trade. Garg Tube's HRC purchase prices (from both import and domestic sources) generally are in line with the various benchmarks that are on the record, demonstrating that there is nothing unusual or outside the ordinary course of trade concerning Garg Tube's purchase prices of this input of production. The information relied upon by Commerce (multiple articles and price data) in support of its affirmative PMS finding does not constitute substantial evidence because it is not contemporaneous with the POR, which makes it irrelevant in adjudicating a PMS during the POR. By relying on such information, Commerce conflated an allegedly distorted global steel market during a pre-POR era with the prevalence of a PMS in India during the POR, prior to which a sufficient recovery in steel markets had taken place, regaining the normal market situation. The Court recently repudiated an attempt to conflate generalized global conditions (*i.e.*, steel overcapacity and government's provision of subsidies to domestic steel producers) with a PMS⁷; similarly, the record here does not show that such factors are unique or "particular" to the Indian steel market, and that the resultant price distortion during the POR was a phenomenon unique to the Indian market. The record in this review contains no evidence of price distortion of HRC in India in the ordinary course of trade - circumstances similar to those in OCTG from Turkey, where Commerce

⁶ See GT's Case Brief at 1-6.

⁷ *Id.* at 4-5, citing *Nesteel Co., Ltd. v. United States*, 355 F. Supp. 3d 1336 (CIT 2019) (*Nesteel*).

rejected a PMS allegation due to a lack of evidence for the proposition that prices for HRC in Turkey were distorted.⁸

Commerce's premise, that "significant" steel production overcapacity and price suppression, globally and especially in China and Korea during the POR, caused a PMS in India, is directly contradicted by record evidence.

- Various data trends show that, before the POR had commenced, the global, as well as the Indian, steel marketplace had sufficiently recovered and regained its pre-overcapacity era levels. As a result, there were no lingering effects of steel overcapacity or price suppression during the POR in India or even China or Korea. Thus, during the POR there has been no "particular" or abnormal market situation with regard to steel products trading in India.⁹
 - The data available on the record concerning steel capacity, production, apparent use, excess capacity, and capacity utilization, reported from the world as well as from China, Korea, and India, unambiguously show, contrary to Commerce's findings, that global overcapacity, and especially Chinese/Korean steel overcapacity, were at significantly reduced levels during the POR. These facts undermine Commerce's central premise that global, and especially Chinese/Korean, overcapacity during the POR led to an overhang and a spillover, fueling a "particular" or distorted market situation in the Indian steel market.¹⁰
 - Record information confirms that steelmaking overcapacity, globally and especially in China/Korea, and its domino effects had been arrested beginning in 2015 and were effectively controlled before and during the POR.¹¹
 - Record information indicates that the global Steel Purchasing Managers' Index was over 50 points, signaling a revival and an expansion of the steel market, establishing that steel overcapacity and its associated symptoms had receded. This record evidence directly refutes Commerce's core argument that global overcapacity was the main driver of a PMS in the Indian steel market during the POR.¹²
 - Record information shows that the demand for steel products, including hot-rolled steel products, and consumption growth around the world, including in China, Korea,

⁸ See GT's Case Brief at 6, citing Memorandum, "2016-2017 Antidumping Duty Administrative Review of Oil Country Tubular Goods from Turkey: Decision on Particular Market Situation Allegation," dated June 5, 2018. Garg Tube incorrectly cites this document in its case brief as "2016-2017 Antidumping Duty Administrative Review of Welded Carbon Steel Standard Pipe and Tube Products from Turkey, Decision on Particular Market Situation Allegation," dated June 4, 2018.

⁹ *Id.* at 6, 21.

¹⁰ *Id.* at 7-8. Garg Tube re-introduces in its case brief the same evidence contained in its submission, "Rebuttal Response to Petitioners' Particular Market Situation Allegations: Administrative Review of the Antidumping Duty Order on Certain Welded Carbon Steel Standard Pipes and Tubes from India," dated March 4, 2019 (PMS Rebuttal Comments). This information was considered and addressed in Memorandum, "2017-2018 Administrative Review of Antidumping Duty Order on Welded Carbon Steel Standard Pipes and Tubes from India: Decisions on Particular Market Situation Allegations," dated July 10, 2019 (PMS Memo).

¹¹ See GT's Case Brief at 9-10. Garg Tube re-introduces in its case brief the same evidence contained in its submission, PMS Rebuttal Comments. This information was considered and addressed in the PMS Memo.

¹² *Id.* at 11-12. Garg Tube re-introduces in its case brief the same evidence contained in its submission, PMS Rebuttal Comments. This information was considered and addressed in the PMS Memo.

and India, generally accelerated during the course of 2016, and remained relatively strong in 2017.¹³

- o A decrease in global overcapacity, and increase in national demand and consumption, resulted in a reduced surplus of steel; record information confirms an anticipated reduction in international trade in steel during the POR. The underlying data therein counters Commerce's arguments that during the POR: (1) Chinese and Korean steel flooded the world market (including India); (2) Chinese steel was being routed to India through Korea; and (3) India was experiencing a surge in imports. On the contrary, these data show that there was a conspicuous reduction of Chinese and Korean steel exports prior to and during the POR, all while India experienced a dramatic surge in exports and a reduction in imports. These data confirm that a distorted, or out of the ordinary, market situation in India did not exist.¹⁴
- o Record information shows that steel prices around the globe rebounded in 2016 and onward (partly in response to the recovery in prices for key steelmaking raw materials), with HRC prices climbing back to their 2013-2014 levels – this is evidence that global overcapacity, which had peaked in 2015, receded by the time the POR commenced. A consistent rise in the price of flat products in India and China undermines Commerce's presumption that dumped HRC from China was flooding the Indian market (either through direct imports or indirectly via Korea), abnormally depressing the prices of steel in India, and causing a PMS. The record information also shows that the profitability of the steel industry around the world stabilized in 2017 at the 2016 level, from the record low registered in 2012.¹⁵
- Even when there was global steel overcapacity, the consequence was a generalized set of conditions impacting all markets around the world, rather than triggering a PMS in India. To the extent these factors impact the steel market, they impact the global market - these are not considerations unique to India and are not indicative of any market situation "particular" to India.¹⁶
- Commerce speculated in its analysis that the evidence merely indicates, at best, the beginning of a recovery in steel markets, and that the record lacks evidence that a potential recovery momentum is sustainable in the long term. Commerce's reasoning is contrary to the global, Chinese, and Korean steel quantity and price data through December 2018; Commerce fails to explain the basis for its conclusion that the recovery is unsustainable in the long run; and Commerce fails to show how the applicable law could be tied to this finding to support prevalence of a PMS in India during the POR.¹⁷
- Commerce's rationale in its analysis that the evidence fails to establish the normalization of steel prices in general, or HRC prices in particular, to levels preceding, or during, the period of build-up in the Chinese steel overcapacity, is unpersuasive. Commerce's reasoning that the rise in HRC prices after 2015 are solely attributable to a rapid growth

¹³ *Id.* at 13-14. Garg Tube re-introduces in its case brief the same evidence contained in its submission, PMS Rebuttal Comments. This information was considered and addressed in the PMS Memo.

¹⁴ *Id.* at 14-16. Garg Tube re-introduces in its case brief the same evidence contained in its submission, PMS Rebuttal Comments. This information was considered and addressed in the PMS Memo.

¹⁵ *Id.* at 17-21. Garg Tube re-introduces in its case brief the same evidence contained in its submission, PMS Rebuttal Comments. This information was considered and addressed in the PMS Memo.

¹⁶ *Id.* at 21.

¹⁷ *Id.* at 21-22.

in the Gross Domestic Product, and not due to a price normalization on account of an amelioration of the steel overcapacity situation is totally without merit.¹⁸

- Commerce is conflating two different issues, global overcapacity and trade remedy measures, in its reasoning that the Government of India's (GOI's) implementation of trade remedy measures on imports of HRC that continued to be in effect during the POR amounts to evidence of the global steel overcapacity crisis persisting during the POR. Global overcapacity should be measured independently and cannot be inferred from the presence of trade remedy measures. The trade remedy measures instituted in India and operative during the POR helped in normalizing the steel market and raising the steel prices back to the pre-overcapacity era – thus, Commerce improperly attempts to rely on this fact in support of its PMS finding.¹⁹

Commerce's reasoning that GOI's subsidization of HRC and GOI's affirmative antidumping and safeguard measures in effect during the POR support a PMS with respect to HRC in India is meritless.

- Commerce is wrong in its reasoning that, due to a global overcapacity, and as a result of an influx of HRC imports at depressed prices (especially from China and Korea) and the Indian market being supplied with subsidized domestically produced product, HRC prices during the POR were below the levels commensurate with the ordinary course of trade. Commerce's findings and conclusions are contradicted by information on the record.²⁰
 - o Imports of HRC (especially from China and Korea) before and during the POR were subject to a rigorous discipline enforced by Safeguard, Minimum Import Price regime, and antidumping duty orders - these trade remedy instruments had a discernible and a favorable impact on the volume and price trends of HRC/Strip in general, or HRC imported into India under HTS heading 7208.39 in particular (relevant to Garg Tube's HRC purchases), evidence that contradicts Commerce's findings that imports of HRC resulted in a PMS in India during the POR.²¹
 - o Commerce is wrong in disputing the relevance of the aforementioned analysis of volume and price trends of HRC imported under Indian HTS subheadings 7208.39.30 and 7208.39.40, on account that there are other Indian HTS subheadings covering hot-rolled flat steel products that can be used in the production of merchandise subject to this review, thus bearing little weight as to whether a PMS existed in the Indian HRC market, overall. Apart from Indian HTS subheadings 7208.39.30 and 7208.39.40, Garg Tube could potentially use HRC imported under only two other Indian HTS subheadings, 7208.38.30 and 7208.38.40 - the remaining 33 Indian HTS subheadings covered by GOI's safeguard measure cover steel plates, which cannot be used for production of subject merchandise.²²

¹⁸ *Id.* at 22-23.

¹⁹ *Id.* at 23.

²⁰ *Id.* at 24.

²¹ *Id.* at 25-29, 30-31. Garg Tube re-introduces in its case brief the same evidence contained in its submission, PMS Rebuttal Comments. This information was considered and addressed in the PMS Memo.

²² *Id.* at 29.

- o The average import price of HRC in India during the POR fell in the same range as HRC benchmark prices reported from several sources around the world – thus, it was not depressed and, therefore, did not cause an abnormal or a PMS.²³
- o Commerce attempts to impeach Indian import prices, reasoning that, while Commerce found subsidization of domestic HRC producers to exist in Korea, China, and Ukraine, the GOI imposed no CVD duties of its own on imports of HRC from these top import sources, in order to offset the subsidies from which the producers in those countries benefit. Commerce’s reasoning is, however, speculative, because there is no record evidence that the exporters from Korea, China and Ukraine who had exported HRC to India had been countervailed or even examined in the U.S. CVD proceedings.²⁴
- All agency precedent relied upon by Commerce are distinguishable, while two recent decisions support a negative PMS finding.
 - o In *Biodiesel from Indonesia Final*, Commerce’s PMS finding resulted from the Government of Indonesia’s direct intervention in the fixation of home market sale price and quantity of the finished goods. Here, there is no evidence that the GOI likewise intervened to fix the price or quantity of the home market sales made by Garg Tube or any other Indian pipe and tube producer. Further, unlike *Biodiesel from Indonesia Final*, where an export tax levied on the key input of production resulted in an oversupply in the domestic market and, consequently, a distorted (lower) market price, there is no evidence here that sales of HRC were subject to any additional (unusual) duty or tax.²⁵
 - o In *CWP from Thailand*, Commerce’s PMS finding was based on a surge of low-priced Chinese steel products causing serious problems to the domestic steel industry, which resulted in distorted (artificially depressed) prices of HRC. Here, Indian imports of HRC, especially from China, declined significantly from prior levels during the POR; global capacity utilization and steel prices around the world, including India, increased; and the Indian domestic steel industry was not adversely impacted by imports of steel during the POR - rather, it flourished.²⁶
 - o In the three Korean proceedings cited by the DIPs, such as *CWP from Korea AR 15-16*, Commerce’s PMS findings were based on the cumulative effect of uniquely intertwined market conditions arising, *inter alia*, from strategic alliances between Korean HRC and pipe producers and government interventions in the Korean electricity market. These two conditions are entirely absent from the Indian market for pipe and tube.²⁷

²³ *Id.* at 31-33. Garg Tube re-introduces in its case brief the same evidence contained in its submission, PMS Rebuttal Comments. This information was considered and addressed in the PMS Memo.

²⁴ *Id.* at 33.

²⁵ *Id.* at 33-36, citing *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018) (*Biodiesel from Indonesia Final*) and accompanying Issues and Decision Memorandum (IDM) at Comments 2 and 3.

²⁶ See GT’s Case Brief at 36, citing *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 51927 (October 15, 2018) (*CWP from Thailand*) and accompanying IDM at Comment 2.

²⁷ See GT’s Case Brief at 37, citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 27541 (June 13, 2018) (*CWP from Korea*

- o The Korea and Thailand case precedents are unavailing because of a critical factual difference between those reviews and the instant review – HRC prices in China. Specifically, as compared to the PORs in those proceedings, HRC prices in China during the POR in the instant review were significantly higher. The significant price increase of HRC shows that the Chinese market was not distorted during the POR due to steel overcapacity; the *de minimis* quantity of Chinese steel imported into India during the POR and the fact that India HRC prices were greater than benchmarks established by the GOI; and worldwide benchmark prices establish the above precedents as inapposite to support a PMS finding here.²⁸
- o On the other hand, Commerce’s recent decisions in the CWP from United Arab Emirates and Oman proceedings have precedential value in the instant review because the average Indian import prices of HRC from the world as well as from the largest sources, China and Korea, consistently increased from 2016 through 2018, and returned to pre-steel overcapacity era price levels.²⁹
- Commerce’s reasoning that the GOI-subsidized, domestically produced HRC fueled a PMS during the POR is unsupported and unpersuasive.
 - o Subsidies by the GOI to steel producers have been in place for a long time, predating the POR – Commerce fails to specify which of the subsidies would have lowered the sale prices of HRC to downstream purchasers and by how much, and fails to explain how such longstanding subsidies suddenly morphed into a PMS. Further, Commerce’s reasoning in support of its PMS finding, that Garg Tube sourced a portion of its HRC requirements from certain manufacturers of HRC that Commerce previously found to have benefited from GOI subsidies, is unavailing – such purchases represent a *de minimis* portion of the total quantity of HRC sourced during the POR and, thus, such minor subsidies fail to support an affirmative PMS finding under Commerce’s practice.³⁰
 - o Commerce’s reasoning that Garg Tube’s domestic HRC purchases are distorted by GOI subsidies is not in accordance with controlling law. Commerce cannot load Garg Tube’s HRC purchase prices by the domestic subsidy portion of the U.S. CVD rate on HRC from India.
 - a. There is no evidence that the subsidy benefits received by the Indian HRC producers have resulted in a depression in the price of HRC sold to Garg Tube – in order to compute a subsidy benefit, Commerce would need to perform a double remedy pass through analysis based on the books and accounts of Garg Tube’s HRC suppliers.³¹
 - b. Garg Tube’s HRC purchase prices cannot be increased by the subsidies received by its HRC suppliers. An allegation of upstream subsidies

AR 15-16) and accompanying IDM at Comment 1.

²⁸ *Id.* at 38-39. Garg Tube re-introduces in its case brief the same evidence contained in its submission, PMS Rebuttal Comments. This information was considered and addressed in the PMS Memo.

²⁹ *Id.* at 39-40, citing *Circular Welded Carbon-Quality Steel Pipe from Oman: Final Results of Antidumping Duty Administrative Review, 2016-2017*, FR 84 29846-29848 (June 25, 2019) and accompanying IDM at Comment 1.

³⁰ See GT’s Case Brief at 40-42 and Exhibit 1, citing CWP from Oman and accompanying IDM at Comment 1.

³¹ *Id.* at 42-43, citing *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480, (July 15, 2008), and accompanying IDM at Comment 2.

requires Commerce to conduct an inquiry pursuant to 19 CFR 351.523, a purview of a CVD proceeding. Such subsidies are accounted for in determining subsidization rates and cannot be used to artificially increase a respondent's margin of dumping through a PMS vehicle. While Commerce conducted a CVD investigation on pipe and tube from India, it did not issue a CVD order – there is no need for Commerce to revisit the prior negative CVD determination and pull in the subsidy results from another proceeding into this one.³²

- c. U.S. CVD rates for several programs are typically based on AFA. Commerce has no basis to apply rates based on adverse inferences, entirely or in part, found to exist in HRC from the India CWP CVD proceeding, to a fully cooperative respondent here – there is also no evidence that such rates are reflective of the subsidy experience associated with HRC production by Garg Tube's suppliers. Commerce's decision to apply a PMS adjustment to Garg Tube's purchase prices of HRC (on account of purchases of allegedly subsidized HRC) would amount to punishing a fully cooperative party based on the non-cooperation of a party, in a separate proceeding, over which Garg Tube had no control.³³
- d. It is Commerce's long-standing practice not to consider subsidies in its dumping calculations as a cost or element of normal value. Commerce has routinely declined to adjust a respondent's costs to account for countervailable subsidies. As such, the alleged subsidies are to be addressed solely under the CVD laws.³⁴
- Indian HRC market is supplied predominantly by domestic steel producers, a fact that detracts from a PMS finding based on allegedly suppressed price of imports.
 - o Commerce's reasoning that global overcapacity led to an enhanced government subsidization and a consequent fall in the price of domestic HRC is belied by the fact that India's steel market is self-reliant and has a large steel production base – thus, India is relatively less affected by the vicissitudes of the global steel market than if it had been reliant predominantly on imported steel.³⁵
 - o India is the world's third-largest producer of crude steel and became a net exporter of steel products beginning in the 2016-2017 period. Domestic production accounted for 93-94 percent of the quantity of finished steel traded in India during 2016-2018; similarly, for HRC/Strip, domestic production accounted

³² See GT's Case Brief at 43-44, 47-48.

³³ *Id.* at 44-46, citing *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from Korea: Final Affirmative Determination*, 81 FR 53439, and accompanying IDM at Comment 5, Section 776(b) of the Act, and *China Steel Corp. v. United States*, 306 F. Supp. 2d 1291 (CIT 2004).

³⁴ See GT's Case Brief at 46-47, citing *Tool Steel from the Federal Republic of Germany; Correction to Early Determination of Antidumping Duty*, 51 FR 10071 (March 24, 1986) and *Final Results of Antidumping Duty Administrative Review of Solid Urea from the Former German Democratic Republic*, 62 FR 61271 (November 17, 1997) at Comment 3.

³⁵ See GT's Case Brief at 48-49. Garg Tube re-introduces in its case brief the same evidence contained in its submission, PMS Rebuttal Comments. This information was considered and addressed in the PMS Memo.

for 92-93 percent of the market, continues to grow, and imports are lagging exports by a significant margin, with imports decelerating.³⁶

- o Having computed a more accurate rate for import penetration, measured in relation to the consumption of HRC in India, it is absurd that Commerce considered an import penetration rate of nine percent as being so significant as to constitute a PMS.³⁷
- o Commerce grounded the significance of said import penetration rate as an indiscountable factor in causing imbalances in the Indian HRC market based on the GOI's own safeguard finding (where the increase in import penetration from five percent to 13 percent was deemed significant to find a sudden surge in imports); Commerce also rationalized that imports have an enlarged effect on the HRC market, considering that imports of HRC were underpriced relative to domestic prices of HRC in India during the POR. This reasoning is unpersuasive in the context of an affirmative PMS finding. While a surge in imports may afford a reasonable predicate for imposition of safeguard duties, a PMS is an exceptional situation which requires significantly more than a mere nine percent import penetration. Further, Commerce's proffered rationale concerning underpriced imports ignores the fact that even the lower average Indian import prices were, in general, consistent with the global benchmark prices and above the thresholds fixed by the GOI for levying safeguard and AD duties.³⁸
- o The average domestic price of HRC in India during the POR exceeds the Non-Injurious Price (NIP) fixed under the GOI's AD regime, as well as the average import price for HRC imported under HTS 7208.39; the average domestic price falls in the same range as the plethora of independent benchmark prices from several international markets. Notwithstanding these facts, Commerce reasons that the benchmark prices on which Garg Tube relies are similarly skewed, as result of the global steel overcapacity crisis, and provide for an unmeaningful proxy for India's average HRC import and domestic prices. Absent any information from the DIPs that rebuts Garg Tube's proffered benchmark prices or arguments concerning the skewness present in them, Commerce's speculative reasoning to reject Garg Tube's benchmark data lacks any basis.³⁹

Garg Tube's non-payment of safeguard and AD duties was in accordance with law and cannot be construed as a PMS.

- Record evidence establishes that Garg Tube's purchase prices, whether from domestic or import sources, were not depressed, distorted or injurious based on the parameters established under the Indian trade remedy measures.

³⁶ *Id.* at 49-51. Garg Tube re-introduces in its case brief the same evidence contained in its submission, PMS Rebuttal Comments. This information was considered and addressed in the PMS Memo.

³⁷ *Id.* at 51.

³⁸ *Id.* at 52.

³⁹ *Id.* at 52-53. Garg Tube re-introduces in its case brief the same evidence contained in its submission, PMS Rebuttal Comments. This information was considered and addressed in the PMS Memo.

- All of Garg Tube's domestic prices, whether for purchases from producers or traders of HRC, were above the baseline NIP under the Indian AD orders regime.⁴⁰
- Garg Tube's import prices were either slightly higher or slightly lower than the baseline NIP under Indian AD orders regime.⁴¹
- Since all the HRC prices were above the minimum import price (MIP) under the Indian safeguard measure, no safeguard duties were payable.⁴²
- In view of these facts, in this review the Department should follow its precedent in Steel Concrete Reinforcing Bar from Taiwan, where Commerce did not apply any PMS adjustments, after concluding that the respondent had not received the inputs at less than market prices.⁴³
- Because Garg Tube Export LLP (GTEL) is in a Special Economic Zone (SEZ), while Garg Tube Limited's (GTL)'s imports were made under the Advanced Authorization Scheme (AAS), HRC imports in both instances were legally exempt from payment of safeguard and AD duties.⁴⁴
- Commerce's assertion that non-payment of safeguard and AD duties indicates that Garg Tube had purchased HRC at depressed prices is meritless and fails to demonstrate a PMS either generally or specifically in relation to Garg Tube's HRC purchases.⁴⁵

DIPs' Arguments

A fundamental tenet of U.S. antidumping law, consistent with the United States' obligations under the WTO Antidumping Agreement, is that the accurate calculation of dumping margins requires a fair comparison between costs and prices in the ordinary course of trade.⁴⁶ The PMS provision under the Trade Preferences Extension Act of 2015 (TPEA) was designed to explicitly give Commerce the broad authority to address situations in a foreign market where inputs are purchased, and where inherent distortions in the market for those inputs prevent a fair comparison between normal value and U.S. prices.⁴⁷ When a PMS exists, comparable prices or costs in the ordinary course of trade do not exist for purposes of normal value calculations - as such, Commerce has the authority to choose any alternative methodology to account for the distorted prices and costs as reported. In accordance with the statute and the agency's obligation to calculate accurate dumping margins, in the final results Commerce should continue to find

⁴⁰ *Id.* at 55-55. Garg Tube re-introduces in its case brief the same evidence contained in its submission, PMS Rebuttal Comments. This information was considered and addressed in the PMS Memo.

⁴¹ *Id.* at 56. Garg Tube re-introduces in its case brief the same evidence contained in its submission, PMS Rebuttal Comments. This information was considered and addressed in the PMS Memo.

⁴² *Id.*

⁴³ *Id.* citing PMS Rebuttal Comments at Exhibit 19 (containing Commerce's memorandum, "Than-Fair-Value Investigation of Steel Concrete Reinforcing Bar from Taiwan: Particular Market Situation Allegation," dated June 20, 2017).

⁴⁴ See GT's Case Brief at 57.

⁴⁵ *Id.*

⁴⁶ See DIPs' Rebuttal Brief at 3, citing Sections 773(a)(1) and 773(f)(1)(a) of the Act.

⁴⁷ See DIPs' Rebuttal Brief at 4, citing Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, § 504, 129 Stat. 362, 385, *codified at* Section 773(e) of the Act.

that a PMS existed in India during the POR, and continue to increase Garg Tube's reported costs for HRC by the adjustment derived from the DIPs' regression analysis.⁴⁸

- Garg Tube misconstrues the statute by arguing that the PMS provision of the TPEA “is triggered only if both a ‘particular market situation’ exists and the respondent’s ‘costs of materials and fabrication or other processing’ do not ‘accurately reflect the cost of production in the ordinary course of trade.’” At no point does the language in the PMS provision of Section 773(e) of the Act, or the explanation of the term “ordinary course of trade,” provided in Section 771(15)(C) of the Act, create a two-part requirement.⁴⁹
- Contrary to Garg Tube's claims, its costs of production do not, in fact, accurately reflect the COP in the ordinary course of trade. As the DIPs have explained in this review, and recognized by Commerce in the *Preliminary Results*, Indian steel manufacturers' costs were distorted through a PMS in India (on the basis on specific factors enumerated in Commerce's affirmative PMS finding) which permeated the entire market for pipe's and tube's most significant input, HRC, and as such specifically affected Indian producers including Garg Tube.⁵⁰
- Contrary to Garg Tube's claim, the DIPs have placed a considerable amount of information on the record that is contemporaneous with the POR, including information that provides details on pricing, import data, and other conditions in the global and Indian steel industries. Notwithstanding, certain information that supports Commerce's determination and pre-dates the POR nevertheless constitutes substantial evidence that a PMS existed during the POR - the fact that the global overcapacity crisis existed prior to the POR, and that the GOI recognized the distortive effects of that crisis by implementing trade remedy measures that continued to be in effect during the POR, is itself evidence that the crisis persisted throughout the POR.⁵¹ To this end, there is no reason why non-contemporaneous information may not also be relevant to a subsequent POR – for example, in *CWP Korea 16-17*, Commerce reached an affirmative PMS determination on the basis of the information provided in that review, inclusive of information that was non-contemporaneous with the POR.⁵²
- Consistent with Commerce's explanation in the *Preliminary Results*, the record does not support a conclusion that “the global steel market had recovered sufficiently and regained its normal market situation” during the POR, as Garg Tube claims. Commerce also observed in its analysis a lack of evidence to suggest a normalization of HRC prices. Additionally, the degree to which steel prices move is not dispositive of the question whether a capacity crisis exist – price changes in and of themselves do not indicate that

⁴⁸ *Id.*

⁴⁹ *Id.* at 4-5.

⁵⁰ *Id.* at 6, citing Trade Preferences Extension Act of 2015, H.R. No. 1295, 114th Congo (2015-2016) (enacted) § 504, Preliminary Decision Memorandum at 20, PMS Memo at 19; *see generally*, DIPs' Letter, “Certain Welded Carbon Steel Standard Pipes and Tubes from India: Particular Market Situation Allegation, Resubmitted Market Viability Allegation, and Supporting Information,” dated December 21, 2018 (PMS Allegation).

⁵¹ *See* DIPs' Rebuttal Brief at 6-7.

⁵² *Id.* at 9-10, citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 26401 (June 6, 2019) (*CWP Korea 16-17*) and accompanying IDM at page 18.

capacity crises are over.⁵³ Furthermore, Commerce has recently issued several affirmative PMS determinations where it has found overcapacity existed during review periods that overlap the POR in this review.⁵⁴

- The record evidence does not support Garg Tube's claim that a PMS specific to India does not exist.
 - Consistent with Commerce's explanation in the *Preliminary Results* (that the global overcapacity crisis will manifest its distortive effects differently in different markets), the DIPs' regression analyses show that it is possible to quantify the specific effects of the global steel overcapacity crisis on the Indian market. Notably the analyses isolate the effects of the steel overcapacity crisis in India, and accounts for the unique supply-and-demand conditions in India during the POR. Garg Tube has not provided, nor does the record contain, evidence to refute these conclusions.⁵⁵
 - There is no requirement under section 504 of the TPEA and, similarly, no suggestion in the Statement of Administrative Action, that a PMS must be so unique to a single country. That distortions under the PMS provision exist in one market does not preclude distortions from existing in another market, even where distortions arise from a problem affecting more than one country.⁵⁶
 - In objecting to Commerce's determination that a PMS existed in India, Garg Tube draws an inapposite analogy to *Nesteel*. As a preliminary matter, *Nesteel* is an ongoing dispute, and as such, the CIT's opinion in that proceeding is not final. Moreover, contrary to Garg Tube's claims, the CIT's analysis in *Nesteel* did not address the actual merits of Commerce's ultimate finding on PMS, i.e., the extent to which the global steel overcapacity crisis and Korean government subsidization in the underlying administrative review resulted in a PMS. In *Nesteel*, the CIT simply disagreed with the Commerce's reversal of its preliminary negative PMS finding under the circumstances of the underlying review.⁵⁷
 - Notwithstanding the CIT's decision in *Nesteel*, Commerce has repeatedly found a PMS to exist in several other proceedings due to distortions towards which the global steel overcapacity crisis and subsidization have contributed, in addition to other factors.⁵⁸

Garg Tube argues at length that: (1) record evidence contradicts a finding that overcapacity

⁵³ See DIPs' Rebuttal Brief at 7-8.

⁵⁴ *Id.* at 8, citing *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments*; 2016-2017, 84 FR 27762 (June 14, 2019) (WLP Korea 16-17) and accompanying IDM at page 17.

⁵⁵ See DIPs' Rebuttal Brief at 10-11.

⁵⁶ *Id.* at 11, citing Section 773(e) of the Act and Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, vol 1 (1994) at 822 (SAA).

⁵⁷ See DIPs' Rebuttal Brief at 11-13, citing *Nesteel*, 355 F. Supp. 3d at 1351.

⁵⁸ See DIPs' Rebuttal Brief. at 13, citing PMS Allegation at 6, Exhibits 4-10; *CWP Korea 16-17* and accompanying IDM at 7, *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments*; 2016-2017, 84 FR 24471 (May 28, 2019) (*HWR Korea 16-17*) and accompanying IDM at 14, and *Large Diameter Welded Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 84 FR 6374 (February 27, 2019) (*LDWP Korea INV*) and accompanying IDM at 12.

and price suppression contributed to a PMS in India; (2) GOI subsidization and its trade and safeguard determinations likewise do not support an affirmative PMS finding; and (3) Garg Tube's non-payment of safeguard and AD duties should not support an affirmative PMS finding. As discussed below, in the *Preliminary Results*, Commerce has already rejected these claims and the respondent offers no new information or argument to support a finding to the contrary.⁵⁹

Commerce's finding that overcapacity and price suppression contributed to a PMS in India is supported by substantial record evidence.

- Garg Tube mischaracterizes Commerce's conclusions regarding overcapacity and global price suppression during the POR. While Garg Tube claims that the agency found that overcapacity and price suppression caused a PMS, Commerce in its *Preliminary Results* viewed the effect of overcapacity and price suppression in the context of several other factors and their cumulative effect on the input costs of HRC in the production of pipe and tube.⁶⁰
- There is no basis for Garg Tube to claim that problems relating to the steel overcapacity crisis have been resolved. Indeed, Commerce has recently issued numerous determinations specifically finding that the effects of steel overcapacity continue to exist and affected the POR in this review.⁶¹ As such, Garg Tube's claims that capacity, production, capacity utilization, and price depression have been "solved" is incorrect.⁶²
- As the DIPs demonstrated in the PMS Allegation, and Commerce explained in its *Preliminary Results*, government industry experts worldwide recognize the existence of the overcapacity crisis and its distortive impact.⁶³ Further, the DIPs' submission on the PMS regression analysis illustrates clearly both the existence of global steel overcapacity and the particular effects that crisis has had on the Indian market – it indicates that there is a compelling and statistically significant inverse relationship between global overcapacity and HRC import average unit values in India.⁶⁴ As such, notwithstanding the various data Garg Tube refers to in its case brief, the evidence on the record shows that the overcapacity crisis and its effects contributed to a PMS during the POR.⁶⁵
- Critically, in its *Preliminary Results*, Commerce considered Garg Tube's same arguments and provided specific explanations, supported by data, where available, pertaining to its interpretation of the facts in this review, but in its case brief Garg Tube fails to point to information on the record that rebuts the agency's observations or leads to a contrary outcome, and otherwise misconstrues Commerce's various conclusions.⁶⁶

⁵⁹ See DIPs' Rebuttal Brief at 13-14.

⁶⁰ *Id.* at 14, citing Preliminary Decision Memorandum at 20, and PMS Memo at 19.

⁶¹ See DIPs' Rebuttal Brief at 14-15, citing *WLP Korea 16-17* and accompanying IDM at 17, *CWP Korea 16-17* and accompanying IDM at 12-13, and *HWR Korea 16-17* and accompanying IDM at 13.

⁶² See DIPs' Rebuttal Brief at 15.

⁶³ *Id.* citing PMS Allegation at 30-41.

⁶⁴ See DIPs' Rebuttal Brief at 15, citing DIPs' Letter, "Certain Welded Carbon Steel Standard Pipes and Tubes from India: Revised PMS Valuation Methodology," dated March 22, 2019 (Regression Analysis).

⁶⁵ See DIPs' Rebuttal Brief at 15-16.

⁶⁶ *Id.* at 16-19, citing various excerpts from PMS Memo found at 20-21, 23 (adding emphasis and omitting internal citations) and GT's Case Brief at 7-24.

Commerce's reasoning that the GOI's subsidization of HRC, and AD and safeguard determinations support a PMS finding, which relies on substantial evidence.

- Commerce found in its *Preliminary Results* that the very existence of the trade measures confirms that the Indian government recognizes the adverse price effects that imports are having on domestic HRC prices and, thus, the distortive effects these imports have in the Indian market; because Indian pipe and tube producers do not pay duties on imported HRC, these trade measures are entirely absent from the COP for Indian pipe and tube producers.⁶⁷
- Garg Tube claims that HRC prices in the Indian market were not depressed as gauged by certain global benchmark prices. Commerce explicitly rejected this argument in the *Preliminary Results*.⁶⁸
- Garg Tube's argument that Indian HRC import volumes and price trends do not support a PMS finding is unavailing.
 - Commerce recognized in its *Preliminary Results* that Garg Tube's limited focus on the data for Indian imports under Indian HTS subheadings 7208.39.30 and 7208.39.40 is unavailing in the context of the agency's PMS analysis that focused on a broader range of hot-rolled products that can be used in the production of in-scope merchandise.⁶⁹ As such, Garg Tube's argument that Commerce's reasoning is flawed on account of specific Indian HTS subheadings that Garg Tube actually imports or can, potentially, use in the production of pipe and tube, is irrelevant, given Commerce's framework.⁷⁰
 - The pricing and import information provided in the PMS Allegation covered a broader range of Indian HTS subheadings for inputs that may be used in the production of subject merchandise.⁷¹ Further, information provided by Garg Tube regarding India's safeguard proceeding on hot-rolled steel imports shows that Garg Tube's imports of HRC fall under just two of 37 tariff lines of what the GOI considers to constitute hot-rolled steel.⁷²
- Garg Tube ignores that the question facing Commerce is not whether it has been demonstrated that Garg Tube's specific purchases of HRC were distorted, and thus outside the ordinary course of trade, but, rather, whether a PMS existed in the entire Indian HRC market such that the COP of pipe and tube is distorted. Recently, in *LDWP Korea INV*, the Department specified that it is not necessary to consider whether specific purchases of a respondent's HRC were made outside the ordinary course of trade.⁷³ Thus, comparing Garg Tube's HRC purchases with other Indian HRC prices is merely comparing one set of distorted prices to another and says nothing about what the value of HRC is in the ordinary course of trade, where no distortion exists.⁷⁴

⁶⁷ See DIPs' Rebuttal Brief at 19, citing PMS memo at 22-27.

⁶⁸ See DIPs' Rebuttal Brief at 20, citing excerpts from PMS memo found at 23-24.

⁶⁹ *Id.* at 20-21, citing PMS Memo at 23.

⁷⁰ See DIPs' Rebuttal Brief at 21-22.

⁷¹ *Id.* at 21.

⁷² *Id.*, citing PMS Rebuttal Comments at Exhibit 6.

⁷³ See DIPs' Rebuttal Brief at 22-23 citing *LDWP Korea INV* and accompanying IDM at 14.

⁷⁴ See DIPs' Rebuttal Brief at 22-23.

- Commerce specifically rejected Garg Tube’s renewed claim that, because the average import price of HRC in India during the POR approximated HRC prices elsewhere in the world, it could not be distorted.⁷⁵ The Chinese-led global steel overcapacity crisis has impacted steel prices all over the world; however, the distortions caused by this crisis manifest themselves differently in each country. Thus, a comparison with HRC prices in third countries is not demonstrative that HRC prices in India are not distorted.⁷⁶
- Garg Tube’s claims are unavailing that case precedent Commerce cited in its *Preliminary Results* are distinguishable because the underlying facts in those proceedings differ from the ones here. Notably, the differences that Garg Tube chooses to highlight are inapposite to the reason for which the Department cited those cases.⁷⁷
 - For example, neither of the facts from *Biodiesel from Indonesia Final* that Garg Tube cites (*i.e.*, government intervention in the fixation of price and quantity of biodiesel and the oversupply in the market as a result of an export tax levied on a key input of production) detract from the Commerce’s reliance on that finding as precedent where the agency determined that a PMS existed which distorted the domestic costs of major inputs used in the production of subject merchandise.⁷⁸
 - Other precedents cited by the Department in its *Preliminary Results* contain salient similarities with respect to the existence of a PMS in India in this review. Indeed, regardless of certain differences between this review and other recent determinations in which the Department has found a PMS to have existed, both this and other findings likewise support a finding of a PMS based on the cumulative effect of various factors.⁷⁹ Garg Tube misconstrues the PMS Allegation and Commerce’s *Preliminary Results* in claiming that the PMS allegation in this review is “limited to ... a surge of steel imports driven by global overcapacity.”⁸⁰
 - While Garg Tube attempts to distinguish Commerce’s affirmative PMS determination in other proceedings based on a comparison of average Chinese HRC prices prevalent in the PORs of those findings and in this review’s POR, Garg Tube ignores that Commerce has recently issued several other affirmative PMS determinations in proceedings with review periods that overlap instant review’s POR.⁸¹
- Despite Garg Tube’s attempt to frame recent decisions in the proceedings of CWP from Oman and from the United Arab Emirates as precedential, the facts in those proceedings are significantly different from those in the present review – neither review involved a cumulation of multiple factors that are the basis for Commerce’s affirmative preliminary PMS finding in this review.⁸²

⁷⁵ *Id.* at 23, citing PMS Memo at 23.

⁷⁶ See DIPs’ Rebuttal Brief at 23.

⁷⁷ *Id.* at 23-24.

⁷⁸ *Id.* at 24, citing PMS Memo at 19.

⁷⁹ *Id.* at 24-25, citing PMS Memo at 19.

⁸⁰ See DIPs’ Rebuttal Brief at 25, citing GT’s Case Brief at 37.

⁸¹ See DIPs’ Rebuttal Brief at 25, citing, among others, *WLP Korea 16-17* and accompanying IDM at 17, *CWP Korea 16-17* and accompanying IDM at 12-13, and *HWR Korea 16-17* and accompanying IDM at 13.

⁸² See DIPs’ Rebuttal Brief at 25, citing PMS Memo at 19.

- Garg Tube claims that, because the GOI’s subsidy policies have been in place for a long time, predating the POR, they cannot be the cause of a distortion, belies both common sense and Commerce’s prior practice. That the GOI has had “longstanding government subsidies” in place that have propped up the Indian HRC industry, and that have continued to be in effect during the POR, shows that the overcapacity crisis continued to affect the Indian HRC market throughout the POR – DIPs have not alleged, and Commerce has not stated, that a PMS in India first arose in 2017; rather, a PMS existed throughout the POR, and it is likely that a PMS existed in India far before the POR.⁸³ In *CWP from Thailand*, Commerce “recognized that distortions that are widespread or longstanding may still cause prices and costs to be outside the ordinary course trade.”⁸⁴
- Garg Tube fails to explain why identifying specific subsidy programs for HRC production in India and their subsidy-specific effects on HRC price is relevant to Commerce’s PMS analysis. The record evidence identifies the distortive subsidy programs that contributed to the PMS in India – in its PMS Allegation, the DIPs had carefully detailed the subsidy programs that Commerce has found to benefit Indian HRC producers.⁸⁵ As Commerce recently found in *LDWP Korea INV*, “CVD rates ... represent an appropriate measure of the subsidies being received by the producers for the production of HRC.”⁸⁶
- In its case brief, Garg Tube only confirms that it made certain purchases of HRC from suppliers who had benefitted from GOI subsidization. Garg Tube’s claim that a substantial proportion of its HRC purchases was not subsidized is unsupported, as it fails to provide any evidence to show that such other purchases were not subsidized by the GOI or any other government, and otherwise undistorted.⁸⁷
- Garg Tube’s claims that the GOI subsidization does not support an affirmative PMS determination in accordance with controlling law is unavailing. No requirement exists in the PMS provision of the statute calling for a substantial evidence supporting a determination that the subsidy benefits received by HRC producers had resulted in the depression in the price of HRC sold to Garg Tube. Nevertheless, to the extent Garg Tube’s claim is relevant, the World Trade Organization, Commerce, and reviewing courts have concluded that input subsidies are passed through and affect the price of the downstream product.⁸⁸

⁸³ See DIPs’ Rebuttal Brief at 26.

⁸⁴ *Id.*, citing PMS Allegation at Exhibit 6 (containing cited precedent).

⁸⁵ *Id.* at 27, citing PMS Allegation at 18-27.

⁸⁶ See DIPs’ Rebuttal Brief at 27, citing *LDWP Korea INV* and accompanying IDM at 15.

⁸⁷ See DIPs’ Rebuttal Brief at 28, citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 17,146 (April 18, 2018) (*OCTG Korea 15-16*) and accompanying IDM at 19.

⁸⁸ See DIPs’ Rebuttal Brief at 28, citing *China Nat’l Mach. Imp. & Exp. Corp. v. United States*, 264 F. Supp. 2d 1229, 1237 (Ct. Int’l Trade 2003); see generally, *GPX Int’l Tire Corp. v. United States*, 780 F.3d 1136 (Fed. Cir. 2015) and *Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People’s Republic of China*, 77 FR 52683 (August 30, 2012).

- Garg Tube’s argument that, because of the regulations on upstream subsidies, its HRC purchase prices cannot be increased by the subsidies received by its HRC suppliers, is inapposite because Commerce did not make a PMS adjustment on such a basis.⁸⁹
- While Garg Tube challenges Commerce finding that nine percent import penetration contributes to the PMS in India, it fails to provide a reason or identify evidence to support a finding that such a value is not significant, contrary to Commerce’s conclusion in the *Preliminary Results*, supported by record evidence.⁹⁰

Commerce’s finding that Garg Tube’s non-payment of safeguard and AD duties contributes to the PMS in India is supported by substantial record evidence.

- Garg Tube mischaracterizes Commerce’s conclusions - rather than finding non-payment as a PMS, Commerce, in its *Preliminary Results*, explained that the non-payment of duties was one component out of numerous others that the agency considered cumulatively and found “to represent facets of a single PMS.”⁹¹
- Garg Tube fails to address the fact that by not paying duties on imported HRC, the trade and safeguard measures in India are entirely absent from the COP for Indian pipe and tube producers, a fact Commerce recognized in its *Preliminary Results*. The existing AD and safeguard duties in India confirmed that the Indian government recognizes the adverse price effects that HRC imports are having on HRC prices in India; in turn, trade and safeguard measures in India confirm the distortive effects that HRC imports into India have on the Indian steel market.⁹²
- The continual surge of highly distorted HRC imports into India, coupled with the significant amount of Indian government subsidization of its competing domestic steel industry, resulted in overall market prices that, but for the PMS in India, would be higher, regardless of the levels at which they were recorded. Even if Garg Tube’s HRC purchase prices were above the MIP or NIP thresholds established under GOI’s safeguard and AD regimes, a PMS still existed in India during the POR, with input prices outside of the ordinary course of trade.⁹³
- The GOI imposed global safeguard duties on HRC imports in response to the steel production overcapacity crisis. As such, the mere existence of these safeguards demonstrates that the GOI recognized the distortive effects of HRC imports, regardless of the values at which Garg Tube claims it purchased imported HRC. The GOI made its final safeguard determination without also limiting its findings to HRC priced at or above any kind of minimum import price. Critically, the Indian government’s injury finding was not premised on a surge of imports into India below a minimum price.⁹⁴
- The GOI’s safeguard remedy likely fails to account for the worst of the steel production overcapacity crisis and does not address the combined effects of the GOI’s subsidization of its industry.

⁸⁹ See DIPs’ Rebuttal Brief. at 29.

⁹⁰ *Id.* at 30, citing PMS Memo at 24.

⁹¹ See DIPs’ Rebuttal Brief at 30-31, citing PMS Memo at 19 and Preliminary Decision Memorandum at 20.

⁹² See DIPs’ Rebuttal Brief at 31.

⁹³ *Id.* at 31-32, citing *LDWP Korea INV* and accompanying IDM at 13.

⁹⁴ See DIPs’ Rebuttal Brief at 33, citing PMS Allegation at 44-45 and Exhibit 6 at 208.

- To the extent that application of India’s safeguard on HRC is limited to imports that are priced below a price that was set at the nadir of HRC pricing, given constantly fluctuating HRC prices, the safeguard likely does not remedy the full measure of the steel production overcapacity crisis’ adverse effects.⁹⁵
- Indeed, India’s safeguard system, as subject to the MIP, may entirely fail to account for a price that is above that stagnant threshold but among the lowest prices worldwide, and as such, is injurious to the domestic market. Moreover, but for the significant subsidization of the Indian steel industry, the MIP would likely have to be set higher to provide more meaningful relief to the industry.⁹⁶
- The very existence of a safeguard measure is evidence that a PMS existed during the POR, and that an adjustment is warranted, even for HRC import prices above the MIP. The Indian safeguard on HRC and the Indian government’s subsidization of its domestic steel industry are related in that they are both responses to the global steel overcapacity crisis. Namely, were it not for the significant domestic subsidies given to the Indian steel industry, the MIP for HRC would be higher and, as a result, Garg Tube’s specific purchases of HRC would likely be subject to the safeguard duties. These actions of the GOI are inherently linked and, thus, cannot be considered in isolation of each other.⁹⁷

Commerce’s Position: For these final results, we continue to find that a PMS existed in India during the POR concerning the cost of HRC.

Section 504 of the TPEA⁹⁸ added the concept of “particular market situation” in the definition of the term “ordinary course of trade” for purposes of constructed value (CV) under section 773(e) of the Act, and through these provisions for purposes of the COP under section 773(b)(3) of the Act. Section 773(e) of the Act states that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.”

In the *Preliminary Results*, Commerce found that a cost-based PMS existed in India during the POR concerning the cost of HRC, either as a component of the COP for pipe and tube that Garg Tube self-produced from HRC, or the cost of HRC embedded in the acquisition cost of the purchased mild strength (MS) and galvanized pipe that Garg Tube sourced from unaffiliated Indian suppliers.⁹⁹ Commerce found the PMS to have existed in India during the POR, concerning the prices for HRC, based on the collective impact of the continued effects of the global steel overcapacity, the GOI’s subsidization of HRC, its findings that imports are unfairly traded, and the non-payment of antidumping or safeguard duties on imports of HRC.¹⁰⁰ Commerce considered the components of the PMS Allegation as a whole, based on the cumulative effect on the input costs for HRC in the production of pipe and tube; based on the

⁹⁵ See DIPs’ Rebuttal Brief at 33-34, citing Regression Analysis at Exhibit 1.1.

⁹⁶ See DIPs’ Rebuttal Brief at 33-34.

⁹⁷ *Id.* at 34-35.

⁹⁸ See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA).

⁹⁹ See Preliminary Decision Memorandum at 20 and PMS Memo at 19.

¹⁰⁰ *Id.*

totality of the conditions in the HRC market and the production of pipe and tube in India, Commerce preliminarily found that each of the components of the PMS Allegation represent facets of a single PMS.¹⁰¹

In the *Preliminary Results*, Commerce relied on the PMS Allegation that it determined “provides a wealth of information concerning the global steel overcapacity crisis and its far-reaching effects around the globe (including India), an issue that Commerce had previously encountered and addressed in several of its other proceedings.”¹⁰² Garg Tube does not, in general, dispute that this phenomenon took place in steel markets worldwide. In the *Preliminary Results*, Commerce found that the global overcapacity crisis existed well prior to the instant POR, and that the GOI attempted to quell its distortive effects by implementing trade remedy measures that continued to be in effect during the POR.¹⁰³ Commerce found these indisputable facts to be, in themselves, evidence that the global steel overcapacity crisis persisted during the POR and beyond, as confirmed by the information in the PMS Allegation.¹⁰⁴ Contrary to Garg Tube’s claims that Commerce found overcapacity and price suppression as causes of a PMS, in the *Preliminary Results* we viewed the effects of the global steel overcapacity and price suppression in the context of several other factors and their cumulative effect on the input costs of HRC in the production of pipe and tube.¹⁰⁵

In its case brief, Garg Tube renewed its arguments that, before the POR had commenced, the global steel market (including China, India, and Korea) had recovered and regained its pre-crisis levels; that steel prices around the world rebounded in 2016 with HRC prices climbing back to their 2013-2014 levels. As a result, Garg Tube argues, there were no lingering effects of global steel overcapacity or price suppression during the POR in India, or even in China or in Korea. In the *Preliminary Results*, we did not find these arguments compelling. We stated the following:

While we do not dispute certain positive developments in various steel markets, along with favorable improvements in trade flows in general, in India, in particular, to which Garg Tube refers, such strides may, at best, signal the nascent stages of a recovery. The record lacks evidence that the recovery momentum is sustainable in the long term, or that steel prices in general, or HRC prices in particular, have normalized to levels preceding, or even during, the period of build-up in the Chinese steel overcapacity.¹⁰⁶

Similar to our finding in *CWP from Korea AR 16-17*, we find that the facts in this review, on which Garg Tube relies to make its arguments, fail to dispel that the Chinese steel overcapacity and its effects were absent during this POR, and that increases in steel prices in general, or in HRC in particular, have risen to such an extent that the downward price effects caused by global steel overcapacity did not exist during the POR. On the contrary, the record merely shows that the world steel prices for flat products (which

¹⁰¹ *Id.*

¹⁰² See PMS Memo at 19 (internal citations omitted).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ See Preliminary Decision Memorandum at 20 and PMS Memo at 19.

¹⁰⁶ See PMS Memo at 20.

includes HRC) increased, albeit substantially, from the low point achieved in 2015, and during the POR, were at the levels prevalent in the 2012-2013 period. Similarly, the HRC prices in India, in particular, increased, albeit substantially, from the low point achieved in 2015, and during the POR were at the levels prevalent in the 2013-2014 period. Increases in steel prices do not necessarily mean that the effects from global steel overcapacity have been cured.¹⁰⁷

...Garg Tube's arguments fail to reconcile the improving trends in the hot-rolled pricing levels in India against the backdrop of a rapid economic growth in India during that time. In other words, that the POR pricing levels for hot-rolled steel have a nexus in a prior period of time is not evidence of price normalization, when the extent of growth in the Indian economy (and the resultant demand for steel, including HRC) is not taken into account. Put simply, for the proposition that HRC prices had fully recovered, the POR-equivalent of the HRC price levels prevalent in 2013-2014 would necessarily need to be substantially higher, because from that time India had experienced substantial expansion in economic growth, the most among all major economies in the world, triggering the tantamount increase in the domestic demand for steel.¹⁰⁸

Garg Tube argues that Commerce speculated in its analysis that Garg Tube's presented data may, at best, signal the beginning of a recovery in steel markets, and fails to establish the sustainability of a potential recovery in the long term.¹⁰⁹ However, the record indicates that a great expansion in global steel production capacity had taken place.¹¹⁰ The expansion of steel capacity in China alone, by far the country with the largest steel production capacity, occurred over a twenty-year period (1996-2016), and grew at a compound annual growth rate of nearly 12.7 percent, exceeding by several percentage points China's own growth in real GDP.¹¹¹ Garg Tube does not explain or show how the improvements in the values for capacity, consumption, demand, trade flows, prices, and profitability, data on which it relies, spanning a period of 2016-2018, had either reversed the damage inflicted on steel markets in the course of almost two decades, or how its data over such a short period of time can serve as a meaningful or an affirmative trend confirming that a long-run sustainability of a recovery in steel markets had taken root. The information provided on the record merely shows a *deceleration in growth* in world steelmaking capacity *first* occurring in the 2013-2015 period, followed by the 2016-2017 period registering the *first decline in growth*; further, the largest gap in growth between capacity and production occurred between 2011 and 2017.¹¹² As such, there is no basis in Garg Tube's arguments that the global steel overcapacity and its price suppression effects had receded by the time that the POR had commenced. Garg Tube's arguments are also inconsistent with Commerce's recent PMS determinations in other proceedings, where we found that the global steel overcapacity existed during the review periods that overlap the POR of the instant review.¹¹³

¹⁰⁷ *Id.* (internal citations omitted).

¹⁰⁸ *Id.* at 20-21 (internal citations omitted).

¹⁰⁹ See GT's Case Brief at 21-22.

¹¹⁰ See, generally, PMS Allegation.

¹¹¹ *Id.* at 27-28.

¹¹² See PMS Rebuttal Comments at Exhibits 2B and 3C and charts in GT's Case Brief at 9-10 (excerpts from OECD Steel market Development 2018 Q4 report).

¹¹³ See, e.g., WLP Korea 16-17 and accompanying IDM at 17.

Garg Tube also questions Commerce's conclusion that Garg Tube's presented data fails to prove the normalization of steel prices in general, or HRC prices in India in particular, to levels preceding, or during, the period of build-up in the global steel overcapacity. Our analysis cited above shows, however, that, the POR-equivalent of the 2013-2014 prices would achieve normalization with the prices during that time period after an upward adjustment for cumulative rapid growth in the Indian economy (and the resultant demand HRC) between 2013-2014 and the POR. Thus, the POR-equivalent of the HRC price levels prevalent in 2013-2014 would necessarily need to be substantially higher than during the 2013-2014 period. But the record shows that the HRC prices in India during the POR were at the same levels prevalent in the 2013-2014 period.¹¹⁴ As such, when considering an expansion in India's economic growth, the HRC prices in India during the POR have failed to normalize to even the 2013-2014 period, much less to levels during the 2009-2013 period of build-up in the global steel overcapacity when prices were substantially higher than during the 2013-2014 period, notwithstanding India's continued expansion in growth.¹¹⁵ Accordingly, while it is plausible that, starting in 2016, there was a certain improvement in the HRC price stabilization in India, this is not tantamount to a price normalization to levels preceding, or during, the period of buildup in world steel capacity.

Garg Tube does not dispute the direct evidence on which Commerce relied and Commerce's findings that show the lingering effects of global steel overcapacity on Indian steel markets. We stated the following:

...the fact that Commerce found HRC prices in Korea to be distorted in *CWP from Korea AR 16-17*, as well as several other Korean pipe cases, supports our finding that global steel overcapacity, and particularly Chinese steel overcapacity, has had, and continues to have, both direct (from Chinese imports) and associative (from Korean imports) effects on Indian steel markets, as supported by the following record evidence: India was the fourth largest destination of Chinese exports of hot-rolled products in 2017 (the majority of the POR), importing over a million metric tons, and accounting for approximately five percent of China's total exports; Korea was the second largest destination of Chinese exports of hot-rolled products in 2017, importing over four million metric tons and accounting for approximately 18 percent of China's total exports; India imported almost one million metric tons of hot-rolled sheet and strip products from Korea in 2017, accounting for approximately 56 percent of India's total imports of these products. Concerning the associative effect of Korean imports, this information shows that the Indian hot-rolled market was sufficiently influenced by imports of hot-rolled products from Korea, a country that Commerce found repeatedly to have distortions in the HRC market, partly due to the substantial penetration of Chinese HRC imports in Korea.¹¹⁶

This analysis ties Korea, as an importer of a bulk of Chinese exports of hot-rolled products in 2017, with India, as an importer of the majority of Korean exports of hot-rolled products in the

¹¹⁴ See GT's Case Brief at 20 (for a chart of HRC price index in India for the 2009-2017 period), and 19 (for a chart of world flat price index for 2008-mid 2018 period).

¹¹⁵ *Id.*

¹¹⁶ See PMS Memo at 21 (internal citations omitted).

same year. Such evidence establishes a link between hot-rolled products from China, the culprit in the global steel overcapacity crisis, Korea, a country with its own documented distortions in the HRC market, and India, a destination country for Korean hot-rolled products, India's top source of imports.

Garg Tube argues that Commerce conflated two different issues, global steel overcapacity and trade remedy measures, in its reasoning that GOI's implementation of trade remedy measures on imports of HRC (that continued to be in effect during the POR) amount to evidence of the global steel overcapacity crisis persisting during the POR. Garg Tube asserts that the global steel overcapacity cannot be inferred from the presence of trade remedy measures. We believe Garg Tube mischaracterizes Commerce's findings. Commerce did not state that the GOI's trade remedy measures demonstrate the existence of the global steel overcapacity crisis and its effects in India during the POR. We determined, based on record evidence, that the global steel overcapacity crisis continued to exert its effects on Indian steel markets, including HRC, during the POR.¹¹⁷ As an additional measure, we reasoned, "{t}hat the global overcapacity crisis existed well prior to the instant POR, and that the Indian government attempted to quell its distortive effects by implementing trade remedy measures that continued to be in effect during the POR, are indisputable facts that, *in themselves*, are evidence of the global steel overcapacity crisis persisting during the POR and beyond, as confirmed by the information in the PMS Allegation."¹¹⁸

We do not agree with Garg Tube that the consequence of global steel overcapacity was a generalized set of conditions impacting all markets around the world, rather than being unique to India and, thus, not indicative of any market situation "particular" to India. Commerce rejected this argument in the *Preliminary Results* and explained the following:

The global overcapacity crisis will manifest its distortive effects differently in different markets. In India, the GOI actively pursued measures, such as subsidization and trade remedies, all aimed at supporting the domestic steel producers and their ambitions for capacity expansions, a scenario of further distortions that is unique to India.¹¹⁹

Commerce agrees with DIPs that there is no requirement under Section 504 of the TPEA that a finding of a PMS must be uniquely confined to a single country.¹²⁰ That effects from a global steel overcapacity crisis affect more than one country, the distortion in the prices of inputs of production that Commerce may find to exist under the PMS provision of the statute in one country does not preclude a finding that a distortion of a similar nature exists in another country. We also agree with DIPs that, consistent with our rationale in the *Preliminary Results*, the Regression Analysis submitted on the record quantifies and isolates the specific effects of the global steel overcapacity crisis on the Indian HRC market during the POR.¹²¹ To this end, we do not agree with Garg Tube that the Court of International Trade's (CIT's) decision in *Nexteel*

¹¹⁷ *Id.* at 19-27.

¹¹⁸ *Id.* at 19 (emphasis added).

¹¹⁹ *Id.* at 21 (citations omitted).

¹²⁰ See DIPs' Rebuttal Brief at 11.

¹²¹ *Id.* at 10-11.

stood for the repudiation of Commerce’s attempt to conflate generalized global conditions (*i.e.*, steel overcapacity and government’s provision of subsidies to the domestic producers) with a finding of a PMS in the underlying case.¹²² The Court in *Nesteel* did not address the actual merits of Commerce’s finding of a PMS in the underlying administrative review, but, instead, simply disagreed with Commerce’s reversal of its preliminary negative PMS finding in the final results, based on a lack of any changes in record evidence.¹²³ Further, Commerce has previously found a PMS to have existed in other proceedings due to distortions arising from, among other factors, the global steel overcapacity and the foreign government’s subsidization of production inputs.¹²⁴

Garg Tube argues that the volume and price trends of HRC imported into India under Indian HTS subheadings 7208.39.30 and 7208.39.40 (applicable to Garg Tube’s purchases) is evidence that contradicts Commerce’s findings and conclusions that imports of HRC resulted in a PMS in India during the POR (*i.e.*, that the HRC prices in India during the POR were outside the ordinary course of trade). As a preliminary matter, Garg Tube’s analysis of the volume and average unit values for imports of HRC into India under HTS heading 7208.39 suffers from the same problem as its analysis of the trade flaws for steel products in general, the pricing for world flat products, and the HRC pricing levels in India (discussed above): it fails to show and explain that 1) import volumes under this HTS heading during the POR were at significantly reduced levels *vis-à-vis* the volumes preceding and during the build-up in steel overcapacity, and 2) pricing levels for HTS heading 7208.39 normalized to levels preceding and during the build-up in global steel overcapacity. Garg Tube’s analysis merely shows an improvement in trends, a decline in imports and appreciation in price. Further, in the *Preliminary Results*, we stated the following:

...Garg Tube’s analysis of import data is limited to only two Indian HTS subheadings, 7208.39.30 and 7208.39.40 (the only subheadings under which Garg Tube purchased HRC during the POR for its production of pipe and tube). These are not the only HTS categories covering hot-rolled flat steel products that can be used in the production of merchandise subject to this review, and our analysis above is focused on a broader range of hot-rolled sheet and strip products that can be used in the production of in-scope merchandise. Indeed, the GOI’s safeguard measure on imports of hot-rolled flat steel products covered 37 Indian HTS subheadings. Consequently, Garg Tube’s limited focus in its analysis on two specific Indian HTS subheadings, bears little weight as to whether a PMS existed in the Indian HRC market, overall, during the POR.¹²⁵

Garg Tube posits that Commerce is wrong in disputing the relevance of Garg Tube’s analysis of imports of HRC into India under the aforementioned HTS subheadings – while Garg Tube can use HRC imported under two other Indian HTS subheadings, 7208.39.30 and 7208.39.40, Garg Tube cannot use the merchandise imported under the remaining 33 Indian HTS subheadings

¹²² See GT’s Case Brief at 4-5.

¹²³ See *Nesteel*, 355 F. Supp. 3d at 1351 (“The court finds it unreasonable that Commerce reversed its position and subsequently found a particular market situation based on the same evidence. It does not stand to reason that individually, the facts would not support a particular market situation, but when viewed as a whole, these same facts could support the opposite conclusion.”).

¹²⁴ See DIPs’ Rebuttal Brief at 13 (citing relevant precedent).

¹²⁵ See PMS Memo at 23 (internal citations omitted).

(steel plate) covered by GOI's safeguard measure in the production of pipe and tube. First, Garg Tube misconstrues our findings. We indicated that our analysis is focused on a broader range of hot-rolled sheet and strip products that can be used in the production of in-scope merchandise. Second, Garg Tube misconstrues record evidence in asserting that the remaining 33 Indian HTS subheadings cover steel plate. The information on the record provides extracts from Indian HTS Chapter 72; it shows that 36 of 37 Indian HTS subheadings covered under GOI's safeguard measure on imports of hot-rolled flat steel products (*i.e.*, under HTS headings 7208.10, 7208.25, 7208.26, 7208.27, 7208.36, 7208.37, 7208.38, and 7208.39) all cover "Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated," in coils, of various thickness.¹²⁶ The fact that Garg Tube produces pipe and tube to a narrow range of wall thicknesses which, consequently, narrows the range of HRC products consumed by Garg Tube and the focus of Garg Tube's analysis on its two applicable Indian HTS subheadings, is not informative in ascertaining whether a PMS existed in the Indian HRC market, overall, during the POR, as we concluded in the *Preliminary Results*. Third, concerning HRC prices, contrary to Garg Tube's proffered analysis (which was confined to specific Indian HTS subheadings during the 2016-2018 period, that it imports for its production of pipe and tube), Commerce focused its analysis on world price index for flat hot-rolled steel products in general, and HRC price index in India, in particular, over a period of time inclusive of the POR (to the extent of data availability), as discussed above. Concerning import volumes, Commerce focused its analysis on hot-rolled sheet and strip imported into India over a period of time inclusive of the POR (to the extent of data availability). Commerce explained the following:

Concerning the volume of imports of HRC into India, we find that Garg Tube misconstrues the record. First, we agree with Garg Tube that imports of HRC experienced a significant volume decline in the 2016-2018 period, as a result of large increases in volumes that peaked in 2015. The record shows, however, that the flood of HRC imports into India had merely slowed but remained elevated during the POR - the volume of India's hot-rolled sheet and strip imports in 2017 (1.7 million MT) exceeded the volume of imports of these products in 2013 (1.2 million MT) (an increase of approximately 42 percent), while the volume in 2018 (1.1 million MT) was slightly lower than the volume in 2013 (a decrease of approximately 8 percent). Notably, India's volume of imports of hot-rolled sheet and strip from Korea (top import source) in 2017 (0.957 million MT), accounting for approximately 56 percent of the total, was substantially higher than the volume of imports in 2013 (0.280 million MT) (an increase of approximately 340 percent); import volume of hot-rolled sheet and strip from Korea in 2018 (0.722 million MT), accounting for approximately 65 percent of the total, was substantially higher than the volume of imports in 2013 (0.280 million MT) and in 2014 (0.603 million MT) (an increase of approximately 267 percent and 120 percent, respectively).¹²⁷

This analysis shows that India's import volumes of hot-rolled sheet and strip during 2017 (eight months of the POR) were at levels higher than in 2013, a year that first marked a deceleration in

¹²⁶ See PMS Rebuttal Comments at Exhibit 6, pages 1-2 (for HTS categories of heading 7208 covered under GOI's safeguard determination) and Exhibit 17, at 13 (for delineation and description of HTS categories under Indian HTS heading 7208).

¹²⁷ See PMS Memo at 23 (citations omitted).

growth in world steelmaking capacity, as discussed above. India's import volumes of hot-rolled sheet and strip during 2017 and 2018 from Korea, its top import source, were at levels significantly higher than in the year 2013. This is important because, as discussed above, Korea is a country that Commerce found repeatedly to have distortions in its HRC market, and with substantial penetration of Chinese HRC imports present in its market. In this regard, Garg Tube mischaracterizes Commerce's findings in asserting that unfairly priced hot-rolled steel products from China were flooding the Indian market (either through direct imports or indirect imports via Korea) during the POR.¹²⁸ Commerce's finding was narrower in that it determined that the flood of HRC imports into India at the time of the global steel overcapacity build-up had slowed but remained substantially elevated during the POR.

Garg Tube argues that, because the average unit value for Indian imports of HRC made under HTS heading 7208.39 fell within HRC benchmark prices reported from several sources around the world, Indian import prices were not depressed and, therefore, did not cause a PMS. Similarly, Garg Tube argues that the average domestic price of HRC in India during the POR exceeded the average unit value for Indian imports of HRC made under HTS heading 7209.39 and fell within the same HRC benchmark prices. Commerce rejected this argument in the *Preliminary Results*, reasoning:

There is nothing on the record to suggest that the HRC prices in the countries that Garg Tube used as benchmarks were insulated from the effects of the global steel overcapacity crisis, or that the specific pricing trends in those countries were not affected by it or displayed characteristics that were more resilient from downward pricing pressures experienced in the steel markets in other parts of the world. In other words, the likelihood of the benchmark prices on which Garg Tube relies being similarly skewed, as result of the global steel overcapacity crisis, provides for an unmeaningful proxy for India's average HRC import price during the POR. For this reason, Garg Tube's argument concerning the average domestic price of HRC in India...during the POR being consistent with the same benchmark prices in certain international markets is similarly unavailing.¹²⁹

Garg Tube asserts that, because there is no information that rebuts proffered benchmark prices or arguments concerning the skewness present in them, Commerce's speculative reasoning to reject Garg Tube's benchmark data is without any basis. We find Garg Tube's argument misplaced because it ignores the entire premise of the PMS Allegation which, as we stated in the *Preliminary Results*, "provides a wealth of information concerning the global steel overcapacity crisis and its far-reaching effects around the globe (including India)."¹³⁰ We agree with the DIPs that the PMS Allegation demonstrates the recognition by government industry experts of the existence of the global steel overcapacity crisis and its distortive effects on steel markets worldwide. A comparison with HRC prices in third countries is not demonstrative that HRC prices in India are not distorted. In addition, as we explained above, the statistics for Indian imports of HRC made under HTS heading 7208.39 have a limited value within Commerce's

¹²⁸ See GT's Case Brief at 5, 16-18, 24, 28, and 50-51.

¹²⁹ See PMS Memo at 23-24.

¹³⁰ *Id.* at 19.

PMS framework as they capture a small subset of all hot-rolled sheet and strip products that can be used in the production of in-scope merchandise.

Garg Tube argues that the Indian HRC market is supplied predominantly by domestic steel producers, a fact that detracts from a PMS finding, based on allegedly suppressed prices of imports. In the *Preliminary Results*, Commerce stated:

We find that an import penetration rate of nine percent, relative to domestic demand, is not an insignificant factor...{Further}, as part of its affirmative safeguard determination, in concluding that Indian HRC producers suffered a serious injury or a threat of a serious injury, as a result of unfairly traded imports of HRC into India, the GOI considered the increase in import penetration from five percent to 13 percent to be significant to find a “sudden, sharp, and significant surge in imports, during the period of investigation, both in absolute terms, as well as in relation to total domestic production.” We see no reason to disagree with the GOI’s own findings on the matter, in determining that an import penetration rate of nine percent during the POR is insignificant enough to have caused imbalances in the Indian HRC market, particularly when the record shows imports of HRC being underpriced, on average, relative to the average domestic price of HRC in India during the POR, thus having an enlarged effect.¹³¹

While Garg Tube asserts that a finding of a PMS requires significantly more than a nine percent import penetration, it provides no valid reason or evidence from the record to support a finding contrary to Commerce’s conclusion. Also, Garg Tube argues that Commerce’s rationale ignores the fact that even lower average Indian import prices (in relation to domestic prices) were, in general, consistent with the global benchmark prices and above the thresholds fixed by the GOI in levying safeguard and AD duties. This argument does not detract from Commerce’s finding that imports have an enlarged effect on the domestic HRC market at a given rate of import penetration.¹³²

In the *Preliminary Results*, Commerce found that the GOI’s imposed antidumping and safeguard duties on imported HRC were reactionary measures intended to combat the prices of unfairly traded HRC imported into the Indian market. These measures remained in effect during the POR.¹³³ As noted above, the very existence of these trade measures confirms that the GOI recognizes the adverse price effects that imports are having on domestic HRC prices and, thus, the distortive effects these imports have in the market.

Garg Tube challenges Commerce’s reasoning that the GOI-subsidized domestically produced HRC fueled a PMS during the POR. First, Garg Tube argues that Commerce fails to specify which of the subsidies would have lowered the sale prices of HRC to downstream purchasers and by how much, and fails to explain how such longstanding subsidies suddenly morph into a PMS. We agree with the DIPs that the identification of subsidy-specific effects on HRC prices in India is irrelevant to our PMS analysis – the record identifies distortive subsidy programs that we

¹³¹ *Id.* at 24-25 (internal citations omitted).

¹³² *Id.* at 25.

¹³³ *Id.* at 22-27.

found to have contributed to the PMS in this review: the PMS Allegation details the subsidy programs that Commerce has found to benefit Indian HRC producers, including domestic subsidies.¹³⁴ Further, in the *Preliminary Results* we stated, “{t}he GOI’s subsidization of Indian producers of HRC exerted downward pressures on HRC prices in India, in connection with transactions involving consumers of HRC (*i.e.*, producers of pipe and tube),” a fact that we found availed in and informed by Commerce’s finding in *CWP India CVD* (where Commerce countervailed the provision of HRC for LTAR to producers of carbon quality steel pipe and tube in India).¹³⁵ Concerning Garg Tube’s second point, we agree with the DIPs that neither the DIPs nor Commerce had stated that a PMS in India first arose during the POR but, rather, that a PMS existed during the POR. That the GOI’s subsidies had been in place before the POR and continued to be in effect during the POR is a sign that the global steel overcapacity crisis continued to affect the Indian HRC market throughout the POR, and, thus, it is likely that a PMS existed in India far before the POR. To this end, the case that the DIPs cite, *CWP from Thailand*, speaks to the instant review (where Commerce “...recognized that distortions that are widespread or longstanding may still cause prices and costs to be outside the ordinary course of trade.”).¹³⁶

Garg Tube takes issue with Commerce’s finding that Garg Tube sourced a portion of its HRC requirements from certain manufacturers of HRC that Commerce previously found to have benefited from GOI subsidies. Garg Tube argues that such purchases were *de minimis* in relation to all HRC purchases and, thus, fail to support an affirmative PMS finding. Garg Tube misconstrues our findings. In the *Preliminary Results*, Commerce stated:

The record supports Commerce’s finding that the GOI subsidized the biggest HRC producers in India. The GOI’s subsidization of domestic HRC production was a response to the global steel overcapacity crisis. The GOI’s subsidization of Indian producers of HRC exerted downward pressures on HRC prices in India, in connection with transactions involving consumers of HRC (*i.e.*, producers of pipe and tube). It is a fact that to remain afloat, the domestic HRC market must inevitably cope and compete with the suppression in the HRC import prices, caused by the continued effects of the global steel overcapacity crisis...First, the record shows that a portion of the HRC procured by Garg Tube was produced by certain manufacturers of HRC that Commerce previously found to have benefited from GOI subsidies. Second, it is reasonable to assume that the commercial behavior of the largest companies that dominate the HRC market in India controlled the dynamics of the entire HRC market in India, directly affecting the pricing decisions of the smaller HRC producers and traders in India, *i.e.*, the price takers - the record shows that Garg Tube purchased a substantial volume of its HRC requirements

¹³⁴ See DIPs’ Rebuttal Brief at 27, citing PMS Allegation at 18-27

¹³⁵ See PMS Memo at 21-22 and FN 135 (citing *Circular Welded Carbon-Quality Steel Pipe from India: Final Affirmative Countervailing Duty Determination*, 77 FR 64468 (October 22, 2012) (*CWP India CVD*) and accompanying IDM at 22-23, 37).

¹³⁶ See DIPs’ Rebuttal Brief at 26, citing *CWP from Thailand* and accompanying IDM at Comment 2.

from domestic suppliers, companies that are either small Indian HRC producers or resellers trading HRC produced by small and large Indian HRC producers.¹³⁷

First, Garg Tube ignores the fact that a substantial portion of its HRC requirements was procured from domestic producers.¹³⁸ Garg Tube also does not dispute Commerce's rationale that the manufacturers of such HRC (that Commerce previously found to have benefited from GOI subsidies, namely the biggest players in the Indian HRC market), set the tone in the market that affects the pricing decisions of smaller HRC producers and companies that trade in HRC produced by Indian and third-country HRC producers. As such, there is reason to find that the downward pressures on HRC prices in India, exerted by the GOI's subsidization of large Indian producers of HRC, permeates the entire Indian HRC market. Therefore, the GOI's subsidization of its industry champions in the Indian HRC market is evidence of price distortion in India's HRC market overall. Second, there is no evidence that Garg Tube's purchases of HRC sourced from entities other than the manufacturers of HRC that Commerce previously found to have benefited from GOI subsidies were not likewise subsidized by the GOI or were otherwise undistorted. In this regard, Garg Tube misconstrues the framework of Commerce's PMS analysis. As noted correctly by the DIPs, our practice dictates that, in determining whether a PMS exists, the question is not whether a respondent's specific purchase prices of HRC were distorted and, thus, outside the ordinary course of trade but, rather, whether prices reflected in the entire Indian HRC market, as whole, are distorted, such that they do not accurately reflect the COP of pipe and tube in India in the ordinary course of trade.¹³⁹ As apparent from our discussion cited above, in this review we found that the GOI's subsidization of domestic HRC production was a response to the global steel overcapacity crisis, a mechanism which allowed the domestic HRC producers to remain competitive in the face of suppressed HRC import prices, caused by the continued effects of the global steel overcapacity crisis.

Garg Tube takes issue with Commerce's reasoning that Garg Tube's domestic HRC purchases were distorted by GOI subsidies. First, Garg Tube argues that there is no evidence that the subsidy benefits received by the Indian HRC producers has resulted in the in a depression in the price of HRC sold to Garg Tube. According to Garg Tube, such a subsidy benefit requires a double remedy pass through analysis. We disagree. No such requirement exists in the PMS provision of the statute, nor does Commerce's practice imply that such a prerequisite exists. The relevant evidence that Commerce found controlling in its PMS analysis here was that the GOI's subsidization of domestic HRC production contributed to the distortions of HRC prices in India, affecting the COP of pipe and tube in India, including that of Garg Tube.¹⁴⁰ Further, as

¹³⁷ See PMS Memo at 21-22 (citations omitted).

¹³⁸ See GT's Case brief at Exhibit 1.

¹³⁹ See *LDWP Korea INV* and accompanying IDM at 14 ("Regarding SeAH's and Hyundai Steel's argument that there is no evidence that their specific purchases of HRS were outside the ordinary course of trade, we believe that no such analysis is necessary. We disagree with the notion that a company-specific analysis is appropriate in a situation where, as here, there is sufficient evidence demonstrating that the market as a whole is distorted, and a PMS exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the COP in the ordinary course of trade. Companies do not operate in a vacuum but, rather, purchase their inputs in a market. If a particular market is distorted as a whole, it would be illogical to conclude that one company operating in that particular market is insulated from the market distortions with respect to cost.").

¹⁴⁰ See PMS Memo at 21-22.

discussed above, Commerce also found relevant its finding in *CWP India CVD* (where Commerce countervailed the provision of HRC for LTAR to producers of carbon quality steel pipe and tube in India) in establishing that the GOI's subsidization of Indian producers of HRC exerted downward pressures on HRC prices in India, in connection with transactions involving consumers of HRC (*i.e.*, producers of pipe and tube, such as Garg Tube).¹⁴¹ Second, Garg Tube argues that, because of the regulations on upstream subsidies, its HRC purchase prices cannot be increased by the subsidies received by HRC suppliers. This argument is moot – Commerce has not quantified a PMS adjustment on such a basis.

Garg Tube argues that its non-payment of safeguard and AD duties cannot be construed as a PMS, because (1) its purchase prices for HRC, whether from domestic or import producers, were not depressed, distorted or injurious based on the parameters established under the Indian trade remedy measures, and (2) GTEL is located in an SEZ, and GTL's imports were made under the AAS, making HRC imports in both of the instances legally exempt from payment of safeguard and AD duties. Garg Tube misconstrues our analysis. First, instead of finding that the non-payment of safeguard and AD duties on imported HRC constituted a PMS, Commerce explained in the *Preliminary Results* that this issue was one component, among others, that we considered cumulatively as representing facets of a single PMS.¹⁴² Second, Garg Tube does not undermine Commerce's factual findings that, by not paying AD or safeguard duties on imported HRC, the AD and safeguard measures implemented in India are not effectuated in the COP of pipe and tube produced in India. Concerning the non-payment of safeguard duties, Commerce explained:

The nonpayment of safeguard duties by importers can be evidence of a PMS, especially if the safeguard was put in place effectively to remedy the price distortions and injury in the domestic HRC market caused by global steel overcapacity. The nonpayment is evidence that, despite the existence of the safeguard measure in that situation, the injurious effects of overcapacity continue to exist. We agree with Garg Tube that the record evidence supports that it was not required to pay safeguard measures for several reasons. However, just because the government permits exceptions to the payment of safeguard measures, this does not mean that the purposes of the safeguard measures are, nonetheless, being fulfilled. For example, with respect to the MIP, the GOI's injury finding in its safeguard determination was initially made without regard to an MIP and, critically, was not premised on a surge of imports into India at prices below the MIP, which was established by the GOI later. Further, the record evidence suggests that the HRC market prices in India, just like the stagnant MIP under the safeguard measure, would necessarily be higher, but for the continued elevations in distorted HRC imports into India.¹⁴³

Garg Tube does not present new arguments that warrant a reconsideration of the conclusion we reached in the *Preliminary Results*: "...the existence of the safeguard order and the nonpayment of duties...is information {that} supports a global-steel-overcapacity-driven PMS finding."¹⁴⁴

¹⁴¹ *Id.* at 21-22 and FN 135, citing *CWP India CVD* and accompanying IDM at 22-23, 37.

¹⁴² See PMS Memo at 19; see also Preliminary Decision Memorandum at 20.

¹⁴³ See PMS Memo at 25-26 (citations omitted).

¹⁴⁴ *Id.* at 26.

Concerning the non-payment of AD duties, Commerce explained:

...because GTEL is located in an SEZ, and GTL imports under the AAS, the GOI permitted Garg Tube not to pay AD duties it was otherwise liable to pay on imports of HRC that both GTEL and GTL procured from China. In fact, all POR import purchases provided on the record...were made at prices below the statutory NIP...established by the GOI's AD measure, and Garg Tube paid no AD duties on those imports...when a company is exempted from paying AD duties, as Garg Tube was during this POR on imported purchases of HRC, Commerce considers that relevant as part of its PMS analysis. The record shows that the HRC which Garg Tube sourced from China and Ukraine accounts for the entirety of its imports of HRC, as well as for a substantial portion, in terms of volume and value, of the of HRC consumed by Garg Tube in the production of pipe and tube during the POR. Notably, although the GOI did not impose an AD measure against imports of HRC from Ukraine, the remaining source of Garg Tube's HRC imports during the POR, the record shows that GTEL's and GTL's import purchases from Ukraine were at prices similar to or below the companies' purchases from China...In sum, the failure to pay the AD duties leads us to suspect that the prices of both the Chinese and the Ukrainian imports of HRC were distorted as a result of overcapacity, and at least with respect to the Chinese merchandise, the measures put in place to prevent dumping were not effectuated.¹⁴⁵

Garg Tube does not present new arguments that warrant a reconsideration of the conclusion we reached in the *Preliminary Results*: "...this nonpayment of AD duties is further evidence of the existence of a cost-based PMS for the provision of HRC in India."¹⁴⁶

We agree with the DIPs that the differences Garg Tube identifies between the facts of this review and the precedent on which Commerce relied in its *Preliminary Results* are inapposite. Specifically, Commerce cited *Biodiesel from Indonesia* and *OCTG from Korea AR 14-15* merely as a case where Commerce determined that a PMS existed that distorted the domestic costs of major inputs used in the production of subject merchandise.¹⁴⁷ More on point to the facts of this review, Commerce cited *CWP from Korea AR 15-16* as an example of a case where Commerce previously encountered and addressed the global steel overcapacity crisis and its effects,¹⁴⁸ and

¹⁴⁵ *Id.* at 26-27.

¹⁴⁶ *Id.* at 27.

¹⁴⁷ See PMS Memo at 19 (citing *Biodiesel from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50379 (October 31, 2017) (*Biodiesel from Indonesia Prelim*) and accompanying PDM at 18-24 and *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018) and accompanying IDM at 11-16 (collectively, *Biodiesel from Indonesia*) (Commerce incorrectly cited *Biodiesel from Argentina: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 8837 (March 1, 2018), as the applicable final determination that was unchanged from *Biodiesel from Indonesia Prelim*) and *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18105 (April 17, 2017) (*OCTG from Korea AR 14-15*) and accompanying IDM at 40-41).

¹⁴⁸ *Id.* citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015- 2016*, 82 FR 57583 (December 6, 2017) (*CWP from Korea AR 15-*

CWP from Korea AR 16-17, as a recent case where Commerce found unconvincing the proposition that the global steel overcapacity, or the market distortion/price suppression caused by global steel overcapacity, did not exist during the POR.¹⁴⁹ In all the aforementioned Korean proceedings, just as here, Commerce found a PMS to exist based on the cumulative effects of various factors.

Lastly, we disagree with Garg Tube that recent decisions in the reviews of CWP from Oman and from United Arab Emirates have precedential value in the instant review because Indian import prices of HRC from the world (as well as from the two largest export sources, China and Korea) consistently increased from 2016 through 2018. As discussed above, in this review, we found that the HRC price increases to which Garg Tube alludes do not amount to a compelling evidence of HRC price normalization in India. Further, the facts in those proceedings are significantly different from those here, namely, neither finding involved certain factors (*i.e.*, government interference in the HRC market in the form of subsidies, trade measures, etc.), and the cumulation thereof, that are the basis for Commerce's affirmative PMS finding in this review.

Comment 2: Partial AFA For Non-Cooperative Unaffiliated Suppliers' Costs

In the *Preliminary Results*, Commerce determined that certain unaffiliated suppliers'¹⁵⁰ respective COP information is necessary but missing from the record and, as a result, the suppliers in question failed to cooperate to the best of their ability in providing the COP information that Commerce repeatedly sought from them.¹⁵¹ In resorting to use partial facts available with adverse inferences regarding said suppliers' missing cost information, we calculated surrogate costs based on Garg Tube's acquisition costs for the supplier-produced pipe and tube plus amounts for Garg Tube's further processing expenses, G&A expenses, and financial expenses, adjusted based on Garg Tube's home market sale on which it realized the largest loss.¹⁵²

Garg Tube's Arguments

Commerce should reverse its preliminary decision to apply partial adverse facts available (AFA), because neither its reliance on AFA to calculate the unaffiliated suppliers' costs, nor its decision to increase Garg Tube's costs, were supported by substantial evidence and or in accordance with law.¹⁵³

- Neither of the suppliers in question are affiliated with Garg Tube; none of the family members of Garg Tube's management hold equity shares or managerial positions in

16), and accompanying Preliminary Decision Memorandum at 14.

¹⁴⁹ *Id.* at 20 citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 63619 (December 11, 2018) (*CWP from Korea AR 16-17*), and accompanying Preliminary Decision Memorandum at 14.

¹⁵⁰ We are withholding the identity of these entities as this information constitutes business proprietary information claimed by Garg Tube in this review. We herein refer to these entities as Company A and Company B.

¹⁵¹ See Preliminary Decision Memorandum at 16-17.

¹⁵² *Id.* at 17.

¹⁵³ See GT's Case Brief at 99-100.

either of the companies in question; neither Garg Tube or the companies in question exercise control over the operations of each other, through a close supplier relationship or other indicia of control specified in 19 CFR 351.102(b)(3) of Commerce's regulations. Thus, Garg Tube has no right or ability to obtain confidential cost information from the suppliers in question. Nevertheless, the record shows that Garg Tube made extensive efforts to obtain the actual COP of pipe and tube purchased from Company A and, to a lesser extent, from Company B.¹⁵⁴

- Garg Tube should not be penalized because its unaffiliated suppliers failed to provide comprehensive, control number-specific cost data.
 - Other cases with similar fact patterns led the Courts and Commerce to excuse cooperative mandatory respondents from reporting factors of production for their unaffiliated uncooperative suppliers, and to instead rely on neutral facts available.¹⁵⁵
 - The rationale in *Itochu*¹⁵⁶ (where the Court explained the considerations upon which Commerce should rely in deciding whether a cooperative respondent should be penalized when its unaffiliated vendors fail to respond to Commerce's requests to submit cost data) requires that Commerce reverse its decision to rely on AFA to calculate unaffiliated suppliers' costs, and the Court's decision is directly applicable to the facts of the instant case because of the following:¹⁵⁷
 1. Garg Tube's supplier, Company A, lacks prior experience, institutional capacity, and business motivation (it has no direct exports to USA) to cooperate with Commerce's extensive cost data requirement. Company A also expressed confidentiality concerns.
 2. Applying AFA to Garg Tube will not have any direct adverse effect on Company A, since it does not have any direct business with the United States.
 3. Garg Tube's self-production cost information provides an appropriate facts available plug for Company A's missing cost data.
 4. Garg Tube has insufficient leverage over the suppliers in question.
 5. Garg Tube has provided copious evidence of all communications with the suppliers in question and acted to the best of its ability in attempting to convince them to comply with Commerce's requests for data.
 6. Company B's cost data is not relevant in determining Garg Tube's cost of manufacture during the cost reporting period.
 - The judicial precedent on which Commerce relied in the *Preliminary Results* do not support its decision. In *SolarWorld*, the CIT affirmed Commerce's decision

¹⁵⁴ *Id.* at 101-04 (recounting record evidence detailing the various means and the outcome of Garg Tube's pursuits in obtaining the COP information from the suppliers in question).

¹⁵⁵ *Id.* at 108-09, citing *SolarWorld Americas, Inc., v. United States*, 234 F. Supp. 3d 1286, 1312-1314 (Ct. Int'l. Trade 2017) and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791, 63798 (October 17, 2012).

¹⁵⁶ See GT's Case Brief at 105-107, citing *Itochu Bldg. Prods. Co. v. United States*, 2017 Ct. Intl. Trade LEXIS 74, *42-52, 39 Int'l Trade Rep. (BNA) 1522, SLIP OP. 2017-73 (Ct. Int'l. Trade 2017), remand redetermination affirmed in *Itochu Bldg. Prods. Co. v. United States*, 2018 Ct. Intl. Trade LEXIS 26, *26-27 (collectively, *Itochu*).

¹⁵⁷ See GT's Case Brief at 107-108.

to rely on AFA because it was “made in consideration of the magnitude of inputs not reported and of Trina’s apparent ability to induce compliance.”¹⁵⁸ In *Mueller*, the Federal Circuit similarly upheld the Department’s decision to apply AFA to an exporter when its unaffiliated supplier failed to provide data because: (1) the exporter “could potentially have refused to do business with Ternium in the future as a tactic to force Ternium to cooperate;” and (2) “there is the possibility that Ternium could evade its own AFA rate of 48.33 percent by exporting its goods through Mueller, if Mueller were assigned a favorable dumping rate.”¹⁵⁹ In contrast, in the instant review, as elaborated above, the record shows the following:¹⁶⁰

1. Garg Tube failed in its attempts to induce Company A to cooperate;
 2. Garg Tube in fact advised Company A that it would refuse to conduct business in the future, in the absence of Company A’s full cooperation, a tactic which Company A rejected; and
 3. Company A did not itself export subject merchandise to the United States, thereby negating the possibility that it could evade its own AD duty liability by exporting through Garg Tube, if Garg Tube was assigned a favorable rate.
- Commerce should apply Garg Tube’s COP values for identical and similar product control numbers¹⁶¹ as facts available for missing costs for products produced by and sourced from Company A.
 - A comparison of the total cost of manufacturing (TOTCOM) for products (*i.e.*, galvanized pipe) produced from Company A’s inputs (ungalvanized pipe) to the TOTCOM for identical and similar product control numbers produced by Garg Tube directly from HRC, reveals the values for the former are higher than the values for the latter in every instance – this evidence establishes that Company A’s COPs and its sale prices to Garg Tube were not depressed or distorted; this fact is corroborated by Company A’s cost statement for product group, “Steel Pipe, Tubes and Poles” reported in its Cost Audit report for year ending March 31, 2018, showing that during the financial year, this product group was profitable; in addition, the financial statements for Company A and Company B confirm that both were profitable during 2017-2018.¹⁶²
 - In view of the above facts, Commerce should rely on neutral facts available to calculate the production costs of pipe and tube supplied by Company A and Company B.¹⁶³
 - Alternatively, Commerce should substantially reduce the increase to costs resulting from its resort to an adverse inference. In applying AFA that reflects an adjustment based on

¹⁵⁸ *Id.* at 109 (citing *SolarWorld Americas, Inc. v. United States*, 273 F. Supp. 3d 1254, 1276-78 (CIT 2017)) (*SolarWorld*)).

¹⁵⁹ See GT’s Case Brief at 109-110, citing *Mueller Comercial de Mexico, S. de R.L. de C.V. v. United States*, 753 F. 3d 1227, 1233, 1236 (Fed. Cir. 2014) (*Mueller*).

¹⁶⁰ See GT’s Case Brief at 110.

¹⁶¹ Commerce defines a “product control number” as the concatenation of the reported codes for each of the physical characteristics of the subject merchandise and foreign like product.

¹⁶² *Id.* at 110-112.

¹⁶³ *Id.*

Garg Tube's home market sale on which it realized the largest loss, Commerce ignored its responsibility to consider all relevant facts and circumstances.¹⁶⁴

- o By decision unsealed on June 14, 2019, *BMW of N. Am. LLC*, 926 F.3d at 1301, the Federal Circuit expressly rejected Commerce's "past practice" of relying on the highest rate as total AFA, noting that the rate may not be punitive when considered in the context of the seriousness of the conduct of the uncooperative party.¹⁶⁵
- o The CIT recently clarified that, notwithstanding the TPEA amendment, Commerce cannot assign aberrational AFA rates.¹⁶⁶ The amended statute authorizes Commerce to select an AFA rate which was determined to be reliable and is relevant to the proceeding. The CIT recently rejected AFA selection where Commerce likewise selectively read TPEA to ignore its statutory responsibility.¹⁶⁷
- o In the instant review, Commerce failed to adequately explain why this situation justified its adjustment based on the selection of the home market sale on which Garg Tube realized the largest loss - the facts in this case clearly did not justify Commerce's resort to a worst case "highest loss" scenario.¹⁶⁸

DIPs' Arguments

- Garg Tube refutes none of the critical factors that led to Commerce's decision to apply partial AFA with respect to missing costs for pipe and tube produced by the suppliers in question (found to be interested parties in this review because they are producers of merchandise subject to the *Order*) and sold by Garg Tube during the POR.¹⁶⁹
- Garg Tube's claim that one of the supplier's cost data are irrelevant (because finished pipe and tube, based on pipe sourced from this supplier, was neither produced nor sold during the cost reporting period) has no basis; what is relevant is that Commerce found that it was missing cost data for pipe and tube produced by two suppliers and sold by Garg Tube during the POR, and that the cost data were missing as a result of said suppliers' failure to cooperate with Commerce.¹⁷⁰
- Regardless of Garg Tube's efforts to encourage the suppliers to provide Commerce with their cost information, the agency still lacks the information necessary to fully assess Garg Tube's production costs.¹⁷¹
- That the application of AFA for these suppliers' non-cooperation may induce cooperation, even if the suppliers are unaffiliated with Garg Tube, is supported by the record evidence.
 - o By Garg Tube's own admission, it only made minimal outreaches to Company B, and only "threatened" to discontinue business with Company A.¹⁷² The

¹⁶⁴ *Id.* at 112.

¹⁶⁵ *Id.* at 113.

¹⁶⁶ *Id.*, citing *Hyundai Steel Co.*, 2018 (Ct. Int'l. Trade) LEXIS 93 at *59-60.

¹⁶⁷ See GT's Case Brief at 114, citing *POSCO v. United States*, 296 F. Supp. 3d 1320, 1349 (Ct. Int'l. Trade) 2018.

¹⁶⁸ See GT's Case Brief at 114.

¹⁶⁹ See DIPs' Rebuttal Brief at 83-84.

¹⁷⁰ *Id.* at 84.

¹⁷¹ *Id.*

¹⁷² *Id.* at 85, citing GT's Case Brief at 102, 104.

application of adverse inferences to Garg Tube may therefore “induce the cooperation of Garg Tube’s suppliers...and induce{ } Garg Tube in future segments to source from producers of subject merchandise that will cooperate.”¹⁷³

- o Based on the nature of Garg Tube’s communications with its suppliers, the record does not support, as Garg Tube claims, a finding that that the respondent “has no rights or ability to obtain confidential cost information from” its suppliers.¹⁷⁴ It appears that Garg Tube maintains sufficient control over its suppliers – being one of the largest producers and exporters of pipe and tube in India, Garg Tube’s suppliers (not exporting to the United States themselves), may be funneling their merchandise through Garg Tube.¹⁷⁵
- Contrary to Garg Tube’s claims, as explained in the DIPs’ pre-preliminary comments, existing case law supports a finding that application of an adverse inference for the non-cooperation of Garg Tube’s unaffiliated suppliers is proper in this review.¹⁷⁶ As noted above, and supported by Commerce’s *Preliminary Results*, the record evidence supports a finding that the application of adverse inferences to Garg Tube may induce cooperation by the respondent’s suppliers in future segments and induce the respondent to source from suppliers who will cooperate.¹⁷⁷
- Garg Tube’s arguments are unavailing that, instead of applying partial AFA, Commerce should rely on facts available, or reduce an addition to costs in deriving the AFA costs.
 - o Garg Tube fails to address the reasoning provided in Commerce’s *Preliminary Results*, concerning the appropriateness of the information chosen as AFA, and, instead, makes a blanket statement about the aberrational nature of the AFA costs - Garg Tube does not explain how Commerce’s AFA costs were otherwise aberrational or unsupported by substantial evidence.¹⁷⁸

Commerce’s Position: For these final results, we continue to find that an application of partial facts available with an adverse inference is warranted regarding certain suppliers’ missing production cost information, and that the AFA information selected in the *Preliminary Results* is appropriate.

The Act directs Commerce to calculate COP and CV on the basis of actual production costs.¹⁷⁹ Additionally, section 771(28) of the Act states that “{f}or purposes of section 773, the term ‘exporter or producer’ includes both the exporter of the subject merchandise and the producer of the same subject merchandise to the extent necessary to accurately calculate the total amount

¹⁷³ See DIPs’ Rebuttal Brief at 85, citing Preliminary Decision Memorandum at 17.

¹⁷⁴ See DIPs’ Rebuttal Brief at 85, citing GT’s Case Brief at 102.

¹⁷⁵ See DIPs’ Rebuttal Brief at 86, citing *Mueller*, 753 F.3d 1227, 1233.

¹⁷⁶ See DIPs’ Rebuttal Brief at 86, citing DIPs’ Letter, “*Certain Welded Carbon Steel Standard Pipes and Tubes from India: Pre-Preliminary Results Comments*,” dated July 2, 2019.

¹⁷⁷ See DIPs’ Rebuttal Brief at 86-78, citing Preliminary Decision Memorandum at 17.

¹⁷⁸ See DIPs’ Rebuttal Brief at 87-88, citing Preliminary Decision Memorandum at 17 and GT’s Case Brief at 113.

¹⁷⁹ See section 773(b)(3)(A) of the Act (COP shall be an amount equal to the sum of “the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product”); section 773(e)(1) of the Act (CV shall be based on “the cost of materials and fabricator other processing of any kind employed in producing the merchandise”); and section 773(f)(1) of the Act (in general “costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records...reasonably reflect the costs associated with the production and sale of the merchandise.”)

incurred and realized for costs, expenses, and profits in connection with production and sale of that merchandise.” The SAA explains that “the purpose of section 771(28)...is to clarify that where different firms perform the production and selling function, Commerce may include the costs, expenses, and profits of each firm in calculating cost of production and constructed value.”¹⁸⁰ The intent of this provision is to ensure that Commerce has the authority to capture all costs, in situations where various companies are engaged in the production and sale of the merchandise under consideration. Accordingly, Commerce’s determination of who is the producer directly impacts the COP and CV computations.

In the *Preliminary Results*, Commerce determined that Garg Tube’s unaffiliated suppliers of pipe and tube are the producers of the foreign like product and subject merchandise because they are producers of in-scope merchandise in India.¹⁸¹ We also determined that the unaffiliated suppliers of pipe and tube are interested parties to this review, within the meaning of section 771(9)(A) of the Act, because they are producers of Indian pipe and tube, which is the merchandise subject to the *Order*.¹⁸² Garg Tube does not dispute these critical findings. Thus, in seeking actual COP information from certain producers of pipe and tube for sales made by Garg Tube during the POR (companies which we found were interested parties in this review), Commerce’s actions were within its statutory authority.

As stated in the *Preliminary Results*, although Garg Tube sourced pipe and tube from a number of domestic producers, Commerce limited its request to Garg Tube to obtain the COP information from two unaffiliated suppliers, Company A and Company B, and also subsequently issued direct requests to these same two suppliers to provide directly to Commerce the cost information concerning the merchandise they sold to Garg Tube.¹⁸³ The suppliers in question refused to provide their COP information either to Garg Tube or directly to Commerce.¹⁸⁴ In the *Preliminary Results*, pursuant to section 776(a)(1) of the Act, we determined that these unaffiliated suppliers’ respective cost information is necessary information that is missing from the record. Pursuant to section 776(a)(2)(A)-(C) of the Act, we found that each of the suppliers withheld information that was requested by Commerce, failed to provide such information within our deadline, and significantly impeded the review.¹⁸⁵ In the *Preliminary Results*, we found that the suppliers in question, as interested parties to this review, failed to cooperate to the best of their ability in responding to Commerce’s separate requests for information, and that it was appropriate to resort to partial facts available with adverse inferences regarding said suppliers’ missing production cost information, pursuant to section 776(b) of the Act.¹⁸⁶

¹⁸⁰ See SAA, at 835.

¹⁸¹ See Preliminary Decision Memorandum at 16.

¹⁸² *Id.* at 17.

¹⁸³ *Id.* at 16, citing Commerce’s Letter to Garg Tube, dated November 30, 2018; and Commerce’s Letters to two unaffiliated suppliers, both dated May 2, 2019.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 17.

¹⁸⁶ *Id.*

Our decision in the *Preliminary Results* is consistent with our practice, under identical circumstances.¹⁸⁷ Notably, similar to our reasoning in *Stainless Steel Bar from India*,¹⁸⁸ without the unaffiliated suppliers' costs, we do not have the appropriate cost data to calculate an accurate weighted-average dumping margin. For example, when Garg Tube simply resells the pipe and tube produced by the unaffiliated suppliers, we cannot accurately determine which of Garg Tube's home market sales were sold below the COP and, as a result, we do not have a basis for determining which home market sales are within the ordinary course of trade and are appropriate to use as normal value. For example, the record shows that, prior to the application of the AFA costs to the suppliers' missing actual costs, certain home market sales of Company A's product and all home market sales of Company B's product were made above Garg Tube's reported acquisition cost.¹⁸⁹ Without the suppliers' actual COPs, it is unknown whether or which of these home market sales would pass the cost test and, as such, would form the basis for normal value for comparison to U.S. sales of product manufactured by these suppliers.

Moreover, without the unaffiliated suppliers' costs, we cannot accurately calculate CV. The record shows that, prior to the application of the AFA costs to Company A's missing actual costs, the vast majority of home market sales of Company A's product failed the cost test and, accordingly, the normal value for comparison to U.S. sales of products manufactured by this unaffiliated supplier was based on CV (representing Garg Tube's acquisition costs). Without Company A's actual costs of production underlying such CV comparisons, it is unknown whether and to what extent the CV for such comparisons is accurate. As such, the absence of necessary unaffiliated suppliers' cost data on the record precludes us from calculating accurate dumping margins for Garg Tube concerning U.S. sales of pipe and tube supplied by Company A. Critically, and by Garg Tube's own admission, the U.S. sales represented by the merchandise sourced from the two unaffiliated suppliers that failed to provide their respective cost information account for a substantial portion of all U.S. sales made by Garg Tube during the POR.¹⁹⁰

Garg Tube argues that Commerce' reliance on AFA to calculate the unaffiliated suppliers' costs was not supported by substantial evidence. We disagree. As explained above, given the prevalence of U.S. sales represented by products sourced from the suppliers in question, the required, but missing from the record, suppliers' actual costs of production are the only means of ensuring an accurate calculation of a weighted-average dumping margin for Garg Tube in this review. A fundamental principle of U.S. antidumping law is that the accurate calculation of dumping margins requires a fair comparison between normal value and U.S. price where normal value is based on production costs and comparison market sale prices in the ordinary course of

¹⁸⁷ See, e.g., *Glycine from India: Final Determination of Sales at Less Than Fair Value*, 84 FR 18487 (May 1, 2019) and accompanying IDM at 10-11.

¹⁸⁸ See *Stainless Steel Bar from India: Final Results of Changed Circumstances Review and Reinstatement of Certain Companies in the Antidumping Duty Order*, 83 FR 17529 (April 20, 2018) (*Stainless Steel Bar from India*) and accompanying IDM at page 16.

¹⁸⁹ See Memorandum, "Administrative Review of the Antidumping Duty Order on Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Analysis Memorandum for Garg Tube Export LLP and Garg Tube Limited; 2017-2018," dated July 10, 2019 (Preliminary Analysis Memorandum), output of "AFA rate derivation" program at 17 (page 66 of full PDF document).

¹⁹⁰ See GT's Case Brief at 101.

trade.¹⁹¹ Here, as explained above, in the absence of actual costs, it remains unknown whether prices for home market sales of product sourced from the suppliers in question were within the ordinary course of trade in establishing the normal value or, subsequently and where applicable, in establishing accurate CV.

Garg Tube argues that its proffered analysis, showing the comparisons of TOTCOM for products produced from Company A's inputs to the TOTCOM for identical and similar product control numbers produced by Garg Tube directly from HRC, is evidence that Company A's COP was not understated; Garg Tube also argues that Company A's and Company B's sale prices to Garg Tube were not depressed on account of both companies' financial statements showing a profit. We do not find these arguments compelling. A comparison of total costs that rely, as an input, upon the acquisition costs from Company A, with Garg Tube's own production costs is not evidence that Company A's actual costs of production are lower than Garg Tube's acquisition costs from Company A – it is merely suggestive that Company A's actual costs for ungalvanized pipe may be higher than that of Garg Tube's. Further, the overall profitability levels of both companies for the general category of products that include pipe and tube is not evidence that sales of specific pipe and tube products made specifically to Garg Tube were made at a profit (*i.e.*, that Garg Tube's acquisition cost was higher than the suppliers' actual COP). In light of these reasons, an application of partial AFA for the missing suppliers' actual costs (instead of relying on Garg Tube's cost experience as neutral facts available) was necessary, in order to effectuate a proxy that reasonably reflects costs associated with the production of merchandise subject to this review, and reflect a built-in increase to deter non-compliance. This explanation supports Commerce's findings in the *Preliminary Results*:

...as partial adverse facts available, we calculated surrogate costs for two suppliers' pipe and tube, based on Garg Tube's acquisition costs for the supplier-produced pipe and tube plus amounts for Garg Tube's further processing expenses, general and administrative expenses, and financial expenses, adjusted based on Garg Tube's home market sale on which it realized the largest loss...We find that this approach results in an appropriate rate for Garg Tube because it is precisely proportional to the missing cost information and, in this instance, relies upon data provided by Garg Tube with respect to COP as well as losses on home market sales of pipe and tube. We find that this approach yields an estimated COP for two unaffiliated suppliers in question and prevents the use of an acquisition price which may be below these suppliers' COP.¹⁹²

Garg Tube argues that Commerce's reliance on AFA to calculate the unaffiliated suppliers' costs was not in accordance with law. We disagree. The controlling judicial precedent for the circumstances at hand is the CAFC's decision in *Mueller*. There, the Court noted that the application of partial AFA would be appropriate where an unaffiliated supplier failed to provide information and the respondent maintained a degree of control over the non-cooperating supplier

¹⁹¹ See Section 773(a)(1) of the Act (providing that sales prices for home market or third country sales must be within the "ordinary course of trade" for establishing normal value) and Section 773(f)(1)(A) of the Act (providing an authority to adjust reported costs that do not reasonably reflect costs associated with the production and sale of merchandise).

¹⁹² See Preliminary Decision Memorandum at 17 (citations omitted).

such that an adverse inference would have the effect of inducing cooperation; the Court observed that the respondent's refusal to do business with the supplier in the future is a potential tactic to force the supplier to cooperate, or that the respondent's unwillingness to export goods produced by the supplier is a potential measure to induce supplier's cooperation.¹⁹³ In the *Preliminary Results*, we stated:

In addition to resulting in an appropriate {AFA} rate, we find that our {AFA} approach potentially induces the cooperation of Garg Tube's suppliers in future segments of this proceeding, if any, and induces Garg Tube in future segments to source from producers of subject merchandise that will cooperate in these proceedings by providing necessary information to Commerce. We recognize that the use of this information indirectly affects the overall dumping margin assigned to Garg Tube. However, we believe that our approach is consistent with our statutory and regulatory obligations to ensure an accurate result, while bearing in mind the need for inducement measures in situations where interested parties have failed to cooperate in these proceedings.¹⁹⁴

Our rationale in the *Preliminary Results* rested on the Court's findings in *Mueller*, in that Commerce is not barred, under appropriate circumstances, "from drawing adverse inferences against a non-cooperating party that have collateral consequences for a cooperating party," or from relying on inducement or deterrence considerations in determining a dumping margin for a cooperating party "**as long as the application of those policies is reasonable on the particular facts and the predominant interest in accuracy** is properly taken into account."¹⁹⁵ As discussed above, the application of partial AFA is warranted to the missing suppliers' actual cost information given 1) the particular facts in this review, *i.e.*, a substantial portion of POR U.S. sales being represented by the merchandise sourced from two unaffiliated suppliers, and 2) the predominant interest in ensuring an accurate calculation of the weighted-average dumping margin for Garg Tube in this review.

Concerning inducement considerations, as envisioned in *Mueller*, it was reasonable to assume that Garg Tube maintained sufficient control over the suppliers in question because it sourced a substantial volume of pipe and tube, particularly from Company A, for Garg Tube's export sales to the United States,¹⁹⁶ Company A did not itself export subject merchandise to the United States,¹⁹⁷ and the record is not clear whether Company B itself, likewise, exported subject merchandise to the United States.

To use Garg Tube's proxy for an unaffiliated supplier's COPs for subject merchandise would allow the unaffiliated supplier to conceal its true production costs of subject merchandise while continuing to sell subject merchandise in the U.S. market by funneling such merchandise through Garg Tube. As noted above, in *Mueller*, the CAFC held that, as a tactic to force the supplier to cooperate, an exporter that had an existing relationship with an unaffiliated supplier could refuse

¹⁹³ See *Mueller*, 753 F.3d 1227, 1233-36.

¹⁹⁴ See Preliminary Decision Memorandum at 17 (citations omitted).

¹⁹⁵ *Id.*, citing *Mueller*, 753 F.3d 1227, 1233, 1236 (emphasis added).

¹⁹⁶ See GT's Case brief at 101 (for particulars on respective share of the U.S. sales, by volume, represented by the merchandise sourced from Company A and Company B).

¹⁹⁷ See Garg Tube's February 19, 2019, supplemental questionnaire response (SQR) at 52; see also Exhibit S1-D-2(d).

to do business with the supplier in the future or, at a minimum, refuse to export goods produced by the supplier, thus denying the supplier an outlet for its products in a lucrative market, in this situation, the United States. Although Garg Tube claims to have made extensive efforts to obtain the actual COPs of pipe and tube purchased from Company A and, to a lesser extent, from Company B, we find that Garg Tube failed to put forth its maximum efforts in inducing the suppliers in question to cooperate by providing the COP information Commerce requested of them. Specifically, while Garg Tube alleges that it advised Company A that it would refuse to conduct business with it in the future, the record does not support this contention – the record shows that Garg Tube merely threatened once (by e-mail) to cancel all pending orders with the company, and Garg Tube further informed it, by letter, that it would consider whether it could conduct future business with it, absent its cooperation in the provision of the requested information.¹⁹⁸ Concerning Company B, Garg Tube informed it, by letter, that it would consider whether it could conduct future business with it, absent cooperation in the provision of the requested information.¹⁹⁹ In this regard, Garg Tube’s communications with Company A and Company B, documented on the record, do not bear out Garg Tube’s definitive and formal intent to sever all future business with the suppliers in question, for their failure to provide the COP information requested by Commerce. Garg Tube’s communications only held out a possibility, rather than a certainty or near-certainty, of a future loss of business. Accordingly, we determine that Garg Tube’s efforts, documented on the record, did not serve as a strong inducement for the suppliers in question to cooperate and, therefore, Garg Tube did not act to the best of its ability in attempting to obtain the suppliers’ costs. Importantly, contrary to Garg Tube’s assertion, the application of partial AFA to Garg Tube has a direct effect on the suppliers in question, precisely because they do not conduct business directly within the United States. This is so, because any hinderance to Garg Tube’s export sales to the United States, caused by the increase in its antidumping duty liability, adversely affects Garg Tube’s purchases from the suppliers and, thus, the suppliers’ continued ability to sell their merchandise to Garg Tube for its export sales to the United States. Based on this, the record evidence supports a finding that the application of partial AFA to Garg Tube may induce cooperation by the Garg Tube suppliers in future segments and induces the respondent to source from suppliers who will cooperate with Commerce’s request for suppliers’ actual COP information.

Lastly, Garg Tube argues that Commerce should substantially reduce the increase to costs resulting from its resort to an adverse inference, because its selected AFA information ignores a consideration of all relevant facts and circumstances in this review. In the *Preliminary Results* (the language from which we cited above), however, we provided the rationale in support of the appropriateness of the information that we chose as AFA and, as discussed above, the methodology used in the AFA calculations (*i.e.*, respondent’s acquisition cost, adjusted for highest-loss sale) is consistent with our practice. Garg Tube does not explain why such information is inapposite to the facts of this review, as discussed in detail above, or what evidence on the record makes it aberrational.

Comment 3: PMS Adjustment for Purchases from Certain Unaffiliated Suppliers

DIPs’ Arguments

¹⁹⁸ *Id.* at 51; Exhibit S1-D-2(d).

¹⁹⁹ *See* SQR at Exhibit S1-D-2(h).

- Commerce should adjust the cost of HRC in the pipe and tube that Garg Tube purchased from certain unaffiliated suppliers, *i.e.*, companies A and B, by applying the PMS adjustment factor used by the agency in its *Preliminary Results*. In its *Preliminary Results*, Commerce adjusted Garg Tube's costs to account for the PMS when calculating the appropriate AFA costs for these companies' unreported COP data, but then did not apply the PMS adjustment for these two suppliers to account for the PMS in the Indian HRC market.²⁰⁰
- By not applying the PMS adjustment to Garg Tube's reported acquisition costs of pipe and tube sourced from Company A and Company B in its *Preliminary Results*, Commerce erred in that it did not account for the distortive effects of the Indian PMS on the costs of production for that pipe and tube.²⁰¹
 - The AFA rate that Commerce calculated for Company A and Company B does not fully account for the effects of the PMS in India and, therefore, it should not be the only adjustment made with respect to Garg Tube's pipe and tube purchases from these suppliers.
 - To calculate an AFA costs that were not adjusted to reflect the PMS in India that existed throughout the POR would be inappropriate as it would result in a AFA costs derived from uncorrected data.
 - Application of AFA is used to approximate information that is missing from the record, whereas a PMS adjustment is used to correct distorted production costs that are already on the record - these are separate analyses that should not be collapsed into a single, halfway adjustment.

Garg Tube's Arguments

- The DIPs' arguments should be rejected because they amount to an impermissible double counting of a PMS adjustment factor for determining the costs of production for Garg Tube's purchases of pipe and tube from Company A and Company B.²⁰²
 - The DIPs ask Commerce to apply the PMS adjustment twice - first, to apply the PMS adjustment to the cost of HRC embedded in Garg Tube's purchases of pipe and tube from the two suppliers, in order to obtain adjusted acquisition costs to which the AFA COPs would be applied and, second, to continue to calculate AFA COPs for the suppliers by first adjusting Garg Tube's costs to account for the PMS in India.
 - In asserting that the AFA COPs ignore the effect of PMS in India, the DIPs misstate the undisputed fact that Commerce's derivation of the AFA COPs already incorporates the PMS adjustment factor - the AFA COPs computation already accounts for the exact same PMS adjustment that the DIPs urge Commerce to reapply to Garg Tube's acquisition costs of pipe and tube from the suppliers in question.

²⁰⁰ See DIPs' Case Brief at 6-13, citing Preliminary Decision Memorandum at 16-17 and Preliminary Analysis Memorandum at 6-7.

²⁰¹ *Id.*

²⁰² See GT's Rebuttal Brief at 7-10.

Commerce's Position: We agree with Garg Tube that a direct PMS adjustment to the cost of HRC imbedded in Garg Tube's acquisition costs related to purchases from Company A and Company B would amount to a double counting of the PMS adjustment. As we stated in the *Preliminary Results*, in calculating the AFA costs for two suppliers' pipe and tube, the partial AFA information was based on Garg Tube's acquisition costs for the supplier-produced pipe and tube, plus amounts for Garg Tube's further processing expenses, G&A expenses, and financial expenses, adjusted based on Garg Tube's home market sale on which it realized the largest loss.²⁰³ The record is clear that Garg Tube's home market sale on which it realized the largest loss involved a product self-produced by Garg Tube from HRC.²⁰⁴ The record is also clear that Commerce adjusted the cost of HRC, for all products manufactured by Garg Tube from HRC, by a PMS adjustment factor of 38.54 percent, prior to the execution of a cost test;²⁰⁵ the results from the cost test, reflecting the PMS-adjusted HRC costs, were used to ascertain Garg Tube's specific home market sale with the largest loss, forming the basis for the calculation of the AFA rate.²⁰⁶ Therefore, because the cost of HRC was already adjusted to account for a PMS in India in the derivation of the AFA COPs, (which was applied to Garg Tube's acquisition costs for products sourced from Company A and Company B), it is precisely the reason why "we did not adjust the cost of HRC inherent in the COP of MS and galvanized pipe and tube sourced from these particular suppliers," as stated in the *Preliminary Results*.²⁰⁷ Accordingly, we find no basis in the DIPs' claim that Commerce did not account for the distortive effects of the Indian PMS, because the PMS adjustment was not applied directly to Garg Tube's reported acquisition costs of pipe and tube sourced from Company A and Company B. The computation of the AFA COPs that Commerce calculated and applied in the *Preliminary Results* to Garg Tube's acquisition costs for products sourced from these companies indirectly but fully accounts for the effects of the PMS in India, concerning HRC, in the production costs of pipe and tube manufactured by these companies.

Comment 4: Adjustment to Direct Material Costs

DIPs' Arguments

Commerce should adjust upwards Garg Tube's direct material costs to account for apparent inaccuracies in the company's reported input consumption quantities.

- Garg Tube's reported input consumption quantities appear understated *vis-à-vis* the finished pipe quantities.²⁰⁸
- Because Garg Tube's galvanized pipe production does not have this shortfall (while its ungalvanized pipe production does) it suggests that Garg Tube's cost reporting methodology is incorrectly allocating cost between products.²⁰⁹

²⁰³ See Preliminary Decision Memorandum at 17 (citations omitted).

²⁰⁴ See "AFA" output file from the "AFA rate derivation" program, electronically disclosed to interested parties.

²⁰⁵ See Preliminary Analysis Memorandum at attachment (for a log derived from the "AFA rate derivation" program, at line 7472, page 31 of full PDM document).

²⁰⁶ *Id.* at 7-8.

²⁰⁷ *Id.* at 6, n.13.

²⁰⁸ See DIPs' Case Brief at 3-4.

²⁰⁹ *Id.* at 4.

- Commerce should adjust direct material costs to account for the apparent quantity shortfall of inputs consumed on a theoretical basis to produce the reported quantities of subject pipe.²¹⁰
- Applying an adjustment to Garg Tube's direct material costs to account for discrepancies in the company's cost reporting is warranted and is consistent with Commerce's practice in *Olives from Spain INV*, under similar circumstances.²¹¹

Garg Tube's Arguments

Garg Tube has correctly calculated and reported its direct material costs and there is no basis for an upward adjustment.

- The DIPs' argument is misplaced because finished pipe quantities were reported on a theoretical weight basis, whereas the input consumption quantities were reported on an actual weight basis.²¹²
- It is a usual practice in the industry to manufacture pipe with an actual thickness which is lower than, but still within the tolerance of, the nominal wall thickness. As a result, the actual weight of finished product would be lower than the theoretical weight (calculated based on nominal wall thickness) and, hence, the production quantity based on theoretical weight would be higher than the production quantity based on actual weight.²¹³
- The record contains an input/output analysis, contrasting input on actual weight basis vis-à-vis output weight of finished pipe on theoretical and actual weight bases. This analysis reveals that when production quantities based on theoretical weight are compared with input consumption quantities based on actual weight, the input consumption quantity appears to be lower than the theoretical weight of the finished pipe quantities produced. This is because both the input and output weight are not reported on the same basis. However, when the input consumption quantities reported on an actual weight basis are compared with finished pipe quantities reported on an actual weight basis, the difference to which the DIPs allude disappears.²¹⁴
- The DIPs' reliance on *Olives from Spain INV* for any adjustment to Garg Tube's direct material costs is not appropriate in this case. There, the respondent's costs required adjustment due to the chosen cost reporting methodology (i.e., reported costs were based on purchases instead of consumption). Here, Garg Tube's reported costs are the actual input consumption quantities and consumption costs as per its book of accounts, duly reconciled with its financial accounts - they are not the purchase costs.²¹⁵

Commerce's Position: An adjustment to Garg Tube's reported direct material costs is not warranted.

²¹⁰ *Id.* at 4-5.

²¹¹ *Id.* at 5-6, citing *Ripe Olives from Spain: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 28193 (June 18, 2018) (*Olives from Spain INV*) and accompanying IDM at 34-38.

²¹² See GT's Rebuttal Brief at 3.

²¹³ *Id.*

²¹⁴ *Id.* at 4-5.

²¹⁵ *Id.* at 5-6.

In its questionnaire responses, Garg Tube explained that it is usual in the industry to manufacture pipe with an actual thickness which is lower but within the tolerance of the nominal wall thickness, per various applicable pipe and tube specifications.²¹⁶ No record information disputes Garg Tube's assertion. Further, Garg Tube reported a substantial number of sales, particularly in the home market, for which the actual wall thickness does not fall within the allowable tolerance of the nominal wall thickness, per applicable pipe and tube specification.²¹⁷ For such transactions, on a sample basis for a number of reported transactions in each market, Garg Tube provided documentation demonstrating the lower actual thickness of pipe and tube vs. the nominal wall thickness per applicable specification.²¹⁸ Therefore, the record supports Garg Tube's assertion that, because pipe and tube is often made with an actual thickness smaller than the nominal thickness, the actual weight of the finished product is lower than the theoretical weight (calculated based on nominal wall thickness) and, hence, the production quantity based on theoretical weight is higher than the production quantity based on actual weight.²¹⁹ Accordingly, this discussion, *prima facie*, suggests that the consumption weight of inputs should track closely the weight of finished pipe and tube measured on actual weight basis, and, as a result, may be lower than the weight of finished pipe and tube measured on a theoretical weight basis.

In asserting that Garg Tube's reported input consumption quantities appear understated *vis-à-vis* the finished pipe quantities, the DIPs compare the consumption of inputs reported on an actual weight basis to the weight of finished pipe and tube reported on a theoretical weight basis. As the discussion above shows, however, such result is to be expected. The question before Commerce is whether Garg Tube's cost reporting understated the consumption weight of material inputs in the context of the production weight of finished pipe and tube. In this regard, the record does not support DIPs' claim of a shortfall in Garg Tube's reporting of the consumption weight of material inputs. The record shows that the consumption quantities of material inputs were reported on the basis of actual weight, while the production quantities of finished pipe and tube were reported on the basis of theoretical weight.²²⁰ To demonstrate that the consumption of inputs was reported correctly, Garg Tube provided an analysis, contrasting the consumption weight of inputs (net of scrap) on an actual weight basis *vis-à-vis* output weight of finished pipe and tube on theoretical and actual weight bases.²²¹ This analysis shows that when the weight of finished pipe and tube production is considered on an actual weight basis and compared to the consumption weight of material inputs on an actual weight basis, there is no shortfall in the consumption quantity of direct materials, as the DIPs allege.²²² As discussed above, an expected difference between the consumption weight of material inputs measured on an actual weight basis and the weight of finished pipe and tube measured on a theoretical weight basis is (1) a function of pipe and tube with a wall thickness that's either (a) lower than the

²¹⁶ See SQR at 78, n.11; at 91, n.16.

²¹⁷ *Id.* at 21-22, 37-38 and applicable U.S. and home market sales lists (submitted electronically) (where transactions for which actual wall thickness was outside the nominal thickness were identified as "Non Standard-WT" under variable STANDARD1H or STANDARD1U).

²¹⁸ *Id.* at Exhibits S1B-8(c), S1B-8(d), S1A-10(c), S1A-10(e) (for sample home market transactions); Exhibits S1C-5(a), S1C-5(b), S1A-10(e) (for sample U.S. transactions).

²¹⁹ *Id.*

²²⁰ See, e.g., SQR at 78, 91.

²²¹ *Id.* at 78,91; Exhibits S1-D-5(d) and Exhibit S1-D-12(d).

²²² *Id.*

nominal wall thickness (but still within the allowable tolerance of the specification), or (b) lower than the nominal wall thickness and outside the allowable tolerance of specification, *i.e.*, non-standard, and 2) not a function underreported costs. Accordingly, based on this discussion, we find that Garg Tube reported accurately the consumption of input quantities, and no adjustment to its reported direct material costs is necessary.

Comment 5: Establishing Normal Value Based On Constructed Value

DIPs' Arguments

Commerce should find in its final results that Garg Tube does not have a viable home market within the meaning of 19 CFR 351.404, and, instead, Commerce should rely on CV.²²³

- As asserted in the PMS Allegation, Garg Tube's home market sales are not within the ordinary course of trade due to the existence of a PMS in India concerning COP of pipe and tube.
 - Commerce erred in preliminarily determining that Garg Tube's home market sales were not made outside of the ordinary course of trade as a result of the PMS.²²⁴ Contrary to Commerce's statement in its *Preliminary Results*, the DIPs' reliance on *Biodiesel from Indonesia* is not misplaced. In *Biodiesel from Indonesia*, Commerce found the distortion in prices for the input of production as a further indication of a distortion in the home market prices for biodiesel.²²⁵
 - In this review, since a PMS exists that affects Garg Tube's COP, Commerce should find that the standard viability analysis is not a reliable basis to determine whether normal value should be based on the home market sale prices. The effects of the PMS in India, recognized by Commerce, were so distortive during the POR that Garg Tube's home market sale prices could not have been considered to be based on competitive market conditions.²²⁶
 - Once Garg Tube's costs are adjusted to account for the PMS in India, an insignificant number of home market sales survive the cost test to serve as a basis for normal value, an indication of an unviable home market, making it unrepresentative of Garg Tube's sales in the foreign market.²²⁷
 - If not for the PMS in India distorting HRC prices, the prices of Garg Tube's home market sales would have been higher, and, as such, would have sold at a higher and undistorted profit rate – however, it is precisely because of the distortion caused by the PMS in India that such a rate is not known. Thus, it is critical that

²²³ See DIPs' Case Brief at 13, citing 19 CFR 351.404(c)(2)(i)-(ii) (providing that the agency may decline to use home or third country market sales in calculating normal value, and instead rely on CV if "a particular market situation exists that does not permit a proper comparison with the export price or constructed export price," or if the third-country price is otherwise "not representative.").

²²⁴ See DIPs' Case Brief at 14, citing PMS Memo at 30.

²²⁵ See DIPs' Case Brief at 14, citing, PMS Allegation at Exhibit 5, 21-22 (providing the Preliminary Decision Memorandum for the original investigation in *Biodiesel from Indonesia*).

²²⁶ See DIPs' Case Brief at 15, citing PMS Memo at 19-27, 30).

²²⁷ See DIPs' Case Brief at 15.

Commerce find that Garg Tube's reported home market sales are not representative of what prices would be in the home market.²²⁸

- In this regard, this case again presents an analogous set of facts to those in *Biodiesel from Indonesia*, where Commerce relied on CV as the basis for calculating NV because a PMS existed that distorted biodiesel prices in the home market.²²⁹
- Should Commerce continue to determine that the Indian home market is viable, it should nevertheless find that Garg Tube's home market sale prices do not constitute an appropriate basis for normal value, and it should accordingly use CV as the basis for normal value, as it did in *OCTG from Saudi Arabia*.²³⁰
- In determining normal value using CV, Commerce should base its calculations of CV profit and indirect selling expenses ratio on the information provided in the 2017 annual report and accounts for Evraz.²³¹ Commerce should adopt the "other reasonable method" alternative for CV profit, and rely on Evraz's information as the best available information to reflect the profit of an Indian pipe and tube producer, and serve as the basis for Garg Tube's CV profit rate.²³² Alternatively, Commerce should consider relying on the 2017-2018 information for Ratnamani, as its financial data reflect a best-available profit rate for a welded steel pipe producer.²³³

Garg Tube's Arguments

- The DIPs conflate a cost-based PMS, addressed under Section 773(e) of the Act, with a sales-based PMS, addressed under Section 773(a) of the Act. Commerce should summarily reject the DIPs' attempt to metastasize a narrow PMS for COP of pipe and tube to a much wider PMS for sales of finished pipe and tube.
 - Instead of a broad-based and all-encompassing PMS finding for sale prices of pipe and tube, Commerce's PMS finding was narrow and limited to the COP, due to distorted purchase cost of HRC. In contrast, Commerce found that a PMS did not exist concerning Garg Tube's sale prices of its finished pipe and tube. Commerce did not find that a cost-based PMS distorted the sale prices of finished pipes and tubes as well.²³⁴
 - Contrary to the DIPs assertion, Commerce's sales-based PMS finding in *Biodiesel From Indonesia* is distinguishable because it was principally predicated upon the Indonesian government's direct intervention in fixing the price and quantity of sales of finished goods.²³⁵

²²⁸ *Id.* at 16-17.

²²⁹ *Id.* at 17, citing PMS Allegation at Exhibit 5, pages 17, 20-22 (for excerpts from preliminary decision memorandum for the original investigation in *Biodiesel from Indonesia*).

²³⁰ See DIPs' Case Brief at 17-18, citing *Certain Oil Country Tubular Goods from Saudi Arabia: Final Determination of Sales at Less Than Fair Value*, 79 FR 41986 (July 18, 2014) (*OCTG From Saudi Arabia*) and accompanying IDM at 7.

²³¹ See DIPs' Case Brief at 18-19.

²³² *Id.* at 19, citing Section 773(e)(2)(B) of the Act and SAA at 840.

²³³ See DIPs' Case Brief at 19-20.

²³⁴ See GT's Rebuttal Brief at 11-12, citing PMS Memo at 30.

²³⁵ See GT's Rebuttal Brief at 12-14, citing *Biodiesel from Indonesia Prelim* and accompanying Preliminary Decision Memorandum at 20-22.

- The number of sales that pass the cost test is irrelevant for the market viability threshold of five percent.
 - *OCTG from Saudi Arabia* fails to support the DIPs' arguments.
 - There, Commerce resorted to CV not because home market sales remaining after cost and affiliation tests were below five percent of the U.S. sales quantity, but, instead, because no sales remained at all, leaving Commerce with no home market sales data for comparison purposes.
 - There, Commerce also explained that the proportion of above-cost home market sales is a distinct decision from the threshold that determines the market viability of such sales for price comparison purposes.²³⁶
 - In contrast, here, because Commerce determined that there were a number of above-cost home market sale prices, the agency was not rendered with no home market sale prices in the ordinary course of trade.²³⁷
- In the event that Commerce decides to apply the CV methodology, it should not rely on the financial statements from either Evraz or Ratnamani, as a source for CV profit and indirect selling expenses.²³⁸
 - Evraz is a multinational company, with no presence in India, it has vertically integrated operations, and its financial statements are consolidated. EVRAZ's financial performance fails to mirror the production experiences of a welded pipe producer like Garg Tubes who purchases rather than self-produces the steel inputs (HRC and pipes).
 - Ratnamani is a company focused on stainless steel products, while the carbon steel pipe and tube that it produces are either significantly dissimilar to those produced by Garg Tube, or are not produced by Garg Tube.
 - In the alternate, all seven Indian financial statements and two third-country financial statements available on the record satisfy Commerce's criteria and afford accurate computation of profit and expense ratios.

Commerce's Position: There is no basis to find that Garg Tube's home-market sales of pipe and tube reported in this review constitute a sales-based PMS pursuant to 19 CFR 351.404(c)(2).

The regulations at 19 CFR 351.404(b)(1) require that Commerce consider the exporting country to constitute a viable market if "sales of the foreign like product in that country are of sufficient quantity to form the basis of normal value." Sections 773(a)(1)(B)(ii)(II) and 773(a)(1)(C)(ii) of the Act and 19 CFR 351.404(b)(2) define "sufficient quantity" as the aggregate quantity of the foreign like product sold by an exporter or producer in a country that is five percent or more of the aggregate quantity of its sales of the subject merchandise to the United States. The regulations at 19 CFR 351.404(c)(1)(i) state that, if the exporting country constitutes a viable market, Commerce will calculate normal value on the basis of price in the exporting country. Pursuant to section 773(a)(1)(B)(i) of the Act, Commerce may base normal value on the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, where that sale is made in usual commercial quantities and in the ordinary course of trade. However, subject to the regulations at 19 CFR

²³⁶ See GT's Rebuttal Brief at 15-17, citing *OCTG from Saudi Arabia* and accompanying IDM at Comment 2.

²³⁷ See GT's Rebuttal Brief at 16.

²³⁸ *Id.* at 17-20.

351.404(c)(2)(i), Commerce may decline to calculate normal value on the basis of price in the exporting country if it is established that a PMS exists in the exporting country that does not permit a proper comparison of normal value with the export price or constructed export price.

In the *Preliminary Results*, Commerce determined, pursuant to Section 773(a)(1) of the Act and 19 CFR 404(b)(2), that Garg Tube's home market is viable for comparison purposes.²³⁹ We find no merit to the DIPs' argument that an insignificant number of home market sales that survive the cost test to serve as a basis for normal value render the home market unviable. There is no regulatory mechanism that requires Commerce to re-examine the market viability requirements under Section 773(a)(1) of the Act and 19 CFR 351.404(b)(2) when the aggregate quantity of home-market sales is subsequently reduced as a result of Commerce's various analyses for evaluating the ordinary-course-of-trade nature of transactions, *e.g.*, arm's-length test, cost test, overruns test, etc. In fact, the very precedent that the DIPs cite, *OCTG from Saudi Arabia*,²⁴⁰ shows that the process of establishing market viability is assessed early in the segment of a proceeding and is independent of the typical and subsequent determinations of whether specific home market sales were made within or outside the ordinary course of trade. In contrast to *OCTG from Saudi Arabia* (where all sales failed either the arm's length test or a cost test, requiring Commerce to resort to CV), in this review Commerce determined that there were a number of above-cost home market sales, which, as discussed below, provided for a proper basis for normal value and possible comparison with U.S. prices, as envisioned by the statutory and regulatory requirements.²⁴¹

According to Sections 773(a)(1)(B)(ii)(III) and 773(a)(1)(C)(iii) of the Act, and 19 CFR 351.404(c)(2)(i), Commerce's authority to decline the calculation of normal value on the basis of price in the exporting country (or in a third country) and, thus, rely on CV in establishing normal value, is permitted when a PMS exists in the exporting country (or in a third country) affecting the price of the foreign like product. That is, a PMS exists in the exporting country (or in a third country), such that sales of the foreign like product in the exporting country (or in a third country) were made outside the ordinary course of trade, pursuant to sections 771(15) and 773(a)(1)(B)(i) of the Act.

In the *Preliminary Results* we found, however, that no sales-based PMS existed such that Garg Tube's home market sale prices of pipe and tube are distorted, *i.e.*, home market sale prices of pipe and tube are outside the ordinary course of trade, due to the distortions in the COP of pipe and tube that we found to have existed with respect to HRC.²⁴² Specifically, we found that the DIPs' reliance on *Biodiesel from Indonesia*, for the proposition that sales prices of pipe and tube in India were distorted, was inapposite to the facts of this review.²⁴³ We explained that in *Biodiesel from Indonesia*, "...the PMS finding stemmed from the Government of Indonesia's direct intervention in controlling both sales quantity and sales price of biodiesel in Indonesia, to

²³⁹ See Preliminary Decision Memorandum at 14.

²⁴⁰ See *OCTG from Saudi Arabia* and accompanying IDM at Comment 2.

²⁴¹ See Preliminary Analysis Memorandum at attachment (output of comparison market program at 17 (page 129 of full PDF document).

²⁴² See Preliminary Decision Memorandum at 21 and PMS Memo at 30.

²⁴³ See PMS Memo at 30.

such an extent that home market prices could not have been considered as based on competitive market conditions. Here, there is no evidence that the GOI likewise intervened to mandate any aspect of Indian producers' home market sales of pipe and tube."²⁴⁴ To this end, we agree with Garg Tube that a sales-based PMS finding in *Biodiesel from Indonesia* was principally predicated upon the Indonesian government's direct intervention in the domestic biodiesel market, and is not a precedent that infers that a distortion in prices for inputs of production must necessarily distort prices for finished goods. There is no basis to reject out of hand Garg Tube's reported foreign like product sale prices because of the existence during the POR of a PMS for an input to the production of the foreign like product. Commerce accounts for the cost-based PMS through its adjustment of the respondent's COPs, which are then reflected in Commerce's dumping calculations, including in the sales-below-costs test to identify comparison market sales which may be outside of the ordinary course of trade.

Further, while we found in the *Preliminary Results* that a cost-based PMS existed in India, which affected the COP of pipe and tube through distortions in the cost of HRC, we also found that an additional, stand-alone, cost-based PMS concerning purchased MS pipe itself did not exist.²⁴⁵ Importantly, we also stated that, to the extent that MS pipe is covered by the scope of this proceeding, any distortions in the price of MS pipe is properly considered to be a sales-based PMS.²⁴⁶ As such, the DIP's claim that the cost-based PMS effects in India were so distortive that home market sales prices could not have been based on competitive market conditions is inconsistent with Commerce's cost-based PMS finding that concerned only the distorted price of one of the inputs of production, HRC, and not MS pipe, which is subject merchandise.²⁴⁷

Comment 6: General and Administrative Expenses

The DIPs argue that Commerce should revise Garg Tube's calculation of G&A expenses by disallowing certain income items that were used to offset G&A expenses.²⁴⁸ Because the discussion of this issue involves extensive use of information that Garg Tube claimed as business proprietary, please refer to the Final Analysis Memorandum.²⁴⁹

Commerce's Position: For these final results, we disallowed one income item as a G&A expense and have adjusted the reported G&A expenses accordingly.²⁵⁰

²⁴⁴ *Id.* (internal citation omitted).

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ See Preliminary Decision Memorandum at 21 and PMS Memo at 30.

²⁴⁸ See DIPs' Case Brief at 20-22.

²⁴⁹ See Memorandum, "Administrative Review of the Antidumping Duty Order on Welded Carbon Steel Standard Pipes and Tubes from India: Final Analysis Memorandum for Garg Tube Export LLP and Garg Tube Limited; 2017-2018," dated concurrently with this Memorandum (Final Analysis Memorandum).

²⁵⁰ *Id.*

Comment 7: Quantifying a Particular Market Situation Adjustment

Garg Tube's Arguments

- The DIPs' proposed regression methodology, OLS (ordinary least squares) cannot be used to compute the PMS adjustment factor.
 - Because global excess steel capacity is not unique to India and is a factor that impacts the global market, the globalized architecture of the OLS regression model is antithetical to a localized PMS within India.²⁵¹
 - The OLS model's results are unsupported by substantial record evidence, including data that were utilized to calculate the results.²⁵²
 - No reliable explanation exists as to how an uneconomic capacity or overcapacity could cause a depression in HRC Import AUVs, and in the short term a higher uneconomic capacity generally correlates with higher, not lower, prices.²⁵³ The record fails to support such a statistically significant negative correlation between steel overcapacity and a decline in steel prices.
 - Depressed steel prices generally correlate not with an oversupply but rather with a reduced supply and lower production (due to sluggish demand), a situation which renders unpersuasive the fundamental rationale underlying OLS model's findings of an alleged excess capacity (or uneconomic capacity) leading to an oversupply, resulting in depressed prices.²⁵⁴
 - Based on the results discussed in a certain article, empirical data remain unclear as to the exact correlation between steel overcapacity and depressed steel prices.²⁵⁵
 - The OLS model's findings of an insignificant correlation between gross fixed capital formation (GFCF) and import AUVs fail to account for several demand variables as well as fiscal/monetary/taxation factors.
 - The OLS model's results show a statistically insignificant negative correlation between GFCF and HRC import AUVs, a result that is unsupported by substantial evidence.²⁵⁶
 - Within any given market or country, steel prices are determined based on a combination of demand and supply side variables – current as well as forecasted. Further, at any given point of time, different markets exhibit disparate trends with regard to steel prices. Given such inherent complexities, Commerce's reliance on a narrowly defined GFCF as a proxy for all demand variables and reducing GFCF's correlation with steel prices to a convenient formula is facile and unpersuasive.²⁵⁷

²⁵¹ See GT's Case Brief at 60.

²⁵² *Id.* at 60-62.

²⁵³ *Id.* at 62-63.

²⁵⁴ *Id.* at 63.

²⁵⁵ *Id.* at 63-65, citing GT's March 4, 2019, submission at Exhibit 28.

²⁵⁶ *Id.* at 65.

²⁵⁷ *Id.* at 66-67, citing GT's April 8, 2019, submission at Exhibits 1A and 1B.

- GFCF encompasses an extremely wide and disparate set of goods and economic activities, and not all of its assets are related to steel consumption. As such, Commerce’s reliance on GFCF as a measure of macroeconomic demand for steel is misplaced.²⁵⁸
 - Instead, in order to discern a correlation between steel prices and demand variables, Commerce should have selected a more precise category such as a steel-focused user industry such as the “construction” sector which, among all of the user industries, accounts for the highest consumption of steel. Nevertheless, while such an industry-specific analysis would have been superior to that based on broad economic categories like GFCF, it would have, by no means, resulted in an accurate and formulaic correlation of steel prices with macroeconomic demand variables.²⁵⁹
 - Demand in user sectors such as construction industries and production of steel, depends on a multitude of fiscal, monetary, and taxation policies that can play out in unique and unpredictable ways, such that they are incapable of being captured in a regression model.
 - ★ The 2007 global economic slowdown marked by a build-up of steel overcapacity, which was triggered by remote events, arising from within the US financial sector, (*i.e.*, far removed from the theater of the steel industry), serves as one of the best examples of this. The sub-prime mortgage loans within the US financial market were the decisive causal and controlling factor in the sluggish demand of steel, which caused both a decline in steel prices (immediately) and a build-up of global steel overcapacity (subsequently) - in that instance, global overcapacity did not act as an independent factor in driving the price of steel.²⁶⁰
 - In sum, steel prices are more directly and immediately influenced by the factors that play out in the user industry segments, such as housing, automotive and machinery. In turn, certain fiscal, monetary, and taxation stimulus fuel demand or retard growth in these user segments. Such growth or slowdown in user segments translates into an incline or decline in steel prices, and later on in the steel overcapacity build up.²⁶¹
 - Since the OLS regression model entirely fails to account for fiscal/monetary/taxation factors, it is an oversimplified and incomplete model.²⁶²
- The record fails to support correlations of iron ore, steel scrap, aluminum, and USD-INR exchange rate with Indian HRC values.
 - In the model, global prices of iron ore and steel scrap are positively correlated with the Indian HRC AUVs, with steel scrap prices more

²⁵⁸ *Id.* at 67, citing GT’s April 8, 2019, submission at Exhibits 1C and 1D.

²⁵⁹ *Id.* at 67-68, citing GT’s March 4, 2019, submission at 84.

²⁶⁰ *Id.* at 68-69, citing March 4, 2019, submission at Exhibit 29.

²⁶¹ *Id.* at 69-70, citing March 4, 2019, submission at Exhibit 32.

²⁶² *Id.* at 70.

strongly correlated; global aluminum prices are negatively correlated with the Indian HRC AUVs, with the magnitude of its negative correlation equaling the magnitude of the positive correlation of iron ore prices with the Indian HRC AUVs; the depreciation of national currency vis-a-vis U.S. dollar is negatively correlated to the Indian HRC AUV; and oil prices and motor vehicle sales evidence significant correlation with the Indian HRC AUVs. However, record evidence fails to support the above propositions.²⁶³

- Concerning iron ore prices, data on the record show that, contrary to the OLS model results, the iron ore pricing data used in the model did not always positively correlate with the Indian HRC/flat steel product average import prices between the years 2008 and 2018.²⁶⁴
- Concerning steel scrap prices, data on the record show that, contrary to a rigidly positive correlation suggested by OLS model results, the steel scrap pricing data used in the model fail to positively correlate with the Indian HRC/flat steel product average import prices in 2014. The record is also ambiguous regarding a correlation between the global steel scrap prices and Indian HRC/flat steel product average import AUVs. While the steel scrap pricing data used in the model and Garg Tube's global steel scrap pricing data evidence a positive correlation in 2012, 2013, 2014, 2016, 2017, and 2018, the latter data show a significantly negative correlation in 2015.²⁶⁵
- Concerning aluminum prices, data on the record show that global aluminum prices positively correlate with the Indian HRC/flat steel product average import prices in every year except 2014, which dovetails with Commerce's own expectation as well as with the DIPs' acknowledgment of the expectation of positive effect, as aluminum is a substitute for steel. Other record evidence also shows a positive correlation between global aluminum prices and HRC import AUVs in India and other jurisdictions during 2014-2018 period. As such, contrary to the OLS model results, independent record evidence suggests a positive instead of a negative correlation between global aluminum prices and Indian import AUVs.²⁶⁶
- Concerning the exchange rate, Commerce's support of the model's finding of a statistically significant negative correlation between the exchange rate and import AUVs is premised upon a presumption that a higher import price in domestic currency (caused local currency devaluation) is invariably followed by a lowering of the import price in USD, to compete with the domestic market price. Such a presumption ignores the alternative possibility of the domestic steel

²⁶³ *Id.*

²⁶⁴ *Id.* at 71-73, citing GT's April 8, 2019, submission at Exhibits 2A and 2B.

²⁶⁵ *Id.* at 73-75, citing GT's April 8, 2019, submission at Exhibit 2.

²⁶⁶ *Id.* at 75-77, citing PMS Memo at 29, Regression Analysis at Exhibit 1.1, and GT's April 8, 2019, submission at Exhibit 3, and GT's March 4, 2019, submission at 34.

producers raising their sale price as well. At a minimum, Commerce fails to provide any record support for its convenient presumption in support of OLS model findings. Commerce also fails to account for an important aspect, the currency in which import price is denominated, applicable in the context of a correlation between a devaluation of national currencies (vis-a-vis U.S. dollar) and import AUVs.²⁶⁷

- The OLS Methodology is skewed because the differences in time periods significantly impacts the relationships.
 - Commerce has not provided any reason as to why the relationship between the variables in the model during the specific time range of 2008-2017 (as shown in the calculated coefficients) can be used to reliably represent what the market situation was in 2017 and 2018, or how the underlying set of data represents what the market situation should have been during 2017-2018 under the counterfactual scenario.²⁶⁸
 - Explanatory variables on the right side of the equation, such as iron ore and steel scrap, are highly correlated with each other. Likewise, these variables are correlated with the variable to be explained (the hot rolled steel coil AUVs) on the left-hand side of the equation. Consequently, the regressions over different time periods do show quite different coefficients and thus generate quite different results. In addition, the variables may also be serially correlated over time. While that does not necessarily bias the coefficients, it would render the variance calculations inaccurate.²⁶⁹
 - In order to test the impact of alternative time periods on resulting coefficients, Garg Tube carried out an analysis demonstrating that the OLS model generated vastly different adjustment factors by changing the dataset merely by one year forward. This fact shows that the OLS regression model is highly unstable in its results. This instability should be a sufficient ground to reject its use for making a PMS adjustment.²⁷⁰
 - Additionally, a fixed effects OLS regression, such as the one used in the preliminary results, presumes a fixed relationship between the left-hand side variable and the variables on the right side of the regression across different countries. Commerce has not adduced any support for such presumption. Moreover, the OLS model results themselves undermine such presumption. The quarterly regression model using India data alone is of a different functional form and does not show a particularly strong relationship between the country-specific coefficients and the equation used to produce the adjustment factor. The wide range of country-specific elasticities is also an indicator that this assumption may not hold true.²⁷¹
 - At this point, 2018 data for most of the parameters are available. As such, Commerce should include the 2018 data in its regression analysis. If the resulting coefficients based on data for various time series terminating

²⁶⁷ *Id.* at 77-80, citing PMS Memo at 29.

²⁶⁸ *Id.* at 86.

²⁶⁹ *Id.* at 86-87.

²⁷⁰ *Id.* at 87, citing GT's August 16, 2019, submission at Exhibits 1 and 2.

²⁷¹ *Id.* at 87-88, citing Regression Analysis at Exhibits 1.10b and 1.7b.

with 2018 turn out to be different than those based on corresponding time series terminating with 2017, that would further confirm that the regression methodology yields varying results based simply upon the choice of the selected time period and would raise serious concerns about the validity of the regression methodology applied in the preliminary results.²⁷²

- Commerce has preliminarily agreed to apply a counterfactual capacity utilization rate of 85 percent, presuming that such utilization rate is necessary for steel companies to generate enough capital to reinvest and be profitable. However, in none of the recent prior years has such a hypothetical benchmark utilization rate been met. The use of this regression requires an adjustment factor only until capacity utilization reaches a level that is sufficient for steel industry's "health" and assumes that the number must be as high as 85 percent. Yet, Commerce itself has endorsed an 80 percent capacity utilization rate as being sufficient for the profitable operations of the steel industry.²⁷³

DIP's Arguments

Contrary to Garg Tube's claims, the DIPs' regression analysis and PMS adjustment methodologies are transparent, methodologically sound, and supported by substantial record evidence.

- The OLS regression model and analysis are particular to India.
 - The distortions from global steel excess capacity manifest differently within a given country's market, and the manner in which a national government and its steel industry act in the face of that crisis further differentiates the impact at the national level. Critical changes in trade patterns, combined with domestic policies and existing market forces, come together to generate an overcapacity-driven PMS in a given market. Thus, the factors that define the current PMS in India are unique to India and linked by the distortive effects of the Chinese overcapacity crisis on the Indian market and the Indian government's action in the face of that crisis.²⁷⁴ Commerce recognized these facts in its preliminary results.
 - Garg Tube fails to acknowledge the nature of the global steel overcapacity crisis and the fundamental dynamics underlying the DIPs' modeling and analysis.²⁷⁵
- The inverse relationship between steel overcapacity and HRC import prices is an empirical fact, and the record contains, without question, substantial evidence to support the inverse relationship between global steel overcapacity and HRC prices.
 - A single article on which Garg Tube relies to challenge the statistical significance of the negative relationship between uneconomic capacity and HRC import AUVs found by the DIPs' model does not constitute substantial evidence.²⁷⁶

²⁷² *Id.* at 88.

²⁷³ *Id.*, citing Regression Analysis at n.43 (discussing "The Effect of Imports of Steel on the National Security - An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, As Amended," U.S. Department of Commerce, Bureau of Industry and Security Office of Technology Evaluation (Jan. 11, 2018)).

²⁷⁴ See DIPs' Rebuttal Brief at 38-39, citing PMS Memo at 21.

²⁷⁵ *Id.* at 39.

²⁷⁶ *Id.* at 40.

- o The DIPs' analysis models a link between excess capacity and steel prices that steel industry experts, participants, and stakeholders, including the OECD Steel Committee and even the Government of China, have recognized as obvious.²⁷⁷ In the preliminary results, Commerce as well found a reasonable link between excess steel capacity and depression in steel prices in India.²⁷⁸ The DIPs have also supplemented the record with, not one, but numerous additional third-party materials confirming this link.²⁷⁹ The single article on which Garg Tube relies supports the view that overcapacity is negatively correlated with steel prices.²⁸⁰
- o The DIPs' analysis is based on 10 years of high quality, publicly available global and country-specific data from reliable sources, and all such data, as well as the details of the established econometric procedures applied in the analysis, available in the Stata and SAS/STAT statistical software packages, are on the record for this proceeding.²⁸¹
- The GFCF variable in the model appropriately captures the impact of domestic demand on HRC prices in India.
 - o Given that the price of HRC is partially a function of the demand for steel, national HRC prices are likely affected by the state of a country's economy at that time. Because it is impossible to include in the regression analysis a separate variable specific to every economic factor that may potentially impact steel prices, it is a standard practice to account for macroeconomic conditions vis-à-vis a measure such as gross domestic product or GDP. The DIPs ultimately applied GFCF as the demand variable in the model because it is more narrowly defined to include economic activity that uses hot-rolled steel.²⁸²
 - o Structural equations, like that applied in the DIPs' regression analysis, use explanatory variables to analyze how producers and purchasers respond to changes in various market conditions. The demand equation typically includes an "activity" variable to capture the impact of economic growth on demand of the product being modeled. Common variables used for such purposes include GDP, fixed investment, and industrial production.²⁸³
 - o Contrary to Garg Tube's criticism, it does not matter that the GFCF variable covers items that do not include steel. Conditions that lead to changes in investment goods also lead to changes in demand for HRC. Ironically, Garg Tube suggests "construction" activity as a better choice, despite the fact that construction spending covers many of the non-steel items that Garg Tube cites in critiquing the use of GFCF. Construction also excludes sectors such as machinery, which would use steel as an input.²⁸⁴
 - o Garg Tube's other asserted demand-driving factors, *i.e.*, fiscal, monetary, and taxation policies, necessarily impact steel demand through changes in activity

²⁷⁷ *Id.*, citing DIPs' June 18, 2019, submission at Attachment 1.

²⁷⁸ *Id.*, citing PMS Memo at 29.

²⁷⁹ *Id.*, citing DIPs' July 22, 2019, submission at Exhibits 1-8.

²⁸⁰ *Id.*

²⁸¹ *Id.* at 40-41.

²⁸² *Id.* at 41, citing Regression Analysis at 8-9

²⁸³ *Id.* at 42, citing DIPs' June 18, 2019, submission at Attachment 1.

²⁸⁴ *Id.*

variables such as GFCF. Thus, it is not necessary to separately include these policy variables in the modeling.²⁸⁵

- o As the DIPs explained and Commerce recognized in its preliminary results, Garg Tube's one-dimensional approaches in simply surveying the data or looking at correlation coefficients are not a sufficient basis to evaluate a variable's appropriateness and fail to capture the nature of the economic relationships involved.²⁸⁶
- o Similarly, Garg Tube's claim that the DIPs have failed to explain why GFCF has a negligible coefficient and a negative relationship with HRC prices is premised on the *a priori* expectation that the GFCF variable must have a positive and statistically significant impact on HRC prices. Yet, the DIPs' analysis demonstrates this expectation to be misplaced - the coefficient is negligible because macroeconomic demand is not driving the results. As the record evidence and modeling confirm, there is a statically significant inverse relationship between global overcapacity and HRC prices that is not impacted by the inclusion or choice of a macroeconomic measure.²⁸⁷
- o While GFCF is weakly negatively correlated with HRC prices over the sample, it is highly positively correlated with steel consumption (*i.e.*, the quantity of consumption). For India, the correlation between GFCF and steel consumption is nearly perfect, demonstrating why GFCF is an appropriate measure of the demand for steel. That is, as GFCF increases, steel consumption clearly increases, while the impact on steel price is ambiguous.²⁸⁸
- o The fact that steel prices do not necessarily track changes in steel demand is not evidence that the model is flawed; rather, it is evidence that further supports the notion that the excess steel capacity crisis has decoupled price from demand – it, in fact, proves the distortive effect of the steel capacity crisis.²⁸⁹
- Garg Tube's analysis of correlations is fundamentally mistaken and irrelevant to Commerce' determination. As a matter of basic mathematical fact, contrary to Garg Tube's assertions, the record inarguably supports the correlations of iron ore, steel scrap, aluminum, and USD-INR exchange rate with Indian HRC values. Commerce should dismiss Garg Tube's arguments because: (1) raw correlations between variables, even when properly defined, are of limited meaning compared to regression coefficients that account for other factors; (2) Garg Tube's correlation assessments do not include actual correlations - they are comparisons of annual percent changes that are not relevant to the statistical concept of correlation; (3) correlation coefficients are not a matter for litigation - a correlation coefficient is, simply put, math - while one may debate the interpretation of correlations, the calculations themselves are straightforward and not something that can be readily dismissed; and (4) when correlation assessments are properly conducted, they yield conclusions that are entirely consistent with the DIPs' regression model.²⁹⁰

²⁸⁵ *Id.* at 42-43.

²⁸⁶ *Id.* at 43, citing the DIP's July 22, 2019, submission at 5-6, and PMS Memo at 29.

²⁸⁷ *Id.*

²⁸⁸ *Id.* at 43-44, citing DIPs' July 22, 2019, submission at 5-6, and July 11, 2019, submission at 12-13.

²⁸⁹ *Id.* at 44.

²⁹⁰ *Id.* at 44-45.

- o Each of Garg Tube's correlation assessments is conceptually flawed and empirically irrelevant.
 - Statistical economic analysis is not conducted by listing various correlations - it is necessary to construct a model that comprehensively accounts for other factors when estimating the *all else equal* effect of a particular variable, a fundamental concept that Commerce recognized in the preliminary results.²⁹¹
 - Garg Tube repeatedly conflates correlation coefficients with regression coefficients, which is not merely a semantic error, but is indicative of Garg Tube's refusal to engage with the *but for* nature of regression analysis.²⁹²
 - A regression coefficient is not rendered invalid because it differs (in magnitude, sign, or statistical significance) from a correlation coefficient - the fact that raw correlations can differ from *all else equal* regression coefficients is the entire motivation for a multivariate regression analysis.²⁹³
 - Correlation coefficients are not a matter for discursive argument - they are basic mathematical calculations. Garg Tube's repeated assertions are contradicted by plain math - the presence of a correlation between two data series does not depend on the directional relationship holding 100 percent of the time and in every instance and is certainly not nullified by a single year moving in an opposite direction from the overall trends over the period.²⁹⁴
- o The DIPs' calculation of coefficients of correlation between HRC prices and global uneconomic capacity shows a clear inverse relationship, whether national HRC import AUVs or Indian import AUVs are considered, with both coefficients of correlation being statistically significant.²⁹⁵ While Garg attempts to rebut the basic mathematical fact that steel prices are negatively correlated with overcapacity with a single article, the article, in fact, clearly supports the position that steel prices are negatively correlated with overcapacity.²⁹⁶
- o The DIPs' calculation of coefficients of correlation between GFCF and HRC prices and between GFCF and steel consumption shows that GFCF is weakly negatively correlated with HRC prices over the sample, but is highly positively correlated with national steel consumption, and with Indian steel consumption in particular exhibiting a nearly perfect correlation.²⁹⁷
 - This empirical observation follows from basic economic logic and demonstrates why GFCF is an appropriate measure of the demand for steel: as GFCF increases, steel consumption clearly increases; the impact on steel prices, however, is ambiguous.
 - Garg Tube is incorrect in its contention that GFCF is a flawed measure because it includes non-steel items. For modeling purposes, the

²⁹¹ *Id.* at 45-46, citing PMS Memo at 29.

²⁹² *Id.* at 46.

²⁹³ *Id.* citing the DIPs' July 11, 2019, submission at 9.

²⁹⁴ *Id.* at 46-47.

²⁹⁵ *Id.* at 48 (Table 1), 49-50.

²⁹⁶ *Id.* at 50-51.

²⁹⁷ *Id.* at 48 (Table 1), 51-52.

macroeconomic variable just needs to capture changes in macroeconomic conditions at work within a country that lead to changes in the demand for HRC. Given the impossibility of including a separate variable to account for every economic factor that may potentially impact the demand for HRC, it is standard econometric practice and methodologically sound to account for macroeconomic conditions vis-a-vis a measure such as GFCF.²⁹⁸

- o The DIPs' calculation of coefficients of correlation between iron ore prices and national HRC prices and between steel scrap prices and national HRC prices are statistically significant. These empirical results are consistent with basic economic logic, as one would expect the price of a product to be, at least partially, a function of the prices for its inputs.²⁹⁹
 - Garg Tube's perceived anomalies regarding iron ore and scrap prices are based on a faulty interpretation of the model's coefficients. It is not unusual for there to be occasional instances when two variables move in opposite directions from what would be expected based on the econometrically-estimated relationship.
- o Garg Tube questions the validity of the regression model because the direction of the correlation between aluminum prices and HRC prices (positive) differs from the direction of the regression coefficient (negative). Garg Tube conflates the definition of a regression coefficient and a correlation coefficient. The marginally negative effect of aluminum prices on HRC prices is due to effect of input prices (*i.e.*, iron ore and steel scrap) and other factors; the correlation between HRC prices and aluminum prices is largely spurious, the result of correlated metal commodity prices, and not driven by causal economic factors.³⁰⁰
 - The explanatory power of the OLS regression is virtually identical whether the aluminum price variable is included or excluded, such that the coefficient for uneconomic capacity remains strongly negative and statistically significant.
- o Garg Tube's arguments questioning a negative correlation between exchange rates and HRC prices are based on its misreading of *a priori* economic theory without any consideration of the data. The DIPs calculation of a coefficient of correlation between national exchange rates (expressed in local currency units per U.S. dollar) and HRC prices produces a negative correlation and is statistically significant at any conventional level of confidence; if the data are restricted to India alone, the correlation coefficient is also negative and statistically significant. Further, the DIPs original modeling demonstrates that exchange rates are negatively associated with HRC prices once other relevant factors are accounted for.³⁰¹

²⁹⁸ *Id.* 52-53.

²⁹⁹ *Id.* at 48 (Table 1) 53.

³⁰⁰ *Id.* at 54-55.

³⁰¹ *Id.* at 48 (Table 1) and 55-56.

- Commerce’s preliminary findings, the DIPs’ analysis, and the data themselves demonstrate that exchange rates are properly specified in the DIPs’ model.³⁰²
 - o The variable-specific discussion above comprehensively demonstrates that Garg Tube has failed to invalidate the particulars of DIPs’ model. Further, Garg Tube has failed to offer any alternative explanation for the relationship between overcapacity and steel prices.
 - At no point has Garg Tube offered an answer to the following question: If global overcapacity is not the cause of declining steel prices, then why is there a powerful statistical relationship between these variables?³⁰³
 - The relationship between overcapacity and steel prices is no coincidence. The DIPs’ analysis has demonstrated that the relationship holds: in India, across countries, and at the global level, over the 2008-2017 period and in alternative periods, on an annual basis or quarterly basis, using various measures of overcapacity, across a range of specifications and regression methodologies.³⁰⁴
- The DIPs’ OLS model is stable, robust, explanatory and predicative.
 - o The DIPs not only have provided all data underlying the model and every detail of the regression analysis, but the record includes numerous supporting econometric analyses, extensions, alternative specifications and robustness checks, the purpose of which are to specifically demonstrate the veracity of the OLS model and the DIPs’ analytical assumptions. These supporting analyses confirm the OLS Model is robust to a range of potential confounds and demonstrate that the OLS model’s results capture the true effect of global steel overcapacity on HRC prices in India.³⁰⁵
 - o Garg Tube’s proffered time period analysis is fundamentally flawed for the proposition that the DIPs’ model provides unstable results simply because Garg Tube’s analysis generates different results for different time periods.
 - Time series analysis is not rendered invalid or lacking in robustness because a model generates a different result using a different time period - one is supposed to get different results using different data.³⁰⁶
 - This is especially true when the excluded period is of critical importance to assessing the statistical relationships involved, as is the case with the years that Garg Tube excludes in its alternative analyses, without providing any justification or support for the exclusions. Conceptually, it is telling, however, that Garg Tube excludes the defining years of the global economic crisis, thus ignoring data that directly addresses the empirical question facing Commerce: what would India’s steel prices be if global overcapacity were reduced?³⁰⁷

³⁰² *Id.* at 56, citing PMS Memo at 29.

³⁰³ *Id.* at 57.

³⁰⁴ *Id.* at 57-58 and Exhibit 1.A, citing Regression Analysis at Exhibits 1.1, 1.2, 1.4, 1.7, 1.10, and 1.11.

³⁰⁵ *Id.* at 59-61, citing Regression Analysis at Exhibits 1.1, 1.2, 1.4, 1.7, 1.10, and 1.10.D.

³⁰⁶ *Id.* at 62.

³⁰⁷ *Id.* at 62-64.

- Garg Tube’s analysis introduces critical methodological complications to the modeling. In particular, the iterations of the model that remove years of data severely constrict the sample size of the available data. Thus, while Garg Tube attempts to demonstrate the DIP’s OLS model as highly unstable, the very analysis it uses to make that point relies on methodologies that inherently generate unstable econometric results.³⁰⁸
- Indeed, the record demonstrates that when an adequate sample size is preserved, the elimination of time periods generates the same large, negative, and statistically significant relationship between uneconomic capacity and Indian steel prices, robust to the time period selected. The fact that the DIPs’ quarterly regression analysis proves robust to the exclusion of certain years demonstrates that Garg Tube’s analysis is driven by spurious correlations due to insufficient sample size.³⁰⁹
- To the extent one assesses the model’s performance in different time periods, one can examine whether any alleged “outlier” observations are driving the results, an assessment that ensures the model retains its predictive power across various time periods.³¹⁰
 - A common methodology for assessing the predictive power of a model is known as out-of-sample prediction, or out-of-sample testing. This methodology assesses whether a model can accurately predict the outcome for a particular observation if that observation is excluded from the econometric estimation. If a model is capable of accurately predicting observations that are excluded from the estimation, then the model is robust and not driven by spurious correlations.
 - The DIPs’ provide the out-of-sample analysis and results which demonstrate the considerable predictive power of its regression model - there is a strong, statistically significant relationship between the out-of-sample predicted AUVs and the actual AUVs, particularly with respect to India.
 - The demonstrated predictive power provides Commerce with considerable confidence that the DIPs’ model not only explains observed steel prices but has a predictive power that is robust to the time period selected for the analysis.
- Robustness checks confirm that fixed effects OLS is appropriate.
 - Because each country within the DIPs’ multi-country regression may have certain characteristics that may or may not influence their import AUVs, a fixed effects model controls for these time-invariant characteristics, eliminating the bias. Thus, a fixed effects approach restricts all of the action in the regression to within-country action, eliminating the key source of omitted variable bias, namely, unobservable across-country differences.³¹¹

³⁰⁸ *Id.* at 65-66.

³⁰⁹ *Id.* at 66-67 and Exhibit 1.A (relying on data in Regression Analysis at Exhibit 1.10).

³¹⁰ *Id.* at 67-71 and Exhibit 1.B.

³¹¹ *Id.* at 71-72

- Concerning Garg Tube’s critiques, the DIPs’ analysis included robustness checks that explored potential concerns for the use of fixed effects. In particular, the quarterly extension of the model and the country-specific elasticities demonstrate that (1) the use of fixed effects does not bias the model’s results and, (2) the model’s results are reflective of the particular impact of overcapacity on HRC prices *within India*.³¹²
- The sample countries’ price-sensitivity to uneconomic capacity should be, on average, representative of India’s sensitivity, if one is to ascribe the fixed effects OLS model’s results to India. Record evidence clearly demonstrates that the sample is representative of India.³¹³
- Contrary to Garg Tube’s claims, based on its misunderstanding and mischaracterization of a technical note, by definition and construction, the fixed effect does not vary over time. The DIPs did not “calculate” or otherwise independently derive the fixed-effects coefficients on the record – the DIPs merely included programming that instructed the Stata package to run the regression with a fixed effects parameter, and Stata returned the necessary coefficient. There is nothing uncertain about this methodology.³¹⁴
- o The DIPs’ 85-percent global capacity utilization assumption is reasonable and methodologically sound.
 - In its recent Section 232 steel investigation, Commerce’s Bureau of Industry and Security indicated that steel utilization rates of 80 percent or more are typically necessary for sustained profitability, among other factors and that for most capital and energy-intensive U.S. steel producers, capacity levels of 80 percent or higher are required to maintain facilities, carry out periodic modernization, service company debt, and fund research and development.³¹⁵
 - According to a recent study by McKinsey & Company about excess capacity in the global steel industry, a global capacity utilization rate of 90 percent is necessary for the long-term sustainability of the global steel industry.³¹⁶
 - As such, 85 percent is a reasonable assumption and benchmark for this analysis given these expert sources.³¹⁷
 - Garg Tube’s criticism that the global capacity utilization has not reached 85 percent in the last ten years is a fact that actually proves the DIP’s point. Capacity utilization has been distorted by global excess capacity over the past decade. The global steel excess capacity crisis is the reason that the world has been unable to achieve capacity utilization rates typical for sustained profitability. Given the recognized existence of a global capacity crisis, the 85 percent assumed capacity utilization rate is reasonably and necessarily higher than recent years’ capacity utilization rates, in light of the crisis.³¹⁸

³¹² *Id.* at 72.

³¹³ *Id.* at 72-73, citing Regression Analysis at Exhibit 1.7 (providing table titled “Estimated Country-Specific Elasticities of Price to Uneconomic Capacity”).

³¹⁴ *Id.* at 73.

³¹⁵ *Id.* at 73-74, citing Regression Analysis at 18, FN 43, and Exhibit 1.8.

³¹⁶ *Id.* at 74, citing Regression Analysis at 18, FN 43, and Exhibit 1.9.

³¹⁷ *Id.*

³¹⁸ *Id.*

- o There is no basis for including 2018 data in the DIPs' OLS Model.
 - Garg Tube fails to provide any evidence that the DIPs' model does not accurately apply to the POR.³¹⁹
 - Given the critical conceptual and empirical flaws in Garg Tube's time period analysis, there is no basis for its assumption that the inclusion of 2018 data would somehow demonstrate the DIPs' model unstable or otherwise invalid. Indeed, the DIPs' own time period analysis demonstrates, assuming adequate sample size, the model is robust to the selection of time period. The DIPs' out-of-sample analysis further speaks to the explanatory as well as the predicative power of the model.³²⁰
 - The model is clearly contemporaneous to the POR. In determining contemporaneity with a given POR, Commerce does not require the data or information at issue to match the POR exactly, but only to overlap with the POR.³²¹ This instant 12-month POR includes 8 months of 2017. The DIPs' model and resulting PMS adjustment calculations are clearly contemporaneous to the POR and are appropriately applied.³²²

Commerce's Position: As an initial matter, we note that neither section 773(e), section 771(16), nor any other provision of the Act mandates either what constitutes a cost-based PMS or how Commerce may "use another calculation methodology" to establish the "cost of materials and fabrication" of the merchandise covered by the scope of an order. As a result, Commerce has established "another calculation methodology" where it has adjusted the respondent's reported costs of production to account for distortions in input costs based on a determination of a cost-based PMS. For the *Preliminary Results*, Commerce quantified an adjustment to Garg Tube's costs for HRC based on a regression analysis proposed by DIPs, the results from which were used to determine a counterfactual Indian import AUV for HRC in 2017, based on the reduction of global steel production "uneconomic capacity" to a "healthy" level. Garg Tube's HRC costs were then adjusted based on the relative difference between the counterfactual Indian HRC import AUV in 2017 and the actual Indian HRC import AUV in 2017. Based on the comments included in parties' case and rebuttal briefs, for these final results, Commerce has continued to adjust Garg Tube's HRC costs based on the results of a regression analysis, with the changes described below.

The regression analyses on the record of this review, including those used in the *Preliminary Results* and these final results, are based in general on the science of economics, and specifically on econometrics. Econometrics is the quantitative application of economic theory whereby a statistical model is developed and applied to economic data to empirically understand the economic relationships of observed phenomena.³²³ Whereas an observed economy, or some part

³¹⁹ *Id.* at 75.

³²⁰ *Id.*

³²¹ *Id.*, citing, among others, *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Fifth New Shipper Review*, 75 FR 38985 (July 7, 2010) and accompanying IDM at 4-5.

³²² *Id.*

³²³ See Wooldridge, Jeffrey M., *Introductory Econometrics: A Modern Approach*, Fifth Edition; South-Western, Cengage Learning (2013, 2009) (Wooldridge), page 1 ("Econometrics is based upon the development of statistical methods for estimating economic relationships, testing economic theories, and evaluating and implementing government and business policy.").

thereof, offers voluminous data with unending complexities, a statistical model must, by nature and intent, be a simplification of that observed economy. Any statistical model is limited by the types and availability of observed and measured economic data; and must be administratively feasible given the resources of the investigators. In general, such a statistical model will examine the relationship between a number of “explanatory” “independent” factors (or variables) and a “dependent” variable. The regression analysis will estimate the relationship between the dependent variable and each of the explanatory independent variables as well as other estimated fixed coefficients.³²⁴ In general, for the OLS model, these relationships are represented in the following linear equation:³²⁵

$$y_{i,t} = \beta_0 + \hat{\beta}_1 \cdot x_{1,i,t} + \hat{\beta}_2 \cdot x_{2,i,t} + \dots \hat{\beta}_n \cdot x_{n,i,t} + \hat{\alpha}_i + \varepsilon_{i,t}$$

where “i” denotes the country and “t” denotes the year of the dependent and independent variables.

In this administrative review, DIPs have provided several regression analyses which they argue can be used to quantify the impact of the alleged cost-based PMS during the POR.³²⁶ These proposed statistical models are based on two general types of regression: OLS and two-stage least squares (2SLS). For the *Preliminary Results*, Commerce relied on one of DIPs’ regression analyses based on OLS. Commerce did not use a 2SLS model in the *Preliminary Results* or in these final results. Consequently, Commerce finds that issues raised by parties specifically related to the 2SLS models are moot and has not addressed these comments for these final results. Further, we find that the issues Garg Tube raises concerning 2SLS model do not provide convincing grounds for invalidating the use of the OLS model, which is recognized in econometrics as being the best unbiased estimator for determining a linear relationship between variables.³²⁷ Accordingly, Commerce continues to find that an OLS model, in general, provides acceptable means for the purpose of quantifying a PMS adjustment for these final results, as long as the regression model includes a reasonable number of independent variables and data points that account for all relevant categories of factors from a price determination standpoint (*i.e.*, supply and demand), while at the same time, minimizing the endogeneity problem through the use of proxies where necessary, *e.g.*, the variable gross fixed capital formation for the variable national steel demand. Importantly, with Garg Tube providing no alternative regression model(s) of its own, the DIPs’ regression models provide the only means to quantify a distortion in HRC prices that Commerce finds to have existed in India during the POR, as a result of a PMS.

In the *Preliminary Results*, the results of the OLS regression analysis were accepted and used to calculate a counterfactual Indian HRC import AUV in 2017 based on a reduction of the uneconomic capacity to a “healthy” level where the capacity utilization rate is 85 percent (*i.e.*,

³²⁴ See *Wooldridge* at 847 (“Econometric Model: An equation relating the dependent variable to a set of explanatory variables and unobserved disturbances, where unknown population parameters determine the ceteris paribus effect of each explanatory variable.”).

³²⁵ See Regression Analysis at Exhibit 1.1; see also *Wooldridge* at 83.

³²⁶ See Regression Analysis at Exhibit 1.7a.

³²⁷ *Id.* at Exhibit 1.1 (page 5); see also *Wooldridge* at 101-102.

the “implied capacity”) during 2017. For the *Preliminary Results*, the reduction of global steel production capacity in 2017 to the implied capacity level resulted in a counterfactual Indian HRC import AUV of US\$ 796.77 in 2017. When compared with the actual Indian HRC import AUV of US\$ 575.12 in 2017, an adjustment factor of 38.54 percent was calculated to upwardly increase Garg Tube’s reported HRC costs (*i.e.*, PMS adjustment factor) in the *Preliminary Results*.³²⁸

As further discussed below in addressing parties’ comments on quantifying the adjustment for the distortions of the Indian HRC market, Commerce has made three changes to how the PMS adjustment factor was calculated and used in the *Preliminary Results*. First, Commerce relied on DIPs’ OLS model which regresses domestic HRC prices from eight countries, including India, instead of import HRC AUVs for 38 countries, including India, in establishing a statistical relationship between the dependent variable in the form of domestic prices and the same explanatory variables used by the OLS model adapted in the *Preliminary Results*.³²⁹ Second, rather than calculating a counterfactual Indian HRC import AUV in 2017, Commerce calculated a PMS adjustment factor relying solely on the estimated regression coefficient (*i.e.*, the estimated “beta”) for the “uneconomic capacity” explanatory variable, derived from the OLS regression analysis that uses available domestic HRC prices. Third, Commerce calculated a PMS adjustment factor by determining that a desired reduction of the uneconomic capacity is reasonably attained by a capacity utilization rate of 80 percent, instead of 85 percent.

Specifically, the regression analysis based on the OLS model where the data for the dependent variable are the domestic prices for eight countries, including India, results in an estimated regression coefficient for uneconomic capacity of -0.4338 (*i.e.*, a 10 percent decrease in uneconomic capacity will result in a 4.338 percent increase in domestic Indian HRC prices). To compute a PMS adjustment factor, this “beta” rate is multiplied by the percent reduction in uneconomic capacity that is required to reduce overall production capacity to the “implied capacity” level.

The equations, values,³³⁰ and the result for the needed percent reduction in capacity is as follows:

$$\frac{\text{capacity}_{2017} - \text{implied capacity}_{2017}}{\text{capacity}_{2017} - \text{production}_{\max}} = \frac{2251.20 - 2113.10}{2251.20 - 1669.50} = 23.74\%$$

where *implied capacity*₂₀₁₇ is as follows:

$$\frac{\text{production}_{2017}}{\text{capacity utilization rate}} = 1690.48/0.80 = 2113.10$$

The 23.74 percent required reduction in uneconomic capacity, when multiplied by the “beta” for uneconomic capacity (*i.e.*, -0.4338) determined as a result of the OLS model on which Commerce is relying for these final results, amounts to a 10.30 percent increase in domestic Indian HRC prices. Therefore, for the final results, Commerce will increase Garg Tube’s

³²⁸ See Preliminary Analysis Memorandum at 6, citing Regression Analysis.

³²⁹ This corresponds to DIPs’ model iteration number 11 in Exhibit 1.7a of Regression Analysis.

³³⁰ See Regression Analysis at Exhibits 1.3 and 1.11.

reported HRC costs by 10.30 percent to account for the cost-based PMS that existed in India during the POR.

Commerce determines that the DIPs' OLS regression model that uses domestic pricing data, instead of import AUVs, for the dependent variable, is appropriate in this review. In the Regression Analysis, the DIPs contended that import AUVs serve to best capture the overall dynamics of an individual steel market and the impact of trade flows on that market, eliminating the need for a domestic price series and ensuring a result that applies equally to imports and domestically sourced HRC.³³¹ While this assertion is generally true for countries that rely substantially on imports to satisfy domestic demand, and where, as a result, domestic and import prices are in a close equilibrium, this assumption does not appear to hold true with respect to India specifically. The record in this review shows (as discussed in Comment 1, above) that (1) the import penetration of foreign-produced HRC in India was only nine percent of the domestic demand during POR,³³² with imports of HRC considerably underpriced, on average, relative to domestic price of HRC in India during the POR,³³³ (2) import penetration was never significant in India, at least dating from the 2013-2014 period and onward,³³⁴ and (3) the import prices for HRC were, on average, less than domestic prices in India for five of ten years used by the DIPs' regression models' time series.³³⁵ These facts indicate that, with respect to India, domestic HRC prices, and not import AUVs, may best capture the overall dynamics of the Indian HRC market. Thus, for the purpose of quantifying a PMS adjustment in this review, Commerce deems domestic HRC prices central in properly assessing the amount of distortion in the prices paid for HRC, as a result of a PMS that we continue to find to exist in India during the POR.

Further, Commerce finds that use of the regression coefficient for uneconomic capacity as the basis for the PMS adjustment is directly related to the principal cause for a cost-based PMS in the Indian HRC market. The adjustment proposed by DIPs and used in the *Preliminary Results* is based on calculating a counterfactual HRC import AUV, which is dependent upon changes in uneconomic capacity as well as the other five independent economic factors which are not directly related to the alleged cost-based PMS. Therefore, in order to isolate the factors contributing to the cost-based PMS in the Indian HRC market, and in order to capture the *ceteris paribus* effect (*i.e.*, holding all other factors constant) for global uneconomic capacity in the steel industry on domestic HRC prices in India, Commerce has relied on the regression coefficient associated with uneconomic capacity to quantify the PMS adjustment to Garg Tube's reported HRC costs, as described above.

Commerce also recognizes that global capacity utilization rates have been no greater than 80 percent since 2007,³³⁶ and that all the steel production and capacity data included in the model are from a period where the prevailing capacity utilization rate was substantially lower than the level assumed by DIPs as being "healthy." Also, Garg Tube correctly points out that Commerce

³³¹ See Regression Analysis at 14-15.

³³² See PMS Memo at 24 internal citations omitted.

³³³ *Id.* at 25 internal citations omitted.

³³⁴ See PMS Allegation at Exhibit 63 (pages 197-198).

³³⁵ See Regression Analysis at Exhibit 1.11.

³³⁶ See GT's Case Brief at 94 (internal citation omitted).

has in the past also endorsed an 80 percent capacity utilization rate as being sufficient for sustaining profitable operations and maintaining operational efficiency of the steel industry and has used the 80 percent target in its Section 232 Investigations.³³⁷ Therefore, in its final results of this review, Commerce has lowered the target capacity utilization rate to 80 percent, which more accurately reflects a historic capacity utilization rate for the preceding ten years.

Commerce continues to disagree with Garg Tube's arguments that any such *global* steel overcapacity crisis cannot, on its face, be found to be *particular* to a given national market. As discussed in the PMS Memo and in Comment 1, above, Commerce finds that the global steel overcapacity will impact individual national markets in different ways, via different mechanisms, that are specific to each distinct national market. This impact for the Indian market is dependent on market-specific facts, such as the large domestic production of HRC which supplies most of the Indian HRC consumption. Further, the GOI has imposed remedial trade measures to counteract the injurious impact of imports driven by global overcapacity - as such, distorted HRC imports will still impact domestic prices as they may serve as substitutes for domestically produced HRC. Additionally, the customers and uses of consumed HRC will differ between each national market. These are just three of many economic factors which translate a global crisis into a national-market-specific phenomenon.

While Commerce recognizes each of the examples which Garg Tube has presented to contradict the results of the regression analysis, Commerce finds that these examples are unpersuasive as a basis to find that the OLS model is invalid. One of the foundations of economic theories is that in a free market, prices are determined by supply and demand. Many disparate demand and supply forces simultaneously push and pull prices higher or lower, and to rely on just one individual aspect of all of the possible influences on price is one-sided and ignores the complexities of the marketplace, complexities which Garg Tube in other instances uses as a reason for discounting the regression analysis used in the *Preliminary Results*. The results of the regression analysis itself quantifies the relationships between the dependent variable and the independent variables, but the results, in themselves, do not identify the mechanisms for these *empirically* observed relationships. Simply because Garg Tube's presumptions concerning the forces at play do not match the empirical results of the analysis does not necessarily invalidate the regression analysis, but rather challenges the validity of the presumptions. The relevance of each explanatory and dependent variable is borne out by the results of the analysis; an analysis which will by necessity be a simplification of the complexities of the marketplace. Commerce dismisses Garg Tube's arguments that the results of the regression analysis are not supported by the record where Garg Tube compares each of the regression coefficients with year-on-year changes in one of the independent variables and the dependent variable. Garg Tube misconstrues the meaning of the regression analysis which quantifies the relationship over time between the dependent variable and all of the independent variables when all other factors are held constant. The results of the analysis, including the regression coefficients for each of the independent variables, describes the empirical relationships in the marketplace as a whole over the entire time span of the data. Garg Tube's comparison of each regression coefficient with the

³³⁷ See Regression Analysis at Exhibit 1.8 (containing "The Effect of Imports of Steel on the National Security - An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, As Amended," U.S. Department of Commerce, Bureau of Industry and Security Office of Technology Evaluation (January 11, 2018) (Section 232 Investigations) at 47-49).

year-on-year trends in each of these variables is incongruous since each of these individual annual changes in the independent variables are not equivalent as the relationship between each of the independent variables as a whole over a much longer (here 10 years) time span. Further, to characterize the regression coefficients as “rigid” simply because there is a single value for each coefficient compared with differing values for the year-on-year changes is disingenuous. Thus, Commerce finds Garg Tube’s logic in so dismissing the effects for each of the independent variables as meritless.

Further, Garg Tube’s approach diametrically contradicts the scientific method. In the scientific method, one proposes (not presumes) a hypothesis, and then examines the real-world facts to confirm or disprove the hypothesis. Here, Garg Tube’s assertions require that the facts conform to its presumptions with no claim that the data itself are in error. Garg Tube dismisses the economic data and the empirical results of the regression analysis in preference to its unsupported hypothesis regarding the workings of the Indian marketplace. Accordingly, Commerce rejects Garg Tube’s presumptions rather than the data on the record.

Specifically, Garg Tube claims that the correlations between HRC import AUVs and the explanatory variables used in the model (including aluminum prices, the exchange rate, steel scrap prices, and iron ore prices) are spurious because data on the record do not show a consistent relationship between 2008 and 2017. As explained generally above, Commerce disagrees with this assessment. A general relationship (valid for most years) between two variables may still exist even if the opposite relationship manifests itself in a couple instances. For example, contrary to Garg Tube’s assertions, one can still infer a generally positive correlation between steel scrap prices and import AUVs, because such a relationship was observed for six out of the seven years between 2012 and 2018, and even though the correlation between the two was negative in 2015 (contrary to regression results and economic theory), this year can be considered an outlier that doesn’t represent the overall correlation between the two variables over the entire time period. Concerning Garg Tube’s arguments with respect to the aluminum, the results of the OLS model that Commerce is using in these final results shows a positive and statistically significant coefficient for this explanatory variable,³³⁸ consistent with economic theory. Notwithstanding, Commerce agrees with the DIPs that a presumably incorrect sign on one variable in a multivariable regression does not necessarily invalidate its results. Concerning the correlation of HRC import AUVs with the exchange rate variable, we find Garg Tube’s arguments moot. The results of the OLS model on which Commerce is relying for these final results to calculate a PMS adjustment is based on domestic HRC prices, and not on import HRC AUVs – the results of the model show that the exchange rate variations have a negligible effect on domestic HRC prices, and the coefficient of the exchange rate variable is statistically insignificant.

We agree with DIPs that the inverse relationship between steel overcapacity and HRC prices is an empirical fact, as demonstrated by the results of DIPs’ regression analysis, and there is substantial record evidence supporting this relationship. The DIPs’ regression models establish an inverse relationship between excess steel capacity and steel prices that various industry authorities have recognized as obvious, with Commerce itself finding this link as reasonable in

³³⁸ See Regression Analysis at Exhibit 1.7a (Iteration number 11).

the *Preliminary Results*, concerning HRC prices in India.³³⁹ Garg Tube offers no formable evidence that disputes the inverse relationship between uneconomic capacity and HRC prices.

Commerce agrees with DIPs that the GFCF, as the demand variable in the OLS model, appropriately captures the impact of domestic demand on HRC prices in India, because it is more narrowly defined to include economic activity that uses hot-rolled steel. It is indisputable that conditions that lead to changes in investment goods also lead to changes in demand for HRC, and other demand-driving factors to which Garg Tube alludes, *i.e.*, fiscal, monetary, and taxation policies, necessarily impact steel demand through changes in activity variables such as GFCF. Thus, we agree with DIPs that a failure to separately include each of these policy variables in the modeling does not undermine the use of GFCF as an appropriate choice of a demand variable in the model. Further, Garg Tube's arguments concerning this variable's inverse and insignificant statistical relationship with the dependent variable is moot, since the results of the OLS model that Commerce is using in these final results exhibits a positive and statistically significant relationship between GFCF and domestic HRC prices.³⁴⁰

Lastly, Commerce disagrees with Garg Tube's argument that the OLS methodology is skewed because the differences in time periods significantly impact the relationships between the variables. The DIPs regression analyses attempt to quantify the relation between uneconomic capacity and import AUVs (or domestic prices). Because this relationship is constant over time, inclusion or exclusion of data for 2008 -2009 (or from 2018) will not change the overall nature of the relationship, and the adjustment will capture the effect of overcapacity on import AUVs (or domestic prices). Furthermore, in the event of interest in the analysis, the 2008-2009 financial crisis and the subsequent decline in global steel demand, instigated the Chinese stimulus and increased GOC investment and spending to boost the steel industry. Therefore, although data from the two financial crisis years may not contribute to the model's overall statistical significance, as suggested by Garg Tube, omitting 2008-2009 from the analysis fails to account for the volatile period and price fluctuations in the defining years of the global overcapacity crisis that still affect steel import prices today. Inclusion of these years is therefore important to fully capture the nature of the relationship. Lastly, omitting these two years from the analysis raises the possibility of degrees of freedom issues, as a regression with six independent variables may not be able to quantify a relationship if data in annual time series are limited to a period of less than ten years.

³³⁹ See, *e.g.*, DIPs' June 18, 2019, submission at Attachment 1, PMS Memo at 29 (internal citations omitted), and DIPs' July 22, 2019, submission at Exhibits 1-8.

³⁴⁰ See Regression Analysis at Exhibit 1.7 (model iteration number 11).

V. 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 results of this administrative review and the final weighted-average dumping margin in the *Federal Register*.



Agree



Disagree

X  _____

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
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