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March 15, 2020

MEMORANDUM TO: Christian Marsh
Acting 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; 2018-2019

I. SUMMARY

We analyzed the comments filed by interested parties in the administrative review of the antidumping duty (AD) order on welded carbon steel standard pipes and tubes (pipe and tube) from India covering the period of review (POR), May 1, 2018, through April 30, 2019, described in the “Discussion of the Issues” section of this memorandum.

We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below are the issues for which we received comments from interested parties:

Comment 1: Particular Market Situation and Quantifying an Adjustment

Comment 2: Partial Adverse Facts Available for Non-Cooperative Unaffiliated Suppliers’ Costs

II. BACKGROUND

On July 24, 2020, the Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review and invited interested parties to comment.¹ On July 21, 2020, Commerce tolled all deadlines in administrative reviews by 60 days, thereby extending the deadline for these final results until January 19, 2020.²

¹ See *Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review; 2018-2019*, 85 FR 44860 (July 24, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020. Because the *Preliminary Results* published on July 24, 2020, three days after the tolling memorandum, the deadline for these final results was tolled by 57 days.



Garg Tube Export LLP and its affiliate Garg Tube Limited (collectively, Garg Tube) constitute a single entity and the sole respondent in this administrative review.³

In the *Preliminary Results*, Commerce found that a particular market situation (PMS) existed in India affecting the material costs for hot-rolled coil (HRC), but Commerce also found there was insufficient information on the record to quantify an adjustment to Garg Tube's reported cost of production (COP) data for the cost-based PMS for HRC in the Indian market during the POR.⁴ On July 14, 2020, Commerce issued a supplemental questionnaire to Nucor Tubular Products Inc., the domestic interested party (DIP) that alleged a PMS in India.⁵ On July 30, 2020, the DIP responded to the supplemental questionnaire.⁶ Garg Tube submitted a rebuttal to the DIP's response⁷ and the DIP submitted a response to Garg Tube's rebuttal.⁸

On December 7, 2020, the DIP and Garg Tube submitted case briefs.⁹ On December 14, 2020, the DIP and Garg Tube submitted respective rebuttal briefs.¹⁰

On January 7, 2021, Commerce extended the deadline for these final results by 60 days to March 18, 2021.¹¹

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.

³ 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), and accompanying PDM at 7-8, unchanged in *Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2715 (January 16, 2020) (where we determined to collapse and consider these two companies as one entity).

⁴ See *Preliminary Results* PDM at 14-15.

⁵ See Commerce's Letter, "Particular Market Situation Regression Analyses Deficiency Questionnaire," dated July 14, 2020.

⁶ See DIP's Letter, "Second Particular Market Situation Allegation Deficiency Questionnaire Response," dated July 30, 2020.

⁷ See Garg Tube's Letter, "Comments on Nucor's Second PMS Deficiency Questionnaire Response," dated September 1, 2020.

⁸ See DIP's Letter, "Comments on Garg Tube's September 1, 2020 Submission," dated September 9, 2020.

⁹ See DIP's Letter, "Certain Welded Carbon Steel Standard Pipes and Tubes from India: Case Brief and Request to Participate in Hearing," dated December 7, 2020 (DIP's Case Brief); see also Garg Tube's Letter, "Antidumping Duty Review of Certain Welded Carbon Steel Standard Pipes and Tubes from India: Garg Tube's Case Brief," dated December 7, 2020 (GT's Case Brief).

¹⁰ See DIP's Letter, "Certain Welded Carbon Steel Standard Pipes and Tubes from India: Rebuttal Brief," dated December 14, 2020 (DIP's Rebuttal Brief); see also Garg Tube's Letter, "Antidumping Duty Administrative Review of Certain Welded Carbon Steel Standard Pipes and Tubes from India (2018-2019): Garg Tube's Rebuttal Brief," dated December 14, 2020 (GT's Rebuttal Brief).

¹¹ See Memorandum, "Welded Carbon Steel Standard Pipes and Tubes from India: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated January 7, 2021.

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 of the United States (HTSUS).¹² 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 HTSUS subheadings are provided for convenience and customs purposes. The written product description remains dispositive.

IV. CHANGES SINCE THE PRELIMINARY RESULTS

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

- We made an adjustment for the cost-based PMS that was found to have existed during the POR in the *Preliminary Results*, calculated by the DIP and reliant upon the results of its regression analysis that uses domestic pricing data. Specifically, we increased Garg Tube's reported material costs for HRC reported for self-produced pipe and tube, as well as the estimated material costs for HRC embedded in the purchase price of mild steel and galvanized pipe.

V. DISCUSSION OF THE ISSUES

Comment 1: Particular Market Situation and Quantifying an Adjustment

DIP's Affirmative Arguments

- Commerce should continue to find that a cost-based PMS existed in India during the POR, such that the COP of pipe and tube in India is not accurately reflective of the COP in the ordinary course of trade.¹³
 - Commerce correctly recognized in the *Preliminary Results*, as well as in the previous review and in numerous other determinations, that the combined effects of the global steel overcapacity crisis and a series of government actions have

¹² 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).

¹³ See DIP's Case Brief at 3.

- distorted the price of HRC, the primary input in the production of pipe and tube, and, thus, distorted the costs of producing pipe and tube in India.¹⁴
- A fundamental tenet of U.S. AD law is that the accurate calculation of dumping margins “requires a fair comparison between costs and prices in the ordinary course of trade.”¹⁵
 - “Where in a foreign market those prices or costs are distorted through government intervention, or otherwise prevented from functioning properly, a proper comparison of normal value and U.S. prices is impossible, and Commerce has an inherent authority to reject those prices and costs and apply alternative methodologies to calculate the dumping margin.”¹⁶
 - “It is this lack of an appropriate comparison between prices and costs in the ordinary course of trade that forms the basis of the {cost-based} PMS adjustment under the Trade Preferences Extension Act of 2015 (‘TPEA’);”¹⁷ section 504 of the TPEA gives Commerce the authority to “use another calculation methodology under this subtitle {i.e., section 773(e) of the Tariff Act of 1930, as amended (the Act)} or any other calculation methodology.”¹⁸ “While the TPEA does not define a ‘particular market situation,’ the {SAA} indicates that a PMS may exist where there are distortions in a market.”¹⁹
 - On this legal basis, Commerce’s preliminary results correctly identified a distortion that affects the costs of producing pipe and tube in India.
 - The DIP demonstrated in its PMS Allegation that the existence of a cost-based PMS “is supported by substantial evidence regarding the significant global overcapacity in steel production, the Indian government’s subsidization of HRC in response to overcapacity, the imposition of AD and safeguard measures on HRC in response to overcapacity, and Indian pipe and tube producers’ non-payment of AD, countervailing duty (CVD), or safeguard duties, imposed to address the price distortions and injury caused by global steel overcapacity.”²⁰

¹⁴ *Id.* at 3 and 5 (citing *Preliminary Results PDM* at 14; Memorandum, “Certain Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results on Particular Market Situation Allegations,” dated July 20, 2020 (PMS Memorandum) at 6-10; *Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2715 (January 16, 2020) (*Pipe and Tube India AR 17-18*), and accompanying Issues and Decision Memorandum (IDM) at 19-32; *Certain Cold Rolled Steel Flat Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 41955 (July 13, 2020) (*CR Korea AR 17-18*), and accompanying IDM at 25-26; and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 71055 (November 6, 2020) (*CWP Korea AR 17-18*), and accompanying IDM at 14-15).

¹⁵ *Id.* at 4 (citing sections 773(a)(1) and 773(f)(1) of the Act).

¹⁶ *Id.*

¹⁷ *Id.* at 4-5 (citing Trade Preferences Extension Act of 2015, H.R. 1295, 114th Cong. (2015-2016) (enacted), Pub. L. No. 114- 27, § 504, 129 Stat. 362, 385).

¹⁸ *Id.* at 5 (quoting the TPEA at 385).

¹⁹ *Id.* at 5 (citing Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 822).

²⁰ *Id.* at 5-6 (citing DIP’s Letter, “Certain Welded Carbon Steel Standard Pipes and Tubes from India: Particular Market Situation Allegation and Supporting Information,” dated December 2, 2019 (PMS Allegation) at 7-50).

- These are the same factors that Commerce relied upon in the prior review in finding that a collective cost-based PMS existed in the Indian HRC market during that earlier POR.²¹
- Commerce should adjust upwards Garg Tube’s reported HRC costs in its self-produced or purchased pipe and tube to account for the cost-based PMS in India.
 - Commerce should quantify the impact of the PMS in India by adopting the DIP’s regression analysis on the relationship between global overcapacity and HRC average import values (AUVs).²² In the previous review, Commerce partially adopted the regression methodology proposed by the DIP and it adjusted Garg Tube’s HRC costs based on the results of the regression analysis.²³
 - “Recognizing that the global overcapacity crisis is the fundamental driver that links together the various factors that collectively define a given PMS, {the DIP’s} global-excess capacity-based regression analysis quantifies the impact of global steel excess capacity on the price of HRC at the national level and derives a corresponding percentage adjustment factor that, when applied to a respondent’s HRC costs, accounts for the distortions inherent to an overcapacity-driven PMS.”²⁴
 - In recent PMS determinations, Commerce has used data covering a ten-year period in its regression analyses. However, Commerce should not limit its regression analysis here to merely a ten-year period (*i.e.*, 2009-2018) but, rather, it should expand the period to include the 2008 data.²⁵
 - Previously, Commerce found that including data for the years 2008 and 2009 in the PMS regression analysis is essential to fully capture the nature of the relationship between global uneconomic capacity and the price of HRC, because the 2008-2009 period reflected a volatile period and price fluctuations in the defining years of the global overcapacity crisis.²⁶
 - The 2008-2009 period is the tipping point, or the point in time where a distinction can be drawn between “before” and “after” the onset of the global steel overcapacity crisis. Thus, it is critical to include data for 2008 or earlier because these data provide observed information on HRC prices when steel overcapacity was at relatively modest levels. In limiting the underlying data to a rolling ten-year period, Commerce will, in fact, fail to define the “before” period and, thus, fail to capture the full extent of the price depression caused by global excess capacity.²⁷

²¹ *Id.* at 6 (citing *Pipe and Tube India AR 17-18* IDM at 19-32).

²² *Id.* at 7 (citing *CR Korea AR 17-18* IDM at 38; and *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017–2018*, 85 FR 41538 (July 10, 2020) (*HWR Korea AR 17-18*), and accompanying IDM at 35-46).

²³ *Id.* at 8 (citing *Pipe and Tube India AR 17-18* IDM at 63-69).

²⁴ *Id.* at 7.

²⁵ *Id.* at 9 (citing *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 76517 (November 30, 2020) (*WLP Korea AR 17-18*), and accompanying IDM at 37; and *CWP Korea AR 17-18* IDM at 21).

²⁶ *Id.* at 9-12 (citing *Pipe and Tube India AR 17-18* IDM at 69; and *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 3616 (January 22, 2020), and accompanying IDM at 25; *CR Korea AR 17-18* IDM at 39-40; and *CWP Korea AR 17-18* IDM at 21).

²⁷ *Id.* at 10-11.

- Sound empirical practice requires one to employ as much relevant data as possible, as a larger “sample size” improves the scope, accuracy, and precision of econometric estimates. Excluding the 2008 data will weaken the model’s predicative power and undermine the reliability of the analysis.²⁸
- Commerce should not limit the regression analysis only to countries where domestic HRC price data are available, due to limited data points and certain data anomalies.²⁹
 - Were Commerce to rely on the domestic price data, the regression results would be compromised due to a limited number of data points and render less precise results.
 - Certain anomalies in the domestic price data, if included in the analysis, would further distort the analysis and lead to inaccurate results. If excluded, an already compromised analysis would be based on even fewer data points. Accordingly, Commerce should rely on the regression analyses supported by the import AUV data.
 - The predicative power of a regression based on domestic pricing data alone, is further constrained by the limited sample size – such a limited sample size fails to support the regression’s various advanced methodologies (*i.e.*, multiple explanatory variables, fixed effects, and eleven years of data). Robust econometric results require sample sizes large enough to accommodate the regression methodologies applied and to capture the nature of the relationship under investigation.
- Commerce should assume an 85 percent target capacity utilization rate for global steel production, instead of the 80 percent rate used in the final results of the previous administrative review.³⁰
 - The DIP provided information in its PMS Allegation supporting the use of an 85 percent target capacity utilization rate, and it also demonstrated in further submissions that under various regression analysis scenarios, a target capacity utilization rate of 85 percent is just as realistic and reasonable as an 80 percent rate.
- For these final results, Commerce should maintain its recent practice of calculating global steel production overcapacity using a five-year average, *i.e.*, base counterfactual global production capacity on the average of global production during the most recent five-year period, including the contemporaneous year (*i.e.*, 2018), rather than relying on the production figure during the contemporaneous year alone.³¹
- Commerce should also adjust the cost of HRC used in the production of the pipe and tube purchased by Garg Tube from unaffiliated suppliers, to account for the cost-based PMS in India.

²⁸ *Id.* at 11.

²⁹ *Id.* at 13-15.

³⁰ *Id.* at 15 (citing *Pipe and Tube India AR 17-18* IDM at 64-67).

³¹ *Id.* at 15-17 (citing *HWR Korea AR 17-18* IDM at 39-40; and *WLP Korea AR 17-18* IDM at 33-34).

- Like Garg Tube, its unaffiliated pipe suppliers are affected by the same cost-based PMS concerning HRC costs in India.³²
- Similar to its approach in the previous review, Commerce should apply the cost-based PMS adjustment to both direct HRC material costs in the self-produced pipes and tubes, as well as the estimated HRC cost in the purchased pipes and tubes.³³
- The DIP has been prejudiced in this proceeding by being denied the opportunity to submit information related to its PMS allegation.³⁴
 - The DIP sought to submit new factual information related to Commerce’s recent change in methodology with respect to the target global steel capacity utilization rate to be applied in the regression analyses used to calculate a PMS adjustment. Commerce, however, repeatedly rejected the DIP’s submissions containing this information, finding that such information could only have been timely filed as part of its PMS Allegation.³⁵
 - Since the DIP’s PMS Allegation was submitted over a month before Commerce announced its change in methodology, the DIP did not have an opportunity to submit information in this administrative review to address a fundamental methodological change in Commerce’s analysis.³⁶
 - Commerce acknowledged in this review that fundamental changes have been made to Commerce’s regression analyses since the submission of the DIP’s PMS Allegation. Therefore, Commerce should have accepted and considered supplemental information addressing those changes that could not have been submitted as part of the DIP’s initial PMS submission.³⁷
 - As with other allegations, interested parties can supplement and provide updated information concerning their allegation with other factual information submitted pursuant to 19 CFR 351.102(b)(21)(v), and timely filed under 19 CFR 351.301(c)(5). Particularly at a time when the agency’s PMS methodology is evolving, it is critical that Commerce permit parties to supplement an initial PMS allegation and PMS adjustment analyses – in this regard, Commerce should not treat a PMS allegation differently than other allegations.³⁸
 - The information that the DIP sought to provide clearly supplements its existing PMS allegation, was submitted well before the deadline for other factual information, pursuant to 19 CFR 351.102(b)(21)(v) and, thus should have been accepted.
 - Commerce’s decision to blind itself to the information in question runs afoul of its statutory obligations.
 - For purpose of meeting its statutory deadlines, Commerce’s exercise of its discretion to create the rules of procedure related to the development of

³² *Id.* at 18.

³³ *Id.*

³⁴ *Id.* at 20-31.

³⁵ *Id.* at 20.

³⁶ *Id.* at 25.

³⁷ *Id.* at 23.

³⁸ *Id.* at 24-25.

the record is bounded by its the obligation to carry out its statutory duty of determining dumping margins as accurately as possible.³⁹

- Commerce rejection of the DIP's submission is not a procedural deficiency that can be cured at briefing.⁴⁰
- The courts have recently instructed Commerce to accept certain relevant information and allow interested parties to respond to such information, to avoid prejudice to certain parties and to assure accuracy of the dumping margin calculations.⁴¹
- In *CR Korea AR 17-18*, after placing certain information on the record, Commerce specifically allowed comments and rebuttal information related to the appropriate target capacity utilization rate for global steel production.⁴²

Garg Tube's Affirmative Arguments

- The PMS allegations set forth by the DIP do not give rise to an affirmative PMS finding in this administrative review.
 - It is Commerce's well-established practice that "a finding that a PMS exists 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 foreign and domestic prices."⁴³
 - Record evidence does not support a sales-based PMS finding. The DIP fails to make any argument that Garg Tube's sales of the merchandise under consideration are not representative of sales of pipe and tube in the Indian market.⁴⁴
 - As Commerce accurately concluded in its *Preliminary Results*, the DIP's reliance on *Biodiesel from Indonesia* to exemplify distortions of Indian home market sales prices is misplaced. There is nothing on the record to suggest an intervention in the Indian pipe and tube market by the Government of India (GOI).⁴⁵
 - The record lacks substantial evidence to support the DIP's cost-based PMS allegation.

³⁹ *Id.* at 27 (citing *Huzhou Muyun Wood Co., Ltd. v. United States*, 279 F. Supp. 3d 1215, 1224-1225 (CIT 2017) (*Huzhou Muyun Wood*); and *Wuhu Fenglian Co., Ltd. v. United States*, 836 F. Supp. 2d 1398, 1403 (CIT 2012) (*Wuhu Fenglian*)).

⁴⁰ *Id.* at 27-28 (citing *Huzhou Muyun Wood*, 279 F. Supp. 3d at 1225; and *Wuhu Fenglian*, 836 F. Supp. 2d at 1404).

⁴¹ *Id.* at 28-29 (citing *Husteel Co., Ltd. v. United States*, 98 F. Supp. 3d 1315, 1341-46 (CIT 2015) (*Husteel*); *Husteel Co., Ltd., v. United States*, 180 F. Supp. 3d 1330, 1339-41 (CIT 2016); *Stupp Corp. v. United States*, 359 F. Supp. 3d 1293, 1311-13 (CIT 2019) (*Stupp*); and *Stupp Corp. v. United States*, 413 F. Supp. 3d 1326, 1328-30 (CIT 2019)).

⁴² *Id.* at 29-30 (citing *CR Korea AR 17-18* IDM at 43-47).

⁴³ See GT's Case Brief at 3 (citing *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 85 FR 51927 (October 15, 2018), and accompanying IDM at Comment 2; and Memorandum, "Antidumping Duty Investigation of Carbon and Alloy Steel Threaded Rod from India: Decision on Particular Market Situation Allegation," dated January 9, 2020 at 7-8) (*Carbon and Alloy Steel Threaded Rod from India*)).

⁴⁴ *Id.* at 4.

⁴⁵ *Id.* (citing PMS Memorandum at 11; and *Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018) (*Biodiesel from Indonesia*), and accompanying IDM at Comment 2).

- The DIP has failed to show that global steel overcapacity manifests in a significant and sufficiently particular way to the Indian market. The fact that Commerce found that a PMS existed in the previous administrative review is not conclusive that a situation or circumstance continued, such that a PMS persisted in the current POR.⁴⁶
- The subsidies that domestic HRC producers have allegedly received from the GOI reflect long standing economic policy, and are in no way related to, or reflective of, a PMS during the POR, contrary to the DIP's allegations.⁴⁷
- The DIP fails to directly trace Garg Tube's purchases of HRC from allegedly subsidized producers, and to the extent that such purchases have been made, they only represent a negligible portion of Garg Tube's overall HRC consumption.
- The DIP's assertion that GOI's imposition of trade remedies on imports of HRC to address price distortions is irrelevant – Commerce correctly noted in its *Preliminary Results* that the GOI's safeguard measures expired two months before the POR, rendering the DIP's argument irrelevant.⁴⁸
- The non-payment of antidumping and safeguard duties by Garg Tube for imports of HRC does not present a valid argument by the DIP for the existence of a PMS. Commerce should continue to conclude in its final results that Garg Tube's non-payment of antidumping and safeguarding duties does not serve as additional evidence of the existence of a PMS.⁴⁹
 1. During the POR, Garg Tube imported HRC only from one country that was not subject to an AD order on HRC issued by the GOI.
 2. As stated above, the GOI's safeguard duty on imports of HRC expired before the POR, and Garg Tube's cost reporting period is based on its fiscal year of April 1, 2018 to March 31, 2019.
- U.S. Court of International Trade (CIT) precedent renders the DIP's PMS allegation unlawful.
 - Recent precedent from the CIT precludes Commerce from considering the DIP's sales-based PMS allegation – even if Commerce finds that cost-based PMS existed during the POR, assuming that Garg Tube's home market sales continue to be found viable, Commerce is legally precluded from making any PMS-based adjustment to Garg Tube's COP.⁵⁰
- If Commerce continues to find a cost-based PMS for the final results, the PMS adjustment to Garg Tube's reported cost must be negative.
 - The DIP offers no constructive or persuasive reasoning for Commerce to apply an 85 percent target capacity utilization rate, instead of an 80 percent rate, to construct a counterfactual capacity volume used in the calculation of a PMS adjustment.⁵¹

⁴⁶ *Id.* at 6 (citing PMS Allegation at 8-9; and *WLP Korea AR 17-18* IDM at Comment 2).

⁴⁷ *Id.* at 6 (citing PMS Allegation at 9-10).

⁴⁸ *Id.* at 7 (citing PMS Allegation at 10-12; and PMS Memorandum 9).

⁴⁹ *Id.*

⁵⁰ *Id.* at 4-5 (citing *Saha Thai Steel Pipe Public Co. Ltd. v. United States*, 422 F. Supp. 3d 1363, 1369 (CIT 2019) (*Saha Thai*)).

⁵¹ *Id.* at 8.

- Commerce's established practice is to use an 80 percent capacity utilization rate.⁵²
- Applying the DIP's regression analysis model with an 80 percent target capacity utilization rate produces a negative PMS adjustment.⁵³
- Commerce should consider using data for 2010-2018 as the applicable period for its regression analysis to ensure greater accuracy.
 - The 2010-2018 period avoids the distortionary influence of data points overlapping with the 2008-2009 Great Recession.⁵⁴
 - The record shows that steel prices in 2008 were abnormally high, considering data surrounding this time-period, making a 2008 data anomalous.
 - The DIP's request to begin the regression analysis at this high point inevitably guarantees that the 2008 AUV has a disproportionate weight in determining the regression coefficients and generates the highest possible constant term for the regression.⁵⁵
 - The gross fixed capital formation variable is insignificant in the regression analysis, whereas the uneconomic capacity variable has been constructed to "fit" into the price decline, and therefore, operates as a "stand in" for all factors that were causing steel prices to decline during the period of the DIP's analysis.⁵⁶
 - Considering the alternative data period on the record, 2010-2018, starting immediately after the 2008-2009 Great Recession, the coefficient on the uneconomic capacity variable falls nearly to zero and becomes insignificant in the regression analysis.

DIP's Rebuttal Arguments

- Commerce should find that both a sales-based PMS and a cost-based PMS existed in India.
 - With respect to a sales-based PMS affecting the sale prices of pipe and tube in India, should the agency determine in its final results that Garg Tube's home market sale prices are distorted by the cost-based PMS that affects the HRC input, Commerce's decision would be lawful and fully supported by the record evidence.⁵⁷
 - Section 773(b)(1)(B) of the Act, supported by 19 CFR 351.404(c)(2), provides that the agency has the authority to resort to constructed value (CV) to calculate normal value (NV), where a PMS distorts the respondent's foreign market sales prices. The significant distortions of prices of HRC in India in turn distort Garg Tube's home market sale prices of pipe and tube, warranting reliance on CV as the basis for NV.⁵⁸

⁵² *Id.* at 8-9 (citing *Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 15114 (March 17, 2020), and accompanying IDM at 31-33; and *HWR Korea AR 17-18* IDM at 38-39).

⁵³ *Id.* at 9.

⁵⁴ *Id.*

⁵⁵ *Id.* at 11.

⁵⁶ *Id.* at 9-10.

⁵⁷ See DIP's Rebuttal Brief at 3-4.

⁵⁸ *Id.* at 4.

- Commerce in other determinations has already found that distortions in inputs that account for the vast majority of the COP can, in turn distort the sales prices of final products.⁵⁹
- The distortions of prices of HRC in India distort the COP in the sales-below-cost test, making a meaningful sales-below-cost test impossible.⁶⁰
- There is no reason, and Garg Tube offers none, why an intervention by the foreign government is the only way that prices can be uncommercially distorted in a market.⁶¹
- Garg Tube's reading of *Saha Thai* to argue that the agency is legally precluded from making a cost-based PMS adjustment to COP is overly broad and materially misrepresents the court's decision. Moreover, there is no conclusive judgement in that litigation.⁶²
- As discussed in the DIP's case brief, Commerce's authority to reject distorted prices and costs and apply alternative methodologies to calculate a dumping margin is inherent in U.S. antidumping law.⁶³
- Commerce should reject Garg Tube's claims against Commerce's preliminary finding that a cost-based PMS existed in India.
 - Garg Tube's claim that a PMS sufficiently particular to India did not exist is unsupported by record evidence. As Commerce explained in a previous review, while the overcapacity crisis is a global problem, the particular element of the PMS that existed in India stems from the way in which the crisis manifested itself in the Indian market. Garg Tube provides no compelling argument for Commerce to find otherwise in this review.⁶⁴
 - Contrary to Garg Tube's claims of insufficient evidence on this issue, the DIP has provided extensive information, analysis, and argument to show that it is not only possible to quantify the effects of the global steel overcapacity crisis, it is also possible to quantify the specific effects of that crisis on the Indian market.⁶⁵
 - The robust results returned by the DIP's regression analysis substantiate that a PMS particular to India existed during the POR – the analyses isolate the effects of the overcapacity crisis in India, and account 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.⁶⁶

⁵⁹ *Id.* (citing *Biodiesel from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 50379 (October 31, 2017), and accompanying PDM at 21-22).

⁶⁰ *Id.* (citing Final Results of Redetermination Pursuant to Remand, dated March 10, 2020, in *Saha Thai Steel Pipe Co., Ltd., et al. v. United States*, Court No. 18-00214, Slip Cp. 19-165 (CIT 2019)).

⁶¹ *Id.* at 5.

⁶² *Id.* (citing *Saha Thai*, 422 F. Supp. 3d at 1368).

⁶³ *Id.* (citing DIP's Case Brief at 4-5).

⁶⁴ *Id.* at 5-6 (citing *India Pipe and Tube AR1 17-18 IDM* at 23.)

⁶⁵ *Id.* at 6 (citing, *e.g.*, PMS Allegation).

⁶⁶ *Id.* at 7.

- Despite its claims that no PMS persisted in the current review, Garg Tube offers no evidence or argument to suggest that meaningful changes on the PMS issue have taken place in this review.⁶⁷
- Garg Tube fails to provide any reasoning for its assertion that the GOI's subsidies reflected long standing economic policy and were not related to, or reflective of a PMS distortion.
 1. That the GOI has had long standing government subsidies to prop up its HRC industry itself shows that the overcapacity crisis has affected the Indian HRC market. It is furthermore illogical to suggest that because the GOI has subsidized its HRC producers for a long time that the conditions contributing to a PMS could not have existed during a POR.⁶⁸
 2. Commerce has in other determinations specifically recognized that longstanding distortions may cause prices and costs to be outside the ordinary course of trade – these determinations provide further basis for concluding that regardless of how long they have been in effect, subsidization policies can nevertheless distort prices and costs in a given POR.⁶⁹
- Garg Tube's arguments that its purchases of HRC from allegedly subsidized producers were not traced and are, nevertheless, negligible, are meritless. Garg Tube fails to explain why tracing a specific subsidy program or its subsidy-specific effects is in any way relevant to Commerce's PMS analysis. Moreover, it is irrelevant to whether a PMS existed for Garg Tube to quibble about the extent to which each subsidy distorted the price.⁷⁰
- Garg Tube's challenges to Commerce's PMS finding by citing the expiration of GOI's safeguard measures and the non-payment of antidumping and safeguard duties are irrelevant and unavailing.
 1. Commerce found that a PMS existed based on a totality of conditions in the Indian HRC market and its decision simply did not rely on the status of GOI safeguards or the non-payment of AD and safeguard duties. Instead, Commerce found that a PMS existed on the basis of "the collective impact of the continued effects of the global steel overcapacity, the Indian government's subsidization of HRC, and the Indian government's finding that imports are unfairly traded."⁷¹
 2. That a safeguard existed, *let alone* in the same year as parts of the POR, is itself evidence that supports a finding of a PMS.⁷²
 3. Garg Tube cites to no information on the record to indicate that the distortive effects of HRC imports that led to the safeguard

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 7-8 (citing *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2016–2017*, (October 15, 2018), and accompanying IDM at 9).

⁷⁰ *Id.* at 8. 83 FR 51927

⁷¹ *Id.* (citing and quoting *India Pipe and Tube AR 17-18 PDM* at 14; and PMS Memorandum at 10).

⁷² *Id.* at 8-9.

measures no longer exist, even to some extent. Indeed, the results of the PMS regression analysis suggest otherwise.⁷³

- Commerce should adjust upwards Garg Tube's reported HRC costs to account for the cost-based PMS in India.⁷⁴
 - Garg Tube argues that the Department should apply a negative cost-based PMS adjustment to its production costs. However, the PMS modeling only generates a negative adjustment under an 80 percent counterfactual capacity utilization rate where counterfactual global production capacity is based on the contemporaneous year alone.
 - If Commerce assumes an 80 percent counterfactual capacity utilization for these final results, it should adhere to its current practice of defining global production based on the five-year average – when Commerce's five-year modification is applied to one of the DIP's most recent regression analyses, the modeling generates positive cost-based PMS adjustment for 2018.⁷⁵
 - Garg Tube's argument that Commerce should use the 2010-2018 period to avoid the distortionary influence of data overlapping with the 2008-2009 Great Recession is similarly misleading.
 - Simply because an observation has a high value doesn't make it an outlier – Garg Tube's overly simplistic comparison of annual import AUV data lacks the complexity and empirical rigor necessary to properly define 2008 or any other individual data as an outlier.⁷⁶
 - If the 2008 import AUV data was truly an outlier, the anomaly would be isolated to the import AUV data alone. Yet, the record in this situation confirms that the same trend appears in the Indian domestic market HRC price data.⁷⁷
 - The import AUV data for 2008 are consistent with the statistically significant inverse relationship and the link between global excess capacity and HRC prices identified by the DIP's modeling, as recognized by Commerce in this and other proceedings.⁷⁸
 - Garg Tube also provides no evidence that demonstrates that the 2009 import AUV data distort the analysis. It simply assumes that the 2009 data is an outlier because it falls within the period of the 2008-2009 Great Recession.⁷⁹
 - Garg Tube's claim that the GFCF variable is insignificant to the analysis has been previously rejected by Commerce. Commerce has repeatedly confirmed that the variables of the PMS regression analysis are reasonable and sufficient for the analysis at hand.⁸⁰

⁷³ *Id.*

⁷⁴ *Id.* at 9-11.

⁷⁵ *Id.* at 10-11 (citing *WLP Korea AD 17-18* IDM at 33-34, 39-41)

⁷⁶ *Id.* at 11-12.

⁷⁷ *Id.*

⁷⁸ *Id.* at 12 (citing *India Pipe and Tube AR 17-18* IDM at 68-69).

⁷⁹ *Id.*

⁸⁰ *Id.* (citing *HWR Korea AD 17-18* IDM at 36, 38-39).

- Likewise, Commerce has articulated the critical nature of the 2008-2009 data to the PMS regression analysis.⁸¹ Specifically, Commerce found that data from this time period account for the volatile period and price fluctuations in the defining years of the global overcapacity crisis, and determined that these years are essential in fully capturing the nature of relationship between global uneconomic capacity and the price of HRC.⁸²
- The exclusion of 2008 and 2009 from the data underlying the regression analysis is contrary to the basic principles of sound empirical practice and weakens the model's predicative power. Because the results of a PMS regression require an adequate number of reliable data points, sound empirical practice requires as much data as possible, as larger sample size improves the scope, accuracy, and precision of econometric estimates.⁸³ In limiting the underlying data to a period that does not account for 2008 and 2009, Commerce will fail to define the "before" period and, thus, fail to capture the full extent of the price depression caused by global excess capacity.⁸⁴

Garg Tube's Rebuttal Arguments

- The record lacks substantial evidence to support the DIP's assertions that a PMS existed during the POR.
 - The factors considered to establish that a PMS existed in the previous administrative review (as well as in other determinations) do not necessarily apply to the current POR.⁸⁵
 - Should Commerce continue to consider the same factors as in the previous review, it should not conclude that a PMS existed during the instant POR because the record lacks substantial evidence to support the DIP's claims.
 - The DIP offers a generalized allegation that the global steel overcapacity persists without providing specifics about its alleged impact on the Indian market. Commerce has previously found that "a generalized allegation regarding the effect of excess capacity is insufficient to demonstrate the existence of a PMS."⁸⁶
 - The subsidies domestic producers have allegedly received from the GOI reflect long-standing economic policy and is contrary to the DIP's allegation of subsidization of HRC.⁸⁷
 - The imposition by the GOI of AD and safeguard measures on HRC do not appear to be relevant in the current review as those measures expired

⁸¹ *Id.* at 12-13 (citing *India Pipe and Tube AR 17-18 IDM* at Comment 7; and *CWP Korea AD 17-18 IDM* at 21).

⁸² *Id.*

⁸³ *Id.* at 13.

⁸⁴ *Id.* at 14.

⁸⁵ See GT's Rebuttal Brief at 3 (citing, e.g., *HWR Korea AR 17-18 IDM* at 18-19; and *CWP Korea AR 17-18 IDM* at 8).

⁸⁶ *Id.* at 3-4 (citing PMS Allegation at 7-9; and Memorandum, "Antidumping Duty Investigation of Carbon and Alloy Steel Threaded Rod from India: Decision on Particular Market Situation Allegation," dated January 9, 2020 at 5).

⁸⁷ *Id.* at 4 (citing PMS Allegation at 9-10).

- before the POR. In addition, Commerce correctly determined that Garg Tube's non-payment of AD and safeguard duties do not serve as additional evidence of the existence of a PMS in India concerning HRC.⁸⁸
- If Commerce persists in finding a cost-based PMS, the PMS adjustment must be negative and there is, therefore, no reason to upwardly adjust Garg Tube's reported HRC costs.⁸⁹
 - To ensure accuracy, Commerce should ignore the DIP's request to consider data from 2008 and 2009 and, instead, consider using the data for the 2010-2018 period.
 - The DIP cites certain previous agency decisions that do not support its argument for using data that are out of a ten-year period. In all decisions to which the DIP refers, the relevant POR was 2017-2018 – therefore, the ten-year period that Commerce has considered in its calculations for these cases naturally includes data for 2008 and 2009.⁹⁰
 - The DIP misconstrues Commerce's determination in *CWP Korea AR 17 – 18*. There, Commerce included data for 2008 in the analysis not only because it considered it to be a defining year in the global steel overcapacity crisis, but also because it felt within the ten-year period. Therefore, Commerce should disregard the DIP's request to use data from 2008.⁹¹
 - However, Commerce has not specifically stated that a period shorter than ten years may not be considered. The inclusion of 2009 data in the DIP's regression model does not guarantee an accurate representation of market conditions in the POR because of the sharp drop in prices as a result of the Great Recession.⁹²
 - Should Commerce find a basis for a cost-based PMS, it should assume an 80 percent counterfactual target capacity utilization rate.
 - Commerce has established in a number of determinations that an 80 percent target capacity utilization rate is reasonable in the context of the steel industry, and that actual global capacity utilization rates have been no greater than 80 percent since 2007.⁹³
 - Record evidence shows that an 80 percent capacity utilization rate was where steel companies could be profitable as a financially viable target.⁹⁴
 - Commerce has no reason not to limit the regression analysis to where domestic HRC price data are available.⁹⁵
 - Other than claiming that the domestic pricing data contains limited data points and certain data anomalies, the DIP fails to provide any substantive explanation against its use.

⁸⁸ *Id.* (citing PMS Allegation at Exhibits 134 and 136; and PMS Memorandum at 10).

⁸⁹ *Id.* at 5-6.

⁹⁰ *Id.* at 7 (citing, e.g., *Pipe and Tube India AR 17-18*; and *CWP Korea AR 17-18*).

⁹¹ *Id.* at 7-8 (citing *CWP Korea AR 17-18* IDM at 21).

⁹² *Id.* at 8 (citing *WLP Korea AR 17-18* IDM).

⁹³ *Id.* at 9 (citing, e.g., *CWP Korea AR 17-18* IDM at 21-22; *CR Korea AR 17-18* IDM at 42; *WLP Korea AR 17-18* IDM at 33; and *HWR Korea AR 17-18* IDM at 38).

⁹⁴ *Id.*

⁹⁵ *Id.* at 10.

- In fact, if Commerce were to fulfil the DIP’s request and base the regression analyses on import AUVs, then this would create an inaccurate result, as import AUVs are created by averaging the prices of a wide array of products, for which changes in the mix alters the results of the regression analysis.
 - Commerce is not compelled to use a five-year average of global steel production to calculate the cost-based PMS adjustment.⁹⁶
 - Commerce’s application of a concept that uses a five-year average of global production to calculate counterfactual global capacity in recent determinations is not a permanent revision in Commerce’s PMS adjustment calculations – Commerce has not officially set this as its standard approach for all future proceedings.
 - Although Commerce has provided limited reasoning for undertaking this new approach, the DIP has not offered additional information or substantial reasoning to explain how and why this approach is more accurate.
- A PMS adjustment concerning HRC has no bearing on an adjustment to Garg Tube’s purchased pipe and tube.⁹⁷
 - Should Commerce persist in finding that a cost-based PMS existed relating to HRC, there is little to no evidence on the record to suggest that a PMS adjustment should be made in relation to Garg Tube’s purchased pipe and tube.
 - HRC is only one component of the input costs to pipe and tube production so the adjustment should not be automatically applied to pipe and tube inputs generally.
 - There is nothing on the record to show that a PMS adjustment calculated on HRC is in any way appropriate for purchased pipe and tube.
- Commerce’s determination in the previous review is not conclusive that a cost-based PMS existed in the current review.
 - It is erroneous, and inconsistent with Commerce’s practice, for the DIP to draw a comparison to the previous administrative review in suggesting that Commerce’s findings are conclusive to this administrative review – Commerce’s decisions are based on the evidentiary record developed in each individual segment of a proceeding.⁹⁸
 - In addition, Commerce has stated that it cannot “supplant” the administrative record in a prior proceeding to the administrative record of the current proceeding.⁹⁹
- Commerce properly rejected certain of the DIP’s submissions containing new factual information and, thus, the DIP has not been prejudiced in any way.

⁹⁶ *Id.* at 11 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 41949 (July 13, 2020), and accompanying IDM at Comment 3-C).

⁹⁷ *Id.* at 11-12.

⁹⁸ *Id.* at 12-13 (citing *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 24085, (May 24, 2019), and accompanying IDM at 26).

⁹⁹ *Id.* at 13 (citing *WLP Korea AR 17-18* IDM at 17).

- As Commerce detailed in both of its rejection letters, all of the DIP’s supplemental PMS submissions contained new factual information that had been untimely filed.¹⁰⁰
 - Information in the *Initiation Notice* made all interested parties aware of the deadline for submitting a PMS allegation and supporting factual information.¹⁰¹
 - Following acceptance of a PMS allegation, Commerce’s regulations permit parties to submit comments and other factual information that rebuts, clarifies, or corrects the factual information contained therein, following a schedule issued by Commerce.¹⁰²
 - Commerce’s actions in establishing a schedule for parties to rebut, clarify, or correct the factual information included in the DIP’s PMS Allegation, and enforcing such deadlines by rejecting the DIP’s supplemental PMS submissions, was in line with Commerce’s well-established practice and regulations, and within its discretion, as affirmed by the courts.¹⁰³
 - The DIP’s multiple attempts to characterize its supplemental PMS submissions as timely factual information run afoul of Commerce’s regulations and specific requirements established in this review.
 - 1. First, in filing its submissions, the DIP failed to include the information that adhered to Commerce’s requirements for submission of factual information, as established in Commerce’s December 20, 2019, and December 30, 2019, letters – Commerce correctly and appropriately rejected the submissions on this basis alone.¹⁰⁴
 - 2. Second, contrary to its assertions, the DIP’s supplemental submissions were not clarifications to its PMS Allegation, as required under 19 CFR 351.301(c)(v) and Commerce’s letters (providing an opportunity for parties to submit comments and other factual information that rebuts, clarifies, or corrects the factual information contained in the PMS Allegation) – Commerce correctly determined that the DIP’s submissions were not a clarification, but in fact untimely and unsolicited new factual information.¹⁰⁵
 - 3. Third, Commerce was correct in rejecting the DIP’s supplemental PMS submissions as untimely and should not be persuaded by the DIP’s claim that the submissions should be accepted pursuant to 19 CFR 351.102(b)(21)(v) and 19 CFR 351.301(c)(5).¹⁰⁶
 - The DIP’s assertions that it did not have an opportunity to submit information to address Commerce’s “fundamental change” in its

¹⁰⁰ *Id.* at 15.

¹⁰¹ *Id.* (citing *Initiation of Antidumping and Countervailing Duty Reviews*, 84 FR 33739 (July 15, 2019)).

¹⁰² *Id.* at 16 (citing 19 CFR 351.301(c)(2)(v)).

¹⁰³ *Id.* at 16-17 (citing *Yantai Timken Co. v. United States*, 521 F.Supp.2d 1356 (CIT 2007) at 1370; and *Maverick Tube Corp. v. United States*, 107 F. Supp. 3d 1318, 1331 (CIT 2015)).

¹⁰⁴ *Id.* at 17.

¹⁰⁵ *Id.* at 18.

¹⁰⁶ *Id.*

methodology for quantifying the impact of a cost-based PMS is unreasonable – Commerce does not have a set methodology and it previously acknowledged that it has and will continue to refine it.¹⁰⁷

- Whether or not the DIP was unable to comment on Commerce’s “change” in methodology, Commerce properly found in this review that the DIP had ample opportunity to include information concerning the appropriate counterfactual capacity utilization rate (contained in its supplemental PMS submissions that Commerce rejected) in its original PMS Allegation.¹⁰⁸
- Commerce appropriately exercised its discretion in rejecting the submissions.
 - The DIP’s reliance on *Huzhou Muyun Wood* is misplaced. There, the court found that Commerce had abused its discretion by adding data to the record without clarifying its intended use, and for only allowing interested parties one week to submit comments. In this review, Commerce provided interested parties a substantial timeframe to submit comments on the PMS Allegation, and the DIP had ample opportunity to incorporate in it the information the DIP later attempted to submit untimely.¹⁰⁹
 - The DIP’s claim that Commerce abused its discretion is unsupported by the facts of the record – Commerce provided a detailed explanation for rejecting the DIP’s supplemental PMS submissions in both of its rejection letters, citing to the regulations and submission requirements as stated on the record that the DIP failed to fulfill. The legal precedent does not support that such actions undertaken by Commerce amount in any way to an abuse of discretion by the agency.¹¹⁰
 - The DIP’s reliance on *Husteel* is out of context. Unlike the circumstances present there, in the present review, the DIP’s supplemental PMS submissions were not submitted as either a response to a vital calculation or an alternative calculation, but they were simply, as Commerce found in its rejection letter, an attempt to supplement the PMS Allegation with new facts.¹¹¹
 - The DIP’s reliance on *Stupp* is inaccurate. There, the court found that Commerce abused its discretion by rejecting certain information that was not burdensome to incorporate. Here, however, Commerce’s rejection of the DPI’s voluminous, untimely, and unsolicited new factual information was not an abuse of discretion.¹¹²
 - The DIP’s reliance on *CR Korea AR 17-18* is misplaced for its claim that Commerce should afford it the same opportunity to submit additional PMS information in this administrative review. There, it was Commerce who placed additional factual information on the record for comment, not one

¹⁰⁷ *Id.* at 19 (citing *CR Korea AR 17-18* IDM at 43-44, n.325).

¹⁰⁸ *Id.* at 19-20.

¹⁰⁹ *Id.* at 20-21 (citing *Huzhou Muyun Wood*, 279 F. Supp. 3d at 1222-1224).

¹¹⁰ *Id.* at 21 (citing *Wheatland Tube Co. v. United States*, 161 F.3d 1365, 1369 (CAFC 1998) at 1369; and *Dongtai Peak Honey Indus. Co. v. United States*, 971 F. Supp. 2d 1234, 1242 (CIT 2014)).

¹¹¹ *Id.* at 21-22 (citing *Husteel*, 98 F. Supp. 3d at 1341).

¹¹² *Id.* at 22-23 (citing *Stupp*, 359 F. Supp. 3d at 1311-1313).

of the interested parties and, unlike for all interested parties, the regulations do not place time restrictions for Commerce do so.¹¹³

Commerce’s Position: For these final results, Commerce continues to find that a cost-based PMS existed in India during the POR concerning the cost of HRC, either for pipe and tube that Garg Tube self-produced from HRC, or as a component embedded in the acquisition cost of the purchased mild steel and galvanized pipe and tube that Garg Tube sourced from unaffiliated Indian suppliers. The cost-based PMS that we found to have existed in the *Preliminary Results*, and continue to find existed in India during the POR concerning HRC results from the collective impact of the effects of the global steel overcapacity, the Indian government’s subsidization of HRC, and the Indian government’s finding that imports are unfairly traded. In reaching our decision, we have considered the components of the DIP’s PMS Allegation as a whole, based on their cumulative effect on the input costs for HRC in the production of pipes and tubes. Based on the totality of the conditions in the HRC market and the production of pipes and tubes in India, we continue to find that the DIP’s PMS Allegation represent facets of a single cost-based PMS.

As an initial matter, to correct a misstatement, section 773(a) of the Act stipulates that “a fair comparison shall be made between the export price or constructed export price and normal value,” not that the statute “requires a fair comparison between costs and prices in the ordinary course of trade.”¹¹⁴ Section 773(a)(1)(A) of the Act continues that NV in general will be based on “the price” as defined in section 773(a)(1)(B) of the Act.

Section 773(a)(1)(B)(i) of the Act defines “the price” as that “which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the {EP} or {CEP}.” Pursuant to section 771(15) of the Act, Commerce shall find “sales and transactions” to be “outside the ordinary course of trade” in situations in which “sales {are} disregarded under section 773(b)(1) {of the Act},” “transactions {are} disregarded under section 773(f)(2) {of the Act},” or “{Commerce} determines that the particular market situation prevents a proper comparison with the export price or constructed export price.” Further, 19 CFR 351.404(c)(2) provides an exception to determining that a given comparison market is viable when “a particular market exists that does not permit a proper comparison with the {EP} or {CEP}” consistent with sections 773(a)(1)(B)(ii)(III) or 773(a)(1)(C)(iii) of the Act.

In addition to adding the concept of “particular market situation” to the definition of the term “ordinary course of trade” in section 771(15) of the Act, section 504 of the TPEA added the concept of “particular market situation” to the definition of 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.”

¹¹³ *Id.* at 23-24 (citing *CR Korea AR 17-18* IDM at 44-45).

¹¹⁴ *See* DIP’s Case Brief at 4 (citing section 773(a)(1) of the Act).

In the *Preliminary Results*, Commerce determined that the costs of HRC for self-produced pipe and tube and for Indian-produced mild steel and galvanized pipe purchased from unaffiliated parties constitute a predominant proportion of the total COP of pipes and tubes.¹¹⁵ As a result, Commerce found that the price distortions in the Indian HRC market may have had a significant impact on Indian production costs of pipe and tube, such that the cost of materials does not accurately reflect the COP of pipe and tube in India in the ordinary course of trade.¹¹⁶ Commerce's finding in the *Preliminary Results* that the global steel overcapacity crisis and a series of intervening government actions aimed to remedy its effects, are all interdependent factors that are, in themselves, evidence of HRC price distortion in a local market. This finding is consistent with Commerce's determinations in the prior administrative review of this proceeding as well as in other determinations.¹¹⁷ After considering Garg Tube's arguments for Commerce to reverse its preliminary findings, as discussed below, we have determined for these final results that a cost-based PMS existed in the Indian HRC market during the POR.

Garg Tube argues that the record lacks substantial evidence showing that global steel overcapacity manifests in a significant and sufficiently particular way to the Indian market. Commerce previously rejected this argument, and Garg Tube presents no evidence on the instant record that compels us to reach a different finding in this review. Specifically, in the previous administrative review of this proceeding, we addressed Garg Tube's assertion 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. We found as follows:

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.

Commerce agrees with {the commenters} 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. 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 ... 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.¹¹⁸

Further, we agree with the DIP that the record contains extensive information that demonstrates the quantification of the effects of the global steel overcapacity crisis on the Indian HRC market

¹¹⁵ See *Preliminary Results* PDM at 13; and PMS Memorandum at 6.

¹¹⁶ See PMS Memorandum at 6.

¹¹⁷ See *Preliminary Results* PDM at 14; PMS Memorandum at 6-10; and *India Pipe and Tube AR 17-18* IDM at Comment 1; see also *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 84 FR 64041 (November 20, 2019), and accompanying IDM at Comment 1.

¹¹⁸ See *India Pipe and Tube AR 17-18* IDM at 23 (internal citations omitted).

in particular.¹¹⁹ In the previous administrative review of this proceeding, we stated, similarly, “... 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.”¹²⁰ The instant record simply lacks, and Garg Tube does not offer, evidence that refutes this conclusion.

Garg Tube relies on a negative PMS determination in the *Carbon and Alloy Steel Threaded Rod from India* investigation for its proposition that a generalized allegation regarding the effect of excess capacity is insufficient to demonstrate the existence of a cost-based PMS. There, Commerce found that “the record does not establish that the global overcapacity of steel production contributed to a PMS in the steel wire rod and bar market in India” because “the petitioner does not identify a relationship between Chinese steel exports and steel prices in India,” and that “in stark contrast to *CWP from India*, where Commerce was able to examine prices of the key input (*i.e.*, HRC),... the petitioner did not provide an analysis of the prices of wire rod and bar in India.”¹²¹ That determination is inapposite. In the last administrative review, Commerce undertook a comprehensive analysis linking China’s exports of HRC to India’s imports of HRC, primarily through Korea, and demonstrated a lack of alleged price normalization in world steel prices for flat-rolled products (which includes HRC) in general, and in the India HRC market, in particular.¹²² In this review, we found that the record lacked evidence to suggest that the downward price effects in the Indian HRC market, caused by lingering global steel overcapacity, no longer exist;¹²³ further, there is no information that suggests that a substantial change in the make-up of countries that export HRC to Korea and then subsequently to India had taken place.

Garg Tube argues that the subsidies that domestic HRC producers have allegedly received from the GOI reflect long standing economic policy, and are in no way related to, or reflective of, a cost-based PMS. In the *Preliminary Results*, Commerce found that the record supports a finding that the GOI subsidized the biggest HRC producers in India, and that the subsidized domestic HRC production was in response to the global steel overcapacity crisis.¹²⁴ As an initial matter, aside from failing to elaborate meaningfully on the merits of its assertion, Garg Tube does not demonstrate with evidence that the GOI’s “long standing economic policy,” as it applies to Indian steel producers, had no nexus to the GOI’s direct response to the evolving global steel overcapacity crisis. On the contrary, that steel overcapacity was adversely affecting the Indian HRC market over many years was, at least in part, one of the factors responsible for the GOI maintaining long standing government subsidies for the HRC industry.¹²⁵ To this end, we agree with the DIP that it is illogical to suggest that because the GOI has subsidized its HRC producers

¹¹⁹ See, generally, PMS Allegation; and DIP’s Letters, “Certain Welded Carbon Steel Standard Pipes and Tubes from India: Particular Market Situation Allegation Deficiency Questionnaire Response,” dated June 1, 2020; “Certain Welded Carbon Steel Standard Pipes and Tubes from India: Second Particular Market Situation Allegation Deficiency Questionnaire Response,” dated July 30, 2020; and “Certain Welded Carbon Steel Standard Pipes and Tubes from India: Comments on Garg Tube’s September 1, 2020 Submission,” dated September 9, 2020 (DIP’s September 9, 2020 Submission).

¹²⁰ See *India Pipe and Tube AR 17-18 IDM* at 23.

¹²¹ See Memorandum, “Antidumping Duty Investigation of Carbon and Alloy Steel Threaded Rod from India: Decision on Particular Market Situation Allegation,” dated January 9, 2020 at 5.

¹²² See *India Pipe and Tube AR 17-18 IDM* at 20-22.

¹²³ See, generally, PMS Memorandum.

¹²⁴ See PMS Memorandum at 8.

¹²⁵ *Id.* (citing PMS Allegation at 10 and Exhibits 21-25).

for a long time, the conditions contributing to a PMS could not have existed during this POR. That the GOI's subsidies had been in place long 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. As the DIP note, in previous determinations, Commerce recognized that longstanding distortions may still cause input costs to be outside the ordinary course of trade and, therefore, regardless of how long they have been in effect, subsidization policies can nevertheless distort input costs in a given POR.¹²⁶

Garg Tube asserts that its HRC purchases from allegedly subsidized producers have not been traced, and to the extent purchases have been made, they only represent a negligible portion of Garg Tube's overall HRC consumption. Garg Tube misconstrues the record on both points. In the *Preliminary Results*, Commerce found:

The record supports Commerce's finding that the Indian government subsidized the biggest HRC producers in India ... 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 and directly affected 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 from domestic suppliers that are either small Indian HRC producers or resellers trading HRC produced by small and large Indian HRC producers.¹²⁷

First, Garg Tube ignores the fact that a substantial portion of its HRC requirements was procured from domestic producers.¹²⁸ Garg Tube also does not dispute Commerce's posture 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, and, 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.¹²⁹ 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."¹³⁰ Lastly, as Commerce noted in the previous review of this case:

Garg Tube misconstrues the framework of Commerce's PMS analysis ... 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

¹²⁶ See DIP's Rebuttal Brief at 7-8 (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), and accompanying IDM at 9); see also *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), and accompanying IDM at Comment 3.

¹²⁷ See PMS Memorandum at 8.

¹²⁸ See Garg Tube's Letter, "Welded Carbon Steel Standard Pipes and Tubes from India: Garg Tube Section BCD Response to Original Questionnaire," dated January 23, 2020 (title erroneously refers to the original questionnaire, instead of the supplemental questionnaire) (January 23, 2020 SQR) at 59 and Exhibits S1-D-3(a), S1-D-3(b), S1-D-4(a), and S1-D-4(b).

¹²⁹ See *India Pipe and Tube AR 17-18* IDM at 28.

¹³⁰ *Id.*

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.¹³¹

To the extent Garg Tube's argument, that its purchases of HRC from allegedly subsidized producers were not traced, infers that Commerce has failed to specify which of the GOI's subsidies would have lowered the sale prices of HRC in the Indian market and by how much, we previously have rejected such arguments. In the previous review, we found, "... 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 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."¹³²

Garg Tube argues that the GOI's imposition of trade remedies on imports of HRC is irrelevant to Commerce's PMS determination because GOI's safeguard measures expired prior to the POR and Garg Tube paid no AD duties on its imported purchases of HRC. We disagree. In the *Preliminary Results*, Commerce found that Garg Tube's non-payment of safeguard or AD duties during the POR did not serve as additional evidence of the existence of a PMS for the provision of HRC in India.¹³³ Although we continue to conclude that Garg Tube's non-payment of antidumping and safeguarding duties does not serve as additional evidence of the existence of a PMS, this does not impact our finding that the GOI's act of imposing antidumping and safeguard duties on imports of HRC into India serves as a factor contributing the existence of the PMS. The record shows that the GOI imposed, prior to the POR, trade measures aimed at combatting injurious effects of unfairly traded imports of HRC into India.¹³⁴ The fact that Garg Tube imported HRC from a country that is not on a list of numerous countries for which GOI imposed and maintained AD orders during the POR is not dispositive of a lack of distortions in the Indian HRC market – the fact that AD orders on imports of HRC into India remain in place is evidence that the price distortions and injury in the domestic Indian HRC market, caused by global steel overcapacity, continue to exist and require the remedy afforded by this trade measure.

We continue to find that a sales-based PMS did not exist in India during the POR, concerning pipe and tube. In the *Preliminary Results*, Commerce found that there is no evidence on the record supporting the DIP's assertion that Garg Tube's home market sale prices for pipe and tube are distorted by the cost-based PMS that affects the main input of production, HRC.¹³⁵ The DIP

¹³¹ *Id.* at 28-29 (citing *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 LTFV*), 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.")).

¹³² *Id.* at 27.

¹³³ See PMS Memorandum at 10.

¹³⁴ *Id.* at 9.

¹³⁵ See *Preliminary Results* PDM at 14-15.

does not present new arguments which warrant a reversal of Commerce’s determination in the *Preliminary Results*.

Regression Analysis and Quantifying a PMS Adjustment

For these final results, Commerce adopted a PMS adjustment of 15.66 percent, calculated and submitted to the record by the DIP in this review, which reflects the results of a regression analysis that: (1) uses 2009-2018 domestic pricing data; (2) assumes an 80 percent counterfactual target capacity utilization rate; and (3) defines global production on the basis of the five-year average during the 2014-2018 period.¹³⁶ We find that the information and the methodology underpinning the calculation of this PMS adjustment rate reflect fully Commerce’s practice, as the discussion below shows.

As an initial matter, Commerce disagrees with Garg Tube’s assertion that Commerce is legally precluded from making a PMS adjustment to Garg Tube’s COP in the context of the sales-below-costs test. The plain language of the statute and the legislative history of the TPEA amendments support that Commerce possesses the discretion to adjust Garg Tube’s COP as part of a sales-below-costs test. They also establish that Commerce has discretion when selecting a calculation methodology to address distortions in a particular market. As discussed above, if Commerce finds that the “cost of materials and fabrication or other processing of any kind” under section 773(e) of the Act is found to have been distorted because of a cost-based PMS, then it is logical that the very same “cost of materials and of fabrication or other processing of any kind” under section 773(b)(3)(A) of the Act must also be distorted; and, consequently, a cost-based PMS adjustment is warranted in both situations. Garg Tube points to a recent decision in *Saha Thai* where the CIT has held that the Section 504 TPEA amendments “did not amend the statute governing the calculation of cost of production (for below-cost-sales purposes) or application of the below-cost test set out in {773(b)}.”¹³⁷ In its remand order, the Court found that Commerce may not apply a cost-based PMS adjustment..¹³⁸ This ruling is not final and remains subject to appeal.

Section 773(a) mandates Commerce to determine NV based on the rules set forth to achieve a “fair comparison” between NV and export price or constructed export price. The statute in its basic definition of NV requires that NV reflect a price that is in the “ordinary course of trade.”¹³⁹ This carries through to the provisions of subsection (b) – Sales at Less Than Cost of Production (subsection (b)(3)(A) uses the similar term, “ordinary cost of business”).¹⁴⁰ The TPEA generally expanded the meaning of the term “ordinary course of trade” to include a situation in which Commerce finds that “the particular market situation prevents a proper comparison with the export price or constructed export price.”¹⁴¹ Thus, where a PMS affects the COP of the foreign

¹³⁶ See DIP’s September 9, 2020 Submission at Exhibit 1.

¹³⁷ See *Saha Thai*, 422 F. Supp. 3d at 1368.

¹³⁸ See *Saha Thai Steel Pipe Pub. Co. v United States*, 2020 Ct. Intl. Trade LEXIS 191 *, Slip. Op. 2020-181 (CIT 2020) (the second remand order following *Saha Thai* concerning the 2016/17 administrative review); *Saha Thai Steel Pipe Pub. Co. v United States*, 476 F. Supp. 3d 1378 (CIT 2020) (the first remand order for the 2017/18 administrative review).

¹³⁹ See section 773(a)(1)(B)(i) of the Act.

¹⁴⁰ See sections 773(b)(1) and 773(b)(3) of the Act.

¹⁴¹ See section 771(15) of the Act (Commerce “shall consider” such transactions outside ordinary course of trade).

like product through distortions to the cost of an input, it is reasonable to conclude that such a situation may prevent a proper comparison of the EP or CEP with NV that is based on home market prices just as with NV that is based on CV. The statute also authorizes Commerce to use “any” alternative cost calculation methodology if it determines that a “particular market situation exists such that the cost of materials... does not accurately reflect the {COP} in the ordinary course of trade.”¹⁴² Although the TPEA did not specifically amend section 773(b) of the Act, including the provisions governing Commerce’s sales-below-cost test, Congress’ expansion of the definition of the term “ordinary course of trade” and the continued inclusion of that term under section 773(b) of the Act indicate that Commerce is within its discretion to interpret section 773(b) of the Act in line with this TPEA amendment.

The definition of “ordinary course of trade” is directly applicable when Commerce determines NV.¹⁴³ Similarly, section 773(e) of the Act discusses constructed value and provides Commerce with broad authority to use “any other calculation methodology” if costs are distorted by a PMS. Although section 773(e) of the Act is the subsection that is applicable to CV, given the applicability of the definition “ordinary course of trade” when Commerce determines normal value (section 773(a)(1)(B)(i)), having Commerce forgo considering costs distorted by a PMS for CV, but still consider and rely on those distorted costs for purposes of COP and the sales-below-cost test creates an illogical discordance. Commerce considers the totality of the statute considering the TPEA amendments that expanded the fundamental and ubiquitous term “ordinary course of trade” to include PMS considerations.¹⁴⁴

Commerce’s interpretation that the TPEA permits it to adjust Garg Tube’s COP based upon the cost-based PMS that we found to have existed in India during the POR is also supported by the relevant legislative history, which states that the amendments ultimately enacted in the TPEA “provide that where a particular market situation exists that distorts pricing or cost in a foreign producer’s home market, the Department of Commerce has flexibility in calculating a duty that is not based on distorted pricing or costs.”¹⁴⁵ Reviewing the TPEA’s legislative history, the Court has recognized that the statute reflects Congress’s “desire to give Commerce the ability to choose the appropriate methodology when a particular market situation exists.”¹⁴⁶ The TPEA amendments and their legislative history reflect Congress’s intent to expand Commerce’s discretion in administering the statute when a PMS is found to have existed. Based on the statutory language and the legislative intent on this matter, Commerce has consistently found that section 504 of the TPEA added the concept of a PMS in the definition of the term “ordinary course of trade,” for purposes of CV “and through these provisions for purposes of the COP under section 773(b)(3) of the Act.”¹⁴⁷ Given the broad discretion afforded

¹⁴² See section 773(e) of the Act.

¹⁴³ See section 773(a)(1)(B)(i) of the Act.

¹⁴⁴ See, e.g., *Norfolk & W. Ry. Co. v. American Train Dispatchers’ Ass’n*, 499 U.S. 117, 129 (1991) (declining to resort to a canon of construction that supported a particular interpretation of a statute when the “whole context,” “dictate a different conclusion” process).

¹⁴⁵ See S. Rep. No. 114-45 at 37 (2015).

¹⁴⁶ See *NEXTEEL Co. v. United States*, 355 F. Supp. 3d 1336, 1349 (CIT 2019).

¹⁴⁷ See, e.g., *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), and accompanying IDM at Comment 3; and *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), and accompanying IDM at Comment 1.

to Commerce in the statutory language and the legislative history regarding the “particular market situation” concept, Commerce’s adjustment of Garg Tube’s COP is a reasonable interpretation of the statute and is in accordance with law.

Use of Domestic Pricing Data

In this review, we estimate that India’s import penetration rate of foreign-produced HRC during the 2018-2019 period was approximately seven percent.¹⁴⁸ Consistent with Commerce’s finding in the last administrative review, we find it appropriate to use the iteration of the regression analysis that relies on the domestic pricing data, instead of import AUVs. In *India Pipe and Tube AR 17-18*, Commerce found that domestic HRC prices, and not import AUVs, may best capture the overall dynamics of the Indian HRC market, primarily due to the history of a low import penetration rate of foreign-produced HRC in India, in relation to the domestic demand.¹⁴⁹ In *India Pipe and Tube AR 17-18*, India’s import penetration rate of foreign-produced HRC was nine percent during the 2017-2018 period.¹⁵⁰ Further, in *India Pipe and Tube AR 17-18*, Commerce found that “import penetration was never significant in India, at least dating from the 2013-2014 period and onward,” a factor relevant to our analysis in this review.¹⁵¹ Additionally, similar to our finding in the last review, the import prices for HRC were, on average, less than domestic prices in India for five of the years 2009-2018 as reported by the DIP, suggesting a lack of a consistent equilibrium between domestic and import HRC prices in India, unlike for countries that rely substantially on imports to satisfy domestic demand.¹⁵² Accordingly, in this review, we find no compelling reason to depart from using the analysis that regresses domestic HRC prices, instead of import AUVs, for purposes of quantifying the distortion that we find to have existed in the Indian HRC market during the POR, and calculating a cost-based PMS adjustment.

Commerce disagrees with the DIP that a regression analysis based on import AUV data is appropriate because there are more countries for which import AUV data is available than for domestic prices. Commerce has determined to rely on the DIP’s regression analysis based on

¹⁴⁸ The record does not have data concerning the domestic consumption of HRC in India during the POR. The record shows that for all finished steel products (which includes HRC) produced in India during the 2018-2019 period, the domestic production (for sale) volume exceeded the domestic consumption volume. Thus, in order to compute an accurate rate of import penetration of HRC, measured in relation to the consumption of HRC in India, we divided the volume of imports of HRC by the volume of domestic consumption of HRC, with the latter being estimated on the basis of the overall production/consumption experience for all finished steel products produced and sold in India. The calculations are as follows: the ratio of consumption to production (for sale) – all finished steel (97.536 million MTs divided by 131.572 million MTs, equals 0.74), multiplied by the production (for sale) – HRC (37.185 million MTs), equals consumption of HRC of 27.566 million MTs. The volume of imports of HRC of 1.951 million MTs divided by the estimated consumption of HRC of 27.566 million MTs equals seven percent. For consumption and production (for sale) figures (all finished steel), see 2018-2019 Annual Report, Ministry of Steel, Government of India (MOS AR) at page 2; for production (for sale) and import volume figures for HRC, see MOS AR at Annexure IX (page 148 of report) and Annexure XI (page 150 of report). Memorandum, “Certain Welded Carbon Steel Standard Pipes and Tubes from India: Placement of Document on the Record,” dated May 19, 2020, contains a full copy of MOS AR.

¹⁴⁹ See *India Pipe and Tube AR 17-18* IDM at 65, 66.

¹⁵⁰ *Id.* at 26 and 66.

¹⁵¹ See *India Pipe and Tube AR 17-18* IDM at 65.

¹⁵² See DIP’s Letter, “Certain Welded Carbon Steel Standard Pipes and Tubes from India: Second Particular Market Situation Allegation Deficiency Questionnaire Response,” dated July 30, 2020 (2nd PMS DQR) at Exhibit 3.

domestic prices, rather than import AUVs, based on the preceding analysis. Further, Commerce finds that the regression analyses submitted by the DIP each include an adequate number of data points to result in statistically significant results.

Appropriate Beginning and End of Annual Time Series Data

In all previous determinations where a regression analysis has been used to quantify the impact of a cost-based PMS, annual data over a ten-year period was used.¹⁵³ For this review, Commerce continues to find that ten years of data represent an appropriate period for quantifying the effects of global steel overcapacity on domestic HRC prices.

We disagree with Garg Tube that data spanning a period shorter than ten years should be used in a regression analysis. Commerce previously stated that a period of ten years allows for an adequate amount of data and ensures consistency of the regression analysis from one proceeding to another.¹⁵⁴ In *India Pipe and Tube AR 17-18*, where Commerce included data from 2008-2017 in its regressions analysis, Commerce found that because the regression model quantifies a constant relationship between uneconomic capacity and import AUVs (or domestic prices) over time, inclusion or exclusion of data for 2008-2009 will not change the overall nature of the relationship.¹⁵⁵ Commerce also found the following:

... although data from the two financial crisis years may not contribute to the model's overall statistical significance ... 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.¹⁵⁶

Garg Tube provides no evidence that demonstrates that the inclusion of the 2009 data distorts the analysis. Garg Tube also fails to explain why the exercise of determining the relationship between HRC prices and global excess capacity over a fixed period of time is undermined due to a sharp drop in HRC prices in 2009, as a result of what Garg Tube identifies as the Great Recession (*i.e.*, 2008-2009).¹⁵⁷

We disagree with the DIP that data spanning a period greater than ten years, *i.e.*, to include 2008, is warranted. The DIP argues that Commerce should include data for 2008 or earlier because it argues 2008-2009 is the tipping point of the onset of the global steel overcapacity crisis and including such years provides information when steel overcapacity was at “relatively modest levels,” yet the DIP’s insistence to include data from at least 2008 does not accomplish this aim.

¹⁵³ See, e.g., *WLP Korea AR 17-18* IDM at 37.

¹⁵⁴ *Id.*

¹⁵⁵ See *India Pipe and Tube AR 17-18* IDM at 69.

¹⁵⁶ *Id.*

¹⁵⁷ See *Garg Tube Brief* at 9-11.

Therefore, we find that data for the 2009-2018 period is the appropriate time period to underlie the regression analysis in this review. This period balances Commerce's practice of using an annual time series data over a ten-year period, and as it happens, it includes data for 2009, a year in the period of the 2008-2009 financial crisis. Accordingly, because the 2009-2018 period spans 10 years, it sufficiently captures the nature of the relationship between global uneconomic capacity and the domestic price of HRC, without compromising the regression model's predicative power or undermining the reliability of the analysis. The purpose of the regression analysis is to quantify the impact of global excess capacity on HRC prices – thus, the HRC price points before, during, and after the onset of global steel overcapacity crisis are all critical pieces of information that contribute, collectively, in accurately informing that answer.

Capacity Utilization Rate

For these final results, Commerce finds it appropriate to assume an 80 percent counterfactual target capacity utilization rate. In a number of previous determinations, including the previous review of this proceeding, Commerce recognized that the actual annual global capacity utilization rates have been no greater than 80 percent since 2007.¹⁵⁸ In this review, with the exception of 2018 where the actual capacity utilization rate was approximately 81 percent, all the steel production and capacity data included in the DIP's data are from a period where the prevailing capacity utilization rate was substantially lower than the level that can be deemed "healthy"; in fact, the average capacity utilization rate during the period that underlies the DIP's regression analysis, *i.e.*, 2009-2018, was only 74 percent.¹⁵⁹ Commerce has in the past also endorsed an 80 percent capacity utilization rate as being sufficient for profitable operations of the steel industry and has used the 80 percent target in its Section 232 Investigation.¹⁶⁰ Further, in *WLP Korea AR 17-18*, Commerce noted that the conclusion in the report for Section 232 Investigation was that "... an 80 percent capacity utilization rate, sustained over a number of years, is one at which the steel market would be healthy."¹⁶¹ Accordingly, we have determined for these final results to rely on a target capacity utilization rate of 80 percent, which we continue to find more accurately reflects a historic capacity utilization rate.

Use of a five-year average of global production to calculate counterfactual global capacity

For these final results, Commerce continues its recent practice of calculating counterfactual global steel production capacity using a five-year average of global production during the most recent five-year period – in this review, during 2014-2018.¹⁶² In *HWR Korea AR 17-18*, as reiterated in *WLP Korea AR 17-18*, Commerce found:

¹⁵⁸ See, *e.g.*, *WLP Korea AR 17-18* IDM at 33; *HWR Korea AR 17-18* IDM at 38; and *India Pipe and Tube AR 17-18* IDM at 66.

¹⁵⁹ See 2nd PMS DQR at Exhibit 3.

¹⁶⁰ See *WLP Korea AR 17-18* IDM at 33; *HWR Korea AR 17-18* IDM at 39; and *India Pipe and Tube AR 17-18* IDM at 67; see also "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 Investigation).

¹⁶¹ See *WLP Korea AR 17-18* IDM at 33.

¹⁶² See *HWR Korea AR 17-18* IDM at 39-40; and *WLP Korea AR 17-18* IDM at 33-34.

... a more rational, industry-specific period of consideration for purposes of determining the economic health of the steel industry is one that takes into account five years' worth of data.

A five-year average represents a rational, medium term perspective for assessing the economic health of the industry which takes into consideration some fluctuation in the market and provides a reasonable basis on which to assess future prospects. A five-year average is frequently relied upon in the steel industry for statistical reporting to show trends in production and capacity. Five years is a typical timeframe for strategic planning to outline the operational and financial objectives of an enterprise, including in the steel industry. In addition, a five-year average for capacity utilization has been used in other steel policy initiatives of the U.S. government.

Thus, we find that a counterfactual global production capacity based on a longer, 5-year time frame is more consistent with steel industry planning and considerations, the capital-intensive nature of the steel industry, and susceptibilities to market fluctuations that accompany steel production, purchases, and sales.¹⁶³

Consistent with the rationale offered, more recently, in *HWR Korea AR 17-18* and *WLP Korea AR 17-18*, we find that the counterfactual global steel production capacity at a targeted 80 percent capacity utilization rate is best measured using the average of global production during the most recent five-year period, including the contemporaneous year, rather than on the production of steel during the contemporaneous year alone.

Application of a PMS Adjustment

We agree with the DIP that, similar to our approach in the previous review,¹⁶⁴ we should apply the PMS adjustment to both the reported HRC material costs in the pipe and tube that Garg Tube self-produced, as well as to the estimated HRC costs that are embedded in the costs of pipes and tubes that Garg Tube purchased from unaffiliated suppliers. As explained above, Commerce determines that a cost-based PMS existed in India during the POR concerning the cost of HRC. Therefore, Garg Tube as well as its unaffiliated pipe and tube suppliers, by virtue of the consumption of HRC to produce pipe and tube in the Indian market, are all equally affected by the same distortions in the prices of HRC that we have found to have existed in India during the POR. In the *Preliminary Results*, we found:

{t}he costs of HRC for self-produced pipe and tube and for Indian-produced mild steel and galvanized pipe sourced from unaffiliated parties constitute a predominant proportion of the total COP of pipes and tubes; thus, the alleged price distortion in the Indian HRC market may have had a significant impact on Indian production costs of pipe and tube.¹⁶⁵

¹⁶³ *Id.* (internal citations omitted).

¹⁶⁴ See *Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018*, 84 FR 33916 (January 16, 2020), and accompanying PDM at 15, 20-21, unchanged in *India Pipe and Tube AR 17-18*.

¹⁶⁵ See PMS Memorandum at 6 (internal citations omitted).

{the} resultant distortions of input costs flow directly to Garg Tube's COP of pipe and tube self-produced from HRC, as well as to its suppliers' COP for Indian-produced mild steel pipe and galvanized pipe, which are also made from HRC.¹⁶⁶

Garg Tube does not proffer a rationale as to why the distortion that we find to have existed during the POR concerning the price of HRC in India should be remedied through a PMS adjustment to the HRC costs in the self-produced pipe and tube, but not also to the HRC costs included in the costs of the purchased pipe and tube. There is no record evidence that the distortion that we found to have existed in the Indian HRC market affects Garg Tube differently or dissimilarly from other Indian producers of pipe and tube. Commerce's PMS determination in this review is that HRC prices 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 – thus, it is irrelevant to which Indian producer of pipe and tube this determination should be ascribed. Our practice supports this rationale. In *LDWP Korea LTFV*, Commerce stated,

{w}e 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.”¹⁶⁷

Rejected New Factual Information

Commerce disagrees with the DIP that by rejecting untimely new factual information, the DIP has been prejudiced in this review. Commerce properly rejected certain of the DIP's submissions because they contained what Commerce determined was untimely filed new factual information. In both of its letters, as detailed below, Commerce provided comprehensive explanations, citing relevant regulations and submission requirements, in support of rejecting the information that the DIP attempted to submit untimely on the record. Commerce possesses an inherent authority to administer the records of its proceedings by vigorously enforcing its regulations¹⁶⁸ – contrary to the DIP's claim, such actions cannot be considered an abuse of agency's discretion, provided the agency explains, as it did here, the reasons for its decisions, and how they are supported by the relevant regulations.

As a preliminary matter, the *Initiation Notice* clearly established that a submission of a PMS allegation pursuant to section 773(e) of the Act *and supporting new factual information*, must be made no later than 20 days after submission of initial responses to section D of the

¹⁶⁶ *Id.* at 8.

¹⁶⁷ See *LDWP Korea LTFV* IDM at 14.

¹⁶⁸ See, e.g., *PSC VSMPO-Avisma Corp. v. United States*, 688 F. 3d 751, 761 (Fed. Cir. 2012) (holding that the CIT's decision to remand Commerce's determination to reject an untimely-filed document was an improper intrusion into Commerce's power to apply its own procedures for the timely resolution of antidumping reviews).

questionnaire.¹⁶⁹ As such, the DIP was on notice that the deadline in this administrative review to submit factual information in support of a PMS allegation was December 2, 2019, 20 days after Garg Tube's submission of its section D response on November 12, 2019. Indeed, the DIP timely filed its PMS allegation, including over 7,500 pages of supporting documentation on December 2, 2019.¹⁷⁰

On December 20, 2019, Commerce accepted the DIP's PMS Allegation and invited interested parties to "submit comments and other factual information that rebuts, clarifies, or corrects the factual information contained in" the PMS Allegation, pursuant to 19 CFR 351.301(c)(2)(i).¹⁷¹ The deadline for the submission of other new factual information was January 13, 2020.¹⁷² In its acceptance letter, Commerce stated that, for each piece of new factual information submitted, the party submitting new factual information must "explain its relevance to the allegations and how the particular piece of factual information ties into factual information included in the PMS Allegation."¹⁷³

In its June 2, 2020, letter, Commerce rejected the DIP's January 13, 2020, submission that the DIP claimed "clarifies" its PMS Allegation. Specifically, Commerce discussed each exhibit in the DIP's January 13, 2020, submission in detail, and explained that the DIP: (1) did not identify an ambiguity in the PMS Allegation that it seeks to clarify; (2) did not explain the particular exhibit's relevance in connection with the clarification of the PMS Allegation; and (3) did not specifically explain how the particular piece of new factual information ties into factual information in the PMS Allegation.¹⁷⁴ In short, we found that the DIP's January 13, 2020, submission supplements the PMS Allegation with new facts, instead of providing new factual information that clarified the claims and facts set forth therein.

On June 10, 2020, and June 22, 2020, the DIP filed new factual information under 19 CFR 351.102(b)(21)(v) and 19 CFR 351.301(c)(5) to supplement its PMS Allegation.¹⁷⁵ On June 24, 2020, Commerce rejected the DIP's June 10, 2020, and June 22, 2020, submissions. Specifically, Commerce found that the information contained in these filings was submitted in support of an allegation, and thus is appropriately defined under 19 CFR 351.102(b)(21)(ii), not 351.102(b)(21)(v) as the DIP alleged. Commerce's regulations indicate that Commerce "will reject information filed under paragraph (c)(5) that satisfies the definition of information described in 351.102(b)(21)(i)-(iv)."¹⁷⁶ Accordingly, because the new factual information in the DIP's submissions satisfied the definition of information described in 19 CFR

¹⁶⁹ See *Initiation of Antidumping and Countervailing Duty Reviews*, 84 FR 33739, 33740 (July 15, 2019) (*Initiation Notice*) (emphasis added).

¹⁷⁰ See PMS Allegation.

¹⁷¹ See Commerce's Letter, dated December 20, 2019 (PMS Allegation Acceptance Letter).

¹⁷² See Commerce's Letter, dated December 30, 2019, which extended the deadline from January 6, 2020, to January 13, 2020.

¹⁷³ See PMS Allegation Acceptance Letter.

¹⁷⁴ See Commerce's Letter, "Administrative Review of the Antidumping Duty Order on Certain Welded Carbon Steel Standard Pipes and Tubes from India; 2018-19: Rejection of New Factual Information," dated June 2, 2020.

¹⁷⁵ See DIP's Letter, "Certain Welded Carbon Steel Standard Pipes and Tubes from India: Request for Opportunity to Submit New Factual Information Regarding Global Steel Capacity Utilization," dated June 10, 2020; see also DIP's Letter, "Certain Welded Carbon Steel Standard Pipes and Tubes from India: Submission of Other Factual Information," dated June 22, 2020.

¹⁷⁶ 19 CFR 351.301(c)(5).

351.102(b)(21)(ii), we found that the DIP's June 10, 2020 and June 22, 2020, filings contained untimely filed new factual information and should therefore be rejected.¹⁷⁷

Further, in its June 24, 2020, letter addressing the DIP's June 10, 2020, submission, Commerce found that it was not necessary to establish a deadline, pursuant to 19 CFR 351.301(c)(2)(v), for interested parties to submit information regarding the appropriate counterfactual global steel capacity utilization rate, because all interested parties were aware of this issue well before the deadline for the submission of the cost-based PMS Allegation in this review.¹⁷⁸ Specifically, notwithstanding the fact that Commerce first announced the use of 80 percent counterfactual global steel capacity utilization rate in the final results of the previous review, published on January 16, 2020, as detailed in Commerce's June 24, 2020, letter, the DIP was aware of this issue months before it made its PMS Allegation, on December 2, 2019. Namely, in the last completed administrative review of this proceeding, Garg Tube raised the issue concerning the counterfactual global steel capacity utilization rate at either 85 percent or 80 percent in its case brief dated August 27, 2019,¹⁷⁹ which was 97 days before the date of the DIP's submission of its cost-based PMS Allegation. There, the DIP submitted a rebuttal brief on September 3, 2019, discussing the counterfactual global steel capacity utilization rate.¹⁸⁰

Moreover, the same counterfactual global steel capacity utilization rate issues were raised and addressed in *Pipes and Tubes Turkey Final 2017-2018*, in which the DIP submitted its case brief on September 13, 2019, and its rebuttal brief on September 27, 2019.¹⁸¹ Thus, the DIP could have raised this issue with supporting new factual information at the time it filed a PMS Allegation in this review on December 2, 2019. Accordingly, there is no basis in the DIP's assertion that it was unaware of this issue and, therefore, did not have an opportunity to submit information to address Commerce's use of an 80 percent counterfactual capacity utilization rate for quantifying the impact of a cost-based PMS in this review.

Comment 2: Partial Adverse Facts Available for Non-Cooperative Unaffiliated Suppliers' Costs

DIP's Affirmative Arguments

- Commerce should apply partial adverse facts available (AFA) to all of Garg Tube's pipe purchases from unaffiliated pipe suppliers, including the non-examined ones.
 - That Commerce has attempted to solicit cost information indirectly from Garg Tube and directly from certain of its unaffiliated pipe suppliers in each of the last two administrative reviews, but has been unable to collect this information in both

¹⁷⁷ See Commerce's Letter, "Administrative Review of the Antidumping Duty Order on Certain Welded Carbon Steel Standard Pipes and Tubes from India; 2018-19: Rejection of New Factual Information," dated June 24, 2020.

¹⁷⁸ *Id.* at 4.

¹⁷⁹ *India Pipe and Tube AR 17-18* IDM at 2, n.2, 54-55, in which Nucor was listed as Independence Tube Corporation and Southland Tube, Incorporated.

¹⁸⁰ *Id.* at 2, n.3, 55- 63

¹⁸¹ See *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 3616 (January 22, 2020) (*Pipes and Tubes Turkey Final 2017-2018*), and accompanying IDM at 2, n.5, and Comment 2, in which Nucor was listed as Independence Tube Corporation and Southland Tube, Incorporated.

instances, which demonstrates that Garg Tube and its pipe suppliers are incapable or unwilling to provide critical information regarding their COP.¹⁸²

- As a large player in the Indian pipe market, Garg Tube should know or be able to acquire cost information concerning the pipe and tube which it purchases from its numerous suppliers.¹⁸³
- Since this same information was requested of Garg Tube in the previous review, both the respondent and its unaffiliated pipe suppliers were put on notice that similar information may be requested in the current review. The fact that they chose not to provide this information in the ongoing review even more clearly demonstrates an unwillingness to act to the best of their ability and illustrates a pattern of failing to cooperate with Commerce.¹⁸⁴
- Applying AFA only to the unaffiliated pipe producers from which cost information was sought in this administrative review would open this proceeding up to gamesmanship.¹⁸⁵
 - If Commerce limited its application of AFA to only the companies from which it sought cost information, then Garg Tube could coordinate with its pipe and tube suppliers, and submit cost information for only the companies for which it was beneficial to do so and not for the companies for which the AFA rate would be preferred.
 - Further, Garg Tube could submit a cost questionnaire for one of its pipe and tube suppliers and have those costs used as the surrogate for the costs of any suppliers for which Commerce did not solicit cost information individually.
 - This would allow Garg Tube to make a company-by-company decision of whether to submit cost information and choose which cost information it shares with Commerce. This would not provide Commerce with a complete view of the COP for Garg Tube's purchased pipe and tube.
- It is consistent with Commerce's established practice to apply AFA in situations where continuing to request the same information is futile, because the parties are repeat offenders that regularly refuse to provide the requested information.¹⁸⁶
 - Since Garg Tube and its unaffiliated pipe and tube suppliers have continued to refuse to provide this information, there is no value in continuing to request that Garg Tube's other pipe and tube suppliers provide this cost information.
- Commerce's established practice is to apply AFA where the agency lacks necessary cost information from unaffiliated suppliers and an AFA rate is necessary to induce cooperation. Just as the court envisioned in *Mueller* and Commerce's finding in *Stainless Steel Bar from India*, Garg Tube maintains

¹⁸² See DIP's Case Brief at 32-35 (citing *Pipe and Tube India AR 17-18* IDM at 37-39; and *Preliminary Results PDM* at 9-11).

¹⁸³ *Id.* at 35.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 36.

¹⁸⁶ *Id.* at 37 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review and Preliminary Intent To Rescind, in Part*; 2014, 82 FR 2317 (January 9, 2017), and accompanying PDM at 31).

sufficient control over its pipe and tube suppliers such that the application of AFA is justified.¹⁸⁷

- At a minimum, Commerce should continue to apply partial AFA to Garg Tube's non-cooperative unaffiliated suppliers' costs using the highest cost after applying a full PMS adjustment.
 - Commerce should use the production cost data for the product control number with the highest calculated COP *after* applying a PMS adjustment to Garg Tube's HRC costs.¹⁸⁸
 - Since the AFA selected by Commerce approximates the COP of pipe and tube produced by Garg Tube's unaffiliated suppliers, not using an AFA that accounts for the PMS in the Indian HRC market would result in a substantial understatement of such costs.¹⁸⁹
 - The use of partial AFA information that does not account for the full effects of Commerce's PMS determination would fail to deter future non-cooperation by Garg Tube's unaffiliated suppliers.¹⁹⁰

Garg Tube's Affirmative Arguments

- Commerce should reverse its decision to apply partial AFA to certain suppliers' cost information missing from the record, or, alternatively, implement an established partial AFA methodology.
 - Garg Tube is not affiliated with any of the suppliers in question; the companies do not exercise any control over the operations of each other, through a close supplier relationship or any other indicia of control specified in 19 CFR 351.102(b)(3); notwithstanding its attempts to obtain cost information, Garg Tube has no rights or ability to obtain confidential cost information from the suppliers in question.¹⁹¹
 - Garg Tube sent emails and follow-up emails to the three suppliers Commerce identified, requesting that they provide COP information sought by Commerce, but no suppliers responded to these emails.¹⁹²
 - Accordingly, Garg Tube acted to the best of its ability to comply with Commerce's request for the suppliers' cost data. Therefore, Garg Tube should not be penalized for the non-cooperation of its unaffiliated suppliers that run their businesses independently of Garg Tube, are not beholden to Garg Tube for their survival, and have no reason to provide cost data to their customer.¹⁹³

¹⁸⁷ *Id.* at 38-40 (citing *Pipe and Tube India* AR 17-18 IDM at 36-41; *Mueller Comercial de Mex., S. de R.L. de C.V. v. United States*, 753 F.3d 1227, 1233-36 (CAFC 2014) (*Mueller*); and *Stainless Steel Bar from India: Preliminary Results of Antidumping Duty Administrative Review; 2017- 2018*, 84 FR 15582 (April 16, 2019) (*Stainless Steel Bar from India*), and accompanying PDM at 7-10).

¹⁸⁸ *Id.* at 41 (emphasis added).

¹⁸⁹ *Id.* at 42.

¹⁹⁰ *Id.* at 42-43 (citing, e.g., sections 776(a) and (b) of the Act; SAA at 870; *Maverick Tube Corp. v. United States*, 857 F.3d 1353, 1360 (CAFC 2017); and *Nan Ya Plastics Corp. v. United States*, 810 F.3d 1333, 1348 (CAFC 2016)).

¹⁹¹ See GT's Case Brief at 13-14.

¹⁹² *Id.* at 14.

¹⁹³ *Id.* at 14.

- Commerce should excuse cooperative mandatory respondents from reporting unaffiliated uncooperative suppliers' cost information and to apply, instead, as facts available, the cost data of the cooperative respondent, i.e., Garg Tube.¹⁹⁴
- Alternatively, instead of basing AFA on the highest control number-specific cost, as it has done here, Commerce should use 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, as applied in last administrative review and several other determinations under the same circumstances.¹⁹⁵

DIP's Rebuttal Arguments

- Commerce should Continue to apply partial AFA regarding Garg Tube's pipe and tube purchases from unaffiliated suppliers.
 - Garg Tube fails to tackle Commerce's explicit reasoning and explanation in its *Preliminary Results* that address Garg Tube's arguments.
 - Commerce already explained that its decision to apply AFA to account for Garg Tube's suppliers' non-cooperation is lawful given the nature of the information withheld, and reasonable in that it induces Garg Tube to source from cooperative suppliers.¹⁹⁶
 - With respect to the AFA methodology applied in the *Preliminary Results* of this review, Commerce specifically explained why a different methodology from that adapted in the last review is appropriate.¹⁹⁷
 - As a leading manufacturer and exporter of pipe and tube, Garg Tube maintains sufficient control over its pipe and tube suppliers such that it could induce them to cooperate.¹⁹⁸
 - Were Commerce to lower the effectiveness of its partial AFA methodology in the final results, it would be making a decision that is contrary to the purposes of the AFA provision, as well as past practice.¹⁹⁹
 - Commerce should actually extend its application of AFA beyond those suppliers from which it requested cost information, and adjust its application of partial AFA after applying a PMS adjustment to Garg Tube's costs or, at a minimum, make this adjustment to partial AFA as to the non-cooperative suppliers.²⁰⁰

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 15-16 (citing *Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 33916 (July 16, 2019) (*India Pipe and Tube AR 17-18 Prelim*), and accompanying PDM at 17; *Stainless Steel Bar from India: Final Results of Antidumping Duty Administrative Review; 2018-2019*, 85 FR 74985 (November 24, 2020) (*SS Bar India AR 18-19*), and accompanying IDM at 30; and *Glycine from India: Final Determination of Sales at Less Than Fair Value*, 84 FR 18487 (May 1, 2019) (*Glycine India LTFV*), and accompanying IDM at Comment 1).

¹⁹⁶ See DIP's Rebuttal Brief at 14-16 (citing *Preliminary Results* PDM at 9-11).

¹⁹⁷ *Id.* at 16 (citing *Preliminary Results* PDM at 9-11).

¹⁹⁸ *Id.* at 16-17.

¹⁹⁹ *Id.* at 17 (citing *Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007), and accompanying IDM at Comment 7).

²⁰⁰ *Id.* at 17-18.

Garg Tube's Rebuttal Arguments

- Commerce should not apply partial AFA to all of Garg Tube's pipe purchases from non-examined unaffiliated suppliers.
 - Garg Tube attempted to obtain COP information for pipe and tube that it purchased from three suppliers Commerce identified. Since Garg Tube is in no way connected, however, to any of the suppliers in question, it has no legal right or ability to obtain confidential cost information from them.²⁰¹
 - For the remaining non-examined unaffiliated suppliers, Commerce did not solicit cost information. Therefore, not soliciting information from the rest of the unaffiliated suppliers does not establish that they have not cooperated in providing information, as it is incorrect to presume those suppliers cannot or will not provide cost information without soliciting the information in first place.²⁰²
 - Commerce has correctly applied in the *Preliminary Results* neutral facts available to the non-examined unaffiliated input suppliers and should continue to do so for the final results.²⁰³
 - The DIP's claims that Garg Tube controls its suppliers, and is able to coordinate with certain of them to manipulate which supplier's cost data is being submitted for the benefit of Garg Tube's result, or that certain suppliers evade AD duties through sales to Garg Tube, are all baseless speculation, lacking evidence, and should be rejected by Commerce.
 - Garg Tube and its suppliers do not exercise any control over the operations of each other, through a close supplier relationship or any other indicia of control specified in 19 CFR 351.102(b)(3). All of the unaffiliated suppliers run their businesses independently of Garg Tube, are not beholden to Garg Tube for their survival, and have no reason to provide cost data to Garg Tube.²⁰⁴
- If Commerce continues to rely on AFA, it should use its well-accepted methodology to apply partial AFA to Garg Tube's non-cooperative unaffiliated pipe suppliers.
 - Instead of basing AFA on the highest control number-specific cost, as it has done here, Commerce should use Garg Tube's acquisition costs for the supplier-produced pipe and tube, adjusted based on Garg Tube's home market sale on which it realized the largest loss, as applied in last administrative review and several other determinations under same circumstances.²⁰⁵

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,²⁰⁶ and that the AFA methodology selected in the *Preliminary Results* is appropriate, as discussed below. Further, for these final results, we find it appropriate to apply a PMS adjustment to HRC cost prior to the derivation and application of AFA to certain

²⁰¹ See GT's Rebuttal Brief at 25-26.

²⁰² *Id.* at 26.

²⁰³ *Id.* (citing *India Pipe and Tube AR 17/18 PDM* at 11).

²⁰⁴ *Id.* at 27-28.

²⁰⁵ *Id.* at 29-30 (citing *India Pipe and Tube AR 17-18 Prelim PDM* at 17, unchanged in *India Pipe and Tube AR 17-18*; *SS Bar India AR 18-19 IDM* at 30; and *Glycine India LTFV IDM* at Comment 1).

²⁰⁶ We are withholding the identity of these entities as this information constitutes business proprietary information claimed by Garg Tube in this review.

suppliers' missing COPs. We also find that it is not appropriate to apply partial AFA to determine the costs for those suppliers from which Commerce did not request the COP information. For those suppliers, we used Garg Tube's acquisition costs as the COP for the purchased pipe and tube.

The Act directs Commerce to calculate COP and CV on the basis of actual production costs.²⁰⁷ 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 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 COP and constructed value.”²⁰⁸ 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.²⁰⁹ 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.²¹⁰ 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 Indian producers, Commerce limited its request to Garg Tube to obtain the COP information from certain unaffiliated suppliers, and also subsequently issued direct requests to these same suppliers to provide directly to Commerce the cost information concerning the merchandise they sold to Garg Tube.²¹¹ The suppliers in question refused to provide their COP information either to Garg Tube or directly to Commerce as requested.²¹² In the *Preliminary Results*, pursuant to section 776(a)(1) of the Act, we determined that these unaffiliated suppliers' respective cost

²⁰⁷ 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.”)

²⁰⁸ See SAA at 835.

²⁰⁹ See *Preliminary Results* PDM at 9-10.

²¹⁰ *Id.*

²¹¹ *Id.* (citing Commerce's Letter to Garg Tube, dated December 19, 2019 at 12-13; and Commerce's Letters, Supplier Questionnaires, both dated May 5, 2020).

²¹² *Id.* at 10 (citing January 23, 2020 SQR at 38-39 and Exhibits S1-D-5(a), (b), and (c)).

information is necessary information that is missing from the record.²¹³ Pursuant to section 776(a)(2)(A)-(C) of the Act, we found that each of the suppliers withheld cost information that was requested by Commerce, failed to provide such information within our deadline, and significantly impeded the review.²¹⁴ Further, 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 and repeated requests for information, and that it was appropriate to resort to partial facts available with adverse inferences regarding said suppliers' missing cost information, pursuant to section 776(b) of the Act.²¹⁵

Our decision in the *Preliminary Results* to rely on partial AFA for missing cost information from certain unaffiliated suppliers from which Commerce sought COP data is consistent with our practice, under identical circumstances, including the last administrative review of this proceeding.²¹⁶ Notably, as Commerce reasoned in *SS Bar from India*,²¹⁷ without the unaffiliated suppliers' costs, we do not have the appropriate cost data to calculate an accurate weighted-average dumping margin. Specifically, as we explained in the previous administrative review, when Garg Tube, for example, "simply resells the pipe and tube produced by the unaffiliated suppliers, we cannot accurately determine which of Garg Tube's home market sales were {made} 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, {thus} are appropriate {for establishing the} normal value."²¹⁸ In such circumstances, the normal value for comparison to U.S. sale prices of product manufactured by the suppliers in question may be compromised. Further, as we explained in the previous administrative review, without the unaffiliated suppliers' costs, we cannot accurately calculate CV.²¹⁹ As such, adopting the explanation we provided in the last administrative review for these final results, "the absence of necessary {but missing} unaffiliated suppliers' cost data on the record precludes us from calculating {an} accurate dumping margin for Garg Tube {with respect to} U.S. sales of pipe and tube supplied by {these entities}."²²⁰ Here, as we found in the previous review, "the U.S. sales represented by the merchandise sourced from the 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."²²¹ In the previous review, Commerce explicitly found:

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ See, e.g., *Glycine India LTFV* IDM at Comment 1; and *India Pipe and Tube AR 17-18* IDM at Comment 2.

²¹⁷ 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) (*SS Bar from India*), and accompanying IDM at 16.

²¹⁸ See *India Pipe and Tube AR 17-18* IDM at 37 ("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.").

²¹⁹ *Id.* ("Without {supplier's} actual costs of production underlying {the} CV comparisons, it is unknown whether and to what extent the CV for such comparisons is accurate.").

²²⁰ *Id.* at 37-38.

²²¹ *Id.* at 38-39; see also Garg Tube's Letter, "Welded Carbon Steel Standard Pipes and Tubes from India: Garg Tube 2nd Supplemental Questionnaire Response," dated June 9, 2020 (submitting, electronically and separately under barcode 3983219-10, the revised U.S. sales database, providing the identification of a manufacturer for each reported U.S. sale).

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 trade.²²²

In this review, as we found previously and reiterated 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."²²³ This conundrum prevents a fair comparison between normal value and U.S. price and, consequently, compromises an accurate calculation of a weighted-average dumping margin for Garg Tube.

Consistent with the rationale offered by the Court of Appeals for the Federal Circuit,²²⁴ Commerce fully explained its approach in the previous review, noting that "an application of partial AFA for the missing suppliers' actual costs (instead of relying on Garg Tube's cost experience as neutral facts available, {as Garg Tube argues}) {is} necessary, in order to effectuate a proxy that reasonably reflects costs associated with the production of merchandise {under consideration}..."²²⁵ As it did in the previous review,²²⁶ this explanation supports Commerce's findings in the *Preliminary Results* of this review:

... in this administrative review, as partial adverse facts available, we have used the production cost data for the product control number with the highest calculated COP as partial AFA for the missing cost data for these unaffiliated suppliers' pipes and tubes. We find that this approach results in an appropriate rate for Garg Tube because it is applied to the missing cost information, it relies upon the cost data provided by Garg Tube, and it provides a stronger inducement for future cooperation from these unaffiliated suppliers. We find that this approach yields an estimated COP for these unaffiliated suppliers in question and prevents the use of an acquisition price which may not be reflective of these suppliers' COP of in-scope merchandise.²²⁷

Commerce's reliance on partial AFA to calculate the unaffiliated suppliers' costs was in accordance with law. As we explained in the previous review and continue to find here, the controlling judicial precedent for the circumstances at hand is the decision in *Mueller*.

²²² *Id.* (citing 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").

²²³ *Id.*

²²⁴ See, e.g., *F.Lii de Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (CAFC 2000).

²²⁵ See *India Pipe and Tube AR 17-18 IDM* at 38-39.

²²⁶ *Id.*

²²⁷ See *Preliminary Results PDM* at 11 (citations omitted).

The Court {in *Mueller*} 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 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.²²⁸

In keeping with the rationale offered by *Mueller*, in the *Preliminary Results*, Commerce 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, on balance, is consistent with our statutory and regulatory obligations to ensure an appropriate result, while bearing in mind the need for inducement measures in situations where the same interested parties have continued to be uncooperative in these proceedings.²²⁹

In referencing the explanation that we provided in the previous administrative review, we continue to maintain here that

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.**'²³⁰

Similar to our finding in the previous review, on the basis of the above discussion, the application of partial AFA is warranted to the missing suppliers' actual cost information given (1) a substantial portion of POR U.S. sales being represented by the merchandise sourced from the unaffiliated suppliers in question, and 2) the predominant interest in ensuring an accurate calculation of the weighted-average dumping margin for Garg Tube in this review.²³¹

Here, just as we found previously,²³² concerning inducement considerations envisioned in *Mueller*, it is reasonable to assume that Garg Tube maintained sufficient control over the

²²⁸ See *India Pipe and Tube AR 17-18 IDM* at 39 (citing *Mueller*, 753 F.3d 1227, 1233-36).

²²⁹ See *Preliminary Results PDM* at 11 (citations omitted).

²³⁰ See *India Pipe and Tube AR 17-18 IDM* at 39 (retaining emphasis in original and quoting from *Mueller*, 753 F.3d 1227, 1233, 1236).

²³¹ *Id.*

²³² *Id.* at 40.

suppliers in question – it sourced a substantial volume of pipe and tube for Garg Tube’s export sales to the United States and (with the exception of one entity that directly exported a small volume of merchandise under consideration to the United States) the record does not suggest that the other two suppliers in question directly exported subject merchandise to the United States.²³³

On the basis of our reasoning adopted from the previous review, we find that using Garg Tube’s proxy for unaffiliated suppliers’ COPs “would allow the unaffiliated supplier{s} to conceal {their} true production costs of subject merchandise while continuing to sell {it} in the U.S. market by funneling such merchandise through Garg Tube.”²³⁴ Commerce interpreted the Court’s decision in *Mueller* to imply that, “as a tactic to force the supplier to cooperate, an exporter that had an existing relationship with an unaffiliated supplier could refuse 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 {case}, the United States.”²³⁵ Similar to the rationale we espoused in the previous review,²³⁶ here, notwithstanding Garg Tube’s efforts to obtain the actual COPs of pipe and tube from the suppliers in question, we find that Garg Tube failed to put forth its maximum efforts in inducing them to cooperate. Specifically, with respect to all three unaffiliated suppliers in question, Garg Tube merely communicated to them, in a single instance, that their refusal to provide requested cost data could affect Garg Tube’s business relationship with them.²³⁷ Garg Tube’s communications only held out a general inference of a potential adverse effect on the business relationships.²³⁸ 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.”²³⁹ In keeping with the rationale we offered previously, we find that “the application of partial AFA to Garg Tube has a direct effect on the suppliers in question, precisely because ... any hinderance to Garg Tube’s export sales to the United States, caused by the increase in its AD 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.”²⁴⁰ Based on this discussion, as we indicated in the *Preliminary Results*, the application of partial AFA to Garg Tube is necessary to induce cooperation by the Garg Tube suppliers in future segments and induces Garg Tube to source from suppliers who will cooperate with Commerce’s request for suppliers’ actual COP information.²⁴¹

Garg Tube argues that Commerce should resort to the methodology used in the last administrative review for the derivation of the AFA information used in this review. Garg Tube ignores, however, the rationale we offered in the *Preliminary Results*, explaining the reason for

²³³ See Memorandum dated July 19, 2019 (placing on the record U.S. Customs and Border Protection data on U.S. imports of pipe and tube during the POR).

²³⁴ See *India Pipe and Tube AR 17-18* IDM at 40.

²³⁵ *Id.*

²³⁶ *Id.* at 40-41.

²³⁷ See January 23, 2020 SQR at Exhibits S1D-5(a), S1D-5(b), and S1D-5(c).

²³⁸ See *India Pipe and Tube AR 17-18* IDM at 40-41.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ See *Preliminary Results* PDM at 11.

adopting a different methodology in choosing the AFA information in this review. In the *Preliminary Results*, Commerce specifically stated:

In the last administrative review, as partial adverse facts available, we calculated surrogate costs for the uncooperative unaffiliated suppliers' pipes and tubes based on Garg Tube's acquisition costs for the supplier-produced pipes and tubes 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 applied this methodology to induce cooperation from unaffiliated suppliers of in-scope merchandise of which we requested cost information. In this administrative review, even after we applied this methodology as partial adverse facts available in the prior review, unaffiliated suppliers continue to fail to cooperate with our request for information. Therefore, in this administrative review, as partial adverse facts available, we have used the production cost data for the product control number with the highest calculated COP as partial AFA for the missing cost data for these unaffiliated suppliers' pipes and tubes.²⁴²

This language makes it clear that, in contrast to the methodology used in the last review to derive the AFA information, the methodology we used in this review is sufficiently adverse to Garg Tube's interests, given that Garg Tube continues to source pipe and tube from suppliers who refuse to cooperate with Commerce's requests for actual COP information, but repeatedly failing to induce cooperation from each of the suppliers from which Commerce sought this information. Garg Tube does not explain why the AFA methodology on which Commerce relied in this review is unreasonable given Commerce's explanation in the *Preliminary Results* and the facts prevalent in this and in the immediately preceding review.

We disagree with the DIP that Commerce should apply partial AFA to Garg Tube's pipe and tube purchases from *all* unaffiliated pipe suppliers, including the non-examined ones. As a preliminary matter, Commerce has no practice in the AD proceedings, and the DIP cites none, of applying AFA to entities from which Commerce did not request any information. Commerce is prohibited from reaching a determination under sections 776(a)(2)(A)-(C) of the Act because it cannot find that the non-examined unaffiliated suppliers withheld cost information or significantly impeded the review; subsequently, Commerce is prohibited from reaching a determination under section 776(b) of the Act because these entities cannot be shown to have failed to cooperate by not acting to the best of its ability to comply with a request for information. It is for these reasons that Commerce found in the *Preliminary Results* the following:

For Garg Tube's unaffiliated suppliers of pipes and tubes for which Commerce did not request cost information, such cost information is missing from the record of this review. Accordingly, as neutral facts available for these preliminary results, Commerce has used the reported acquisition costs for pipes and tubes that Garg Tube sourced from the suppliers in question.²⁴³

²⁴² See *Preliminary Results* PDM at 10-11.

²⁴³ *Id.* at 11.

We also find no basis in the DIP's claim that Garg Tube is in the position to manipulate which supplier's cost data can be submitted for the benefit of Garg Tube's result. There is no record information that shows which of Garg Tube's suppliers' actual COP may be beneficial or detrimental to Garg Tube's results in this review. Further, Garg Tube is not in the position to control which specific suppliers Commerce will identify for individual examination for purpose of soliciting their COPs.

Lastly, Commerce agrees with the DIP that Commerce should use the production cost data for the product control number with the highest calculated COP after applying the cost-based PMS adjustment to the HRC costs. COPs that do not account for the PMS in the Indian HRC market, and thus do not reflect costs as adjusted for the PMS, would result in a substantial understatement of the COP of pipe and tube produced by Garg Tube's unaffiliated suppliers, and would be counterproductive in deterring future non-cooperation by Garg Tube's unaffiliated suppliers. Further, Commerce's practice on this issue supports the use of a PMS adjusted COP for the unreported COP, in light of the cost-based PMS finding in this review that pertains to such costs in the Indian market.²⁴⁴

VI. 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: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

²⁴⁴ See *India Pipe and Tube AR 17-18* IDM at Comment 3.