




UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-580-870
Investigation
Public Document
E&C Operations VI: DS, VC, SB
OA: TS, SH

July 10, 2014

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

FROM: Gary Taverman 
Senior Advisor
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in the Less than Fair Value Investigation of Certain
Oil Country Tubular Goods from the Republic of Korea

SUMMARY

The Department of Commerce (the Department) has analyzed the comments submitted by the petitioners¹ and the mandatory respondents² in the antidumping investigation of certain oil country tubular goods (OCTG) from the Republic of Korea (Korea). Following issuance of the preliminary determination, verification, and the analysis of the comments received, we made changes to the margin calculation for the final determination. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of issues for which we received comments and rebuttal comments from parties.

General Issues

- Comment 1: Constructed Value Profit
- Comment 2: The Department Should Base Its Final Determination on an Objective Assessment of the Facts and Law
- Comment 3: Whether to Reject Certain Submissions Containing New Factual Information
- Comment 4: Denial of Offsets for Non-Dumped Sales With the Average-to-Transaction Method
- Comment 5: Application of the Average-to-Transaction Method to All U.S. Sales

¹ Petitioners are United States Steel Corporation (U.S. Steel), Maverick Tube Corporation (Maverick), and Boomerang Tube, Energex Tube, a division of JMC Steel Group, Northwest Pipe Company, Tejas Tubular Products, TMK IPSCO, Vallourec Star, L. P., and Welded Tube USA Inc. (Boomerang Tube, *et al.*).

² The mandatory respondents are NEXTEEL Co. Ltd (NEXTEEL) and Hyundai HYSKO (HYSKO).



- Comment 6: Differential Pricing Analysis: Thresholds for the Results of the Ratio Test
Comment 7: Differential Pricing Analysis: Calculations of the Ratio Test

Issues Pertaining to HYSCO

- Comment 8: Basis for U.S. Price
Comment 9: HYSCO's International Freight Expenses
Comment 10: Application of Total or Partial Adverse Facts Available to HYSCO's Reported Costs
Comment 11: HYSCO's Domestic Inland Freight Expenses
Comment 12: Raw Material Transportation Costs Provided by HYSCO's Affiliate
Comment 13: Rental Fees Paid to HYSCO's Affiliate
Comment 14: HYSCO's Packing Expenses
Comment 15: Whether to Reject One of HHU's Minor Corrections
Comment 16: Whether to Allocate HHU's Property Taxes to OCTG Sales or Sales of All Products
Comment 17: HYSCO's Warranty Expenses
Comment 18: Treatment of HYSCO's Non-Prime Merchandise
Comment 19: Adjustments to HYSCO's General and Administrative Expenses

Issues Pertaining to NEXTEEL

- Comment 20: Affiliation and Application of the Major Input Rule
Comment 21: Propriety of Use of Adverse Facts Available for NEXTEEL
Comment 22: NEXTEEL's Warranty Expenses
Comment 23: NEXTEEL's Warehousing Expenses
Comment 24: NEXTEEL's Direct Sales to U.S. Customers
Comment 25: Alleged Middleman Dumping
Comment 26: Date of Sale
Comment 27: The Department Should Apply AFA to NEXTEEL's Direct Material Costs
Comment 28: The Department Should Adjust NEXTEEL's Reported Data to Correct for the Unreconciled Difference
Comment 29: The Department Should Exclude the Transferred Quantity of OCTG from NEXTEEL's Cost File
Comment 30: The Department Should Increase NEXTEEL's TOTCOM for Costs Related to Test Production
Comment 31: The Department Should Increase NEXTEEL's TOTCOM for Expenses Incurred by NEXTEEL's Wholly-Owned Subsidiary NEXTEEL QNT
Comment 32: The Department Should Rely on Facts Available for NEXTEEL's Heat Treatment Costs
Comment 33: The Department Erred in Adjusting NEXTEEL's Reported Costs for Apparent Minor Differences in Scrap Value
Comment 34: The Department Should Accept NEXTEEL's Reported General and Administrative Expense Ratio Without Adjustment
Comment 35: Miscellaneous Comments on the Department's Cost Verification Report

Issues Pertaining to Non-Selected Respondents

Comment 36: Respondent Selection and Basis for the Weighted-Average Dumping Margin
Assigned to Non-Selected Respondents

Comment 37: Critical Circumstances

Comment 38: Incorporating Arguments by Reference

BACKGROUND

The Department published the preliminary determination in the *Federal Register* on February 25, 2014.³ The period of investigation (POI) is July 1, 2012 through June 30, 2013. Subsequent to the *Preliminary Determination*, the Department issued questionnaires to NEXTEEL's customer, NEXTEEL's hot-rolled supplier, and HYSCO's U.S. customer, and supplemental questionnaires to NEXTEEL's customer and HYSCO's U.S. customer. The Department also issued additional supplemental questionnaires to NEXTEEL and HYSCO. Between April 21, 2014, and June 4, 2014, the Department conducted verifications in Korea, Texas, and New Jersey, of the sales, cost, and further manufacturing information submitted by NEXTEEL, NEXTEEL's customer, NEXTEEL's customer's affiliate, NEXTEEL's hot-rolled supplier, HYSCO, Hyundai HYSCO USA, Inc. (HHU), and HYSCO's U.S. customer.

In accordance with 19 CFR 351.309(c)(1)(i), we invited parties to comment on our preliminary determination. On June 18, 2014, U.S. Steel, Maverick, Boomerang Tube, *et al.*, HYSCO, NEXTEEL, AJU Besteel Co. Ltd. (AJU Besteel), Husteel Co., Ltd. (Husteel), ILJIN Steel Corporation (ILJIN), and SeAH Steel Corporation (SeAH) submitted case briefs. Except for ILJIN, each of these parties submitted rebuttal briefs on June 23, 2014. We held a public hearing on June 26, 2014.

Discussion of the Issues:

Comment 1: Constructed Value Profit

Neither HYSCO nor NEXTEEL has a viable home or third-country market, and, thus, normal value (NV) is based on constructed value (CV). For the preliminary determination, we calculated HYSCO's CV profit in accordance with section 773(e)(2)(B)(i) of the Tariff Act of the 1930, as amended (the Act), using the profit from HYSCO's non-OCTG pipe products; for NEXTEEL under section 773(e)(2)(B)(iii) of the Act, we calculated CV profit based the 2012 fiscal year (FY) audited financial statements for six Korean OCTG producers. We stated at the preliminary determination that we would continue to explore other possible options for CV profit.

U.S. Steel contends that the Department should not base CV profit on HYSCO's or NEXTEEL's home market sales of non-OCTG pipe or the financial statements of the six Korean OCTG producers, respectively. According to U.S. Steel, non-OCTG pipe products cannot be

³ See *Certain Oil Country Tubular Goods From the Republic of Korea: Negative Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 79 FR 10480 (February 25, 2014) (*Preliminary Determination*).

considered as being in the same general category of products as OCTG for purposes of calculating CV. Likewise, the financial data of the six Korean producers' do not provide a reasonable reflection of what the profit would be for sales of OCTG in a viable home or third-country market. Moreover, the financial data of these six Korean OCTG producers are based on sales of OCTG and non-OCTG pipes, sales of non-pipe products, sales below cost, and sales in the U.S. market. U.S. Steel argues that, for the final determination, the Department should calculate CV profit for both HYSCO and NEXTEEL based on the financial data of Tenaris S.A. (Tenaris) because it is the best information available regarding the profit that these respondents would earn if it had a viable home or third-country market for OCTG. Tenaris is a world-wide producer of OCTG.

Regarding the same general category of product, U.S. Steel asserts that OCTG is a much more specialized and a higher value-added product with demanding specifications that few producers are able to meet. As such, non-OCTG pipe cannot be considered as being in the same general category of products as OCTG. OCTG is used in applications that are normally more demanding than those in which other tubular products are used. OCTG must be able to withstand significant forces, pressures, and harsh environments while drilling a well and producing oil and gas. As a result, OCTG is produced from steel substrate that has different physical, mechanical, and chemical characteristics than the steel substrate used to produce other tubular products. The production process and testing procedures for OCTG are more rigorous than those for other tubular products. Because of the uniqueness of OCTG, the producers are able to sell OCTG at a significant premium over other tubular products.

Furthermore, OCTG is sold in different markets that have different forces driving demand, price, and profitability. As support, U.S. Steel proffers that the International Trade Commission (ITC) found demand for OCTG is largely driven by the level of activity in the oil and gas industry, whereas demand for standard pipe is driven primarily by nonresidential construction spending and, to a lesser extent, residential construction spending. Because there is little, if any, oil and gas exploration and production (E&P) in Korea, demand for line pipe in Korea is driven primarily by the level of construction. Accordingly, U.S. Steel asserts that end users in the construction sector are generally unable or unwilling to pay the price premium paid by end users of higher value-added steel products like those in the oil and gas E&P sector. Hence, the Korea Iron & Steel Association has stated that Korean steel producers are no longer earning a "visible profit" on conventional products such as those dependent on the construction industry. According to U.S. Steel, while sales of OCTG are generally more profitable than sales of standard pipe and line pipe – irrespective of cycles in the markets – sales of OCTG are especially more profitable relative to standard and line pipe sales in years when construction activity is declining or stagnant. Thus, while non-OCTG pipe normally should not be considered in the same general category of products as OCTG for purposes of calculating CV profit, this divergence in market cycles makes it particularly improper to do so in the instant investigation.

Next, U.S. Steel argues that HYSCO's sales of non-OCTG pipe are also inappropriate for use in calculating CV profit because they include sales below cost. According to U.S. Steel, the CAFC upheld the Department's interpretation of the statute as expressing "a general preference for exclusion" of sales below cost when calculating CV profit where the data necessary to make such an exclusion are "readily available." Hence, U.S. Steel points to the 2011-2012

administrative review of the antidumping duty on welded standard pipe from Korea, where the Department has determined that more than 20 percent of HYSCO's home market sales of certain products were made below cost. Given the period of review for that case covers 11 months of FY 2012, there is no question that HYSCO's reported home market sales of non-OCTG pipe include sales made below cost.

Next, U.S. Steel asserts that the Department should not base CV profit on HYSCO's line pipe sales in Korea because, as previously discussed, demand for line pipe in Korea is driven primarily by the construction industry rather than the oil and gas E&P industry. According to U.S. Steel, even in an economy where there is a significant amount of oil and gas activity, an increase in such activity will not necessarily increase demand for line pipe in the same manner as OCTG, because unlike end users of OCTG, end users of line pipe may substitute other products or services for line pipe. For example, oil and gas may be transported in tankers by truck, rail or waterway instead of through pipelines. In addition, in certain lower-pressure applications, steel line pipe must compete directly with plastic pipe. Furthermore, line pipe may be "dual stenciled" as meeting both the American Petroleum Institute (API) 5L specifications for line pipe and the American Society for Testing Materials specifications for standard pipe.⁴ U.S. Steel asserts that dual stenciled line pipe is often sold to the construction industry and used for standard pipe applications.⁵ Notwithstanding that line pipe is sold for structural purposes, HYSCO's sales of line pipe in the home market include non-prime pipe which was generated during the production of line pipe, and sold to home market customers for structural purposes.⁶

Regarding the Korean financial statements used to calculate CV profit for NEXTEEL, U.S. Steel analyzed the financial data of each of these six OCTG producers. For these Korean OCTG producers, they found sales dominated by standard pipe and line pipe sold to the construction industry, no viable home or third-country market for OCTG sales, and sales of steel products other than steel pipe (*e.g.*, color coated and galvanized flat-rolled steel products).⁷ U.S. Steel also points to Husteel where the financial statements show a sharp decrease in domestic sales of pipe from 325,307 million won in 2011 fiscal year to 250,864 million won in 2012 fiscal year.⁸ In addition, they point to ILJIN's financial statements that show a significant portion of its pipe products are in the power generation, automotive, and mechanical engineering industries,⁹ and where all of its sales of OCTG were sold to the United States.¹⁰

In summary, U.S. Steel asserts that the six Korean producers' profit margin largely reflects sales

⁴ See Letter from U.S. Steel to the Department regarding NEXTEEL's March 6, 2014 section D supplemental questionnaire response, dated March 21, 2014 (U.S. Steel's March 21, 2014 Comments), at Exhibit Q (Public Version).

⁵ *Id.*

⁶ See Letter from HYSCO to the Department, "Cost Verification Exhibits," dated April 11, 2014 (HYSCO Cost Verification Exhibits), at Exhibit 15 (APO Document) and Memorandum to the File through Robert James, Program Manager, AD/CVD Operations, Office VI, from Deborah Scott, Steve Bezirgianian, and Victoria Cho, International Trade Compliance Analysts, AD/CVD Operations, Office VI, "Verification of Hyundai HYSCO's Sales Responses in the Antidumping Duty Investigation of Certain Oil Country Tubular Goods from the Republic of Korea," dated June 5, 2014 (HYSCO Sales Verification Report) at 25 (Public Version).

⁷ See U.S. Steel Brief at 5-6.

⁸ See Husteel's September 17, 2013 section A response at exhibit A-15 (Public Version).

⁹ See ILJIN's September 17, 2013 section A response at exhibit A-12 (Public Version).

¹⁰ See ILJIN's September 17, 2013 section A response at exhibit A-12 (Public Version).

of non-OCTG pipes cannot be considered as being in the same general category of products as OCTG for purposes of calculating CV profit. Moreover, U.S. Steels asserts that because of the slump in the Korean construction industry, the consumption of welded pipe remained flat, and the construction companies are not purchasing standard pipe. This results in standard pipe products having low profit margins. Thus, U.S. Steel asserts that, for all the reasons cited above, the Department should not base CV profit on the six Korean OCTG producers. Instead, the Department should calculate CV profit based on the financial data of Tenaris, a world-wide producer of OCTG products.

U.S. Steel states that when calculating CV profit for a respondent based on another company's financial statements, the Department examines the following factors: (1) the similarity of the potential surrogate company's business operations and products to the respondent's production and sales of the subject merchandise; (2) the extent to which the financial data of the surrogate company reflects sales in the United States as well as the home market; and, (3) the similarity of the customer base.¹¹ The Department has emphasized that the greater the similarity in business operations, products, and customer base, the more likely that there is a greater correlation in the profit experience of the two companies.¹² U.S. Steel maintains that based on the above mentioned factors, Tenaris's financial data is best suited to calculate CV profit for HYSCO and NEXTEEL.

According to U.S. Steel, Tenaris's business operations and products are similar to HYSCO's and NEXTEEL's production and sales of subject merchandise. Like HYSCO and NEXTEEL, Tenaris's production of welded OCTG does not represent fully integrated production, but instead, reflects the production of OCTG from hot-rolled coil purchased from outside suppliers.¹³ In addition, Tenaris's operations and products are focused almost exclusively on the production of OCTG and 93 percent of its sales revenue is from tubing products.¹⁴ U.S. Steel further states that Tenaris is the largest OCTG producer in the world and sells OCTG in North America, South America, Europe, Middle East, the Far East, and Oceania.¹⁵ According to U.S. Steel, Tenaris's profit experience is representative of sales of OCTG across a broad range of markets. As a result, Tenaris's profit experience best approximates the profit that would be earned on sales of OCTG in Korea provided Korea had a viable market for OCTG.

U.S. Steel points out that the Department has emphasized that because the Department compares U.S. sales to normal value from the home or the third-country markets, the Department does not want to construct a normal value based on the financial data that contains exclusively or

¹¹ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Color Television Receiver from Malaysia*, 69 FR 20592 (April 16, 2004) (*CTVs from Malaysia*), and accompanying Issues and Decision Memorandum (*CTVs from Malaysia Decision Memo*) at Comment 26.

¹² See *CTVs from Malaysia Decision Memo* at Comment 26.

¹³ See U.S. Steel's March 21, 2014 Comments at exhibit P (Public Version). In this exhibit, U.S. Steel submitted the 2012 Fiscal Year Annual Report of Tenaris. The Annual Report at page 21 states "we purchase substantial quantities of steel coils and plates for use in the production of our welded pipe products."

¹⁴ See U.S. Steel's March 21, 2014 Comments at exhibit P (the 2012 Fiscal Year Annual Report of Tenaris), page 15.

¹⁵ *Id.*

predominantly U.S. sales.¹⁶ Among all of the pipe producers financial statements that are on the record, Tenaris' financial statements reflect the highest portion of OCTG sales outside the United States. In fact, a majority of Tenaris's sales of OCTG are outside the United States.¹⁷ In contrast, each of the six Korean producers sells its OCTG in the United States.¹⁸ U.S. Steel emphasizes that Tenaris primarily sells OCTG and its customer base is similar to the customer base of the subject merchandise, the oil and gas E&P industry. Tenaris' financial statements clearly show that substantial sales are from the oil and gas E&P industry¹⁹ while the financial statements of the Korean producers largely reflects sales to a different customer base including the construction industry.

U.S. Steel claims that Tenaris earned a profit margin of 26.11 percent during the 2012 fiscal year.²⁰ In addition, a research paper conducted by an investment firm shows that the average profit earned by Tenaris for the last five years was 23 percent and is projected to earn an average profit of 23 percent in the next five years.²¹ The profit earned by Tenaris is representative of the profit experience by an OCTG producer selling over a broad time period rather than an anomalous good or bad year. If HYSCO and NEXTEEL had a viable market of OCTG in Korea or non-U.S. markets served by Tenaris, it would have earned the profit similar to Tenaris. Further, U.S. Steel placed on the record the financial statements of four Indian OCTG producers.²² The Indian producers are Ratnamani Metals and Tubes, Maharashtra Seamless Limited, Bhushan Steel Limited, and OCTL. U.S. Steel claims that the profits earned by these Indian OCTG producers during the 2012-2013 FY are in line with the profit earned by Tenaris.

Finally, U.S. Steel asserts that Tenaris's profit margin of 26.11 percent represents the best information on profit that HYSCO and NEXTEEL would have earned provided these companies had a viable home or third-country market. Tenaris earns 85 percent of its revenue from the sales of OCTG. Tenaris' production operations and level of integration for welded OCTG are similar to those of NEXTEEL. Tenaris sells a majority of its products outside United States in a broad range of different geographic markets that approximates what the market condition would be in Korea if there were a viable OCTG market in Korea. Tenaris's customer base is exactly the same customer base as of the subject merchandise, the oil and gas E&P industry. Tenaris earned a consistent profit over a broad period of time. The Department, for the final determination, should use Tenaris' profit margin in calculating CV profit

¹⁶ See *Notice of Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from Portugal*, 67 FR 60219 (April 16, 2002), and accompanying Issues and Decision Memorandum at Comment 5.

¹⁷ See U.S. Steel's March 21, 2014 Comments at exhibit P (the 2012 Fiscal Year Annual Report of Tenaris), page 15.

¹⁸ See SeAH Steel's September 13, 2013 section A response at Exhibit A-1 (APO Version); ILJIN's September 17, 2013 section A response at Exhibit A-1 (APO Version); AJU Besteel's September 17, 2013 section A response at Exhibit A-1 (APO Version); HYSCO's September 17, 2013 section A response at Exhibit A-1 (APO Version); and Husteel's September 17, 2013 section A response at Exhibit A-1 (APO Version).

¹⁹ See U.S. Steel's March 21, 2014 Comments at exhibit P (the 2012 Fiscal Year Annual Report of Tenaris), page 19.

²⁰ See U.S. Steel Case Brief on HYSCO at Exhibit A and U.S. Steel Case Brief on NEXTEEL at Exhibit 1.

²¹ See U.S. Steel's January 16, 2014 CV Profit comments at exhibit J (Public Document). We note we disregarded this study for the *Preliminary Determination*, and we did not consider it in our analysis.

²² See Letter from U.S. Steel to the Department regarding CV profit, dated January 16, 2014, at exhibits K. L. M. and O (Public Document).

U.S. Steel takes note of three objections raised by HYSCO and NEXTEEL regarding the use of Tenaris's financial statements for calculating CV profit.²³ The objections raised by NEXTEEL are: (1) Tenaris financial data does not reflect the sales of OCTG in Korea; (2) Tenaris' products and cost structures differ from those of HYSCO and NEXTEEL; and, (3) Tenaris' profit margin exceeds the statutory "profit cap" for sales of products in the same general category of the subject merchandise.

U.S. Steel argues that the objections are not valid because Korea does not have an oil and gas industry and there is no viable home market for OCTG. Similar to Tenaris, none of the six Korean producers sell OCTG in Korea. Tenaris, HYSCO and NEXTEEL produce a wide array of non-premium and premium grade OCTG products. HYSCO's and NEXTEEL's line and standard pipe are not in the same general category of OCTG and there is no data to calculate a "profit cap." The profit earned by Tenaris is representative of the profit experience Korean producers like HYSCO and NEXTEEL would earn on sales of OCTG to a viable home market or third-country market.

Maverick contends that the Department's preliminary determination²⁴ drastically understates the amount of profit that NEXTEEL would have earned on home market sales of OCTG, and ultimately fails to calculate an accurate dumping margin. The Department's attempt to balance the "statutory preference for CV profit to reflect the production and sale of merchandise in the market under consideration" with "the need for profit to reasonably reflect the merchandise under consideration" has allowed the former to swallow the latter. The result is an unrepresentative amount of CV profit based predominantly on the sales of non-OCTG pipe products that are simply not in the same general category of merchandise as OCTG pipes. Maverick asserts that the Department, for the final determination, should calculate CV profit based on either the financial data of Tenaris, the four Indian OCTG producers, or the 2010 profit earned by the U.S. OCTG producers.

Maverick made arguments similar to those of U.S. Steel regarding the inappropriateness of using the financial statements of the six Korean producers to calculate CV profit. The main points raised by Maverick are: (1) the profits reflect sales of non-OCTG pipes in the construction application; (2) OCTG pipes are not in the same general category as the non-OCTG pipes because OCTG are used in demanding down-hole applications in both vertical and horizontal gas drilling applications and unlike non-OCTG pipe the grade of steel for OCTG must be sufficiently strong to withstand the rugged conditions it is subjected to; (3) OCTG and non-OCTG products have different customer base; and, (4) the Korean construction industry that uses non-OCTG pipe products are currently in a slump while the world-wide demand for OCTG is on the rise because of the growth in the oil and gas E&P sector. In addition, Maverick asserts that there is no way for the Department to approximate a home market profit experience for the production and sale of OCTG in the case of the Korean producers and exporters because there is no Korean

²³ See Letter from NEXTEEL to the Department, "Pre-Preliminary Rebuttal Comments of NEXTEEL," dated February 10, 2014, at 4-10 (Public Version).

²⁴ See *Certain Oil Country Tubular Goods From the Republic of Korea: Negative Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 79 FR 10480 (February 25, 2014) and accompanying Decision Memorandum (Preliminary Decision Memorandum).

OCTG market, and profits earned on non-OCTG pipe do not reasonably represent profit earned on sales of OCTG.

Maverick recommends the use of Tenaris financial statements for calculating HYSCO's and NEXTEEL's CV profit and makes similar arguments that U.S. Steel made: (1) the main product sold and produced by Tenaris is OCTG; (2) the customer base is the same for the companies; and, (3) the business operations are the same and all three companies produce a wide array of OCTG products. Maverick further states that Tenaris is a global company, sells OCTG in several markets, and the profit earned is representative of the profit earned by other OCTG producers in different countries with viable home markets like the U.S. and Indian OCTG producers. As an alternative, Maverick suggests using the financial statements of the Indian OCTG producers for calculating CV profit. According to Maverick, these four Indian companies are large OCTG producers and have viable home markets. The Indian producers manufacture a full range of OCTG products. India is a country with both significant OCTG production and consumption. In the end, Maverick contends that if the Department declines to use Tenaris or the Indian producers' financial statements, then the Department should use the financial data of the U.S. OCTG producers that is on the record.

Boomerang Tube, *et al.* point out, as noted above, that the Department recognized that there were problems with CV profit choices made in the preliminary determination, and noted that the Department intended to explore other options for the final determination.²⁵ Boomerang Tube, *et al.* suggest that the Department should adhere to two principles in exploring other options: (1) the Court granted the Department considerable discretion in determining CV profit;²⁶ and, (2) it is more important to have profits from the same industry than from the same country. The Department needs to recognize that OCTG pipes are more profitable than non-OCTG pipes.²⁷ The problem with the CV profit calculation for HYSCO is that it does not include any OCTG, while the problem with the CV profit calculation for NEXTEEL is that it includes a large number of non-OCTG pipes, thereby lowering the overall profit calculation. Therefore, for the final determination, the Department should not use the options that were used for the preliminary determination. Rather, Boomerang Tube, *et al.* contend that the Department should calculate CV profit based on the financial statements of Tenaris. The arguments for using Tenaris' financial statements are very similar to the arguments submitted by U.S. Steel and Maverick in their respective case briefs. However, as an alternative, Boomerang Tube, *et al.* suggest the Department should use the financial data of the U.S. OCTG producers or the financial statements of Oil Country Tubular Limited, an Indian OCTG producer.

HYSCO and NEXTEEL contend that the Department correctly calculated CV profit based on home market sales of non-OCTG pipe products and the amounts reported in the 2012 fiscal year financial statements of the six Korean OCTG producers because the calculated CV profit for both reflects the home market profit experience of Korean pipe producers as required by the law. According to HYSCO and NEXTEEL, the profit must reflect the experience in the "foreign country" and the "foreign country" is defined by the Department as "the country in which the

²⁵ See Preliminary Decision Memorandum at 22.

²⁶ See *Geum Poong Corporation v. United States*, 193 F. Supp. 2d. 1363, 1370 (CIT 2002) (*Geum Poong*).

²⁷ See *Oil Country Tubular Goods from Argentina, Italy, Japan, and Mexico*, USITC Pub.3434, Inv. Nos. 701-TA-364 and 731-TA-711 and 713-716 (Review), June 2001 at pages 16 and 17.

merchandise is produced.”²⁸ The Department is obligated to enforce the antidumping laws, which include the statute and its own regulations, and accordingly, calculate CV profit based on the experience in the country where the merchandise is produced (in this case, Korea) regardless of the methods used under sections 773(e)(2)(B)(i), (ii), or (iii) of the Act. HYSCO and NEXTEEL maintain that the Department does not have the discretion under the law to base CV profit on the financial data of a producer that does not reflect the production or sale of OCTG, or products within the same general category of merchandise as OCTG in Korea.

HYSCO and NEXTEEL point out that the U.S. Court of International Trade has held that in determining the best surrogate CV profit value, the Department’s ultimate goal “is to approximate the home market profit experience.”²⁹ In every situation, where the Department has chosen to use the financial statements of surrogate companies to calculate CV profit, the Department has declined to use the financial statements from companies that were not from the home market of the respondent.³⁰ HYSCO and NEXTEEL state that the Department has on the record information to calculate CV profit on its home market sales of the non-OCTG pipes. HYSCO and NEXTEEL claim that non-OCTG pipe products are in the same general category of products as the subject merchandise because: (1) OCTG, line, and standard pipes are produced in the same facilities using the same production process; (2) OCTG, line, and standard pipes have similar physical characteristics and the same raw material input, hot-rolled coils; and, (3) limited service OCTG and line pipes have the same application and are used in the oil and gas industry for transporting oil and gas. In the past, the Department used the financial statements of SeAh to calculate CV profit of Husteel.³¹ The Department also used the profit of the respondent’s tubular product division which is a general pipe division to calculate CV profit for OCTG.³² Consistent with the past cases, the Department should determine that non-OCTG pipe products fall within the same general category of products as the subject merchandise. Alternatively, the Department should calculate CV profit for both HYSCO and NEXTEEL based on the amounts reported in the 2012 fiscal year financial statements of the six Korean OCTG producers because: (1) all these producers produce OCTG and non-OCTG pipe in the same facilities using the same production process; and, (2) all the six producers sold pipe in the home market.

Both HYSCO and NEXTEEL contend that the Department should not use the financial data of Tenaris to calculate CV profit because: (1) Tenaris profit rate does not represent the profit experience of the home market; (2) HYSCO’s and NEXTEEL’s operations are not comparable to Tenaris; (3) HYSCO’s and NEXTEEL’s customer base is different than that of Tenaris; (4)

²⁸ See 19 CFR 351.405(b)(2).

²⁹ See *Geum Poong*, 193 F. Supp. 2d. at 1370 and *Thai J-Mei Frozen Foods Co. v. United States*, 572 F. Supp 2d. 1352, 1368 (Ct. Int’l Trade 2008).

³⁰ See NEXTEEL Case Brief at 27-32. In support of this position, NEXTEEL cites several cases, including *Notice of Final Determination of Sales at Less Than Fair Value: Certain Nails from the United Arab Emirates*, 77 FR 17029 (March 23, 2012), and accompanying Issues and Decision Memorandum at Comments 6 and 7.

³¹ See *Notice of Final Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods, Other than Drill Pipe, from Republic of Korea*, 73 FR 14439 (March 18, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

³² See *Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Oil Country Tubular Goods, from Mexico*, 71 FR 27676, 27678 (May 12, 2006), unchanged in *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Oil Country Tubular Goods from Mexico*, 71 FR 54614 (September 18, 2006).

Tenaris has significant U.S. sales; and, (5) Tenaris's profit margin exceeds the profit cap.

According to HYSCO and NEXTEEL, Tenaris is a multinational company and does not appear to have meaningful sales in Korea. It has no manufacturing facility in Korea. Tenaris's main market is the United States where it recorded nearly half of its sales. The U.S. market is followed by South America, Europe, Middle East, and Africa. These market combined represent 96 percent of Tenaris's sales. The remaining four percent is sold in Far East and Oceania which probably would include Korea.³³ Tenaris's profit experience is representative of sales of OCTG across a broad range of different geographic markets and does not reflect the profit experience of the Korean market. Further, HYSCO and NEXTEEL state that its OCTG products are not comparable to Tenaris OCTG products. HYSCO and NEXTEEL produce low grade OCTG while Tenaris is a market leader in the premium pipe industry.³⁴ HYSCO and NEXTEEL only produce welded OCTG while Tenaris produces both seamless and welded OCTG. HYSCO and NEXTEEL sell OCTG to trading companies or directly to distributors while Tenaris' customer base is comprised of most of the world's leading oil and gas companies.³⁵

HYSCO and NEXTEEL continue to argue that: (1) Tenaris's profit rate is aberrational and is much more than the profit rate used by the petitioners in the initiation of the case;³⁶ (2) Tenaris' profit margin exceeds the profit cap; (3) the Department cannot depart from its long standing practice of calculating CV profit based on the home market profit experience without first affording the public adequate notice and opportunity to comments; and, (4) the Department should not calculate CV profit based on the financial statements of an Indian company OCTL because OCTL is not an OCTG manufacturer but a processor of a wide range of OCTG products. Further, the profit of OCTL does not reflect the profit experience of Korea because OCTL does not sell its products in Korea.

In rebuttal, U.S. Steel reiterates that HYSCO's and NEXTEEL's home market sales of non-OCTG pipes are not an appropriate basis for calculating CV profit because: (1) non-OCTG pipe is not in the same general category of products as OCTG; (2) OCTG is a specialized and a higher value added product with demanding specification that few producers are able to meet; (3) OCTG and non-OCTG pipes are sold in different markets that have different forces driving demand, price, and profitability; (4) OCTG pipes are more profitable than non-OCTG pipes; (5) the Korean market for non-OCTG pipes is in a major slump while the world-wide demand for OCTG pipes is on the increase; (6) a number of HYSCO's reported sales on non-OCTG pipes in the home market were made below cost, and NEXTEEL's home market sales of non-OCTG pipe cannot be used for reasons involving the discussion of business proprietary information; (7) the Korean producers manufacture more standard pipes than line pipes; (8) there is no oil and gas industry in Korea, and therefore, the demand for line pipes is related to the construction industry; (9) in the oil and gas industry line pipes and OCTG pipes are not used in the same application, OCTG pipe is used for down hole drilling while line pipe is used to transport oil and gas; and, (10) line pipes can be substituted with plastic pipes while there are no substitutes for OCTG.

³³ See the 2012 Fiscal Year Annual Report of Tenaris at pages 8, 9, and 15.

³⁴ See the 2012 Fiscal Year Annual Report of Tenaris at page 6.

³⁵ See the 2012 Fiscal Year Annual Report of Tenaris at page 9.

³⁶ See Petition Volume II, Page 9 (showing profit ratio between 7.22 percent and 7.79 percent).

U.S. Steel claims that in the two OCTG cases³⁷ cited by NEXTEEL the Department calculated CV profit in accordance with section 773(e)(2)(B)(iii) of the Act and not section 773(e)(2)(B)(i). The Department did not determine that non-OCTG pipes are in the same general category of products as OCTG. In the Korean OCTG case, SeAH had a viable Canadian market for OCTG and possibly the Department thought that SeAH's financial statements provided a reasonable proxy for the profits that Husteel could have earned provided it had a viable home or third-country market. In the Mexican OCTG case, the issue was not contested and the factual differences between OCTG and non-OCTG pipes were not developed. U.S. Steel reiterates that the Department should not base CV profit on the financial statements of the six Korean OCTG producers and submitted the same reasons as it did in its case brief: (1) the sales are dominated by low value standard pipes; (2) sales below costs; (3) no viable home or third-country markets for OCTG; and, (4) sales of steel products other than steel pipe products.

U.S. Steel asserts that statute does not require that CV profit be based only on the data of the Korean companies. To the contrary, the statute grants the Department broad discretion to base CV profit on the data of companies producing and selling merchandise outside Korea. U.S. Steel acknowledges that in past cases the Department used the financial statements of the home market country companies as cited by HYSCO and NEXTEEL because the home market country companies produced the merchandise that was in the same general category of subject merchandise. U.S. Steel reiterates that in this case there are no Korean manufacturers that produced or produce merchandise that is in the same general category as OCTG pipe products. Moreover, the line and standard pipes produced by the Korean companies are not in the same general category of products as OCTG. Therefore, for the final determination the Department should use the financial data of Tenaris to calculate CV profit.

Maverick contends that the Department has broad discretion to base CV profit on the data of companies producing and selling merchandise outside Korea. Maverick acknowledges that in past cases the Department used the financial statements of the home country companies as cited by HYSCO and NEXTEEL because of the Department's preference and not because it is required by the law. Maverick reiterates that the Department, for the final determination, should not use the non-OCTG pipe products produced in the home market or the Korean producers' financial statements for calculating CV profit. Instead, the Department should use Tenaris or the Indian producers' financial statements for the reasons set forth in both U.S. Steel's and Maverick's case brief.

In rebuttal, Boomerang Tube, *et al.* point out that the respondents' case briefs consistently underline the words "foreign country," "domestic market," and "home market value" in quoting language that does not pertain to the issue of whether the Department can use financial statements from companies not in respondents' home market country to determine CV profit in accordance with section 773(e)(2)(B)(iii) of the Act. The respondents have failed to show how

³⁷ See *Notice of Final Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods, Other than Drill Pipe, from Republic of Korea*, 73 FR 14439 (March 18, 2008), and accompanying Issues and Decision Memorandum at Comment 1 and *Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Oil Country Tubular Goods, from Mexico*, 71 FR 27676, 27678 (May 12, 2006), unchanged for the final results 71 FR 54614 (September 18, 2006)

the Department is prohibited from using the financial data of surrogate companies operating outside the respondent's home market. The Department has significant discretion on this issue, and given the priority the Department attaches to using surrogate companies whose business operations most closely resemble those of the respondents, it is appropriate for the Department to look outside of Korea in order to calculate CV profit.

Similar to Maverick, Boomerang Tube, *et al.* contend that the Department has broad discretion to base CV profit on the data of companies producing and selling merchandise outside Korea. Boomerang Tube, *et al.* acknowledge that in past cases the Department used the financial statements of the home country companies as cited by HYSCO and NEXTEEL because of the Department's preference and not because it is required by the law. Boomerang Tube, *et al.* reiterate that the Department, for the final determination, should not use the Korean producers' financial statements for calculating CV profit. Instead, the Department should use Tenaris's financial statements, the Indian producers' financial statements or the profit of the U.S. producers that are on the record. The reasons set forth in the rebuttal brief are similar to the reasons placed in the U.S. Steel's and Maverick's case brief.

Consistent with its case brief, HYSCO and NEXTEEL continue to argue that: (1) the Department has never in the past used the financial data of a company operating outside the respondent's home market; (2) CV profit rate must reflect the home market experience and in this case it is Korea, the country in which the subject merchandise is produced; (3) Tenaris is a multinational company with no production or known sales in Korea and Tenaris's operations have no similarities to those of HYSCO and NEXTEEL; (4) the Department should continue to use non-OCTG pipe products to calculate CV for HYSCO and the financial statements of the six Korean producers to calculate CV profit because the profit rates reflect the home-market experience; and, (5) line and standard pipes are in the same general category of products as OCTG.

To augment its position that line and standard pipes are in the same general category of products as OCTG, HYSCO and NEXTEEL maintain that the general category of products is much broader than the "foreign like" product or the subject merchandise. Neither the statute, the regulations, nor the legislative history impose any requirement that the Department define the "general category of products" according to the end use, market segment, demand, supply, substitutability, and competition. In the past, the Department found that line pipe is in the same general category of merchandise as welded carbon steel standard pipes and tubes.³⁸ Line pipes are used in the same application as the limited service OCTG for transporting oil and gas, and therefore, line pipes, standard pipes, and OCTG are in the same general category of products. Further, the Harmonized Tariff Subheadings of the United States (HTSUS) includes some of OCTG, line pipes, and standard pipe products in the same HTSUS number, 7306.30.

According to HYSCO and NEXTEEL, that pipe products were sold in the home market below the cost of production does not preclude the Department from reliance on an overall profit rate

³⁸ See Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Standard Pipes and Tubes from India, 75 FR 33578, 33583 (June 14, 2010), unchanged for the final results 75 FR 69626 (November 15, 2010)

derived from home market sales of pipe products. Moreover, while calculating profit in accordance with section 773(e)(2)(B)(iii) of the Act, the Department is not obligated to perform the sale-below-cost analysis. Moreover, the profit rates calculated for the preliminary determination perceived by the petitioners to be low should not be a basis to change the profit calculation methodology because the law has not set a minimum CV profit rate.

AJU Besteel and Husteel, which both requested treatment as voluntary respondents, contend that the Department should not use the financial data of Tenaris or the four Indian OCTG producers to calculate CV profit because the profits earned by these five companies bear no relation to a profit margin that would be expected for Korean pipe producers in the domestic market. In addition, AJU Besteel and Husteel adopt the arguments made by the two mandatory respondents' in their case briefs.

AJU Besteel and Husteel in their rebuttal briefs argue that: (1) there is no statutory authority for using the financial data of non-Korean companies as a basis for calculating CV profit; (2) the statute requires the Department to base its calculations of CV profit on the financial data from Korean companies; and, (3) OCTG and the non-OCTG pipes produced and sold by the Korean producers are in the same general category of products. As such, AJU Besteel and Husteel request that the Department issue the final determination consistent with the arguments raised in its case and rebuttal briefs, as well as in the case and rebuttal briefs submitted by the two mandatory respondents.

With respect to the issues raised by AJU Besteel and Husteel, U.S. Steel incorporates by reference its arguments contained in its case and rebuttal briefs regarding HYSCO and NEXTEEL in this investigation.

Department's Position:

For the *Preliminary Determination*, in calculating CV profit for HYSCO under section 773(e)(2)(B)(i) of the Act, we used the profit from HYSCO's non-OCTG pipe products; for NEXTEEL under section 773(e)(2)(B)(iii) we used the 2012 audited financial statements of six Korean OCTG producers. However, after considering the record evidence and the arguments in the parties' briefs and rebuttal briefs, for the final determination we recalculated CV profit for both HYSCO and NEXTEEL under section 773(e)(2)(B)(iii) of the Act using the 2012 audited consolidated financial statements of Tenaris.

As noted above, neither HYSCO nor NEXTEEL had a viable home or third-country market during the POI. Because neither company had home or third-country market sales to serve as the basis for normal value (NV), NV must be based on constructed value (CV). Likewise, absent a viable home or third-country market, we are unable to calculate a CV profit using the preferred method under section 773(e)(2)(A) of the Act.³⁹ When the preferred method is unavailable, section 773(e)(2)(B) of the Act establishes three alternatives for determining CV profit. They are:

³⁹ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act as reprinted in 1994 U.S.C.A.N. at 4177, (SAA) at 840 ("where the method described in section 773(e)(2)(A) cannot be used . . . because there are no home market sales of the foreign like product . . .").

(i) the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review . . . for profits, in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise, (ii) the weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review (other than the exporter or producer described in clause (i)) . . . for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or (iii) the amounts incurred and realized . . . for profits, based on any other reasonable method, except that the amount allowed for profit may not exceed the amount normally realized by exporters or producers (other than the exporter or producer described in clause (i)) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise; [(i.e., the “profit cap”)].

The statute does not establish a hierarchy for selecting among the alternatives for calculating CV profit.⁴⁰ Moreover, as noted in the SAA, “the selection of an alternative will be made on a case-by-case basis, and will depend, to an extent, on available data.”⁴¹ Thus, the Department has discretion to select from any of the three alternative methods, depending on the information available on the record.

The specific language of both the preferred and alternative methods, appears to show a preference that the profit and selling expenses reflect: (1) production and sales in the foreign country; and (2) the foreign like product, *i.e.*, the merchandise under consideration. However, when selecting a profit from available record evidence, we may not be able to find a source that reflects both of these factors. In addition, there may be varying degrees to which a potential profit source reflects the merchandise under consideration. Consequently, we must weigh the quality of the data against these factors. For example, we may have profit information that reflects production and sales in the foreign country of merchandise that is similar to the foreign like product but also includes significant sales of completely different merchandise, or profit information that reflects production and sales of the merchandise under consideration but no sales in the foreign country. Determining how specialized the foreign like product is, what percentage of sales are of the foreign like product or general category of merchandise, what portion of sales are to which markets, etc., judged against the above criteria, may help to determine what profit source to rely upon.

In this case, the Department is faced with several alternatives for CV profit based on available data that reflect at least one of the criteria noted above. We must therefore weigh the value of the available data and, in particular, determine which requirement is more relevant for this case based upon the record before us. With each of the statutory alternatives in mind, we have evaluated the data available and weighed each of the alternatives to determine which surrogate data source most closely fulfills the aim of the statute. We find that the Department could not

⁴⁰ See SAA at 840 (“At the outset, it should be emphasized, consistent with the Antidumping Agreement, new section 773(e)(2)(B) does not establish a hierarchy or preference among these alternative methods. Further, no one approach is necessarily appropriate for use in all cases.”)

⁴¹ See SAA at 840.

rely on alternative (ii), *i.e.*, profit for other exporters or producers subject to the investigation, because there were no other respondents subject to the investigation. Further, for NEXTEEL the Department could not rely on alternative (i), *i.e.*, profit for the same general category of products as subject merchandise, because for business proprietary reasons⁴² that option was not available. Therefore, for NEXTEEL the Department had to resort to alternatives under subsection (iii) *i.e.*, any other reasonable method to determine the appropriate data to use to calculate CV profit. For HYSCO, potential alternatives for calculating CV profit were available under subsection (i), *i.e.*, profit for the same general category of products as subject merchandise and under subsection (iii), *i.e.*, any other reasonable method.

In evaluating the different alternatives available under subsection (iii), we followed the analysis established in *Pure Magnesium from Israel*.⁴³ In *Pure Magnesium from Israel*, the Department set out three criteria for choosing among surrogate data under section 772(e)(2)(B)(iii) of the Act: 1) the similarity of the potential surrogate companies' business operations and products to the respondent's business operations and products; 2) the extent to which the financial data of the surrogate company reflects sales in the home market and does not reflect sales to the United States; and, 3) the contemporaneity of the data to the POI. In *CTVs from Malaysia*, the Department added a fourth criterion of the extent to which the customer base of the surrogate and the respondent were similar (*e.g.*, original equipment manufacturers versus retailers).⁴⁴ These four criteria have been followed in subsequent cases to assess the appropriateness of using various financial statements on the record of a given case under subsection (iii).

In weighing the available information and determining which source to use under both alternative (i) and (iii), we first determined which products fit within "the same general category of products as the subject merchandise." The term "general category of products" is not defined in the statute. However, the SAA provides that the term "encompasses a category of merchandise broader than the 'foreign like product.'"⁴⁵ In that regard, we considered whether subject merchandise and other pipe products such as line pipe, structural pipe, standard pipe, and downgraded pipe are similar enough to OCTG to be considered within the same general category of products. Determining which products are sufficiently similar to OCTG to be considered within the same general category of product is imperative under alternative (i) *i.e.*, profit for the same general category of products as subject merchandise. It is equally important under alternative (iii) because it goes directly to the question of how to evaluate the surrogate financial information of: (1) the six Korean OCTG producers' audited financial statements (*i.e.*, this includes the two respondents individually examined and four voluntary respondents); (2) the four Indian OCTG producers' financial statements; (3) Tenaris, a multinational company that produces and sells OCTG worldwide; and (4) the aggregate profit data from various U.S. OCTG producers from the ITC report.

⁴² See the Memorandum to Neal M. Halper, Director, Office of Accounting, through Taija A. Slaughter, Lead Accountant, from Sheikh M. Hannan, Senior Accountant, titled "Verification of the Cost Response of NEXTEEL Co., Limited In the Antidumping Duty Investigation of Oil Country Tubular Goods from the Republic of Korea" dated May 14, 2014 (NEXTEEL's Cost Verification Report) at pages 31-33.

⁴³ See *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel*, 66 FR 49349 (Sept. 27, 2001) (*Pure Magnesium from Israel*) and accompanying decision memorandum at Comment 8.

⁴⁴ See *CTVs from Malaysia* Decision Memo at Comment 26.

⁴⁵ See SAA at 840.

In assessing whether a given product is in the same general category of products as the subject merchandise for purposes of calculating a CV profit, we evaluated the products in question from both a production and sales perspective since profit is a function of both cost and price. Differences between the physical characteristics of products, differences in production processes, quality, testing and certification requirements, how the products will be used, and the market conditions associated with the industries and customers who purchase and use the different products all materially impact the profit earned on the different products. We have considered all of these points, and after careful consideration, we find that line, structural and standard and downgraded pipe products are not in the same general category of products as OCTG. While we recognize that non-OCTG pipe products and OCTG oil casing and tubing are all tubular products of circular cross section that can be made by either the welded or seamless process and in many instances can be made in the same pipe making mill, the chemical, physical and mechanical characteristics of each product can differ significantly.⁴⁶ Likewise, even though certain non-OCTG pipe (*i.e.*, line pipe), can be used in the oil and gas industry, line pipe is used to transport oil and gas from the point of production and to distribute to consumers, while OCTG is used in down hole applications for oil and gas exploration and extraction.⁴⁷

Regarding the differences, OCTG casing and tubing performance requirements differ significantly from those for the noted non-OCTG products, because OCTG pipes are subjected to external collapse pressures, internal pressures, and tension strength requirements when used in oil or gas wells,⁴⁸ whereas, standard pipe and line pipe products are primarily intended for the conveyance of fluids and gases.⁴⁹ Moreover, casing, which is the overwhelming majority of OCTG consumed, is used as a structural support in an oil or gas well to protect the hole that has been drilled.⁵⁰ It must be sufficiently strong in collapse strength to resist pressures from the outside of the well, and also must resist pressures that can exist from inside the well.⁵¹ In addition, it must have sufficient joint strength to support its own weight and threading sufficient to resist well pressures. Tubing must have sufficient tension strength to carry its own weight, the weight of a tubing string (*i.e.*, the series of pipes attached together and forming the entire string), and any oil within the tubing.⁵² Obtaining these performance requirements requires steel possessing different characteristics (*i.e.*, the steel grade used to produce OCTG are not used to produce non-OCTG pipes)⁵³ than those of non-OCTG products. While OCTG may be made on the same “lines” or in the same production cost centers as non-OCTG pipes, it uses different grades of steel to fulfill different performance requirements.

⁴⁶ See *Specification for Casing and Tubing – API SPECIFICATION 5CT*, Ninth Edition, Copyright American Petroleum Institute. See excerpts placed on the record in petitioner’s rebuttal comments on product characteristics and product matching dated August 12, 2013. See also *Steel Products Manual – Carbon Steel Pipe, Structural Tubing, Line Pipe, Oil Country Tubular Goods*, April 1982, Published by the American Iron and Steel Institute; see also U.S. Steel’s submission dated March 26, 2014, at Exhibit Q.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ See the January 6, 2014 supplemental section D questionnaire response at page SD-4 (*Supplemental Section D Response*).

Comparing these differences further, the destructive and non-destructive testing requirements are much greater for OCTG casing and tubing because of the stresses to which the products are subjected.⁵⁴ Indeed, the quality standards, testing and certification for OCTG are substantially different from those of line pipe and standard pipes. Statements made by HYSCO in its Supplemental Section D Response regarding prime and non-prime OCTG support these facts. HYSCO stated that “{a}s their name implies, prime OCTG products are designed to withstand the extraordinary pressures and harsh working environment present in drilling fields. As a practical matter customers would not attempt to use non-prime OCTG products in OCTG applications because of the potential liability and cost in the event of a pipe failure.” HYSCO further states that “{n}on-prime OCTG is generally used for structural purposes. Non-prime OCTG cannot be used for applications defined under API 5CT because non-prime does not satisfy the relevant API standard.” Further, we note that these differences are so significant that how the pipes are connected to each other also changes. Line pipe generally is connected by welding pipes together while OCTG casing and tubing are connected in different ways⁵⁵ (e.g., threading and coupling and integral joints) because of the stresses that are placed on the joint connections. For casing, the ends are threaded and subsequently connected by an assortment of couplings, depending on the environmental requirements of the application.⁵⁶ For tubing, the ends usually will be upset, which is a hot-forging process used to increase the metal thickness of the ends, and will be subsequently threaded. Hence, they will possess mechanical and physical characteristics unlike those of the other products and will be subjected to more demanding testing requirements. The performance measures, production processes, alloys, and physical and mechanical characteristics of OCTG casing and tubing products differ in such significant ways from those of standard pipe and line pipe that these products should not be considered to be of the same general category of products as OCTG for purposes of section 773(e)(2)(B) of the Act. In summary, OCTG casing and tubing are subjected to extreme pressures not characteristic of standard pipe and line pipe applications.

The record shows that OCTG and non-OCTG are sold to different end users for use in different applications, and that these different end users have distinct forces which drive prices, demand, and profitability. OCTG demand is driven by oil and gas exploration and production, which has been strong globally over the past few years, while demand for non-OCTG pipe products has been stagnant over the past few years. Strong demand, all other things being equal, generally translates into higher prices and higher profits. Record evidence indicates that demand for standard pipe is driven primarily by construction activity. End users in the construction sector are generally unable and unwilling to pay the price premium paid in the oil and gas exploration and production sector.⁵⁷ Evidence on the record also indicates that an increase in oil and gas exploration and production will not necessarily result in an increase in demand for line pipe that is similar to the increase in demand for OCTG. In an exhibit provided by HYSCO, it states that for steel pipe there has been “sluggish domestic sales” and “depression of construction and shipbuilding industry.”⁵⁸ HYSCO’s exhibit further states that there has been a “continuous good

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Petitioner’s March 21, 2014 Comments - Exhibit Q.

⁵⁸ See HYSCO’s section A questionnaire response dated September 17, 2013 exhibit A-14.

export trend” due to “good steel pipe for energy due to high oil price.”⁵⁹ We also noted that in the Tenaris 2012 financial statements the company stated that “in 2012, our sales of premium casing and tubing products rose 27% year on year.”⁶⁰ According to Tenaris “historically, most of Projects sales were of line pipe for onshore pipelines and equipment for petrochemical and mining applications, but now, we are positioning ourselves as a supplier of mainly OCTG and offshore line pipe, very similar to the rest of the Tubes segment”⁶¹ and in the Middle East and Africa, sales decreased mainly due to lower shipments of line pipe products and lower selling prices.⁶²

While we do not consider line pipe and standard pipe to be in the same general category of products as OCTG, we do find that the general category of products that encompass the subject casing and tubing would not be limited to just the foreign like product. Rather, it would include other tubular products that go into the exploration and production of oil and gas. These would be products that would exhibit the same fundamental characteristics for down hole applications, and they would include subject OCTG, non-scope OCTG such as stainless steel tubular products, and drill pipes. However, we do not have CV profit information on the record pertaining to any of these products that would be considered the general category of product.

Given the conclusion that HYSCO’s non-OCTG pipe products are not within the same general category of products as the subject merchandise, the Department could not rely on alternative (i) for HYSCO. Therefore, consistent with NEXTEEL, the Department resorted to all the alternatives under subsection (iii), *i.e.*, any other reasonable method, to determine the appropriate data to use to calculate CV profit. In this case, we have on the record financial data from three different sources from which to select a CV profit, as well as the aggregate profit rate for U.S. producers. However, using the aggregate profit rate of the U.S. producers for the U.S. market is problematic because petitioners have alleged the market was affected by significant dumping during the period. We therefore do not consider this to be a viable option. The remaining options are the financial statements for: (1) Tenaris S.A., a multinational company that produces and sells OCTG worldwide; (2) six Korean pipe companies, all of which produce and sell line and standard pipes in addition to OCTG which is sold primarily in the United States; (3) three Indian pipe companies, all of which primarily produce line pipe and standard pipe, but also produce OCTG; and a fourth Indian company that is a processor of OCTG. Below we analyze each of the financial statement data sources in accordance with the criteria established in *CTVs from Malaysia*.

Tenaris has OCTG manufacturing plants in many countries around the world. Tenaris’s consolidated financial statements are for 2012, which overlaps with half of the POI and predominantly reflect production and sales of OCTG.⁶³ Approximately 50 percent of its sales were to the North American market,⁶⁴ which includes the United States, Canada and Mexico. Thus, over 50 percent of its sales were to non-U.S. customers. The financial statements indicate that Tenaris’s sales are generally made to end users, with export sales transacted through a

⁵⁹ *Id.*

⁶⁰ See page 6 of Tenaris S.A.’s 2012 annual report – Petitioner’s March 21, 2014 Comments Exhibit P.

⁶¹ See page 11 of Tenaris S.A.’s 2012 annual report – Petitioner’s March 21, 2014 Comments Exhibit P.

⁶² See page 27 of Tenaris S.A. 2012 annual report – Petitioner’s March 21, 2014 Comments Exhibit P.

⁶³ See pages 12 and 15 of Tenaris S.A.’s 2012 annual report – Petitioner’s March 21, 2014 Comments Exhibit P.

⁶⁴ See page 15 of Tenaris S.A.’s 2012 annual report – Petitioner’s March 21, 2014 Comments Exhibit P.

centrally managed global distribution network.⁶⁵ Tenaris is an international producer serving many markets around the world. Tenaris's financial statements indicate that it has some integrated steel making, and also purchases steel coils and plate products for fabrication into its end products.⁶⁶

As noted, two of the six Korean producers represent the Department's selected mandatory respondents and the four remaining Korean producers provided data as voluntary respondents. Reviewing the submitted quantity and value information for each of these companies in conjunction with the sales revenue reported in each of their audited financial statements demonstrates that the six Korean producers' financial statements reflect primarily sales of non-OCTG pipe products that we determined were not in the same general category of products as OCTG.⁶⁷ Moreover, record evidence demonstrates that not one of these six companies had a viable home or third-country market for its OCTG products.⁶⁸ Thus, the OCTG profit imbedded in the financial statements would be drawn almost exclusively from the allegedly dumped sales under investigation. Thus, while all six are Korean producers of OCTG, their financial statements reflect the profit earned on U.S. sales of OCTG (*i.e.*, alleged dumped sales under investigation) and the profit earned on sales of products determined not in the same general category of product as OCTG.

We note that we are unable to fully analyze the financial information of three of the Indian producers of OCTG, Ratnamani Metals and Tube, Maharashtra Seamless Limited, and Bhaushan Steel Limited, because we do not have the complete financial statements. Nonetheless, record evidence shows that based on the incomplete financial statements, all three appear to produce OCTG products and non-OCTG products. However, we are unable to approximate what percentage of their production and sales activities are from OCTG, versus other non OCTG pipe products. Further, while we have the complete financial statements for OCTL, excerpts from the company website placed on the record indicate that the company is a processor of OCTG, not an integrated producer (*i.e.*, the company purchased green tube and performed finishing operations).⁶⁹

In weighing the above facts in line with the criterion set out in the statute and in *CTVs from Malaysia*, we consider the Tenaris financial statements the best available option for determining CV profit in this case. As OCTG is a very specialized premium product used exclusively in the oil and gas exploration industry with significant quality differences, different end uses, different

⁶⁵ See page 80 of Tenaris S.A.'s 2012 annual report - Petitioner's March 21, 2014 Comments Exhibit P

⁶⁶ See page 21 of Tenaris S.A.'s 2012 annual report - Petitioner's March 21, 2014 Comments Exhibit P

⁶⁷ See SeAH Steel's September 13, 2013 section A questionnaire response at Exhibits A-1 and A-7A; AJU Besteel's September 17, 2013 section A questionnaire response at Exhibits A-1 and A-8; Husteel's September 17, 2013 section A questionnaire response at Exhibits A-1 and A-14; ILJIN's September 17, 2013 section A questionnaire response at Exhibits A-1 and A-9; HYSCO's September 17, 2013 section A questionnaire response at Exhibits A-1 and A-12; and NEXTEEL's September 17, 2013 section A questionnaire response at Exhibits A-1 and 10.

⁶⁸ See SeAH Steel's September 13, 2013 section A questionnaire response at page 2; AJU Besteel's September 17, 2013 section A questionnaire response at page A-2; Husteel's September 17, 2013 section A questionnaire response at page 2; ILJIN's September 17, 2013 section A questionnaire response at page A-2; HYSCO's September 17, 2013 section A questionnaire response at page A-2; and NEXTEEL's September 17, 2013 section A questionnaire response at page A-2.

⁶⁹ See Memorandum to the File from Steve Bezirgianian dated June 11, 2014.

end customers, and different demand patterns than those of non-OCTG pipe,⁷⁰ it is important that we rely on a source that closely reflects such product. We believe due to the nature of this product that it is more consistent with the statute to calculate profit using a company that mainly sells either the identical product or, alternatively, merchandise that is in the same general category of products. Because Tenaris is an OCTG producer that sells OCTG in significant quantities, and in virtually every market in which OCTG is sold, we find its average profit experience is representative of sales of OCTG across a broad range of different geographic markets. As the profit from its financial statements is predominantly of OCTG, it reflects more precisely the profit on products identical to the subject merchandise. While we would prefer to use the financial statements of an OCTG producer that primarily produces and sells OCTG in Korea, such information is not available. The financial statements of the six Korean producers' reflect sales of OCTG almost exclusively to the U.S., and predominantly sales of non-OCTG pipe products and other non-pipe products. Lastly, we are unable to calculate a profit cap for Korea under section (iii) because we do not have home market profit data for other exporters and producers in Korea of the same general category of products.⁷¹

HYSKO and NEXTEEL assert that the Department is obligated by the statute and its regulations to calculate CV profit based on where the merchandise is produced under section 773(e)(2)(B)(i), (ii), or (iii) of the Act. While the statute expresses a preference for the use of home market profit data, it allows, in clause (iii), for the use of reasonable methods that are not based on home market sales. As recognized by the SAA, situations may exist in which Commerce, due to the absence of data, is unable to use either clause (i) or (ii) and also is unable to calculate a profit cap. The SAA states that “[t]he Administration also recognizes that where, due to the absence of data, Commerce cannot determine amounts for profit under alternatives (1) and (2) or a ‘profit cap’ under alternative (3), it might have to apply alternative (3) on the basis of ‘the facts available.’” This ensures that Commerce can use alternative (3) when it cannot calculate the profit normally realized by other companies on sales of the same general category of products.” In this case, the record demonstrates that Korea does not have a domestic market⁷² for merchandise that is in the same general category of products as the subject merchandise (*i.e.*, foreign like product (OCTG), non-subject OCTG and drill pipe), which makes impossible the calculation of the profit normally realized by Korean OCTG producers in connection with the sale of such merchandise for consumption in Korea.

HYSKO and NEXTEEL argue that 19 CFR 351.405(b)(2) specifies that for purposes of section 773(e)(2)(B) of the Act, “foreign country” means the home market. Therefore, they argue that CV profit must be based on home market sales in this investigation. However, in alternative (iii), the term “foreign country” is only used with respect to the profit cap, and therefore the

⁷⁰ *Id.*

⁷¹ See *Pure Magnesium from Israel and Frozen Concentrated Orange Juice from Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 51008 (Oct. 5, 2001) and accompanying Issues and Decision Memorandum at Comment 3.

⁷² See SeAH Steel’s September 13, 2013 section A questionnaire response at page 2; AJU Besteel’s September 17, 2013 section A questionnaire response at page A-2; Husteel’s September 17, 2013 section A questionnaire response at page 2; ILJIN’s September 17, 2013 section A questionnaire response at page A-2; HYSKO’s September 17, 2013 section A questionnaire response at page A-2; and NEXTEEL’s September 17, 2013 section A questionnaire response at page A-2.

regulation's definition of "foreign country" as meaning the home market only applies to the profit cap. Consequently, the Department is not obligated by the statute or the regulations to use a home market profit, but on the contrary is given the discretion to use, as facts available, any reasonable method under 772(e)(2)(B)(iii). Further, the SAA makes clear that we may do so without applying a profit cap, particularly where (as here) there is no domestic market in the exporting country for merchandise that is in the general category of products as the subject merchandise.

In *Geum Poong*, which HYSCO and NEXTEEL cited, the issue was double counting, not whether or not a home market profit is preferable to a third-country profit. What was actually stated was "if anything, double-counting Sam Young's data would result in a *less* accurate measure of the CV profit rate than if it were excluded entirely because the goal in calculating CV profit is to approximate the home market profit experience."⁷³

As noted by HYSCO and NEXTEEL, in *CTVs from Malaysia*, the Department stated "we have on the record financial data for eleven companies from which to select a CV profit rate. Seven of the companies are multinational companies that produce a variety of products worldwide, including CTVs in Malaysia. The financial data on the record for these seven companies reflect the results of each company's worldwide operations. Although each of these company's business operations and products may be considered comparable to Funai Malaysia's consolidated parent, Funai Electric, they bear little similarity to the respondent company. Moreover, there is no evidence that the profit experience from the consolidated results of these multi-international companies reflects the Malaysian profit experience for the sale of merchandise that is in the same general category in accordance with section 773(e)(2)(B) of the Act." The merchandise sold by the multi-international companies in *CTVs from Malaysia* was for the most part completely different from the merchandise under consideration. In the current case, the merchandise produced and sold by Tenaris is predominantly the same as the merchandise under consideration.

In *OCTG from Mexico* we used the profit of the respondent's tubular division in one antidumping administrative review, citing subsection (i).⁷⁴ However, in earlier reviews, using the same source, we cited subsection (iii). While we were inconsistent in the subsection cited for CV profit source used in that case, contrary to this case, there was no discussion or meaningful analysis as to what products were included in the tubular division, and no interested party contested the source used to calculate CV profit. Hence the case does not address whether the products included in the tubular division for *OCTG from Mexico* were in the same general category of products as subject merchandise. Likewise, in *OCTG from Korea 2008*, the issue raised by the interested parties was not the source used to calculate CV profit.⁷⁵ The issue in that antidumping duty administrative review was regarding how the calculated CV profit ratio was applied in the margin analysis. As such, this case also did not address whether the source used to

⁷³ See *Geum Poong*, 193 F. Supp. 2d. at 1370.

⁷⁴ See *Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Oil Country Tubular Goods, from Mexico*, 71 FR 27676, 27678 (May 12, 2006), unchanged in *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Oil Country Tubular Goods from Mexico*, 71 FR 54614 (September 18, 2006).

⁷⁵ See *Notice of Final Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods, Other than Drill Pipe, from Republic of Korea*, 73 FR 14439 (March 18, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

calculate CV was in the same general category of products as subject merchandise.

As stated above, we consider it important in this investigation to have a profit reflective of the specialized nature of OCTG products. We analyzed the data for all possible CV profit sources as discussed above and the record shows that a profit figure from those not selected would predominantly reflect profit of non-OCTG products that cannot reasonably be considered to be of the same general category of merchandise. We believe it is consistent with the statute to calculate profit using a company that mainly produces and sells the merchandise under consideration. Thus for the final determination we calculated a profit using the 2012 audited consolidated financial statements of Tenaris.

Comment 2: The Department Should Base Its Final Determination on an Objective Assessment of the Facts and Law

HYSCO argues that without making a determination regarding affiliation, the Department stated in the *Preliminary Determination* that it would be requesting information from its unaffiliated U.S. customer.⁷⁶ HYSCO states the Department requested a full response from its unaffiliated U.S. customer to sections A, C, and E of the Department's questionnaire and contends that despite having less than half the time normally given to actual respondents to respond, its U.S. customer filed a response by the deadline. HYSCO states its U.S. customer subsequently responded to the Department's supplemental questionnaire in just 14 days, and then participated in on-site verifications. As such, HYSCO claims it and its unaffiliated U.S. customer have complied with all of the Department's requests.

Similarly, NEXTEEL contends that without making a determination with respect to affiliation, the Department declared in the *Preliminary Determination* that it would be requesting information from NEXTEEL's unaffiliated supplier, POSCO, and unaffiliated customer.⁷⁷ NEXTEEL states the Department subsequently requested extensive questionnaire responses from POSCO and its unaffiliated customer. NEXTEEL maintains that, in spite of having less than half the time normally given to actual respondents to respond, its unaffiliated customer submitted a response to the initial questionnaire by the deadline, and later provided a timely response to the Department's extensive supplemental questionnaire. NEXTEEL states POSCO also separately filed many pages of questionnaire response materials. In addition, NEXTEEL states the Department conducted on-site verifications of POSCO and its unaffiliated customer. Thus, NEXTEEL claims itself, POSCO, and its unaffiliated customer have complied with all of the Department's requests.

In addition, HYSCO and NEXTEEL argue the U.S. industry has engaged in an unprecedented level of political activity, citing various *ex parte* memoranda, a letter from the United States Senate, and a memorandum regarding a case briefing with U.S. Senate staff.⁷⁸ Both HYSCO

⁷⁶ See HYSCO Case Brief at 3, citing Preliminary Decision Memorandum at 13.

⁷⁷ See NEXTEEL Case Brief at 3, citing Preliminary Decision Memorandum at 13.

⁷⁸ See HYSCO Case Brief at 5-6 and NEXTEEL Case Brief at 6-7, both citing, *e.g.*, Memorandum to the File from Jim Stowers, Office of Legislative and Intergovernmental Affairs, "Ex parte Phone Call with Senator Casey (PA)," dated January 29, 2014 and Letter from United States Senate to the Honorable Penny Pritzker, Secretary of Commerce, dated May 15, 2014.

and NEXTEEL urge the Department to make its final determination based on an objective assessment of the facts and law in spite of the unprecedented level of political activity.

U.S. Steel retorts that HYSCO's and NEXTEEL's assertions regarding political activity should be rejected. U.S. Steel argues the level of concern expressed by members of Congress is not astonishing given the relevance of this case and the effect that unfairly traded imports of OCTG from Korea and the other countries subject to investigation is having on the U.S. industry. According to U.S. Steel, the unprecedented level of political activity cited by respondents is merely "elected representatives acting within their official capacities to bring attention to matters which greatly affect their constituents and asking for the law to be fully and effectively enforced."⁷⁹ U.S. Steel contends the Department's final determination will be based on an objective assessment of the facts and the law, and will undoubtedly show that HYSCO and NEXTEEL dumped subject merchandise in the U.S. market at a substantial level during the POI.

Boomerang Tube, *et al.* claims there is nothing improper about elected officials communicating with the Department concerning the importance of this investigation to the U.S. OCTG industry and its workers, as long as such communications have been placed on the record, which Boomerang Tube, *et al.* asserts they have. Boomerang Tube, *et al.* urges the Department to request that respondents place on the record all communications related to this investigation with all branches of the U.S. government, including, but not limited to, the State Department, the U.S. Trade Representative, and the White House, by officials of the Government of Korea.

In their rebuttal briefs, HYSCO and NEXTEEL state the Department has placed 30 more pages of *ex parte* communications on the record since the filing of its case brief.⁸⁰ Both respondents assert the *ex parte* communications on the record highlight the extensive level of political activity in this case. HYSCO and NEXTEEL reiterate their requests that the Department issue its final determination based on an objective assessment of the facts and law instead of on political concerns.

Department's Position:

The Department has conducted this proceeding in an open and transparent manner, placing on the record of this investigation all relevant communications from outside parties and all required *ex parte* meeting memoranda. With respect to the parties' respective contentions that the Department should issue its final determination based on an objective assessment of the facts and law instead of on political concerns, we agree. Accordingly, here, as in every proceeding before the Department, the Department's final determination is based upon the record evidence and an objective assessment of this evidence, in accordance with the regulations and statute that govern the Department's proceedings.

⁷⁹ See U.S. Steel Rebuttal Brief on HYSCO at 1 and U.S. Steel Rebuttal Brief on NEXTEEL at 1

⁸⁰ See HYSCO Rebuttal Brief at 3 and NEXTEEL Rebuttal Brief at 4, citing Memorandum to the File from Steve Bezirgianian, International Trade Analyst, Enforcement and Compliance, Office VI, "Antidumping Investigation of Certain Oil Tubular Goods from the Republic of Korea," dated June 23, 2014.

Comment 3: Whether to Reject Certain Submissions Containing New Factual Information

HYSCO and NEXTEEL state that on March 21, 2014 and March 24, 2014, U.S. Steel submitted new factual information claiming to rebut, clarify, or correct evidence in NEXTEEL's March 6, 2014 section D supplemental questionnaire response and NEXTEEL's March 14, 2014 section A, C, and D supplemental questionnaire response, respectively.⁸¹ HYSCO and NEXTEEL argue this information is not properly on the record for several reasons and thus should be rejected. First, citing the Department's new regulations regarding the definition of and time limits for submitting factual information, HYSCO and NEXTEEL contend that factual information submitted to rebut, clarify, or correct a questionnaire response must include a written explanation identifying the information already on the record that the new factual information seeks to rebut, clarify, or correct.⁸² HYSCO and NEXTEEL claim that U.S. Steel failed to link the factual information in both of its submissions to specific information in NEXTEEL's responses.

Second, HYSCO and NEXTEEL assert that in nine prior submissions filed in this proceeding, U.S. Steel carefully identified through footnotes the precise facts on the record that the new factual information sought to address.⁸³ HYSCO and NEXTEEL maintain that U.S. Steel's approach in its March 21, 2014 Comments and its March 24, 2014 Comments is a complete departure from its practice in those nine submissions, as its March 21, 2014 Comments and its March 24, 2014 Comments do not contain any individualized discussion of the reasons for submitting this material. HYSCO and NEXTEEL state that U.S. Steel's March 21, 2014 Comments contained 10 pages of narrative text regarding NEXTEEL's questionnaire response and 214 pages of new factual information, but did not include a single footnote connecting the 214 pages to its rebuttal comments. HYSCO and NEXTEEL claim U.S. Steel's submission of this factual information was in knowing violation of the *Factual Information Regulations*.

Third, HYSCO and NEXTEEL claim that on April 2, 2014, U.S. Steel provided *post hoc* explanations of how the new factual information related to NEXTEEL's supplemental questionnaire responses. According to both respondents, U.S. Steel indicated that NEXTEEL's March 6, 2014 section D supplemental questionnaire response contained information regarding its profits, and that the Department had stated in the *Preliminary Determination* its intention to examine CV profit further.⁸⁴ However, HYSCO and NEXTEEL argue, neither of the NEXTEEL responses at issue refers to "profit," and it is unreasonable to imply that new information such as

⁸¹ See HYSCO Case Brief at 8 and NEXTEEL Case Brief at 9, both citing Letter from U.S. Steel to the Department regarding NEXTEEL's March 6, 2014 section D supplemental questionnaire response, dated March 21, 2014 (U.S. Steel's March 21, 2014 Comments), and Letter from U.S. Steel to the Department regarding NEXTEEL's March 14, 2014 section A, C, and D supplemental questionnaire response, dated March 24, 2014 (U.S. Steel's March 24, 2014 Comments).

⁸² See HYSCO Case Brief at 11-12 and NEXTEEL Case Brief at 12-13, both citing *Definition of Factual Information and Time Limits for Submission of Factual Information*, 78 FR 21246 (April 10, 2013) (*Factual Information Regulations*) and 19 CFR 351.301(b)(2).

⁸³ See HYSCO Case Brief at 13-14 and NEXTEEL Case Brief at 14, both citing, e.g., Letter from U.S. Steel to the Department regarding NEXTEEL's warehousing expenses, dated February 28, 2014, and Letter from U.S. Steel to the Department regarding HYSCO's second section A and C supplemental questionnaire response and Hyundai Steel's section D supplemental questionnaire response, dated February 28, 2014.

⁸⁴ See HYSCO Case Brief at 15 and NEXTEEL Case Brief at 15, both citing Letter from U.S. Steel to the Department regarding NEXTEEL's objection to factual information submitted on March 21, 2014 and March 24, 2014, dated April 2, 2014 and *Preliminary Determination*.

the Tenaris S.A. Annual Report included in U.S. Steel's March 21, 2014 Comments at Exhibit P specifically rebuts, clarifies, or corrects any information in NEXTEEL's responses.⁸⁵ HYSCO and NEXTEEL further contend it is unreasonable to suggest that parties can file unsolicited new factual information at any time in the proceeding whenever the Department announces its intention to consider an issue further.

Fourth, HYSCO and NEXTEEL argue that U.S. Steel has not shown this new factual information was submitted in a timely manner. HYSCO and NEXTEEL contend U.S. Steel's submission of this new factual information is at odds with the *Factual Information Regulations*, stating that the purpose of restricting new factual information to information that rebuts, clarifies, or corrects evidence is to preclude parties from placing factual information on the record at a time when parties do not have the opportunity to see how the Department would utilize that information until the final determination.⁸⁶ HYSCO and NEXTEEL assert that U.S. Steel could have submitted this information by the January 16, 2014 new factual information deadline, noting the Tenaris S.A. Annual Report was available before then.⁸⁷

Lastly, HYSCO and NEXTEEL state that the Department has not responded to NEXTEEL's request to reject this factual information.⁸⁸ HYSCO asserts under 19 CFR 351.301(c)(1)(v) only the original submitter of the questionnaire response is permitted to respond to factual information, and as it is not the original submitter of the questionnaire response, HYSCO is unable to comment on CV profit information that could affect its margin calculation. NEXTEEL argues that although it timely submitted a request to reject this factual information, the Department's lack of response has precluded NEXTEEL from providing any rebuttal factual information.

U.S. Steel responds that the Department should disregard HYSCO's and NEXTEEL's requests to reject its March 21, 2014 Comments and its March 24, 2014 Comments, claiming the respondents' objections are legally and factually unfounded. First, U.S. Steel asserts, it is clear that the two submissions at issue rebut and clarify information included in NEXTEEL's supplemental questionnaire responses. U.S. Steel states that NEXTEEL's March 6, 2014 supplemental questionnaire response contained detailed information pertaining to its costs, revenues, and profits for OCTG, line pipe, standard pipe, and other products sold in Korea, the United States, and other export markets for use in CV profit calculation.⁸⁹ U.S. Steel contends the information in its March 21, 2014 submission related to the costs, revenues, and profits for OCTG sales and how they pertain to the costs, revenues, and profits for non-OCTG pipe sales; the normal profit levels earned on such products; and market conditions in Korea for non-OCTG pipe. For example, U.S. Steel asserts, the cost, revenue, and profit data in Tenaris' financial

⁸⁵ See HYSCO Case Brief at 15 and NEXTEEL Case Brief at 16.

⁸⁶ See HYSCO Case Brief at 16 and NEXTEEL Case Brief at 16-17, both citing *Factual Information Regulations*, 78 FR at 21247.

⁸⁷ See HYSCO Case Brief at 17 and NEXTEEL Case Brief at 17.

⁸⁸ See HYSCO Case Brief at 17 and NEXTEEL Case Brief at 17, both referring to Letter from NEXTEEL to the Department, "Request to Reject Untimely New Factual Information Contained in U.S. Steel's March 21, 2014 and March 24, 2014 Comments Regarding NEXTEEL's Supplemental Questionnaire Response and Third Supplemental Section D Response," dated March 27, 2014.

⁸⁹ See U.S. Steel Rebuttal Brief on HYSCO at 4 and U.S. Steel Rebuttal Brief on NEXTEEL at 8, both citing NEXTEEL's March 6, 2014 section D supplemental questionnaire response.

statements for OCTG sales in viable markets rebut and clarify the cost, revenue, and profit data that NEXTEEL reported in its March 6, 2014 supplemental questionnaire response for both OCTG and non-OCTG products.⁹⁰ Similarly, U.S. Steel maintains the affidavit in its March 21, 2014 submission related to profits from the sale of non-OCTG tubular products and whether they could be used to compute profit for OCTG sales, and the information regarding the Korean construction industry and standard pipe market pertained to profits earned on non-OCTG pipe in Korea.⁹¹

Further, U.S. Steel maintains, the Department stated in the preliminary determination that it would continue to seek other options for calculating CV profit.⁹² U.S. Steel argues the questions to which NEXTEEL responded in its March 6, 2014 supplemental questionnaire response related to this very issue. U.S. Steel contends the Department verified the information in NEXTEEL's March 6, 2014 supplemental questionnaire response.⁹³

In a similar vein, U.S. Steel asserts its March 24, 2014 submission contained factual information rebutting and clarifying information in NEXTEEL's March 14, 2014 supplemental questionnaire response, which addressed NEXTEEL's relationship with POSCO and its significant reliance on POSCO for hot-rolled coil.⁹⁴ In response to the information related to NEXTEEL's relationship with POSCO, U. S. Steel argues it submitted a short public profile of the president of NEXTEEL's U.S. affiliate, NEXTEEL America LLC, which discussed the extensive role of hot-rolled coil supplied by POSCO in NEXTEEL's OCTG manufacturing and sales operations.

Second, U.S. Steel argues that, contrary to respondents' claim, the Department's regulations do not require the submitter to provide a detailed description of the information being rebutted, clarified, or corrected, nor do they require the submitter to provide an individualized discussion of reasons as to why it is submitting that information. Rather, U.S. Steel avers, the Department's regulations merely require that the submitter "provide a written explanation identifying the information which is already on the record that the factual information seeks to rebut, clarify, or correct, including the name of the interested party that submitted the information and the date on which the information was submitted."⁹⁵ U.S. Steel contends that it fully satisfied the regulatory criteria, because it provided a written explanation identifying the record information that it sought to rebut and clarify, *i.e.*, the specific questionnaire response pertaining to a particular section of the Department's questionnaire, and it named the party that submitted the information and the date of the submission.⁹⁶

⁹⁰ See U.S. Steel Rebuttal Brief on HYSCO at 5 and U.S. Steel Rebuttal Brief on NEXTEEL at 9, both citing U.S. Steel's March 21, 2014 Comments at Exhibit P.

⁹¹ See U.S. Steel Rebuttal Brief on HYSCO at 5 and U.S. Steel Rebuttal Brief on NEXTEEL at 9, both citing U.S. Steel's March 21, 2014 Comments at Exhibit Q and Exhibits A-O, respectively.

⁹² See U.S. Steel Rebuttal Brief on HYSCO at 6 and U.S. Steel Rebuttal Brief on NEXTEEL at 10, both citing Preliminary Decision Memorandum at 22.

⁹³ See U.S. Steel Rebuttal Brief on HYSCO at 6 and U.S. Steel Rebuttal Brief on NEXTEEL at 10, both citing NEXTEEL Cost Verification Report at 31-33.

⁹⁴ See U.S. Steel Rebuttal Brief on HYSCO at 7 and U.S. Steel Rebuttal Brief on NEXTEEL at 11, both citing NEXTEEL's March 14, 2014 section A, C, and D supplemental questionnaire response at 4-6.

⁹⁵ See U.S. Steel Rebuttal Brief on HYSCO at 8 and U.S. Steel Rebuttal Brief on NEXTEEL at 12-13, both citing 19 CFR 351.301(b)(2).

⁹⁶ See U.S. Steel Rebuttal Brief on HYSCO at 8-9 and U.S. Steel Rebuttal Brief on NEXTEEL at 13, both citing U.S. Steel's March 21, 2014 Comments at 1-2 and U.S. Steel's March 24, 2014 Comments at 2-3.

Third, U.S. Steel argues that, contrary to HYSCO's and NEXTEEL's allegation, it did not methodically use footnotes to identify the information it was addressing in all of its prior submissions. For example, U.S. Steel states, in its January 8, 2014 submission, it provided two exhibits as factual information rebutting NEXTEEL's December 23, 2013 section D supplemental questionnaire response, but did not cite to these exhibits in its comments. U.S. Steel claims that neither the Department's regulations nor its practice require that a party use the same format in all of its submissions. Regarding respondents' argument about the lack of footnotes linking the factual information to U.S. Steel rebuttal comments, U.S. Steel maintains HYSCO and NEXTEEL are conflating deficiency comments with factual information.

Fourth, U.S. Steel contends it timely filed the two submissions at issue according to the deadlines set forth in the Department's regulations.⁹⁷ Regarding respondents' assertion that U.S. Steel placed a large amount of information on the record at a time when parties would not be able to see how that information would be used until the final determination, U.S. Steel argues that the Department itself requested extensive information regarding CV profit from HYSCO and NEXTEEL after the preliminary determination. U.S. Steel maintains it did not withhold information from the record, since U.S. Steel had submitted factual information in January 2014 demonstrating that non-OCTG products were not appropriate for calculating profit for OCTG and that Tenaris's financial data were the best information available to compute CV profit.

Finally, U.S. Steel contends that, contrary to NEXTEEL's claim, NEXTEEL could have rebutted U.S. Steel's submissions. U.S. Steel argues that NEXTEEL had seven days to respond to U.S. Steel's submission under the Department's regulations, but did not do so.⁹⁸ U.S. Steel maintains the Department's regulations do not condition the seven-day time limit on a party's capability to respond to factual information on whether the party files a request to reject such information. Regarding HYSCO, U.S. Steel argues that HYSCO was not prohibited from filing information to rebut, clarify, or correct the information which U.S. Steel submitted on the record. Rather, U.S. Steel claims, the Department's regulations establish a category of factual information that may be submitted consisting of statements of fact, documents, and data that are not otherwise accounted for in the Department's regulations, and any time limit applicable to the submission of such factual information may be extended for good cause.⁹⁹ U.S. Steel argues HYSCO also could have just requested that the Department permit it to place information on the record to rebut, clarify, or correct the factual information.

Department's Position:

The Department's preliminary determination was signed on February 14, 2014. The accompanying decision memorandum, also dated February 14, 2014, stated that the Department

⁹⁷ See U.S. Steel Rebuttal Brief on HYSCO at 12 and U.S. Steel Rebuttal Brief on NEXTEEL at 16, both citing 19 CFR 351.301(c)(1)(v) and Letter from the Department to U.S. Steel extending the deadline to submit new factual information, dated March 14, 2014.

⁹⁸ See U.S. Steel Rebuttal Brief on HYSCO at 14 and U.S. Steel Rebuttal Brief on NEXTEEL at 18, both citing 19 CFR 351.301(c)(1)(v).

⁹⁹ See U.S. Steel Rebuttal Brief on HYSCO at 15-16 and U.S. Steel Rebuttal Brief on NEXTEEL at 19-20, both citing 19 CFR 351.102(b)(21) and 351.301(a).

intended “to continue to explore other possible options for CV profit for both respondents.”¹⁰⁰ Within one week of that statement, the Department issued a questionnaire to NEXTEEL requesting cost and revenue information for NEXTEEL’s sales of OCTG, line pipe, standard pipe, and other products sold in Korea, the United States, and other export markets.¹⁰¹ While neither that questionnaire, nor NEXTEEL’s response to the questionnaire, expressly referenced the word “profit,” the information requested, and that was provided in NEXTEEL’s response, enables calculations of profits for the countries and product lines in question. That, combined with the context of the issuance of that supplemental questionnaire soon after the Department’s statement regarding “continu{ing} to explore other possible options for CV profit for both respondents,” indicates it was reasonable for U.S. Steel to conclude that the information related to CV profit issue and to offer information to rebut, clarify or correct such information.

U.S. Steel included a copy of the Tenaris financial statement in its March 21, 2014 submission.¹⁰² Financial information of Tenaris had already been considered as a possible source of information for a CV profit calculation, but had not been adopted for use in the calculations of CV profit for the preliminary determination.¹⁰³ Consequently, the presentation of additional information about Tenaris’ sales, costs, and profitability constitutes rebuttal to new options for calculating CV profit posed by the addition to the record of the data in NEXTEEL’s March 6, 2014 response.

With regard to NEXTEEL’s March 14, 2014 questionnaire response, that submission contains various references to POSCO. U.S. Steel’s submission of March 24, 2014 also contains information referencing POSCO, and there is no indication that information should be classified as anything other than rebuttal information.

With regard to the identification of information being rebutted, we note 19 CFR 351.301(b)(2) does not require detailed statements regarding the information being rebutted in such rebuttal submissions. It only requires a “written explanation identifying the information which is already on the record that the factual information seeks to rebut, clarify, or correct, including the name of the interested party that submitted the information and the date on which the information was submitted.”¹⁰⁴ U.S. Steel met these requirements. To the extent that U.S. Steel may have exceeded the requirements of our regulation in some of its prior submissions, we do not find it appropriate to penalize U.S. Steel here by holding it to a higher standard than that required by the regulation.

Even if it were true that the submissions of U.S. Steel included information that could not be considered proper rebuttal information, the Department has the authority to relax requirements of its regulations as long as parties are not substantially prejudiced.¹⁰⁵ The Department had

¹⁰⁰ See February 14, 2014 Decision Memorandum at 22.

¹⁰¹ See February 20, 2014 supplemental questionnaire from Taija A. Slaughter, Lead Accountant, to NEXTEEL.

¹⁰² See U.S. Steel’s March 21, 2014 submission at Exhibit P.

¹⁰³ See the February 14, 2014 Decision Memorandum at 22.

¹⁰⁴ See 19 CFR 351.301(b)(2).

¹⁰⁵ See, e.g., *PAM, S.p.A. v. United States*, 463 F.3d 1345, 1349 (Fed. Cir. 2006), which states “Supreme Court and Federal Circuit precedent dictate that substantial prejudice must be shown to overturn an agency review where the agency exercised its discretion to relax a regulation concerning notice.” Like *PAM* in that case, neither NEXTEEL nor HYSCO have made such a showing of “substantial prejudice.”

acknowledged in its preliminary determination that it was concerned about the existing options for calculation of CV profit, and the additional information submitted by U.S. Steel, as noted above, clarified information about an existing option in response to other information that had been submitted, as noted above. In light of the foregoing, we find no substantial prejudice from our acceptance of Tenaris' financial statements. Both NEXTEEL and HYSCO had an opportunity to submit rebuttal information in response to information that was submitted by U.S. Steel, had they chosen to do so.

Therefore, the Department concludes the information in question was properly filed, and has properly been considered by the Department in the context of its final determination.

Comment 4: Denial of Offsets for Non-Dumped Sales With the Average-to-Transaction Method

In the *Preliminary Determination*, the Department conducted a differential pricing analysis and found for both HYSCO and NEXTEEL the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. However, the Department used the average-to-average comparison method for both respondents because it preliminarily determined that the average-to-average method could appropriately account for such differences. HYSCO and NEXTEEL concur with the Department's use of the average-to-average method.

However, if the Department reaches a different conclusion in the final determination and uses the average-to-transaction method as an alternative comparison method to the standard average-to-average method, then the Department should not deny offsets for non-dumped sales (*i.e.*, use zeroing). HYSCO and NEXTEEL contend that zeroing violates the United States' obligations under the WTO Antidumping Agreement.¹⁰⁶

HYSCO and NEXTEEL argue the Department's policy of denying offsets for non-dumped sales under the second sentence of Article 2.4.2 is contrary with the WTO Antidumping Agreement. HYSCO and NEXTEEL aver the Appellate Body's rationale in *U.S. – Softwood Lumber V (Article 21.5 – Canada)* found that zeroing may not be employed under either option in the first sentence of Article 2.4.2 applies equally to the second sentence of Article 2.4.2.¹⁰⁷ HYSCO and NEXTEEL assert the Appellate Body's decisions in cases involving the appropriateness of zeroing in administrative reviews, which use the same average-to-transaction method that the Department now employs as an alternative comparison method provide further support for this conclusion.¹⁰⁸ For example, HYSCO and NEXTEEL claim the Appellate Body stated in *U.S. –*

¹⁰⁶ See HYSCO Case Brief at 66 and NEXTEEL Case Brief at 56, both citing Article 2.4.2 of the WTO Antidumping Agreement.

¹⁰⁷ See HYSCO Case Brief at 69-71 and NEXTEEL Case Brief at 59-61, both citing *United States - United States - Final Dumping Determination on Softwood Lumber from Canada Recourse to Article 21.5 of the DSU by Canada*, WT/DS264/AB/RW (September 1, 2006) (*U.S. – Softwood Lumber V (Article 21.5 – Canada)*) at paragraphs 87 and 88.

¹⁰⁸ See HYSCO Case Brief at 71-72 and NEXTEEL Case Brief at 61-62, both citing various decisions, including *U.S. – Zeroing (Japan)*; *United States – Laws, Regulations and Methodology for Calculating Dumping Margins, Report of the Appellate Body*, WT/DS294/AB/R (April 18, 2006); and *United States – Continued Existence and Application of Zeroing Methodology, Report of the Appellate Body*, WT/DS350/AB/R (February 4, 2009).

Zeroing (Japan) that the concepts under which the dumping margin is calculated do not differ with the methodologies used to make a determination under the various provisions of the WTO Antidumping Agreement.¹⁰⁹

U.S. Steel rejects HYSCO's and NEXTEEL's arguments as meritless. U.S. Steel claims there has been no WTO decision concerning the use of the Department's differential pricing analysis or the use of the average-to-transaction method as an alternative comparison method.¹¹⁰ Furthermore, U.S. Steel argues, the courts have repeatedly found that WTO decisions have no legal authority under U.S. law unless implemented in accordance with the Uruguay Round Agreements Act.¹¹¹ Therefore, U.S. Steel asserts the Department should apply the average-to-transaction method to all U.S. sales where it finds any degree of differential pricing.

Department's Position:

In this final determination, the Department has applied the standard average-to-average method with offsets for non-dumped sales to calculate the weighted-average dumping margins for both HYSCO and NEXTEEL. Accordingly, this issue is moot.

Comment 5: Application of the Average-to-Transaction Method to All U.S. Sales

HYSCO and NEXTEEL argue that the Department is not permitted to apply the alternative average-to-transaction method to all U.S. sales, but only to those U.S. sales which are part of a pattern of prices that differ significantly. Specifically, HYSCO and NEXTEEL assert the second sentence of Article 2.4.2 only permits the Department to apply the average-to-transaction method to those "individual export transactions" where it finds differential pricing occurred, not to all sales. HYSCO and NEXTEEL hypothesize that if the signatories of the WTO Antidumping Agreement had intended for the alternative average-to-transaction method to be applied to all sales, then they would have included the word "all" in the text of the agreement. Further, HYSCO and NEXTEEL maintain the Appellate Body's report in *U.S. – Zeroing (Japan)* supports this interpretation.¹¹²

HYSCO and NEXTEEL claim the Department's current interpretation of the statute to apply the average-to-transaction to all U.S. sales where there exists a pattern of prices that differ significantly is also flawed. Respondents identify that this interpretation was introduced in the

¹⁰⁹ See HYSCO Case Brief at 72 and NEXTEEL Case Brief at 62, both citing *U.S. – Zeroing (Japan)* at paragraph 114.

¹¹⁰ See U.S. Steel Rebuttal Brief on HYSCO at 66 and U.S. Steel Rebuttal Brief on NEXTEEL at 59-60, both citing *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea; Final Results of Antidumping Duty Administrative Review; 2010 to 2011*, 78 FR 16247 (March 14, 2013), and accompanying Issues and Decision Memorandum at Comment 1E.

¹¹¹ See U.S. Steel Rebuttal Brief on HYSCO at 66 and U.S. Steel Rebuttal Brief on NEXTEEL at 60, both citing *NSK Ltd. v. United States*, 510 F.3d 1375, 1380 (Fed. Cir. 2007); *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007); and *Corus Staal BV v. Dep't of Commerce*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005).

¹¹² See HYSCO Case Brief at 68 and NEXTEEL Case Brief at 58, both citing *United States – Measures Relating to Zeroing and Sunset Reviews*, WT/DS322/AB/R (January 9, 2007 (*U.S. – Zeroing (Japan)*)).

final determination of *PRCBs from Taiwan*,¹¹³ but that the Department has never adequately explained why this is a reasonable approach.

U.S. Steel rejects HYSCO's and NEXTEEL's arguments as meritless. U.S. Steel claims there has been no WTO decision concerning the use of the Department's differential pricing analysis or the use of the average-to-transaction method as an alternative comparison method.¹¹⁴

Furthermore, U.S. Steel argues, the courts have repeatedly found that WTO decisions have no legal authority under U.S. law unless implemented in accordance with the Uruguay Round Agreements Act.¹¹⁵ Therefore, U.S. Steel asserts the Department should apply the average-to-transaction method to all U.S. sales where it finds any degree of differential pricing.

U.S. Steel and Maverick assert that neither the statute nor the SAA includes provision to limit the application of the average-to-transaction method based on the extent of the identified pattern of prices that differ significantly as defined in the results of the ratio test. In doing so, the Department has improperly included an additional element into the two requirements set forth in the statute. U.S. Steel points to *Wood Flooring from the PRC*¹¹⁶ and *PRCBs from Taiwan*¹¹⁷ as examples of where the Department has stated that when targeted dumping is found that it should apply the average-to-transaction method to all, rather than to a limited subset of, U.S. sales. U.S. Steel further argues that the Court's decisions in *Timken I*¹¹⁸ and *Timken II*¹¹⁹ are not relevant in this investigation since both of these decisions did not involve the differential pricing analysis employed in this situation, and the proportion of sales found to be targeted was "miniscule." Further, the Department's use of "ranges" to determine which methodology to employ is arbitrary, and has never provided an explanation to substantiate the ranges it uses. Accordingly, when the Department has established that there exists a pattern of prices that differ significantly, it must apply the alternative average-to-transaction method to all U.S. sales.

Department's Position:

For this final determination, the Department has found for both HYSCO and NEXTEEL that the average-to-average method, applied to all U.S. sales, is the appropriate comparison method to use to calculate the weighted-average dumping margins for each respondent. The basis for this determination is that there is no meaningful difference in the weighted-average dumping margins

¹¹³ See *Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value*, 75 FR 14569 (March 26, 2010) (*PRCBs from Taiwan*).

¹¹⁴ See U.S. Steel Rebuttal Brief on HYSCO at 66 and U.S. Steel Rebuttal Brief on NEXTEEL at 59-60, both citing *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2010 to 2011*, 78 FR 16247 (March 14, 2013), and accompanying Issues and Decision Memorandum at Comment 1E.

¹¹⁵ See U.S. Steel Rebuttal Brief on HYSCO at 66 and U.S. Steel Rebuttal Brief on NEXTEEL at 60, both citing *NSK Ltd. v. United States*, 510 F.3d 1375, 1380 (Fed. Cir. 2007); *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007); and *Corus Staal BV v. Dep't of Commerce*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005).

¹¹⁶ See *Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (*Wood Flooring from the PRC*) and the accompanying Issues and Decision Memorandum at comment 4.

¹¹⁷ See *Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value*, 75 FR 14569 (March 26, 2010) (*PRCBs from Taiwan*) and the accompanying Issues and Decision Memorandum at comment 1.

¹¹⁸ See *The Timken Co. v. United States*, 968 F. Supp. 2d 1279 (CIT 2014) (*Timken I*).

¹¹⁹ See *The Timken Co. v. United States*, Ct. No. 13-69, Slip Op. 2014-51 (CIT 2014) (*Timken II*).

calculated using the average-to-average method applied to all U.S. sales and any alternative comparison method based on the average-to-transaction method. Accordingly, this issue is moot.

Comment 6: Differential Pricing Analysis: Thresholds for the Results of the Ratio Test

Maverick argues that when the differential pricing test is not run on all three bases, *i.e.*, purchaser, region, and time period, the Department should alter the thresholds which determine which, if any, alternative comparison method should be considered. Maverick alleges that when the Department, for whatever reason, does not have the information to run the Cohen's *d* test on a particular basis, then fewer sales will pass the Cohen's *d* test and therefore the thresholds should be altered to account for that fact. Maverick claims that if only two of the three bases are evaluated, then the thresholds should be 22 percent and 44 percent rather than 33 percent and 66 percent, respectively.

Department's Position:

For this final determination, the Department has found for both HYSCO and NEXTEEL that the average-to-average method, applied to all U.S. sales, is the appropriate comparison method to use to calculate the weighted-average dumping margins for each respondent. The basis for this determination is that there is no meaningful difference in the weighted-average dumping margins calculated using the average-to-average method applied to all U.S. sales and any alternative comparison method based on the average-to-transaction method. Accordingly, this issue is moot.

Comment 7: Differential Pricing Analysis: Calculation of the Ratio Test

If the Department continues to use the ratio test in its differential pricing analysis, U.S. Steel argues that the Department should only include the value of those sales for which comparisons are made in the Cohen's *d* test. U.S. Steel claims that NEXTEEL could manipulate the results of the ratio test slightly adjusting its reported U.S. sales data to prevent these comparisons from being made.

Department's Position:

For this final determination, the Department has found for both HYSCO and NEXTEEL that the average-to-average method, applied to all U.S. sales, is the appropriate comparison method to use to calculate the weighted-average dumping margins for each respondent. The basis for this determination is that there is no meaningful difference in the weighted-average dumping margins calculated using the average-to-average method applied to all U.S. sales and any alternative comparison method based on the average-to-transaction method. Accordingly, this issue is moot.

Issues Pertaining to HYSCO

Comment 8: Basis for U.S. Price

HYSCO contends that as it has demonstrated throughout this investigation, it is not affiliated with its U.S. customer.¹²⁰ Rather, HYSCO asserts, it has developed a long-term commercial relationship that has lasted because of the benefits to all of the parties involved.¹²¹ HYSCO claims the information it provided to the Department since the *Preliminary Determination*, and which the Department verified, confirms that HYSCO is not affiliated with its U.S. customer.¹²² As a result, HYSCO argues the Department should base U.S. price on HYSCO's sales to its U.S. customer.

U.S. Steel states the Department appropriately examined whether HYSCO and its U.S. customer should be treated as affiliates, but the evidence gathered by the Department does not suggest a finding of affiliation between HYSCO and its U.S. customer at present.¹²³ However, U.S. Steel maintains the Department should continue to probe this issue in future segments of this proceeding.¹²⁴

In its rebuttal brief, HYSCO urges the Department to disregard U.S. Steel's request that the Department continue to examine the issue of affiliation between HYSCO and its U.S. customer in future segments of this proceeding. HYSCO argues the Department should not allow such an extensive inquiry to occur again regarding its U.S. customer, and should conclude that HYSCO and its U.S. customer are not affiliated.

Department's Position:

Based on the information on the record of this investigation, and after considering HYSCO's and U.S. Steel's respective arguments on this issue, the Department agrees with HYSCO and U.S. Steel that there is no basis on which to find affiliation between HYSCO and its U.S. customer for purposes of this final determination. Therefore, for this final determination, we have calculated U.S. price using HYSCO's sales to its U.S. customer. As for any future segments of this

¹²⁰ See HYSCO Case Brief at 7, citing HYSCO's September 17, 2013 section A questionnaire response at A-5-A-12; Letter from HYSCO to the Department, "Pre-Preliminary Comments of HYSCO," dated January 30, 2014, at 5-16; and Letter from HYSCO to the Department, "Pre-Preliminary Rebuttal Comments of HYSCO," dated February 10, 2014, at 13-14.

¹²¹ *Id.*, citing HYSCO's January 6, 2014 section A supplemental questionnaire response at SA-16 and HYSCO's March 14, 2014 supplemental questionnaire response at 4.

¹²² *Id.* at 7-8, citing HYSCO's February 18, 2014 section A and C supplemental questionnaire response at 4-5, 8, and 25-27; HYSCO's March 14, 2014 supplemental questionnaire response at 1-8 and Exhibit 3; HYSCO's U.S. Customer's March 14, 2014 questionnaire response at 1-3, 5-9, and Exhibit 1; HYSCO's U.S. Customer's April 11, 2014 section A, C, and E supplemental questionnaire response at 3, 5-9, and 13-14; and Memorandum to the File through Robert James, Program Manager, AD/CVD Operations, Office VI, from Deborah Scott and Steve Bezirgianian, International Trade Compliance Analysts, AD/CVD Operations, Office VI, "Verification of Hyundai HYSCO's U.S. Customer's Sales and Further Manufacturing Cost Responses in the Antidumping Duty Investigation of Certain Oil Country Tubular Goods from the Republic of Korea," dated June 10, 2014 (U.S. Customer Verification Report).

¹²³ See U.S. Steel Case Brief on HYSCO at 36-37, footnote 175.

¹²⁴ *Id.*

proceeding, should an order be issued, the Department will make determinations regarding affiliation based upon the information on the record of any such segments.

Comment 9: HYSCO's International Freight Expenses

HYSCO reported that an affiliate provided international freight services during the POI, and that this affiliate only provided freight services to affiliated parties. Thus, HYSCO stated that it was not able to provide evidence of prices between HYSCO and unaffiliated freight providers, or between the affiliated freight provider and unaffiliated customers. In the *Preliminary Determination*, to calculate a market price for the affiliated provider's international freight services, the Department made an adjustment to HYSCO's reported international freight expenses by including selling, general, and administrative (SG&A) expenses and an amount for profit based on the affiliated freight provider's 2012 financial statements. HYSCO claims this adjustment is incorrect and should be eliminated for the final determination. First, HYSCO claims the Department has overlooked the fact that HYSCO has shown its affiliated freight provider recorded an ample profit rate on its transactions with HYSCO and thus these were arm's-length transactions. HYSCO argues the invoice it submitted from the shipping company to the affiliated freight provider demonstrated the amount the shipping company charged the affiliated freight provider was less than what the affiliated freight provider charged HYSCO.¹²⁵ HYSCO asserts that the profit realized by the affiliated freight provider was sufficient to show the transaction was at arm's length, especially since the affiliated freight provider merely acts as a broker for international freight and the quantity of material covered by international shipments is generally large.¹²⁶

Second, HYSCO contends the adjustment overstates the costs for international freight because it encompasses the higher cost for domestic inland freight that have been reported elsewhere in HYSCO's costs. HYSCO maintains the costs related to domestic inland freight are generally much higher than international freight costs because domestic inland freight usually involves transporting smaller quantities by truck. HYSCO claims that since it uses the same affiliated freight provider for domestic freight, the higher SG&A expenses and profit margin for domestic sales are already captured in HYSCO's domestic freight expenses.¹²⁷

Additionally, HYSCO avers in previous cases involving HYSCO the Department has never adjusted its costs because it found the services performed by affiliated providers were not at arm-length.¹²⁸

¹²⁵ See HYSCO Case Brief at 62, citing HYSCO's January 6, 2014 section C supplemental questionnaire response at SC-16 and Exhibit SC-14.

¹²⁶ *Id.* at 62.

¹²⁷ *Id.* at 63, citing HYSCO's November 4, 2013 section C questionnaire response at C-21.

¹²⁸ *Id.* at 63-64, citing, e.g., *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 73015 (December 7, 2012), unchanged in *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35248 (June 12, 2013) and *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results of the 18th Antidumping Duty Administrative Review, and Partial Rescission*, 77 FR 54891 (September 6, 2012), unchanged in *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2010 to 2011*, 78 FR 16247 (March 14, 2013).

Lastly, if the Department continues to adjust HYSCO's international freight expenses, HYSCO contends the Department should amend its calculation so that the profit amount is calculated on the same basis as the SG&A expenses. Specifically, HYSCO argues the Department should exclude net income associated with investment activities from the profit rate just as it excluded such income from the SG&A expenses.¹²⁹

In rebuttal, U.S. Steel contends HYSCO's assertion that its affiliated freight provider realizes a sufficient markup on its transactions with HYSCO is contradicted by the facts on the record. U.S. Steel claims that a comparison of this markup with the SG&A expenses calculated by the Department to adjust HYSCO's international freight expenses for the preliminary determination shows that the rates charged by the affiliated freight provider are not at arm's length.¹³⁰

With respect to HYSCO's argument that the adjustment overstates its international freight expenses because it includes the higher cost for domestic inland freight, U.S. Steel asserts that HYSCO does not cite to any supporting information on the record. U.S. Steel claims that HYSCO could have placed its affiliated freight provider's costs on the record to support its assertion, but did not do so. U.S. Steel maintains HYSCO bore the burden of establishing that its affiliate provided international freight services at arm's length, and the lack of evidence here must be interpreted against HYSCO.¹³¹

Finally, U.S. Steel asserts the argument that the Department has not adjusted the costs of HYSCO's affiliated international freight provider in prior cases is irrelevant. U.S. contends the Department must base its determinations on the facts of each proceeding.¹³² Based on the foregoing, U.S. Steel urges the Department to continue to adjust HYSCO's reported international freight expenses.

Department's Position:

In determining whether to use transactions between affiliated parties, the Department's practice is to compare the transfer price to either prices charged to other unaffiliated parties who contract for the same service or prices for the same service paid by the respondent to unaffiliated parties.¹³³ In the instant investigation, HYSCO stated that it only uses an affiliated company for international freight services, and that affiliated company only provides freight services to

¹²⁹ *Id.* at 64-65, citing Memorandum to the File through Robert James, Program Manager, AD/CVD Operations, Office VI, from Deborah Scott, International Trade Compliance Analyst, AD/CVD Operations, Office VI, "Analysis of Data Submitted by Hyundai HYSCO for the Preliminary Determination of the Antidumping Duty Investigation of Certain Oil Country Tubular Goods from the Republic of Korea," dated February 14, 2014 (HYSCO Sales Preliminary Analysis Memorandum) at Attachment 1.

¹³⁰ *See* U.S. Steel Rebuttal Brief on HYSCO at 63-64, citing HYSCO's January 6, 2014 section C supplemental questionnaire response at Exhibit SC-13, Appendix 2, paragraphs 1 and 3, and Letter from U.S. Steel to the Department providing pre-preliminary determination comments, dated January 31, 2014 at Exhibit C.

¹³¹ *Id.* at 65, citing *Sanyo Elec. Co. v. United States*, 86 F. Supp. 2d 1232, 1242 (CIT 1999) and *NEC Home Elecs., Ltd. v. United States*, 54 F.3d 736, 744 (Fed. Cir. 1995).

¹³² *Id.*, citing *Shandong Huarong Mach. Co. v. United States*, 29 C.I.T. 484, 491 (2005).

¹³³ *See, e.g., Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 63291 (October 16, 2012), and accompanying Issues and Decision Memorandum (Certain Orange Juice from Brazil 2010-2011 Decision Memo) at Comment 8.

affiliated parties.¹³⁴ Therefore, HYSCO was not able to provide documentation showing prices between HYSCO and unaffiliated freight providers, or between the affiliated freight provider and unaffiliated customers. As such, in the *Preliminary Determination* the Department adjusted HYSCO's reported international freight expenses to reflect a market price by incorporating an amount for the affiliated freight provider's SG&A expenses and an amount for profit.¹³⁵

We disagree with HYSCO that the Department should not continue to make an adjustment to its international freight expenses. While the affiliated freight provider applied a markup to the freight rates charged by the companies which performed the actual shipments, there is a difference between this markup and the SG&A expenses reflected in the affiliated freight provider's 2012 financial statements. This indicates that the markup is not an accurate representation of the affiliated freight provider's actual experience as reflected in its 2012 financial statements. Thus, based on this comparison of the markup to the affiliated freight provider's SG&A expenses, we find the rates that the affiliated freight provider charged HYSCO during the POI were not at arm's length. With respect to HYSCO's argument that the Department's adjustment reflects the higher cost for domestic inland freight reported elsewhere in HYSCO's costs, we find that the record does not contain any evidence to establish this is the case. As for HYSCO's assertion that the Department has not made adjustments to the cost of services from affiliated providers in other cases concerning other products involving HYSCO, we find that this is irrelevant to the instant investigation. The Department makes its determinations based on the information contained on the record of each segment of a proceeding.

Based on the foregoing, the Department will continue to make an adjustment to HYSCO's international freight expenses so that they reflect arm's-length transactions. In making this adjustment for the final determination, we have incorporated an amount for SG&A expenses of the affiliated freight provider to the reported international freight expenses. The inclusion of the affiliate's SG&A expenses ensures that the adjusted market price reflects the affiliate's cost of providing its services.¹³⁶ For information regarding the calculation of this amount, *see* the HYSCO Final Analysis Memorandum.¹³⁷

Comment 10: Application of Total or Partial Adverse Facts Available to HYSCO's Reported Costs

At the outset of the investigation, HYSCO provided information regarding its affiliates and how each affiliate was involved in the production or sales of subject merchandise. At the preliminary

¹³⁴ See HYSCO's January 6, 2014 section C supplemental questionnaire response at SC-16.

¹³⁵ See HYSCO Sales Preliminary Analysis Memorandum at 7 and Attachment 1.

¹³⁶ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From Mexico*, 77 FR 17422, March 26, 2012, and accompanying Issues and Decision Memorandum at Comment 28 (where we note that the Department's established practice is to value an affiliated input purchase at the higher of the transfer price or the adjusted market price, which includes an amount for SG&A expenses).

¹³⁷ See Memorandum to the File through Robert James, Program Manager, AD/CVD Operations, Office VI, from Deborah Scott, International Trade Compliance Analyst, AD/CVD Operations, Office VI, "Analysis of Data Submitted by Hyundai HYSCO for the Final Determination in the Less Than Fair Value Investigation of Certain Oil Country Tubular Goods from the Republic of Korea," dated July 10, 2014 (HYSCO Final Analysis Memorandum).

determination, we adjusted the reported costs for certain fees provided by affiliated service providers to ensure they fairly reflected arm's length transactions in accordance with section 773(f)(2) of the Act (*i.e.*, transactions disregarded rule).

U.S. Steel argues that the Department should apply adverse facts available (AFA) to the value of the fees that HYSCO paid to its affiliated service providers. According to U.S. Steel, it was not until verification that HYSCO claimed for the first time that the cost of production (COP) data previously provided for its service providers were inaccurate and unreliable.

U.S. Steel asserts that under the statute and the Department's practice, the burden falls on HYSCO to prove that transactions with its affiliates are conducted at arm's-length.¹³⁸ Accordingly, if available the Department will compare the transfer price paid to an affiliate to a market price, and where such market prices are not available, the transfer price is compared to the affiliates COP.¹³⁹ Consequently, if the respondent has the ability to obtain the market price or COP information from its affiliates, but fails to do so, the Department has applied AFA to the associated affiliated transactions.

In the instant case, U.S. Steel claims that although HYSCO could have obtained its affiliates' actual COP data it failed to do so. Instead, HYSCO claimed that it could not provide its affiliates' COP data because they were considered "to be highly confidential." HYSCO then proceeded to provide its own calculation of the affiliates' COP derived for the affiliates' financial statements. However, U.S. Steel asserts that after an adjustment was made at the preliminary determination, HYSCO claimed for the first time at verification that its affiliates were overstating their expenses in their financial statements and that the "COGS should be reduced for the overstatement prior to calculating the COP used as a comparison to the transfer price."¹⁴⁰ According to U.S. Steel, HYSCO's proposal reflects an attempt to manipulate the cost data. Moreover, U.S. Steel claims that the nature of the relationship between HYSCO and its affiliated service providers leaves little doubt that HYSCO could have obtained the affiliates' actual COP data and they failed to make sufficient efforts to do so. Specifically, U.S. Steel states that because the affiliates were previously a part of HYSCO, HYSCO continues to maintain an ownership interest in each affiliate, and the services providers' have an exclusive relationship with HYSCO, there is no basis to the confidentiality concerns cited by HYSCO for not providing the affiliates actual COP. Furthermore, the information could have been submitted through counsel under an administrative protective order, in the same manner as done by HYSCO's affiliate Hyundai Steel, and HYSCO would never have access to the data.

In summary, U.S. Steel argues that the Department should find that HYSCO did not act to the best of its ability in responding to the requests for COP data from its affiliated service providers.

¹³⁸ See *Sanyo Elec. Co. v. United States*, 86 F. Supp. 2d 1232, 1242 (CIT 1999), and *NEC Home Elecs., Ltd. V. United States*, 54 F.3d 736, 744 (CAFC 1995).

¹³⁹ U.S. Steel cites *Final Result of Antidumping Administrative review, Certain Orange Juice From Brazil*, 77 FR. 63291 (October 16, 2012); *Final Results of Certain Steel Concrete Reinforcing Bars from Turkey*, 69 FR. 64731 (November 8, 2004); *Final Determination of Large Residential Washers from Mexico*, 77 FR 76288 (December 27, 2012).

¹⁴⁰ See *Memorandum to Neal Halper, Verification of the Cost Response of Hyundai HYSCO in the Investigation of Certain Oil Country Tubular Goods from the Republic of Korea*, dated May 20, 2014, (*HYSCO Cost Verification Report*).

As such, HYSCO significantly impeded the Department's ability to probe the arm's length nature of the affiliated party transactions in this investigation, and attempted to provide information that could not be substantiated at verification. Further, the Department should have demanded that HYSCO provide the affiliated COP data, as they did for Hyundai Steel, instead of relying on the COP data provided by HYSCO to adjust the fees HYSCO paid its affiliates. Therefore, for the final determination, AFA should be applied to the value of the services performed by HYSCO's affiliates.

Maverick argues that the Department should apply total AFA to HYSCO because rather than act to the best of its ability, HYSCO has relied on its "web of affiliates" to conceal its true production costs and distort its conversion costs and allocation methodologies to such a degree that the Department's COP analysis is meaningless. Maverick argues that, because HYSCO's conduct has a significant impact on the Department's ability to conduct a margin analysis, the Department should apply total adverse facts available.

Maverick argues that, despite HYSCO's contentions to the contrary, its transactions with its affiliates are not made at arm's-length and that HYSCO effectively controls these affiliates. Maverick argues that, given HYSCO's ability to control its affiliates, it should have been able to provide the Department with the affiliates' COP data. Maverick argues that HYSCO's claim that it could not compel its affiliates to provide the requested data is not credible. Moreover, based on proprietary information contained in the questionnaire responses and cost verification report, Maverick argues that HYSCO appears to have more access to its affiliates financial data than it had claimed previously and that HYSCO has been selectively cherry-picking the information which it chooses to provide the Department. Maverick argues that such actions warrant the application of total adverse facts available.

To further support total AFA, Maverick argues that even though the proper allocation of conversion costs across product lines and between individual products is essential for an accurate antidumping analysis, HYSCO manipulated its allocations across product lines which could make certain product lines appear more profitable than other product lines. Maverick argues that, contrary to HYSCO's claims, HYSCO did not report its actual costs of production. Rather, Maverick claims that HYSCO used estimated raw material costs and a broadly-derived variance to eliminate the product-line specific raw material cost differences and distort the product-line specific profitability figures. Maverick argues that this distortive raw material cost methodology is in addition to a distortive conversion cost methodology which presumes that all pipe products have identical costs. To support its argument that HYSCO's raw material costs are distortive, Maverick explains that the Department's verifiers tested the raw material costs assigned to an item of merchandise not under consideration and determined that the allocated raw material costs were understated which, in turn, made the product line appear more profitable. Maverick asserts that such an intentionally distortive allocation methodology is designed to distort CV profit calculation and warrants the application of total AFA.

In the event that the Department does not apply total adverse facts available to HYSCO, Maverick argues the Department must, at a minimum disregard HYSCO's reported conversion costs because they are distortive and do not reflect HYSCO's actual COP. Maverick argues that the Department should apply partial adverse facts available to compensate for these distortions.

Maverick contends that partial adverse facts available permits the Department to disregard a portion of a respondent's submitted data in instances where there is a deficiency with respect to a 'discrete category of information' presented.¹⁴¹ Maverick also argues that, even though the Department requested that HYSCO submit a monthly schedule of HYSCO's conversion costs, HYSCO claimed that it was unable to obtain the information from its affiliated service providers. Maverick argues that, by refusing to comply with the Department's request, HYSCO forced the Department to test the distortive methodology at verification and offered "clarifying" information for the first time during the cost verification. Indeed, Maverick insists that HYSCO had "unfettered access" to the requested data and chose to feign ignorance so that it could cherry-pick the data presented to the Department.

Furthermore, Maverick argues that the Department should reject HYSCO's reporting methodology because it provides no way to accurately reflect labor and electricity costs associated with the production of OCTG as opposed to non-OCTG pipe products even though labor and electricity are the two largest components of total conversion costs. Maverick asserts that the distortive nature is exacerbated by varying profitability rates, product mixes, and efficiencies so that there is no way for the Department to ascertain actual conversion costs and assess the degree to which they vary between OCTG and non-OCTG pipe products. Maverick argues that, because HYSCO chose to provide the Department with distortive conversion cost data which precludes the Department from evaluating conversion cost differences that are typical across product lines, the Department should disregard HYSCO's reported conversion costs as not being reasonably reflective of the costs associated with the production of OCTG.

HYSCO explains that, while section 776(a) of the Act permits the Department to apply facts available in certain specified situations, section 776(b) of the Act only permits the Department to apply an adverse inference in instances where it has determined that the respondent did not act to the best of its ability. HYSCO asserts that, while the Department has found it appropriate to apply AFA in cases where the respondent had engaged in a deliberate attempt to impede the investigation, in other cases the Department has declined to apply AFA in situations where a respondent has made inadvertent and/or minor errors as long as the error neither prevented the Department from being able to conduct a verification nor prevented the verification being completed successfully.¹⁴² Moreover, HYSCO argues that, even in situations where the Department has resorted to facts available due to a respondent's failure to provide requested information, the Department has declined to apply AFA when the respondent has cooperated

¹⁴¹ *Foshan Shunde Yongjian Housewares & Hardware Co. v. United States*, 33 ITRD (BNA) 2123 (CIT 2011).

¹⁴² See *Lightweight Thermal Paper From Germany: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 23220 (April 18, 2013) and accompanying Issues and Decision Memorandum at comment 1; *Certain Steel Concrete Reinforcing Bars From Turkey: Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082 (November 7, 2006) and accompanying Issues and Decision Memorandum at comment 2; *First Administrative Review of Steel Wire Rod Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 27994 (May 13, 2011) and accompanying Issues and Decision Memorandum at comment 4; and *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) and accompanying Issues and Decision Memorandum at comment 2.

with the proceeding.¹⁴³ Finally, HYSCO explains that the CAFC has explained that the “best of the ability” standard involves “assessing whether the respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.”¹⁴⁴ HYSCO also points out that the CAFC has explained that perfection is not required and that a respondent satisfies the requisite standard when it does the “maximum it is able to do.”¹⁴⁵

HYSCO asserts that it has acted in good faith and has put forth its maximum efforts to fully cooperate throughout the course of this investigation. Indeed, HYSCO explains that it has not only complied with the Department’s extensive requests for information, but has gone so far as to arrange for its unaffiliated U.S. customer to respond to the Department’s questionnaire and submit to verification even though the customer had no reporting obligations. Moreover, HYSCO asserts that it has provided a complete and accurate record and that, even if the Department chooses to make adjustments, the record contains enough information to enable the Department to make reasonable adjustments without resorting to any form of facts available.

HYSCO argues that, despite U.S. Steel’s and Maverick’s unreasonable claims to the contrary, HYSCO has not only fully demonstrated the arm’s length nature of its transactions with affiliated parties, it has met and exceeded any reasonable standard regarding its cooperation in this investigation. HYSCO argues that, even though U.S. Steel has repeatedly challenged the credibility of HYSCO’s reported costs on the grounds that HYSCO relies on affiliates for certain services and inputs, U.S. Steel fails to acknowledge that the Department has examined these issues closely and the record evidence refutes U.S. Steel’s allegations.

HYSCO also argues that, despite the petitioner’s claims to the contrary, it has not attempted to mislead the Department concerning its affiliated suppliers’ COP. HYSCO explains that it identified its affiliated suppliers as well as the quantity and value of inputs sourced from each affiliated supplier in its initial section D questionnaire response. In response to the Department’s additional request, HYSCO provided the COP data based on its affiliated service providers’ financial statements, because the affiliated service providers refused to provide the data to HYSCO. HYSCO explains that the Department did not issue a supplemental questionnaire which identified any deficiencies with respect to HYSCO’s responses concerning its affiliated service providers. Moreover, HYSCO states that it complied with the Department’s additional requests for documentation concerning the affiliated suppliers during both the sales and cost verifications. HYSCO concludes that it in no way refused to provide information and that the record demonstrates that it cooperated fully throughout the investigation.

Next, HYSCO argues that U.S. Steel’s reliance on *Silicomanganese from Brazil* for the proposition that HYSCO had an obligation to provide its affiliated parties’ COP is misplaced. HYSCO explains that, in *Silicomanganese from Brazil* the Department determined that the respondent’s affiliates, which collectively wholly owned the respondent, were interested parties

¹⁴³ See *Certain Cased Pencils from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 33406 (July 13, 2009) and accompanying Issues and Decision Memorandum at comment 2.

¹⁴⁴ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

¹⁴⁵ *Id.*

so that the burden of supplying information fell to both the respondent and the parent companies.¹⁴⁶ HYSCO explains that the current case is readily distinguishable because HYSCO has only a small ownership interest in the affiliated service providers and the affiliated service providers are not interested parties. HYSCO argues that its relatively small ownership interest in the affiliated service providers precludes it from being able to compel the affiliates to provide their COP information.¹⁴⁷

Next, HYSCO argues that the Department should dismiss U.S. Steel's and Maverick's attempts to dismiss its affiliated service providers' confidentiality concerns and claims that HYSCO did, in fact, have access to its affiliates' data. HYSCO argues that the petitioners have failed to cite any case law for the proposition that a previous corporate relationship grants a company current control over another company and unfettered access to accounting records. Indeed, HYSCO argues that common sense demonstrates the fallacy of such an argument. Next, HYSCO explains that Maverick's claims that purported discrepancies between different exhibits contained in HYSCO's supplemental questionnaire responses demonstrate that HYSCO was in fact relying on its suppliers' records despite HYSCO's claims to the contrary, is off point. HYSCO explains that the reason why the quantities differ in the exhibits is because they represent the quantities attributable to different periods (*i.e.*, fiscal year versus the POI).

HYSCO also argues that its reliance on its affiliated service providers' financial statements to estimate their costs of production was reasonable and accurate. HYSCO explains that these service providers provide specified services solely to HYSCO. Moreover, HYSCO explains that the Act directs the Department to examine the nature of the transactions between affiliated parties and, in this case, the affiliated parties' financial statements demonstrate that each supplier was profitable. HYSCO continues that there is no evidence to support Maverick's claim that the financial statements are insufficient for the purpose of analyzing affiliated party transactions simply because they represent fiscal year data rather than the POI data. Similarly, HYSCO explains that there is no record evidence to support Maverick's claim that the use of an average cost per production line is distortive for the Department's specific purposes in its analysis. Finally, HYSCO argues that, due to the nature of their operations, it is unlikely that its affiliates are selling below cost as alleged by Maverick but that, in the event that the Department chooses to make an adjustment to HYSCO's reported costs, the adjustment should be limited.

Finally, HYSCO argues that the petitioners' proposed AFA adjustments are completely unwarranted. Concerning U.S. Steel's proposed adjustment, HYSCO argues that certain fees correlate to specific production lines and processes and that there is no basis in logic or fact to assign the highest fee to all products regardless of process. Concerning Maverick's proposal that the Department apply the highest unit cost incurred by any supplier to determine the COP for all suppliers and that the Department rely on the lowest price paid to any supplier as the transfer price paid for all transactions, HYSCO explains that such approaches are prohibited because the U.S. Court of International Trade has ruled that AFA rates must be shown by substantial

¹⁴⁶ *Id.* at 37873.

¹⁴⁷ See *Certain Cut-To-Length Carbon Steel Plate From Brazil: Final Results of Antidumping Duty Administrative Review*, 63 FR 12744, 12751 (March 16, 1998) (declining to impute an affiliate's refusal to provide requested cost information to the respondent because the respondent, who held only 15 percent of the affiliate's stock, could not compel the affiliate to supply its cost of production information).

evidence to have a rational relationship to the “commercial reality” during the period and not be punitive.¹⁴⁸ HYSCO argues that, because the Department verified the reported transfer prices, there is no reason to disregard the reported transfer prices. HYSCO also argues that there is no basis to use the highest estimated cost for one supplier as the estimated cost for all suppliers because, if the Department were to reject the estimated costs as unreasonable and inaccurate, the Department must reject all of the estimated costs rather than retain the highest estimated cost for the purposes of AFA.

Department’s Position:

We agree with HYSCO that the application of total AFA to its reported costs or partial AFA to the costs associated with its affiliated service providers is not warranted. We disagree with Maverick that both the material costs and conversion costs are distorted. Furthermore, we agree with HYSCO that although the record does not contain the POI COP data from its affiliated service providers, the record does contain sufficient information to use as facts available to conduct an arm’s length analysis of its transactions with the affiliated service providers. Accordingly, we have the information necessary to compare to the reported transfer prices (*i.e.*, amounts paid to the affiliated service providers) to ensure they reflect arm’s length transactions in accordance with section 773(f)(2) of the Act.

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

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

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying facts otherwise available pursuant to section 776(a)(1)-(2) of the Act when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The best-of-its-ability standard asks whether the respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in a proceeding.¹⁴⁹

¹⁴⁸ See *Tianjin Mach. Imp. & Exp. Corp. v. United States*, 752 F. Supp. 2d 1336, 1350 (CIT 2011).

¹⁴⁹ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (CAFC 2003).

The Department has determined that the application of total AFA to HYSCO's reported costs or partial AFA to the cost associated with HYSCO's affiliated service providers is not warranted because HYSCO cooperated to the best of its ability. HYSCO provided all requested information by the deadlines established by the Department, and the information was verified. Additionally, while we found at verification that the material cost variance could have arguably been allocated differently, our testing of the allocation methodology did not show that the reported costs were distorted. Moreover, it did not result in a finding that HYSCO did not cooperate to the best of its ability. Furthermore, and as described below, we have concluded that HYSCO was not in a position to compel its affiliated service providers to provide the COP information. For these reasons, the Department determines that the application of total AFA or partial AFA pursuant to section 776(b), is unwarranted.

As previously noted, pursuant to 773(f)(2) of the Act (*i.e.*, transactions disregarded rule) the Department may disregard the reported value of an input (*i.e.*, transfer price) in favor of the market price if the Department determines that a transaction between affiliated parties "does not fairly reflect" the market value of the input. Further, where a market price is not available, the Department compares the transfer price to the affiliated parties' COP in lieu of the market price. In the instant case, HYSCO provided the transfer price paid to its affiliated service providers and a reasonable approximation of the affiliates' COP data. The estimated COP data was based on the affiliated service providers' FY 2012 financial statements, which reflect activity only with HYSCO, and the quantity HYSCO purchased from each affiliate during FY 2012. HYSCO's affiliates declined its request to provide the COP data, stating that the nature of the information was confidential.

Based on the record of this case, we find that HYSCO's small equity ownership in the affiliated service providers is not significant enough to reach a reasonable conclusion that HYSCO could compel its affiliates to provide the COP data.¹⁵⁰ Equally important, there is no evidence on the record that HYSCO could force its affiliates to comply with its requests for information. Each of the affiliated service providers conducted business exclusively with HYSCO, and each earned an overall profit on their financial statements. Further, while HYSCO has a history with its affiliated service providers as they were previously a part of HYSCO, this does not translate to an ability to compel because in fact, during the POI, HYSCO only had a small equity ownership in each of its affiliated service providers.¹⁵¹ Moreover, the affiliated service providers' here are not interested parties under section 771(9) of the Act. Record evidence shows that HYSCO did, on several occasions, attempt to obtain COP information from its affiliated service providers, in which it had small equity ownership.¹⁵² More importantly, HYSCO complied with the Department's request to the best of its ability by providing a reasonable approximation of the COP data for each affiliated service provider based on their respective FY 2012 financial

¹⁵⁰ See *Certain Cut-To-Length Carbon Steel Plate from Brazil*, 63 FR 12744 (March 16, 1998) where the Department surmised that public data on the record of the proceeding indicated that a 15 percent stock ownership constituted a small portion of a company's total operations; therefore, the respondent could not compel its affiliate to supply cost of production information.

¹⁵¹ See HYSCO's September 17, 2013 section A questionnaire response at Exhibit A-4.

¹⁵² See *Certain Cut-To-Length Carbon Steel Plate from Brazil*, 63 FR 12744 (March 16, 1998) where the Department surmised that public data on the record of the proceeding indicated that a 15 percent stock ownership constituted a small portion of a company's total operations; therefore, the respondent could not compel its affiliate to supply cost of production information.

statements and the quantities it had purchased from each affiliated service provider. Moreover, our testing of the allocation methodology did not show that the reported costs were distorted. Thus, for the final determination, the Department finds that the COP data provided by HYSCO for each affiliated service provider is sufficient to use as facts available to compare to the reported transfer prices to ensure they reflect arm's length transactions.

With respect to Maverick's arguments that HYSCO has unprecedented access to the affiliated service providers business proprietary information, and that the reporting methodology is in no way accurate, we disagree. First, as part of the verification, the Department reviewed and tested previously submitted documents and requested numerous other documents associated with the affiliated service providers including, but not limited to, performing tests and online inquiries within HYSCO's systems. While reviewing these documents and performing these tests the Department found no evidence that HYSCO has access to its affiliated service providers' business proprietary information.¹⁵³ Second, as noted by HYSCO, the fees paid to the affiliates correlate to separate production lines and thus separate products. As such, the reporting methodology differentiates costs by the physical characteristics defined by the Department, and thus equates to a reasonable methodology for allocating the costs in question to specific products.

In regard to both U.S. Steel's and Maverick's arguments that HYSCO offered "clarifying" information for the first time during the cost verification, we note that the explanation both parties are referring to was associated with a reconciliation of the affiliated service providers' financial statements provided in exhibit S-10 of the March 21, 2014 supplemental questionnaire response. While we acknowledge that the business proprietary explanation was not on the record prior to verification, as part of the verification the Department reviewed and tested the reconciliation in question and requested an explanation of the associated reconciling items. Accordingly, the Department has determined, after considering all interested party comments, that the business proprietary explanation which the Department accepted at the start of verification, coupled with the reconciliation and supporting documents, are reasonable. As such, we have determined that it was appropriate to use, as facts available, the COP data provided by HYSCO (*i.e.*, based on its affiliated service providers' financial statements) as a comparison to the transfer price in accordance with section 773(f)(2) of the Act. Therefore, for the final determination, where necessary we adjusted the reported transfer price to reflect the higher COP data.

Comment 11: HYSCO's Domestic Inland Freight Expenses

U.S. Steel asserts that HYSCO has failed to demonstrate its affiliated freight provider transported the subject merchandise from the factory to the port at arm's-length prices. U.S. Steel argues the Department's practice in deciding whether to rely on transactions between affiliated parties is to compare the transfer price to either (1) prices charged to unaffiliated parties for the same service or (2) prices paid by the respondent to unaffiliated parties for the same service.¹⁵⁴ U.S. Steel

¹⁵³ See HYSCO's Cost Verification Report dated May 20, 2014 (HYSCO Cost Verification Report).

¹⁵⁴ See U.S. Steel Case Brief on HYSCO at 45, citing, *e.g.*, *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 40167 (August 11, 2009), and accompanying Issues and Decision Memorandum (Certain Orange Juice from Brazil 2007-2008 Decision Memo) at Comment 8.

claims that when a respondent does not meet this burden of proof, the Department relies upon other information on the record to value the input or service provided by the affiliate.¹⁵⁵ As an example, U.S. Steel cites Certain Orange Juice from Brazil 2007-2008 Decision Memo, wherein the Department adjusted the transfer prices paid to an affiliate for international freight to arm's-length prices based on a single invoice for international freight services provided by the affiliate to an unaffiliated party, as the Department found the invoice was the best evidence of arm's-length prices.¹⁵⁶

U.S. Steel states HYSCO reported that it has occasionally used an unaffiliated trucking company for domestic inland freight services.¹⁵⁷ U.S. Steel notes that HYSCO provided a chart comparing the rates charged by the affiliated freight provider to the rates charged by the unaffiliated trucking company and a copy of a contract with the affiliated freight provider that reflected the rates in the chart.¹⁵⁸ U.S. Steel argues the rates in the chart and on the contract are not in keeping with the rates the affiliated freight provider actually charged, nor do the rates actually charged by the affiliated freight provider reflect arm's-length prices.¹⁵⁹ Comparing the various rates in a table, U.S. Steel contends the rates charged by the unaffiliated trucking company differed by a certain percentage from the rates the affiliated freight provider actually charged HYSCO during the POI.¹⁶⁰ For the final determination, U.S. Steel asserts the Department should increase HYSCO's reported domestic inland freight expenses by this percentage so that they reflect arm's-length prices.

Citing the HYSCO Sales Verification Report, U.S. Steel states that at verification HYSCO reported it had inadvertently submitted the inland freight contract for domestic shipments in its first supplemental questionnaire response and thus it provided the contract covering freight from the factory to the port for export shipments.¹⁶¹ U.S. Steel contends that since HYSCO submitted the original contract to show the affiliated freight provider's prices were at arm's length, it is doubtful that HYSCO inadvertently submitted the original contract. At any rate, U.S. Steel asserts, the contract submitted at verification reinforces the conclusion that the affiliated freight provider's rates were not at arm's length.

HYSCO responds that under 19 CFR 351.403(c), the Department first analyzes whether the price to an affiliate is comparable to unaffiliated parties, and, if this threshold is satisfied, the Department will utilize the transaction to compute normal value. According to HYSCO, U.S. Steel's argument conflates these two steps of the arm's-length test. HYSCO claims that U.S. Steel ignores the fact that HYSCO provided the contracts with its affiliated freight provider and

¹⁵⁵ *Id.*, citing *Seamless Refined Copper Pipe and Tube From Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 73422, 73424 (December 10, 2012), unchanged in *Seamless Refined Copper Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35244 (June 12, 2013).

¹⁵⁶ *Id.* at 45-46, citing at Certain Orange Juice from Brazil 2007-2008 Decision Memo at Comment 10.

¹⁵⁷ *Id.* at 46, citing HYSCO's November 4, 2013 section C questionnaire response at C-21 and Exhibit C-5-B.

¹⁵⁸ *Id.* at 46-47, citing HYSCO's November 4, 2013 section C questionnaire response at C-21 and Exhibit C-5-B and HYSCO's January 6, 2014 section C supplemental questionnaire response at SC-10 and Exhibit SC-8.

¹⁵⁹ *Id.* at 47-48, citing HYSCO's November 4, 2013 section C questionnaire response at C-21, Exhibit C-5-A, and Exhibit C-5-B and HYSCO's January 6, 2014 section C supplemental questionnaire response at SC-10 and Exhibit SC-8.

¹⁶⁰ *Id.* at 48-49.

¹⁶¹ *Id.* at 49, citing HYSCO Sales Verification Report at 35.

the unaffiliated trucking company to show that HYSCO's affiliated freight provider realized profits that were comparable to those of unaffiliated freight providers.¹⁶² HYSCO argues that upon discovering at verification that it had mistakenly provided the wrong freight contract in its January 6, 2014 supplemental questionnaire response, it submitted the correct contract, which the Department officials examined and fully verified.¹⁶³ HYSCO maintains the contract provided during verification does not subvert the arm's-length nature of the relationship between HYSCO and its affiliated freight provider.

HYSCO claims the Department utilized its reported domestic inland freight expenses without making any adjustments in the preliminary determination because the Department was satisfied that the transactions between HYSCO and its affiliated freight provider were conducted at arm's length. HYSCO contends that because it established its transactions with its affiliated freight provider were at arm's length, the Department should continue to rely on HYSCO's domestic inland freight expenses as reported for the final determination.

Department's Position:

At verification, while attempting to verify HYSCO's domestic inland freight expenses and tie them to the rates in the domestic inland freight contract which HYSCO had provided in its January 6, 2014 section C supplemental questionnaire response at Exhibit SC-8, HYSCO realized it had inadvertently submitted the inland freight contract for domestic shipments.¹⁶⁴ HYSCO then provided the contract for transportation from the factory to the port for export shipments.¹⁶⁵ While examining the pre-selected and surprise sales traces, we traced the expenses reported to the Department to the rates in the contract for export shipments.¹⁶⁶

The Department disagrees with HYSCO that its reported domestic inland freight expenses reflect arm's-length prices. In determining whether to use transactions between affiliated parties, the Department's practice is to compare the transfer price to either prices charged to other unaffiliated parties who contract for the same service or prices for the same service paid by the respondent to unaffiliated parties.¹⁶⁷ In its section C questionnaire response, HYSCO provided the rates charged by an unaffiliated company for inland freight services in an effort to demonstrate that its affiliated freight provider's rates were at arm's-length.¹⁶⁸ We have compared these rates, which are the only rates on the record reflecting freight services provided by an unaffiliated company, to the rates in HYSCO's contract with the affiliated freight provider for transportation from the factory to the port for export shipments. Based on this comparison, we find that HYSCO's reported domestic inland freight expenses do not reflect arm's-length

¹⁶² See HYSCO's Rebuttal Brief at 73, citing HYSCO's November 4, 2013 section C questionnaire response at C-21 and HYSCO's January 6, 2014 section C supplemental questionnaire response at SC-13.

¹⁶³ *Id.* at 73-74, citing HYSCO Sales Verification Report at 35-38 and Letter from HYSCO to the Department, "Sales Verification Exhibits," dated May 12, 2014 (HYSCO Sales Verification Exhibits), at Exhibit 20.

¹⁶⁴ See HYSCO Sales Verification Report at 35.

¹⁶⁵ *Id.*; see also HYSCO Sales Verification Exhibits at Exhibit 20.

¹⁶⁶ See HYSCO Sales Verification Report at 36-38.

¹⁶⁷ See, e.g., Certain Orange Juice from Brazil 2010-2011 Decision Memo at Comment 8.

¹⁶⁸ See HYSCO's section C questionnaire response at C-21 and Exhibit C-5-B. See also HYSCO's January 6, 2014 section C supplemental questionnaire response at SC-11, in which HYSCO clarifies that the rates in Exhibit C-5-B reflected rates for freight services from the Ulsan plant to the Ulsan port.

transactions. As a result, for this final determination, the Department finds it appropriate to make an adjustment to HYSCO's domestic inland freight expenses so that they reflect arm's-length prices. For information regarding the calculation of this amount, *see* the HYSCO Final Analysis Memorandum.

Comment 12: Raw Material Transportation Costs Provided by HYSCO's Affiliate

U.S. Steel asserts that, as previously noted in comment 11, HYSCO failed to show that the freight rates charged by its affiliate for transporting the subject merchandise from HYSCO's plant to the Ulsan port reflect arm's length prices. Likewise, HYSCO failed to show that the freight rates charged by the same affiliate for transporting raw materials to the factory reflected an arm's length price. Because there is no other information on the record to show that the freight rate paid to HYSCO's affiliate for transporting raw materials to the factory is at arm's length, as facts available, the Department should increase the cost of manufacture associated with transporting raw materials to the plant by the same upward adjustment that should be applied to the reported domestic inland freight.

HYSCO argues that, for the same reasons stated in Comment 11, the Department need not adjust the freight-in component of HYSCO's reported raw materials cost.

Department's Position:

As noted above, in determining whether to use transactions between affiliated parties, the Department's practice is to compare the transfer price to either prices charged to other unaffiliated parties who contract for the same service or prices for the same service paid by the respondent to unaffiliated parties.¹⁶⁹ We agree with the petitioner that we should increase the transportation costs associated with delivering raw materials to the factory to reflect the higher of the domestic freight transfer price or the unaffiliated domestic market price. As noted in Comment 11, the reported domestic freight costs sourced from HYSCO's affiliate do not reflect an arm's length transaction. Therefore, because HYSCO used the same affiliated company to deliver its raw materials to the production plant, we determined it was appropriate to adjust HYSCO's reported transportation costs related to the delivery of raw materials to reflect prices paid to unaffiliated domestic freight providers.

Comment 13: Rental Fees Paid to HYSCO's Affiliate

According to U.S. Steel, HYSCO failed to meet its burden to show that the rental fees it paid to its affiliate for the facilities where it produced the subject merchandise reflect an arm's length value. Moreover, HYSCO failed to provide the Department with the information needed to adjust the rental fees to reflect an arm's length transaction. Therefore, the Department should apply AFA in calculating the adjustment to the rental fee amount paid by HYSCO to its affiliate for certain facilities.

U.S. Steel asserts that although HYSCO provided the depreciation expense incurred on the Ulsan facility for 2013 and the rental fee paid by HYSCO during the POI, HYSCO did not account for

¹⁶⁹ *See, e.g.,* Certain Orange Juice from Brazil 2010-2011 Decision Memo at Comment 8.

other costs that would have been incurred by its affiliate for the property in question. Furthermore, at verification the Department requested that HYSCO obtain the property taxes paid by its affiliate to more accurately reflect the costs associated with the facilities and HYSCO's affiliate flatly refused to provide the information. Because of the nature of HYSCO's affiliation with this affiliate, U.S. Steel suggests that HYSCO could have obtained and reported the property taxes and other expense information associated with maintaining the facility from its affiliates. To support its claim that HYSCO could have obtained the requested information, U.S. Steel states that both HYSCO and its affiliate are members of the HMG chaebol controlled by the Chairman and his family, and based on that fact there is no question that the controlling interests had the ability to compel the affiliate to provide the information. Rather, HYSCO was simply not willing to provide the information. This impeded the Department's ability to properly calculate an accurate adjustment to the rental fees paid to its affiliates by HYSCO. Therefore, the Department should apply AFA in calculating the rental fees that HYSCO paid to ensure HYSCO does not benefit from its failure to cooperate to the best of its ability.

Maverick explains that HYSCO rents buildings at its Ulsan plant from an affiliated party and that HYSCO pays monthly rent and incurs the insurance costs. Maverick explains that, in response to the Department's request concerning the associated property taxes, HYSCO replied that the affiliate had refused to provide the information to HYSCO and instead HYSCO relied on provisions in the tax law to provide estimated property taxes. Maverick argues that during the cost verification, the Department observed that HYSCO had neglected to include three months' worth of rent in its submitted costs. Maverick argues that, consistent with the preliminary determination, the Department should increase HYSCO's estimation of taxes and depreciation incurred and, after comparing this revised figure with the actual rent paid by HYSCO, adjust HYSCO's reported costs.

Concerning the affiliated company to which HYSCO makes rental payments, HYSCO argues that it is a separate company from the alleged affiliated company. Even though both companies are members of the HMG chaebol, HYSCO claims that it has no authority to compel this other company to provide the requested information pertaining to property taxes and other expenses. HYSCO explains that, while it does not disagree in principle with the minor adjustment identified by the Department, the adjustment itself is so trivial that it should be disregarded. HYSCO notes that it has acted to the best of its ability and argues that, if the Department decides to adjust its reported costs, the Department should rely on the information collected at verification. HYSCO notes that, despite U.S. Steel's calls for adverse facts available, U.S. Steel has not submitted any information which could serve as a basis for AFA.

Department's Position:

We agree with HYSCO that the application of AFA to the costs associated with rental payments made to its affiliate is not warranted. We also agree with Maverick that, in accordance with section 772(f)(2) of the Act, the Department should ensure the actual rental fee paid by HYSCO to its affiliate reflects the higher of the rental fee paid or, in the absence of an available market price, the sum of the depreciation expense, estimated taxes and the affiliates SG&A expenses (*i.e.*, surrogate COP).

The Department determined that the application of AFA to the cost associated with rental payments made by HYSCO to its affiliate is not warranted because HYSCO cooperated to the best of its ability. HYSCO provided all requested information by the deadlines established by the Department, and the information was verified. Furthermore, we do not consider HYSCO to be in a position to compel its affiliate to provide the requested information. During the POI, HYSCO only had a small equity ownership in each of its affiliated service providers.¹⁷⁰ Moreover, the affiliated service providers here are not interested parties under section 771(9) of the Act. At verification, the Department requested HYSCO to obtain the cost of the property taxes for the rented facility from its affiliate. However, HYSCO explained that its affiliate refused to provide the information. Therefore, to cooperate to the best of its ability, HYSCO researched the property tax law for the area where the building was located and using those data, coupled with the information on the rented facility, estimated the property taxes. We verified the property tax information and determined it was a reasonable estimate of the property taxes paid. In addition, at verification supporting documentation was provided by HYSCO showing that it incurs the cost for insuring the facility. For these reasons, the Department determines that the application of total AFA or partial AFA, pursuant to section 776 of the Act, is unwarranted. Thus, for the final determination, we have determined that it is appropriate to use the sum of the depreciation expense, estimated taxes, and the affiliates SG&A expenses (*i.e.*, surrogate COP) as a market price comparison to the transfer price in accordance with section 773(f)(2) of the Act.

Comment 14: HYSCO's Packing Expenses

U.S. Steel contends the Department should make three adjustments to HYSCO's reported packing costs for the final determination. First, U.S. Steel claims HYSCO's processing costs do not include all payments to affiliated packing service providers during the POI. U.S. Steel states that in addition to the master agreement and individual written contracts maintained with each of the affiliated packing service providers, HYSCO had separate unwritten agreements with each affiliate to provide retroactive payments.¹⁷¹ U.S. Steel contends the Department should include the retroactive payments made in 2012 to HYSCO's affiliated packing service providers so that HYSCO's packing expenses incorporate all of the payments for which it is liable.¹⁷²

Second, U.S. Steel avers the prices which HYSCO reported that it paid to each affiliated packing service provider differ from the prices in the contract with each affiliate.¹⁷³ U.S. Steel asserts the Department examined this discrepancy at verification and found that HYSCO paid the contract rates to pack OCTG and the reported packing expenses were based on expenses incurred to pack both OCTG and non-subject merchandise.¹⁷⁴ U.S. Steel argues the Department's questionnaire instructs respondents to report their costs for packing subject merchandise, and the Department's practice is to require respondents to report expenses that are specific to subject merchandise.¹⁷⁵

¹⁷⁰ See HYSCO's September 17, 2013 section A questionnaire response at Exhibit A-4.

¹⁷¹ See U.S. Steel Case Brief on HYSCO at 56-57, citing HYSCO Sales Verification Report at 46-47.

¹⁷² *Id.* at 57, citing HYSCO Sales Verification Report at 47.

¹⁷³ *Id.* at 57-58, citing HYSCO's February 18, 2014 section A and C supplemental questionnaire response at Exhibits SC-8 and SC-9, HYSCO Sales Verification Report at 46-47, and Letter from HYSCO to the Department, "Cost Verification Exhibits," dated April 11, 2014 (HYSCO Cost Verification Exhibits), at Exhibit 17.

¹⁷⁴ *Id.* at 58-59, citing HYSCO Sales Verification Report at 47.

¹⁷⁵ *Id.* at 59, citing *Carbon and Certain Alloy Steel Wire Rod From Mexico: Notice of Final Results of Antidumping Duty Administrative Review*, 77 FR 13545 (March 7, 2012), and accompanying Issues and Decision Memorandum

To ensure HYSCO's packing expenses are specific to OCTG, U.S. Steel contends the Department should rely on the average of the rates indicated in the contracts rather than HYSCO's reported packing expenses.¹⁷⁶

Third, U.S. Steel states the expenses for varnish that HYSCO reported in its questionnaire response differed from the expenses identified at verification.¹⁷⁷ U.S. Steel argues the Department should adjust HYSCO's reported packing material costs so that they reflect the varnish costs identified at verification.

HYSCO disagrees with U.S. Steel's proposed adjustments to its packing expenses. First, HYSCO contends that adding an amount for retroactive payments to its affiliated packing service providers would result in double-counting these payments. HYSCO claims that since retroactive payments for 2013 are still being negotiated, there is no basis on which to determine an amount for 2013 retroactive payments, and such amounts will be recognized in the period in which they are paid. As for the retroactive payments made for 2012, HYSCO asserts these have already been incorporated into its reported costs. Specifically, HYSCO claims the Department's verification report stated a particular exhibit reflected "adjustment payments for each of the affiliates," indicating these amounts were already paid to the affiliates and thus were included in HYSCO's reported packing costs.¹⁷⁸

With respect to the packing contract rates, HYSCO contends U.S. Steel's comparison of the contract prices to the prices paid to the affiliated packing service providers is flawed because the contract prices are on a man-per-hour basis. HYSCO asserts it correctly reported packing costs by allocating packing expenses for all pipes over total production quantity. HYSCO argues the packing contracts show that it pays a certain amount on man-per-hour basis according to the forming line, regardless of whether the product is standard pipe, line pipe, and OCTG.¹⁷⁹ HYSCO claims it is therefore not possible to isolate packing costs for OCTG, and moreover, per-unit costs are identical for standard pipe, line pipe, and OCTG. HYSCO maintains that only one affiliate deviates from this pricing system, charging a certain amount for OCTG packing services.¹⁸⁰

Finally, with respect to varnish expenses, HYSCO claims the difference noted by U.S. Steel relates to materials that are more appropriately classified as consumables used in applying varnish rather than a direct packing expense. HYSCO asserts that if the Department finds these materials pertain to packing expenses, the Department should include the amount in HYSCO's cost of manufacturing, not its packing expenses.

at Comment 2 and *Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea*, 71 FR 29310 (May 22, 2006).

¹⁷⁶ *Id.* at 60, citing HYSCO Cost Verification Exhibits at Exhibit 17.

¹⁷⁷ *Id.*, citing HYSCO's November 4, 2013 section C questionnaire response at C-34 and Exhibit C-17 and HYSCO Sales Verification Report at 46.

¹⁷⁸ See HYSCO Rebuttal Brief at 76-77, citing HYSCO Sales Verification Report at 47 and HYSCO Sales Verification Exhibits at Exhibit 35. HYSCO also cites the HYSCO Sales Verification Exhibits at Exhibit 17, but that document does not appear to contain any information relevant to this topic.

¹⁷⁹ *Id.* at 77, citing HYSCO Cost Verification Exhibits at Exhibit 17.

¹⁸⁰ *Id.* at 78, citing HYSCO Cost Verification Exhibits at Exhibit 17.

Department's Position:

We determine that HYSCO's reported per-ton packing costs are not reliable because of various discrepancies identified at verification. These discrepancies, and our adjustments to account for them, are described below.

We disagree with HYSCO's claim that the additional retroactively-negotiated payments to affiliates made during the POI for earlier packing services including a portion of the POI are reflected in HYSCO's reported packing costs given the absence of any reference to those retroactive payments in HYSCO's responses and the per-unit packing cost calculation worksheets provided at verification.¹⁸¹ Neither the HYSCO Sales Verification Report at 47 nor the HYSCO Sales Verification Exhibits 17 or 35 indicate those payments were included in HYSCO's reported packing costs. HYSCO has not cited any information on the record of the investigation (nor are we aware of any such information ourselves) that demonstrates those payments are reflected in its reported packing costs. HYSCO stated that additional retroactive payments are expected to be made for services provided during 2013 (which also spans part of the POI), but that the final amounts had yet to be determined as of the time of our verification.¹⁸² Therefore, we will make the adjustment to HYSCO's reporting packing costs suggested by U.S. Steel to reflect the retroactive payments made during the POI.

Regarding packing labor expenses, HYSCO confirmed the rates in the contracts with affiliates were those HYSCO paid the affiliates when packing services were performed, and then reiterated that point.¹⁸³ At verification, we also asked why the per-ton packing processing charges reported to the Department by HYSCO, as reflected in page 1 of HYSCO Sales Verification Exhibit 34, are substantially lower than the packing service rates in the contracts, and the company responded that the calculations in the exhibit worksheet page cover all types of pipes, not just OCTG. HYSCO did not respond that no discrepancy existed between the per-ton charges in the worksheets and the rates in the contracts with the affiliated service providers.¹⁸⁴ In its explanations of how it reported packing expenses in its U.S. sales database, HYSCO had made no claims that packing fees charged by the affiliated packers are the same for all pipe products.¹⁸⁵ On the contrary, HYSCO acknowledges the record indicates one of the affiliates charged a specific per metric ton rate for packing OCTG.¹⁸⁶ That contract rate is substantially

¹⁸¹ See e.g., HYSCO's November 4, 2013 Section A response at C-34 and Exhibit C-17, its January 6, 2014 supplemental response at Exhibit SA-7, its February 18, 2014 supplemental response at 25-26 and Exhibits SC-8 and SC-9, and its March 21, 2014 supplemental response at 5 and Exhibit S-10. See also page 1 of HYSCO Sales Verification Exhibit 34.

¹⁸² "The company also stated that about the time those contracts went into effect, it had made separate unwritten agreements with each affiliate to provide for additional retroactive payments by HYSCO to those affiliates for the portion of 2012 prior to September 1, 2012. The company noted the negotiations of retroactive payments for 2013 had yet to be concluded." See HYSCO Sales Verification Report at 47.

¹⁸³ See HYSCO Sales Verification Report at 47.

¹⁸⁴ *Id.*

¹⁸⁵ See, e.g., HYSCO's November 4, 2013 Section A response at C-34 and Exhibit C-17, its January 6, 2014 supplemental response at Exhibit SA-7, its February 18, 2014 supplemental response at 25-26 and Exhibits SC-8 and SC-9, and its March 21, 2014 supplemental response at 5 and Exhibit S-10.

¹⁸⁶ See HYSCO's Rebuttal Brief at 78. In its rebuttal brief at 78, HYSCO also alleges that affiliate "only provides

higher than the per-ton charges in the worksheets in page 1 of HYSCO Sales Verification Exhibit 34 which, as noted, tie to the packing cost values reported in HYSCO's U.S. sales database. HYSCO has pointed to nothing on the record that indicates the rate charged by that affiliate for packing OCTG was aberrational, and as noted above, HYSCO stated repeatedly at verification that HYSCO paid the affiliates the contract rates when packing services were performed. Consequently, instead of making the adjustment to HYSCO's reported packing costs as suggested by U.S. Steel to address the discrepancy between the reported costs and the packing contract rates which HYSCO claims were used to pay its affiliates, as facts available, we will apply a packing labor expense to HYSCO's OCTG based on the per-metric ton rate for the single affiliate that both U.S. Steel and HYSCO acknowledge charged for packing OCTG on a per metric ton basis.

With regard to varnish expenses, HYSCO does not dispute U.S. Steel's claim that the Department identified greater expenses in the categories HYSCO had identified as "varnish" expenses in its packing cost worksheets, and the Department did so as stated by U.S. Steel.¹⁸⁷ HYSCO claims in its rebuttal brief that some of the expenses it reported as "varnish" expenses are actually "rush protection and banding material" and are better classified as consumables rather than packing expenses.¹⁸⁸ That characterization is incorrect. With respect to "rush protection," HYSCO failed to explain what "rush protection" means, but page 4 of HYSCO Sales Verification Exhibit 34, in conjunction with statements in the verification report, confirm the expenses in question relate to varnish. HYSCO admitted during verification that it had mischaracterized some of the expenses on what is page 2 of HYSCO Sales Verification Exhibit 34, as made clear by the verification report.¹⁸⁹ Furthermore, the expenses ultimately determined to relate to varnish were confirmed by HYSCO to relate to packing, and to varnish in particular,¹⁹⁰ and there is no evidence on the record suggesting they would more appropriately be classified as manufacturing expenses. Therefore, we are making an adjustment to the calculation of HYSCO's per-metric ton packing expense to account for the higher varnish expenses identified during verification.

packing services for products that receive additional heat treatment." However, that claim is contradicted by statements made at another point during the verification. *See* HYSCO Sales Verification Report at 4.

¹⁸⁷ *See* HYSCO Sales Verification Report at 46 versus the data on page 2 of HYSCO Sales Verification Exhibit 34, as clarified by the product codes on page 4 of HYSCO Sales Verification Exhibit 34.

¹⁸⁸ *See* HYSCO Rebuttal Brief at 78.

¹⁸⁹ "HYSCO then noted the figures for steel band costs and for varnish costs on the worksheet had been reversed, and stated the Department could see this by analyzing the actual product codes grouped in the breakdown of packing material by product code (see page 2 of VE 34). The company noted codes in the "steel band" portion of the chart are actually varnish codes and codes in the "varnish" portion of the chart are actually steel band codes." *See* HYSCO Sales Verification Report at 46.

The Department notes that HYSCO throughout this investigation has repeatedly altered its reported varnish expenses, and its packing material costs in general. In its February 18, 2014 supplemental response, HYSCO revised its varnish expenses from what it had reported in its January 6, 2014 supplemental responses, stating the expenses were actually those reported in its original November 4, 2013 Section C questionnaire response. *See* HYSCO's February 18, 2014 supplemental response at 25, which itself provides steel band, varnish, and percentage of packing material costs accounted for by varnish, that are internally inconsistent. Then, in its March 21, 2014 supplemental response, HYSCO revised its steel band and varnish expenses again, with a much smaller value for steel band expenses than in the February 18, 2014 response. *See* HYSCO's March 21, 2014 supplemental response at Exhibit S-9. The values for steel band and varnish packing expenses in that Exhibit S-9 are those presented at verification by HYSCO, but which HYSCO, as noted above, stated were actually reversed.

¹⁹⁰ *See* HYSCO Sales Verification Exhibit 34 at 4.

Furthermore, for NEXTEEL, we are assigning varnish expenses only to export (e.g., U.S.) sales. During the NEXTEEL sales verification, NEXTEEL confirmed that varnish is applied to pipes destined for export sale, and it is rarely applied to pipes intended for domestic sale.¹⁹¹ However, NEXTEEL's method of allocation failed to account for this difference in varnish usage.¹⁹²

Comment 15: Whether to Reject One of HHU's Minor Corrections

At verification, HHU reported as a minor correction that it was revising its interest expense ratio because it had inadvertently included interest expenses for long-term loans in the numerator of the ratio. U.S. Steel asserts this is not a minor correction and therefore the Department should reject it. U.S. Steel claims a minor correction "must be a 'clerical error, not a methodological error, an error in judgment, or a substantive error,'" and can consist of a clerical error that has a small impact on a respondent's dumping margin.¹⁹³ U.S. Steel contends the Department has declined to accept major corrections and new information at verification, and also noted in the verification outline that even if it accepted such information for examination, its use would not be guaranteed in the final determination.¹⁹⁴ U.S. Steel argues the use of HHU's revised short-term interest rate would result in a sizeable change to the credit expenses subtracted from gross unit price and thus is not minor. Citing 19 CFR 351.301(c)(1)(v), U.S. Steel also avers the revised rate should be rejected as unsolicited and untimely filed new factual information.

In addition, U.S. Steel asserts, the Department should apply partial adverse facts available because HYSCO did not disclose in its questionnaire response or any time prior to verification that HHU's short-term interest expenses reflected certain expenses that are not susceptible to public summary.¹⁹⁵ U.S. Steel claims HYSCO's withholding of this information impeded this investigation because neither the petitioners nor the Department had the opportunity to explore these expenses. As partial adverse facts available, U.S. Steel urges the Department to apply HHU's originally reported interest expense ratio.

HYSCO replies that U.S. Steel's argument regarding the value of the correction is not based on the statute or the Department's practice. According to HYSCO, the CIT denied a similar claim, stating that "{t}he issue is not the value of the errors as a percentage of total U.S. sales, or the number of instances of errors. Rather the issue is the nature of the errors and their effect on the validity of the submission."¹⁹⁶ Referring to the conditions listed in the Department's verification

¹⁹¹ See NEXTEEL Sales Verification Report at 17.

¹⁹² See NEXTEEL's Sales Verification Exhibit 39 at 1.

¹⁹³ See U.S. Steel Case Brief on HYSCO at 62, 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 Issues and Decision Memorandum at Comment 7 (quoting *Maui Pineapple Co. v. United States*, 264 F. Supp. 2d 1244, 1261 (CIT 2003)) and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia*, 64 FR 73164, 73172 (December 29, 1999).

¹⁹⁴ *Id.* at 62-63, citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1378-84 (Fed. Cir. 2003) and Letter from the Department to HYSCO regarding the HHU sales verification, dated May 12, 2014, at 2.

¹⁹⁵ *Id.* at 61-64, citing Letter from HYSCO to the Department, "CEP Sales Verification Exhibits," dated May 29, 2014 (HHU Sales Verification Exhibits) at Exhibit 23 and HYSCO's September 17, 2013 section A questionnaire response at A-8-A-10 and Exhibit A-7.

¹⁹⁶ See HYSCO Rebuttal Brief at 79, citing *Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers v. United States*, 44 F. Supp. 2d 229, 236 (CIT 1999).

agenda regarding the acceptance of new information, HYSCO asserts its minor correction clarifies the short-term rate already on the record.¹⁹⁷ HYSCO maintains HHU timely reported the minor correction at the beginning of verification and the Department accepted and verified the minor correction to the short-term interest rate.¹⁹⁸ Further, HYSCO contends the Department should allow the minor correction because it is clerical in nature and not methodological, as it does not alter the way the short-term interest rate was calculated. HYSCO also argues the minor correction does not require a major revision, but, rather, a small correction to the calculation of credit expenses (CREDITU) and inventory carrying costs (INVCARU), and states it has provided SAS programming language to make this change. HYSCO contends the Department should not apply adverse facts available, but, rather, in keeping with the Department's practice, use HYSCO's revised short-term interest for the final determination because the correction was clerical in nature, accepted at verification, and verified by the Department.¹⁹⁹

Department's Position:

We disagree with U.S. Steel that the Department should decline to accept as a minor correction HHU's revision to its U.S. short-term interest rate. In the verification agenda issued to HHU prior to verification, the Department stated that new information would be accepted at verification only if: (1) the need for that information was not evident previously; (2) the information makes minor corrections to information already on the record; or (3) the information corroborates, supports, or clarifies information already on the record. At the outset of verification, HHU reported that it had inadvertently included interest expenses for long-term loans in the numerator of the short-term interest rate calculation and was correcting its calculation to exclude the long-term loans.²⁰⁰ Later in the verification, we verified the calculation of the revised short-term interest rates.²⁰¹

In this instance, we find the revision to HHU's interest rate calculation constitutes a minor correction that clarifies information already on the record. HHU did not change the methodology by which it was calculating the short-term interest rate, but, rather, removed long-term loans that had been erroneously included. Since we find this correction to be minor and since HHU reported the revision at the outset of verification, we find that it was reported to the Department in a timely manner.

With respect to U.S. Steel's argument that the Department should apply partial adverse facts available because HYSCO did not report prior to verification that HHU's short-term interest expenses reflected a certain type of expense, we disagree. The Department finds the nature of

¹⁹⁷ *Id.*, citing Letter from the Department to HYSCO regarding the HHU sales verification, dated May 12, 2014, at 2.

¹⁹⁸ *Id.*, citing Memorandum to the File through Robert James, Program Manager, AD/CVD Operations, Office VI, from Deborah Scott and Steve Bezirganian, International Trade Compliance Analysts, AD/CVD Operations, Office VI, "CEP Verification of Hyundai HYSCO's Sales Responses in the Antidumping Duty Investigation of Certain Oil Country Tubular Goods from the Republic of Korea," dated June 9, 2014 (HHU Sales Verification Report), at 29-30.

¹⁹⁹ *Id.* at 80, citing *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea*, 77 FR 17413, (March 26, 2012), and accompanying Issues and Decision Memorandum at Comment 6.

²⁰⁰ See HHU Sales Verification Exhibits at Exhibit 1 and HHU Sales Verification Report at 2.

²⁰¹ See HHU Sales Verification Report at 29-30.

the expense to which U.S. Steel refers is an inherent part of the relationship between affiliated parties. Based on the business proprietary nature of this expense, *see* the HYSCO Final Analysis Memorandum for further discussion.

In conclusion, because the Department has accepted HHU's correction to its short-term interest expense calculation as a minor correction, and because we do not find it appropriate to apply partial facts available to this expense, for this final determination the Department has used the revised short-term interest rate to calculate U.S. credit expenses and U.S. inventory carrying costs.

Comment 16: Whether to Allocate HHU's Property Taxes to OCTG Sales or Sales of All Products

HYSCO reported property taxes incurred by HHU as part of U.S. indirect selling expenses, which it allocated over HHU's total sales of subject and non-subject merchandise. U.S. Steel claims that at verification, HHU reported that its property taxes pertained almost entirely to its inventory of OCTG.²⁰² Citing 19 CFR 351.401(g)(2), U.S. Steel argues any party seeking to report an adjustment on an allocated basis must satisfy the Department that the allocation is calculated on as specific a basis as possible. U.S. Steel contends HYSCO has not allocated HHU's property taxes on as specific a basis as possible, because the property taxes, which are almost entirely attributable to HHU's inventory of OCTG, have been allocated over sales of OCTG and non-subject merchandise. Therefore, for the final determination, U.S. Steel urges the Department to revise HYSCO's U.S. indirect selling expenses by allocating the property taxes only to sales of OCTG.²⁰³

HYSCO did not respond to U.S. Steel's comments on this issue.

Department's Position:

HYSCO calculated the U.S. indirect selling expense ratio as HHU's total indirect selling expenses during the POI, which included property taxes incurred by HHU, divided by HHU's total sales of all products during the POI. At verification, HHU indicated that the preponderance of its inventory consisted of OCTG.²⁰⁴ Since the Department's practice is to calculate expenses on as specific a basis as possible,²⁰⁵ we agree with U.S. Steel that HHU's property taxes should be allocated only to OCTG sales. Thus, for this final determination, we have recalculated the U.S. indirect selling expense ratio by allocating the property taxes just to OCTG sales, allocating the remaining indirect selling expenses to sales of all products, and summing the two ratios. For the calculation of this amount, *see* the HYSCO Final Analysis Memorandum.

²⁰² *See* U.S. Steel Case Brief on HYSCO at 71, citing HHU Sales Verification Report at 5, footnote 1 and 32.

²⁰³ *Id.* at 71-72, footnote 331.

²⁰⁴ *See* HHU Sales Verification Report at 32.

²⁰⁵ *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 71 FR 40064 (July 14, 2006), and accompanying Issues and Decision Memorandum at Comment 21.

Comment 17: HYSCO's Warranty Expenses

HYSCO reported that during the POI it incurred warranty expenses for warranty claims. HYSCO explained that when its U.S. customer finds a defect in the pipe, the customer files a claim with HHU; if the claim is legitimate, HYSCO makes a warranty payment to HHU, which then forwards the payment to the U.S. customer. Citing the HHU Sales Verification Report, U.S. Steel states the U.S. customer files the claims to recoup certain expenses it incurred in connection with the defective pipe.²⁰⁶ U.S. Steel also states that HHU absorbs losses when it sells products that are subsequently classified as “scrap.”²⁰⁷ According to U.S. Steel, HYSCO did not report these losses as warranty expenses because HYSCO claimed they related to internal transactions between HYSCO and HHU.²⁰⁸ However, U.S. Steel argues, both HYSCO and HHU absorbed losses for all of the movement expenses incurred in shipping the defective pipe (*i.e.*, domestic inland freight, domestic brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. inland freight, and U.S. customs duty). U.S. Steel contends that since none of these losses has been reported as part of warranty expenses or elsewhere in HYSCO's data, the Department should amend HYSCO's warranty expenses for the final determination to include these movement expenses.

In addition, U.S. Steel states that at the verification of HYSCO's U.S. customer, the Department found three warranty claims for HYSCO merchandise that had not been reported previously to the Department.²⁰⁹ U.S. Steel avers HYSCO's warranty expenses should be revised to incorporate these three claims. As for one of the claims, U.S. Steel argues that under the Department's established practice, it is irrelevant that the claim was paid after the POI.²¹⁰ For the other two claims, U.S. Steel notes the U.S. customer stated at verification that HYSCO gave it a credit through a price discount.²¹¹ U.S. Steel contends this is also irrelevant because there is no information on the record to corroborate this statement.

HYSCO counters that including movement expenses in the warranty expense calculation would result in double-counting its movement expenses. HYSCO claims that the movement expenses to which U.S. Steel refers are properly included in its reported costs.

HYSCO argues that U.S. Steel has incorrectly stated the Department's practice regarding warranty expenses, asserting that none of the cases cited by U.S. Steel relate to warranty expenses, but, rather, to interest expenses, labor costs, and freight expenses. HYSCO contends the Department's practice is to compute warranty expenses based on expenses incurred and thus

²⁰⁶ See U.S. Steel Case Brief on HYSCO at 73, citing HHU Sales Verification Report at 31.

²⁰⁷ *Id.*, citing HYSCO's February 18, 2014 section A and C supplemental questionnaire response at 17.

²⁰⁸ *Id.*, citing HYSCO's February 18, 2014 section A and C supplemental questionnaire response at 20.

²⁰⁹ *Id.* at 74, citing U.S. Customer Verification Report at 9 and Letter from HYSCO to the Department, “Sales Verification Exhibits,” dated June 2, 2014 (U.S. Customer Verification Exhibits), at Exhibit 10.

²¹⁰ *Id.*, citing *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18448 (April 15, 1997); *Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Brazil*, 58 FR 37091 (July 9, 1993), at Comment 11; and *Sodium Nitrate from Chile*, 53 FR 15258 (April 28, 1988), at Comment 11.

²¹¹ *Id.* at 75, citing U.S. Customer Verification Report at 9.

paid during the POI.²¹² HYSCO also claims that as its U.S. customer stated at verification, HYSCO offset the three additional warranty claims by building a discount into its prices.²¹³ HYSCO asserts the Department thoroughly verified the additional claims, including the invoice from the U.S. customer to HHU concerning these expenses.²¹⁴

Department's Position:

U.S. Steel argues that movement expenses incurred on pipe that is later determined to be defective should be included in warranty expenses. However, it is unclear from the record whether these expenses may be accounted for elsewhere in HYSCO's costs. Therefore, for this final determination, we did not adjust HYSCO's warranty expenses to reflect an amount for movement expenses on pipe that is later determined to be defective.

We now turn to the issue regarding the three claims discovered at the verification of HYSCO's U.S. customer. Given the nature of warranty issues, the total actual amount of warranty expenses cannot be known at the time of the sale. Therefore, the Department has developed a practice of relying on the warranty expenses incurred during the POI by a company or, if found distortive, the company's three-year historical warranty expenses regardless of the particular periods in which the related sales took place.²¹⁵ In this instance, two of the claims discovered at the verification of HYSCO's U.S. customer were dated in the POI, and one was dated after the POI. Since it is the Department's practice to calculate warranty expenses based on the expenses incurred during the POI, we will not consider the claim that was dated after the POI. Therefore, the only claims potentially at issue are the two with dates in the POI.

While there is no evidence on the record to indicate that HYSCO offset the additional warranty claims by building a discount into its price, as HYSCO's U.S. customer stated at verification, there is also nothing on the record to indicate these claims actually involved expenses incurred by HYSCO during the POI. We verified warranty expenses at the verification of HYSCO and found no evidence of these claims being booked as an expense in HYSCO's books and records.²¹⁶ In addition, the Department discovered these claims at the verification of HYSCO's U.S. customer, which the Department has determined for the purpose of this final determination to not be affiliated with HYSCO. For these reasons, the Department has not revised HYSCO's reported warranty expenses to include the additional claims.

²¹² See HYSCO Rebuttal Brief at 82, citing *Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvage from Taiwan*, 75 FR 41804 (July 19, 2010), and accompanying Issues and Decision Memorandum (Narrow Woven Ribbons from Taiwan Decision Memo) at Comment 14.

²¹³ *Id.* at 82-83, citing U.S. Customer Verification Report at 9.

²¹⁴ *Id.* at 83, citing U.S. Customer Verification Exhibits at Exhibit 10.

²¹⁵ See, e.g., *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination*, 77 FR 63791 (October 17, 2012) (*Solar Cells from the PRC*), and accompanying Issues and Decision Memorandum at Comment 28; *Certain Welded Carbon Steel Standard Pipes and Tubes From India: Final Results of Antidumping Duty Administrative Review* 72 FR 69626 (November 15, 2010) (*Welded P&T from India*), and accompanying Issues and Decision Memorandum at Comment 4; and *Chlorinated Isocyanurates from Spain: Final Results of Antidumping Duty Administrative Review*, 74 FR 50774 (October 1, 2009) (*Chlorinated Isos from Spain*), and accompanying Issues and Decision Memorandum at Comment 4.

²¹⁶ See HYSCO Sales Verification Report at 43-45.

Comment 18: Treatment of HYSCO's Non-Prime Merchandise

U.S. Steel argues that the Department should allocate the difference between the cost of producing non-prime pipe and the sales value of non-prime pipe to the cost of producing OCTG pipe. According to U.S. Steel, HYSCO's reported cost excludes the cost incurred for producing non-prime pipe and record evidence is clear that non-prime pipe is a by-product generated as part of the production of subject merchandise. Moreover, the record evidence shows that HYSCO does not sell non-prime pipe as OCTG nor can the pipe be used for the same end use application, *i.e.*, drilling application in from oil and gas.

U.S. Steel identified the five factors the Department considers to determine whether a product is a by-product or a co-product. Those factors include 1) how the company records and allocated cost in the ordinary course of business; 2) the significance of each product relative to the other joint products; 3) whether the product is an unavoidable consequence of producing another product; 4) whether management intentionally controls the production of the product in question; and 5) whether the product requires significant further processing after the split off point from primary production.²¹⁷ U.S. Steel asserts that the most important factor, however, is the significance of each product relative to other joint products.²¹⁸ Therefore, U.S. Steel argues that the significance of the non-prime pipe relative to prime OCTG products indicates the non-prime pipes are, indeed, insignificant both in terms of the sales price and the quantity produced. U.S. Steel points out that HYSCO stated that non-prime merchandise is simply defective pipes. As a result, according to U.S. Steel, management does not intentionally control the production of non-prime merchandise, and thus non-prime merchandise is an unavoidable consequence of producing OCTG. Moreover, argues U.S. Steel, the products require no further processing after the split-off point given that it is simply a finished product that has been identified as defective. U.S. Steel contends that the Department should accordingly find that HYSCO's non-prime pipe are by-products of prime OCTG production and make an adjustment to increase the cost of the prime product.

In conclusion, U.S. Steel insists that the decision of the Court of Appeals in *IPSCO Inc. v. United States*, 965 F.2d 1056, 1060 (Fed. Cir. 1992) (*IPSCO*) is not contrary to its contention here. According to U.S. Steel, the Department treated the defective pipe in *IPSCO* as a co-product because it was sold as limited service OCTG in the United States. *i.e.*, it was sold for the same purpose as non-defective OCTG. Accordingly, it was appropriate to treat the limited service OCTG as a co-product. Indeed, in the subsequent investigation to *IPSCO*, *OCTG from Argentina*,²¹⁹ the Department declined to follow *IPSCO* because the defective OCTG was not sold for the same purpose as prime OCTG. U.S. Steel argues that the facts present in *OCTG from Argentina* are the same in the instant case because HYSCO's non-prime merchandise could not be used for drilling applications relevant to the API standards and is generally used for structural purposes.

²¹⁷ The petitioner cites *Final Determination of Sales at Less than Fair Value; Structural Steel Beams from South Africa*, 67 FR 35,485 (May 20, 2002) (*Structural Beams from South Africa*).

²¹⁸ See *Final Determination of Sales at Less than Fair Value; Oil Country Tubular Goods from Argentina*, 60 FR 33539, 33574 (June 28, 1995) (*OCTG from Argentina*).

²¹⁹ *Id.*

Likewise, Maverick explains that HYSCO calculates the product costs attributable to prime and non-prime OCTG in the same manner. Maverick argues that, because non-prime OCTG cannot be used for the same applications for which prime OCTG is used, the Department should allocate the manufacturing cost less the sales revenue of non-prime OCTG to prime OCTG.

HYSCO explains that, in the course of producing OCTG, it generates two types of scrap, namely side scrap which is generated during the slitting process and pipe scrap which is generated during the forming process. HYSCO explains that it recognizes the value of scrap as a reduction to the cost of manufacturing stage during which the scrap was generated. HYSCO explains that it also occasionally produces non-prime products which are identified as such during the final tests performed during production. HYSCO classifies OCTG as non-prime, which is generally used for structural purposes, when any of the relevant product qualities do not meet the API specification. HYSCO calculates the costs for non-prime products in the same manner as it does for prime products.

HYSCO argues that section 773(f)(1)(A) of the Act requires that the Department rely on the costs based on the records of the producer or exporter as long as such records are kept in accordance with the generally accepted accounting principles of the producing country and reasonably reflect the costs associated with the production and sale of the merchandise. HYSCO also explains that section 773(f)(1)(A) of the Act requires that the Department consider the extent to which allocations have been used historically when assessing the reasonableness of such allocations. HYSCO argues that not only does it allocate costs to prime and non-prime products equally in its normal course of business, but that its practice is consistent with the Department's practice which includes nearly 20 years of ongoing Korean pipe product administrative reviews in which HYSCO is a respondent.²²⁰ HYSCO argues that the Department's long-standing policy, which stretches back nearly 30 years and was, ironically, articulated in a case involving the same products which are the subject of the current investigation, is to treat prime and non-prime products as co-products and allocate costs evenly over their combined production quantity.²²¹ HYSCO argues that, as explained by the Department previously, it is appropriate to allocate costs equally to products that undergo identical production processes which involve equal amounts of material and fabrication expenses when the only difference in the resulting prime and non-prime products is the latter are identified during inspection as non-prime.²²²

HYSCO explains that, in the current proceeding, the Department justified its concerns by focusing on how non-prime products are used. HYSCO states that, as a practical matter, it does not disagree with the Department's observation that non-prime OCTG is used in structural rather

²²⁰ See *Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea*, 57 FR 42942 (September 17, 1992) and accompanying Issues and Decision Memorandum at comment 30.

²²¹ See, e.g., *Antidumping; Oil Country Tubular Goods From Canada; Final Determination of Sales at Less Than Fair Value*, 51 FR 15029 (April 22, 1986) and accompanying Issues and Decision Memorandum at comment 17; *IPSCO Inc. v. United States*, 965 F.2d 1056, 1060-61 (CAFC 1992).

²²² See, *Polyethylene Terephthalate Film, Sheet and Strip From Korea: Final Results of Antidumping Duty Administrative Review*, 65 FR 55003 (September 12, 2000) (*PET Film from Korea*) and accompanying Issues and Decision Memorandum at comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Taiwan*, 65 FR 34658 (May 31, 2000) and accompanying Issues and Decision Memorandum at comment 6.

than drilling applications and explains that such use is often due to liability concerns. However, HYSCO argues that non-prime products sold for applications generally associated with standard pipe are not scrap.

HYSCO also argues that the Department must recognize that an adjustment such as the one contemplated by the Department essentially reclassifies non-prime products as non-subject merchandise. HYSCO states that, to the best of its knowledge, the Department has rarely relied on actual use to determine whether merchandise is in scope and that the Department has rejected end-use scope classifications and opted to rely on physical characteristics to define coverage.²²³ Accordingly, HYSCO argues that, if the Department elects to classify non-prime OCTG as scrap for the Final Determination, the Department must recognize and affirm the implication of the decision as it relates to the enforcement of the order and clarify that non-prime OCTG is not within the scope of the order.

In rebuttal, U.S. Steel argues that HYSCO's reliance on *CWP from Korea* is misplaced because it is unclear whether prime and nonprime merchandise in that case were sold for use in similar applications. Moreover, U.S. Steel argues that, notwithstanding the decision of the CAFC in *IPSCO*,² the Department's decision in *CWP From Korea* has been superseded by the Department's decision in *OCTG From Argentina*. First, U.S. Steel explains that, while the CAFC did uphold the Department's decision to allocate costs between non-defective and defective OCTG equally, the CAFC recognized that the Department's decision was premised on the fact that the defective product was sold as "limited service OCTG" in the United States and that, because the defective OCTG was sold for the same purpose as non-defective OCTG, it was reasonable to treat the limited service OCTG as a co-product and allocate costs to it equally. Next, U.S. Steel explains that the Department declined to follow *IPSCO* in *OCTG From Argentina* because the defective OCTG in *OCTG From Argentina* was not sold for the same purpose as non-defective OCTG. U.S. Steel argues that the facts of the present case are similar to the facts in *OCTG from Argentina* because, as noted by the Department in the cost verification report, HYSCO's non-prime OCTG cannot be sold for use in the same applications as prime OCTG.²²⁴

U.S. Steel also argues that HYSCO's citation to the Department's decision in *PET Film from Korea* is equally unavailing. Specifically, U.S. Steel explains that while the Department did allocate costs equally between the respondent's A-grade and B-grade film, the Department specifically noted that "B-grade film is commercially saleable as a form of PET film" and distinguished the case from *OCTG from Argentina* by noting that "B-grade film is not an 'insignificant' by-product of PET film production." U.S. Steel argues that, as in *OCTG From Argentina*, HYSCO's non-prime pipe is not saleable as a form of OCTG and is an insignificant by-product of OCTG production such that, even under the logic of *PET Film From Korea*, the costs of HYSCO's non-prime pipe should be allocated to OCTG.

²²³ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970 (June 5, 2008) and accompanying Issues and Decision Memorandum at comment 1.

²²⁴ See Cost Verification Report at 16.

Maverick rebuts by arguing that the Department's proposed adjustment concerning prime and non-prime OCTG is appropriate and does not threaten the integrity of the investigation. Concerning HYSCO's reference to the ongoing Korean Standard Pipe proceedings, Maverick argues that both prime and non-prime standard pipe can still be sold as standard pipe. Maverick explains that the fact that non-prime standard pipe can be sold as standard pipe is what sets those proceedings apart from the current proceeding. The ability of a product to be used as OCTG is what determines whether or not a product is OCTG. Maverick explains that, despite the product's intended use at the beginning of the production process, non-prime OCTG is a failed production attempt which amounts to nothing more than scrap because it cannot be used as OCTG. Accordingly, Maverick argues that, for the purposes of the Final Determination, the Department should adopt the proposed adjustment in the cost verification report and allocate manufacturing costs less the sales revenue of non-prime OCTG pipe to prime OCTG pipe.

HYSCO states while it does not disagree that non-prime OCTG is not used in the same applications as prime OCTG. Rather, HYSCO argues that the proposed adjustment essentially renders non-prime OCTG as non-subject merchandise. HYSCO argues that the Department generally defines subject merchandise by reference to the product's physical characteristics and its production process rather than the product's end use. Accordingly, HYSCO requests that, in the event that the Department chooses to treat non-prime OCTG as scrap, it should affirm that non-prime OCTG is non-subject merchandise for the purposes of the order.

Department's Position:

As discussed previously, in HYSCO's cost accounting system, OCTG that is identified during final testing as non-prime merchandise is valued based on the full production costs, in the same manner as prime OCTG. We agree with the petitioners that an adjustment should be made to allocate a portion of the manufacturing costs of HYSCO's non-prime OCTG to prime OCTG production. As a preliminary matter, we disagree with the petitioner that a discussion of co-products is relevant in this case. Joint products – a term which includes by-products and co-products – are multiple products generated simultaneously in a single production process. These products incur undifferentiated joint costs until a “split-off point,” after which the joint products become separately identifiable.²²⁵ Often, the joint products then undergo separate processing activities. In pipe making however, there is no “split-off point” during the production process. Rather, pipes are made sequentially on a production line and costs and production activities are generally identifiable to individual products.²²⁶

The issue here is whether the downgraded non-prime pipe can still be used in the same applications as the subject merchandise (*i.e.*, is it still OCTG).²²⁷ The downgrading of a product from one grade or quality to another will vary from case to case. Sometimes the downgrading is

²²⁵ The Department has previously addressed whether it is relevant to discuss the production of different qualities/grades of pipe within a “by-product vs. co-product” framework.” See, *e.g.*, *Final Results of Antidumping Duty Administrative Review of Circular Carbon Steel Pipes and Tubes From Thailand*, 77 FR 61738 (October 11, 2012) (*Circular Welded Pipe from Thailand*) (in which the Department noted that “[t]echnically, the issue of whether to include the production quantity of the down-graded B and C pipe in the total production quantity of subject merchandise is not a joint product issue.”).

²²⁶ *Id.*

²²⁷ *Id.*

minor and the product remains within a product group, while at other times the downgraded product differs significantly and it no longer belongs to the same group and cannot be used in the same applications as the prime product. In the latter case, the downgraded product's market value is usually significantly impaired, often to a point where its full production cost cannot be recovered. Instead of attempting to judge the relative values and qualities between grades, the Department has adopted the reasonable practice of looking at whether the downgraded product can still be used in the same applications as its prime counterparts.²²⁸

Whether a product can be used for its originally-intended use is an important distinction, because if a product cannot be used in the same applications as the prime product, and the market value of the downgraded product as a result is not sufficient to recover production costs, we need to consider proper valuation and allocation of costs to the downgraded merchandise. In so doing, we have sought guidance from generally accepted accounting principles (GAAP) as they relate to the valuation of inventories. In order to avoid the overstatement of inventory accounts on the balance sheet, GAAP does not allow companies to value products held in inventory at an amount greater than their market price. This principle is known as the "lower of cost or market" (LCM) rule, and it attempts to measure the loss in value, for purposes of presentation on the balance sheet, of a company's inventory. The LCM rule recognizes that it is not always appropriate to value an inventory item at its allocated production costs if there is evidence that the market value of that item cannot recover those costs.²²⁹ That is, an item's allocated cost is not always the most accurate or representative benchmark of its true value. Given that the market value of a downgraded product may be significantly impaired when compared to the prime product, we do not consider it reasonable in such instances to assign full production costs to value the non-prime merchandise. We believe that, under these circumstances, a more appropriate methodology is to assign a value to the downgraded products based on the price at which they can be sold in the marketplace. This approach is a well-established, GAAP-compliant practice in cost and financial accounting. It has also been upheld by the courts. For example, the CIT affirmed the Department's valuation of by-products at their market value in *E.I. DuPont*.²³⁰ Similarly, in *PSC VSMPO*, the CAFC upheld the Department's valuation of a certain co-product based on its market price.²³¹

With this distinction in mind, we have reviewed the information on the record of this investigation related to HYSCO's downgraded merchandise that is detected at the testing stage of the production process. The company's non-prime pipe cannot be used in the same applications as OCTG products subject to the investigation. Pipes that are downgraded at the final stage of production on the OCTG production lines do not meet the strict technical requirements specified in the API 5CT standards for these products and are, therefore, unsuitable for use in oil or gas well applications. HYSCO classifies downgraded OCTG products as non-

²²⁸ *Id.*

²²⁹ See *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review*, 71 FR 28659 (May 17, 2006) and accompanying Issues and Decision Memorandum Comment 1.

²³⁰ See *E. I. DuPont De Nemours & Co. v. United States*, 932 F. Supp. 296 (CIT 1996) (*E.I. DuPont*), where the Court opined that "assigning {recycled} pellets the cost of virgin chips would overstate the actual cost of PET film."

²³¹ See *PSC VSMPO-AVISMA Corp. v. United States*, 688 F.3d 751 (CAFC 2012) (*PSC VSMPO*). We note that while the co-product issue per se is not relevant in the instant case as it was in the CAFC decision, *PSC VSMPO* is germane in that it addresses the issue of product valuation methodologies based on market prices.

prime merchandise that is generally used for structural purposes. In addition, the sales (*i.e.*, market) price of HYSCO's downgraded non-prime pipe products is considerably less than the full production costs that the company assigns to them in the normal course of business.²³² The difference between the costs assigned to these products and the sales revenue earned on the non-prime merchandise is in large part due to the fact that these products are not certified OCTG and cannot be used in the same applications as the specialized, high-value OCTG products. As discussed above, we find that under these circumstances it is more appropriate, considering the guidance on inventory valuation provided by GAAP, to value the downgraded non-prime products at issue using a market-price based approach.

HYSCO asserts that the Department should continue to rely on the company's normal books and records, which allocate manufacturing costs to non-prime products detected in the final production stage in the same manner as OCTG products. However, the statute provides that the Department will rely on such records only if they "... reasonably reflect the costs associated with the production and sale of the merchandise."²³³ The allocation to downgraded non-prime merchandise of full production costs improperly results in the shifting of costs away from OCTG products and overstates the inventory value of the non-prime pipe products. It is unreasonable to assign full OCTG production costs to merchandise that fails to meet OCTG quality standards. The downgraded non-prime merchandise is not certified OCTG and cannot be used as such. While the net market value of the non-prime merchandise should be used to offset OCTG production costs, the net total costs incurred (*i.e.*, total OCTG production costs less the market value of downgraded non-prime pipe production) should be allocated to prime-quality OCTG production costs. Consequently, the company's normal books and records do not "reasonably reflect" the costs associated with the production and sale of the merchandise under consideration (*i.e.*, OCTG) within the meaning of section 773(f)(1)(A) of the Act.

As for HYSCO's reliance on *IPSCO* to support its assertion that "off grade" OCTG is properly a considered a co-product (and thus should be allocated the same manufacturing costs as prime products), we note that the facts in that proceeding are different from those on the current record. For example, in *IPSCO*, the issue related to cost allocation between prime OCTG products and "limited service" OCTG, both of which were subject to the antidumping order. While these products were of different quality, the limited service pipes were still suitable for use as OCTG in "down hole" drilling applications, a fact highlighted by the Court and distinguishable from the current record.²³⁴ Further, while HSYCO proffered the *CWP from Korea* case to support its claim that costs should be allocated equally to both prime and non-prime products, we note that case did not address the end use application as articulated here. Additionally, in the *PET Film from Korea* case cited by HYSCO, B-grade product was commercially saleable as PET film.

For this final determination therefore, we have adjusted HYSCO's reported costs to value the downgraded non-prime pipe products at their sales price, while allocating the difference between the full production costs and market value of the downgraded non-prime pipe products to the production costs of prime-quality OCTG.

²³² See, *e.g.*, the January 6, 2014 section D supplemental questionnaire response exhibit SD-22.

²³³ See Section 773(f)(1)(A) of the Act.

²³⁴ See *IPSCO*, 965 F.2d at 1058 and 1060-1061.

Comment 19: Adjustments to HYSCO's General and Administrative Expenses

HYSCO explains that, for the purposes of the Preliminary Determination, the Department adjusted HYSCO's reported general and administrative ("G&A") expenses to include a certain item on the grounds that HYSCO had recorded the item as a general current period expense.²³⁵ HYSCO explains that, even though the item is included in the other operating expenses portion of the income statement for fiscal year 2012, the item is related directly to HYSCO's selling activities associated with non-subject cold-rolled steel products during a period prior to 2012. Citing *Live Swine from Canada*,²³⁶ HYSCO explains that the Department has specifically excluded items from a respondent's G&A expenses when the event occurred prior to the POI, the liability was known and quantifiable prior to the POI, and it was reasonable to expect that the contingent liability should have been recognized before the POI (even though the liability was actually paid during the POI). HYSCO argues that, not only do all of the factors enunciated in *Live Swine From Canada* apply in the present case, but that including an expense associated with non-subject merchandise incurred during a prior period in the constructed value calculations which serve as a benchmark for US sales of OCTG is illogical and unreasonable. Accordingly, HYSCO concludes that the Department should exclude this item from HYSCO's reported G&A expenses for the purposes of the Final Determination.

U.S. Steel argues that, for the purposes of the Preliminary Determination, the Department properly adjusted HYSCO's reported G&A expenses to include certain miscellaneous losses. U.S. Steel argues that, despite HYSCO's claim that the expenses in question were related to the sale of cold-rolled steel products rather than OCTG, the expenses are not related to any particular product line and are general expenses which must be absorbed by HYSCO's general operations. In support of its position, U.S. Steel explains that HYSCO recorded the expenses as miscellaneous losses under the "other operating expenses" heading rather than recording the item as part of HYSCO's cost of sales.

U.S. Steel also argues that, consistent with the Department's decision in *Live Swine From Canada*, the Department properly included the item in the 2012 fiscal year expenses because, according to HYSCO, 2012 was the year when the item became known and reasonably estimable. U.S. Steel explains that in *Live Swine from Canada*, the Department has excluded an item from the respondent's G&A expenses on the grounds that the item was known and quantifiable in a prior period and, therefore, should have been recognized by the respondent in the prior period. U.S. Steel concludes that, because the item relates to the general operations of the company and was properly recognized during the 2012 fiscal year, the Department should continue to include the item in HYSCO's G&A expenses for the purposes of the Final Determination.

Maverick argues that HYSCO's reliance on *Live Swine from Canada* for the proposition that the Department should reverse an adjustment it made to HYSCO's reported G&A expenses in the preliminary determination is misplaced. Indeed, Maverick also argues that the Department's

²³⁵ Due to the proprietary nature of this item, we cannot address it fully in a public document. For a more detailed discussion of this issue, see Cost Calculation Memorandum.

²³⁶ *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine From Canada*, 70 FR 12181 (March 11, 2005) and accompanying Issues and Decision Memorandum at comment 49.

decision in *Live Swine from Canada* actually supports the Department's decision to adjust HYSCO's reported G&A expenses. Specifically, Maverick argues that despite HYSCO's argument that all three of the factors identified by the Department in *Live Swine from Canada* are present in the current investigation, only the first factor (i.e., the event occurred prior to the POI) is present in the current proceeding. Maverick argues that, in the present investigation, the amount was not known and quantifiable until the end of fiscal year 2012. Maverick explains that in *Live Swine from Canada*, the Department recognized that, under GAAP, costs are not recorded until they can be quantified and concludes that this further highlights the appropriateness of the adjustment in the current investigation.

Concerning HYSCO's argument that the expenses should be excluded from G&A on the grounds that they are related to HYSCO's selling activities directed at non-subject merchandise, Maverick argues that the expense, which is not incurred on a product-specific basis, represents a general cost of doing business and is related to the general operations of the company. Indeed, Maverick argues that HYSCO classified the item in its financial statements as a miscellaneous loss rather than a selling expense. Accordingly, Maverick concludes that the Department should continue to include the item in HYSCO's G&A expenses.

Department's Position:

We agree with U.S. Steel and Maverick and have continued to include the certain business proprietary expenses in question in HYSCO's G&A expenses for the final determination. In calculating the G&A expense ratio, the Department normally includes certain expenses and revenues that relate to the general operations of the company as a whole, as opposed to including only those expenses that directly relate to the production of the merchandise under consideration. The CIT has agreed with the Department that G&A expenses are those expenses which relate to the general operations of the company as a whole rather than to the production process.²³⁷ If the Department identifies expenses that are directly related to a particular production process or product, we normally and more appropriately consider those expenses to be manufacturing costs. In contrast, G&A expenses by their nature are indirect expenses incurred by the company as a whole, and are not directly related to any product.²³⁸

With regard specifically to the expense in question, the Department's established practice is to consider such expenses as related to general operations, rather than to a specific product.²³⁹

²³⁷ See *U.S. Steel Group, et al. v. United States*, 998 F. Supp 1151, 1154 (CIT. 1998) (citing *Rautaruukki Oy v. United States*, 19 C.I.T. 438, 444 (1995)).

²³⁸ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413 (March 26, 2012) and accompanying Issues and Decision Memorandum at Comment 33 and *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329, 24354 (May 6, 1999), and accompanying Issues and Decision Memorandum at Comment 25.

²³⁹ See, e.g., *Notice of Final Results of Antidumping Duty Administrative Review and Final Partial Rescission: Certain Cut-to-Length Carbon Steel Plate from Romania*, 72 FR 6522 (February 12, 2007), and accompanying Issues and Decision Memorandum at Comment 3 (CTL Plate from Romania). See, also, *Notice of Final Results of Antidumping Duty Administrative Review, Rescission of Administrative Review in Part, and Final Determination to Revoke Order in Part: Canned Pineapple Fruit from Thailand*, 67 FR 76718 (December 13, 2002) and accompanying Issues and Decision Memorandum at Comment 7.

Thus, we find that such expenses are more appropriately captured as G&A expenses rather than as part of the cost of manufacturing. This very treatment of the accrual in question as general expenses was followed by HYSCO in its audited financial statements in accordance with Korean GAAP, and there is no evidence on the record to support a conclusion that this methodology is unreasonable or distortive. Further, despite HYSCO's objections, the fact that the underlying events that led to the accrual of the expenses in question took place prior to the POR does not change the fact that these expenses are related to general operations in the current year. Under Korean GAAP, the accruals were recognized and recorded as current expenses for the first time in the 2012 audited financial statements when they became probable and reasonably estimable. In such instances, the Department's consistent practice is to follow the financial statement treatment and include the costs as current year expenses.²⁴⁰

With regard to *Live Swine from Canada*, we agree with the petitioners that HYSCO's reliance is misplaced. As noted by Wheatland, the specified costs in *Live Swine from Canada* were known and quantifiable in the period preceding the POI as opposed to being captured for the first time in the current year as is the case here.

Accordingly, as we find that our methodology in this investigation follows the treatment in HYSCO's audited financial statements prepared in accordance with Korean GAAP and follows a well-established practice supported by ample case precedent, we have continued to adjust the G&A expense ratio to include the expenses in question for the final determination.

Issues Pertaining to NEXTEEL

Comment 20: Affiliation and Application of the Major Input Rule

According to U.S. Steel and Maverick, NEXTEEL and POSCO, its supplier of steel coil, are affiliated. Both U.S. Steel and Maverick claim that NEXTEEL's OCTG operations rely on hot-rolled coil produced by POSCO. They argue that the volume of NEXTEEL's purchases of hot-rolled coil from POSCO, on its own, illustrates the company's dependence on POSCO. In addition, both petitioners note that there are no alternative suppliers that could satisfy NEXTEEL's hot-rolled coil requirements for OCTG production and that POSCO and NEXTEEL cooperate with each other in a manner that further demonstrates reliance.

According to Maverick, the record in this investigation clearly shows that NEXTEEL does not operate as an independent commercial entity. Rather, it is so dependent on POSCO for supply of the most important input in OCTG production that it essentially operates as little more than a processor of POSCO's hot-rolled coil into OCTG. Maverick states that it is unlikely that NEXTEEL could survive as an OCTG producer without its relationship with POSCO. As a result, according to Maverick, POSCO is in a position to exercise restraint and direction over NEXTEEL with an impact on decisions concerning the production, pricing, and cost of the subject merchandise.

²⁴⁰ See, e.g., *CTL Plate from Romania* at Comment 3 and *Chlorinated Isocyanurates from Spain: Final Results of Antidumping Duty Administrative Review*, 74 FR 50774 (October 1, 2009), and accompanying Issues and Decision Memorandum at Comment 1.

According to Maverick, the Act defines “affiliated persons” as “{a}ny person who controls any other person and such other person.”²⁴¹ It notes that the statute explains that “a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.”²⁴² One channel through which the Department finds such control to exist, they explain, is a “close supplier relationship” in which “the supplier or buyer becomes reliant upon the other.”²⁴³ The Department has established a two-part analysis for determining affiliation based on a close supplier relationship. First, the Department will determine whether the buyer or supplier is actually reliant on the other. According to Maverick, only if the Department finds such actual reliance will it proceed to determine whether one party is in a position to control the other, with the potential to impact decisions relating to pricing, production, and cost of the subject merchandise.²⁴⁴

According to Maverick, to determine whether a buyer or seller is actually reliant on the other, the Department looks to various factors, including, but not limited to, the percentage of the buyer’s total purchases that are sourced from the supplier, the existence of alternative suppliers of the input, and whether there are any exclusive supply agreements.²⁴⁵ Further, Maverick notes that when assessing the extent of control generally, the Department also considers the role of the parties with respect to sales of the subject merchandise, the parties’ potential to impact decisions concerning the production, pricing, or cost of the subject merchandise, and any “other indicia of control ... in light of business and economic reality.”²⁴⁶ Maverick argues that with respect to NEXTEEL and POSCO, each of these factors shows that the companies are affiliated.

Maverick notes that while the Department’s analysis requires a buyer to be reliant on a supplier in order to find affiliation through a close supplier relationship, such reliance may exist even if the buyer has purchased some of the input from alternative suppliers. It notes that as the Department has explained in prior investigations, and as it has argued before the Court of International Trade, a buyer is reliant on its supplier if, as a matter of “business and economic reality,” the relationship is “significant and could not be easily replaced.”²⁴⁷ Thus, according to Maverick, the question is not whether NEXTEEL “has the ability to source HRC” from other suppliers. Rather, the question is whether NEXTEEL “can and {does} purchase significant quantities of HRC” from alternative sources, such that POSCO could be easily replaced. Here, according to Maverick, the answer to that question is POSCO is irreplaceable.

According to Maverick, in order for the Department to find that control exists, a relationship must have “the potential to impact decisions concerning the production, pricing, or cost of the

²⁴¹ 19 U.S.C. § 1677(33)(G).

²⁴² *Id.* § 1677(33).

²⁴³ Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, vol. 1, at 838 (1994), reprinted in 1994 U.S.C.A.N. 4040, 4174-75; *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Korea*, 63 FR 40404, 40410 (July 29, 1998) (“SSWR from Korea”); and *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 72 FR 6528 (February 12, 2007).

²⁴⁴ *TJJJD, Inc. v. United States*, 366 F. Supp. 2d 1286, 1299 (Ct. Int’l Trade 2005).

²⁴⁵ See *Notice of Final Determination of Sales at Less than Fair Value: Large Residential Washers from the Republic of Korea*, 77 FR 75988 (December 26, 2012), and accompanying Issues and Decision Memorandum (“IDM in Washers from Korea”) at Comment 8.

²⁴⁶ See *Antidumping Duties; Countervailing Duties*, 61 FR 7308, 7310 (February 27, 1996) (proposed rulemaking).

²⁴⁷ *Id.*; *SSWR from Korea* at 40410.

subject merchandise.” The language of the Department's regulation “properly focuses the Department on the ability to exercise ‘control’ rather the actuality of control over specific decisions.”²⁴⁸

According to Maverick, in previous investigations, the Department has analyzed the issue of control in terms of the ability to cause “economic hardship.”²⁴⁹ POSCO clearly has the ability to do so to NEXTEEL, which would be unable to survive as a commercial entity without POSCO’s supplies of hot-rolled coil, its extensive downstream sales network, or its assistance in developing OCTG.

According to U.S. Steel, there is no other business relationship in the Korean OCTG industry like the one between POSCO and NEXTEEL. The affiliation between NEXTEEL and POSCO extends beyond the companies' close supplier relationship. For example, POSCO has assigned employees to monitor NEXTEEL’s inventory of hot-rolled coil to ensure that the company is supplied with POSCO-produced steel.²⁵⁰ Similarly, POSCO employees oversee “the shipping of finished products” from NEXTEEL's plant.²⁵¹ In addition, POSCO itself has publicly advertised that it “took charge of NEXTEEL’s overseas {public relations} campaign” by providing NEXTEEL with marketing assistance, research and development capacity, and management consulting. Moreover, U.S. Steel notes that NEXTEEL also depends on POSCO for its sales operations and certain other production operations. As such, U.S. Steel notes that NEXTEEL is clearly reliant on POSCO, which is in a position to control NEXTEEL in a manner that affects the pricing, production, and sale of NEXTEEL’s OCTG.

U.S. Steel refers to *SSWR From Korea*, where the Department found that POSCO had a close supplier relationship with the respondent, Dongbang Special Steel Co., Ltd. (Dongbang).²⁵² U.S. Steel notes that in that case, not only was POSCO the major supplier of black coil to Dongbang, but Dongbang did not have an alternative source for black coil. Furthermore, Dongbang’s business operations consisted largely of producing wire rod from black coil. Petitioners assert that based on these facts, the Department found that “the relationship between the parties is significant and ... not easily replaced.” The Department explained that “Dongbang would suffer economic hardship if POSCO ... ceased to supply black coil to Dongbang.” U.S. Steel argues that the same is true here, that POSCO’s supply of hot-rolled coil to NEXTEEL is irreplaceable. If POSCO were to limit or cease hot-rolled coil sales to NEXTEEL, according to the petitioners, the company would be unable to conduct its business and it would result in severe economic hardship to NEXTEEL.

According to both U.S. Steel and Maverick, because NEXTEEL is reliant on POSCO, which is in a position to, and actually does, control NEXTEEL with an impact on the production, pricing, and cost of the subject merchandise, affiliation exists in accordance with the statute. As a result,

²⁴⁸ *Antidumping Duties; Countervailing Duties*, 62 FR 27,296, 27,298 (May 19, 1997) (final rule) (emphasis added).

²⁴⁹ *SSWR from Korea* at 40,410 (“{I}t is reasonable to assume that Dongbang would suffer economic hardship if POSCO/Changwon ceased to supply black coil to Dongbang.”).

²⁵⁰ U. S. Steel's Deficiency Comments at Attachment C, at page 4 (Public Version); U. S. Steel’s POSCO Deficiency Comments at Exhibit 4, p. 6 (explaining that POSCO works with “on-site departments in steelworks, purchasing department, and relevant partners”) (Public Version).

²⁵¹ U.S. Steel’s Deficiency Comments at Attachment C, at pages 4 - 5 (Public Version).

²⁵² See U.S. Steel Case Brief on NEXTEEL, citing *SSWR From Korea* at 40405.

they claim that the Department cannot base NEXTEEL's cost of production on the “transfer price” of hot-rolled coil from POSCO to NEXTEEL but instead must apply the transactions disregarded rule.

U.S. Steel argues that the Department should disregard POSCO's reported costs because the transfer prices of the hot-rolled coils bear no correlation with the corresponding production costs.²⁵³ Instead, while applying the major input rule the Department should compare the transfer prices to the market prices. The Department should calculate a major input adjustment for each separate grade of hot-rolled coil. As an AFA, the market price should be based on POSCO's highest sales price irrespective of the customer being affiliated or unaffiliated.

Maverick makes arguments similar to that of U.S. Steel for disregarding POSCO's costs.²⁵⁴ Maverick argues that the Department should base the market price of all grades of hot-rolled coils based on POSCO's sales of a particular grade to an unaffiliated customer.

NEXTEEL claims that it is not affiliated with either its supplier of hot-rolled coil (HRC) used to manufacture OCTG, POSCO. According to NEXTEEL, the record contains no evidence of affiliation through “control” pursuant to section 771(33)(G) of the Act. Specifically, section 771(33)(G) of the Act provides that “any person who controls any other person and such other person” shall be considered to be “affiliated.” The statute further provides that “a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.” In its regulations, the Department has clarified that in determining whether control exists, among other factors, it will consider “close supplier relationships.”²⁵⁵ Also in its regulations, the Department will not find that control exists based on a close supplier relationship unless “the supplier or buyer becomes reliant upon another.”²⁵⁶ The Department's regulations at section 351.102(b)(3) further state that such a relationship must have the potential to impact decisions concerning the production, pricing or cost of the subject merchandise or foreign like product. They assert that the Department takes the position that the relationship must also be “so significant that it could not be replaced”²⁵⁷ and that in examining “close supplier” relationships for purposes of determining whether affiliation exists, the Department has confirmed that “the threshold issue is whether either the buyer or the supplier has, in fact, become reliant on the other.”²⁵⁸ According to NEXTEEL, the Department has not adopted any bright-line tests for determining whether a specific supplier relationship meets the definition of “close supplier.” Rather, the Department has considered the totality of circumstances and a variety of factors, including, but not limited to: the terms and provisions of any supply agreements; the relative percentage that sales to the buyer represented of the supplier's total sales; the overall profitability of the suppliers; and the existence of alternate sources of supply. NEXTEEL notes that these factors provide a means by which the Department

²⁵³ See U.S. Steel's Case Brief of June 18, 2014 at pages 43 to 49.

²⁵⁴ See Maverick's Case Brief of June 18, 2014 at pages 17 to 21.

²⁵⁵ 19 C.F.R. § 351.102(b)(3)(2013).

²⁵⁶ Statement of Administrative Action (printed in U.S. House of Representatives Document 103-316, vol. 1) (“SAA”) at 838; see also Notice of Preliminary Determination of Sales at Less Than Fair Value: *Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation*, 65 FR 1139, 1142-45 (January 7, 2000).

²⁵⁷ *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404, 18417 (April 15, 1997) (“Korean Flat Products”).

²⁵⁸ *IDM in Washers from Korea* at Comment 8.

can objectively evaluate whether nonmarket forces have established prices between the parties. They note that only if reliance exists in the close supplier relationship will the Department examine further whether one of the parties is in a position to exercise restraint, direction, or control over the other.²⁵⁹ NEXTEEL states that in the second step, the Department will not find that control exists based on a close supplier relationship “unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.” NEXTEEL explains that to clarify this restraint, the Department has indicated that “{w}hen the Preamble to our Proposed Regulations ... states that ‘business and economic reality suggest that these relationships must be significant and not easily replaced,’” it suggests that we must find significant indicia of control.”²⁶⁰

NEXTEEL notes that it is important to recognize that there is an exceptionally high threshold for establishing a close supplier relationship in this context. They assert that the Department has a self-described “history of recognizing that exclusivity arrangements that arise either through contractual provisions or market conditions do not automatically result in a finding of affiliation.”²⁶¹ According to NEXTEEL, even where sole supplier situations exist through exclusivity contracts or other means, it does not normally indicate control of one party over another.²⁶² Consistent with these cases, NEXTEEL argues that there is no affiliation between NEXTEEL and POSCO on the basis of a close supplier relationship. According to NEXTEEL, Petitioners have neither demonstrated the threshold issue of reliance by NEXTEEL on its supplier, nor the second step of control of NEXTEEL by POSCO. Rather, Petitioners have consistently ignored standard business practices and misconstrued the record evidence in order to support their affiliation claim for the sole purpose of generating a dumping margin in this investigation. For this reason, they claim that the Department should maintain the finding made in the *Preliminary Determination* and find that no affiliation between NEXTEEL and POSCO exists.

NEXTEEL notes that POSCO is not the only source from which NEXTEEL purchased HRC during the POI. Further, NEXTEEL explains that it also consumed HRC in producing OCTG during the POI that it had sourced from other suppliers prior to the POI. Moreover, during the POI, NEXTEEL sourced HRC from other suppliers for production of non-OCTG pipe products. According to NEXTEEL, any one of these HRC producers provides potential sources of HRC for NEXTEEL’s production of OCTG. In short, NEXTEEL notes that the record demonstrates that while POSCO was a dependable source of OCTG for NEXTEEL during the POI,

²⁵⁹ *Id.*

²⁶⁰ *Korean Flat Products* at comment 2.

²⁶¹ *SSWR from Korea*, Issues and Decision Memorandum, at comment 2 (finding affiliation between the parties).

²⁶² See Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products of Indonesia, 62 FR 1719 (January 13, 1997) at Comment 17 (finding the Indonesian producer not affiliated with its sole U.S. customer); Notice of Final Results of Antidumping Duty Administrative Review: *Furfuryl Alcohol from the Republic of South Africa*, 62 FR 61084 (November 14, 1997), at comment 2 (finding that respondent is the sole supplier of furfuryl alcohol to the home market is insufficient to demonstrate control of, and affiliation with, domestic purchasers); *Certain Pasta from Turkey: Notice of Final Results of the 14th Antidumping Administrative Review*, 76 FR 68399 (November 4, 2011) and accompanying *Issues and Decision Memorandum at Comment 1*, (finding no affiliation despite sole supplier relationship); and *Chlorinated Isocyanurates from Spain: Final Results of Antidumping Duty Administrative Review*, 72 FR 64194 (November 15, 2007), at *Comment 4* (finding no affiliation with the sole supplier of packaging services and the producer of chlorinated isocyanurates).

NEXTEEL does not need to rely on POSCO for its HRC inputs as several other companies stand ready to supply NEXTEEL with inputs for its OCTG.

NEXTEEL minimizes Petitioners' point that NEXTEEL promotes its products by prominently advertising its reliance on hot-rolled coil from POSCO. The fact that NEXTEEL offers its customers specific POSCO specifications, and that customers purchase them, is not dispositive of reliance or control. Given POSCO's reputation for high quality steel products, NEXTEEL advertises the fact that it consumes high quality steel inputs to its customers in order to promote the quality of NEXTEEL's own downstream products. They assert that these facts do not demonstrate reliance.

Regarding Petitioners' point that NEXTEEL and POSCO work closely together and participate in the Mutual Growth Program, NEXTEEL argues that it fails to establish reliance as required to demonstrate affiliation. NEXTEEL notes that while it is true that new, specialty products, developed with an intensive knowledge of the chemistry of the underlying coil, may result in future orders for POSCO, no obligation to produce this product exists, which means NEXTEEL is under no obligation to purchase POSCO HRC. Further, NEXTEEL claims that the Mutual Growth Program is not unique to POSCO. Almost 1,600 companies have participated in Mutual Growth Programs throughout Korea, and POSCO alone has partnered with almost 400 companies as part of the Mutual Growth Program.²⁶³ Lastly, NEXTEEL contends that Petitioners mischaracterize POSCO's role in the sale of OCTG and claim that it fails to support a finding of reliance or control. For these reasons, NEXTEEL concludes that the record reveals no indicia of control of NEXTEEL by POSCO and, as such, the Department should not find affiliation based on the record before it.

NEXTEEL claims that it is not affiliated with POSCO and that it purchased hot-rolled coils at arm's length. NEXTEEL points out that the costs reported by POSCO have been verified by the Department and should not be disregarded.²⁶⁴

Department's Position:

We find that NEXTEEL and its supplier of steel coil, POSCO, are affiliated within the meaning of section 771(33)(G) of the Act. In accordance with section 771(33) of the Act, the following persons shall be considered affiliated: (A) members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; (B) any officer or director of an organization and such organization; (C) partners; (D) employer and employee; (E) any person directly or indirectly owning, controlling, controlled by, or holding with power to vote, five percent or more of the voting stock or shares of any organization and such organization; (F) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) any person who controls any other person and such other person. To find affiliation between two companies, at least one of the criteria above must be applicable.

²⁶³ See NEXTEEL's Sales Verification Exhibits at Exhibit 31.

²⁶⁴ See NEXTEEL's Rebuttal Brief of June 23, 2014 at pages 69 to 72.

Section 771(33) of the Act further provides that “{f}or purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.” The Department’s regulations at 19 CFR 351.102(b)(3) state that, in finding affiliation based on control, the Department will consider, among other factors: (i) corporate or family groupings; (ii) franchise or joint venture agreements; (iii) debt financing, and (iv) close supplier relationships. Control between persons may exist in close supplier relationships in which either party becomes reliant on one another.²⁶⁵ With respect to close supplier relationships, the Department has determined that the threshold issue is whether either the buyer or seller has, in fact, become reliant on the other. Only if such reliance exists does the Department then determine whether one of the parties is in a position to exercise restraint or direction over the other.²⁶⁶ The Department will not, however, find affiliation on the basis of this factor unless the relationship has the potential to affect decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.²⁶⁷

In establishing whether there is a close supplier relationship, we normally look to whether one of the parties has become reliant on the other. However, in this situation, the argument for affiliation goes beyond an allegation of a close supplier relationship. POSCO is involved in both the production and sales sides of NEXTEEL’s operations involving subject merchandise. The combination of its involvement on both the production and sales sides creates a unique situation where POSCO is operationally in a position to exercise restraint or direction over NEXTEEL in a manner that affects the pricing, production, and sale of OCTG. The preamble to the Department’s regulations states that section 771(33), which refers to a person being “in a position to exercise restraint or direction,” properly focuses the Department on the ability to exercise “control” rather than the actuality of control over specific transactions. In this case, given POSCO’s involvement as both a supplier and in the sales process, POSCO is in a rather unique position to exercise restraint or control over NEXTEEL.

We note that the facts in this situation are different from each of the cases cited by NEXTEEL in that none of the cited cases had a fact pattern where a party played a significant role on both the production and sales side of the respondent’s operations during the POI. Due to the proprietary nature of the facts relevant to this case, we are unable to explain here the detailed relationships between POSCO and NEXTEEL as they relate to affiliation, including the extent of transactions. See the “Affiliation Memorandum for the Final Affirmative Determination in the Less than Fair Value Investigation of Certain Oil Country Tubular Goods from the Republic of Korea,” (Affiliation Memorandum) adopted concurrently with this memorandum, for a detailed discussion of such transactions and related issues.

For the final determination, we find NEXTEEL and POSCO affiliated and accordingly we consider it appropriate to apply the major input rule to the purchases of steel coil from POSCO.

²⁶⁵ See, e.g., SAA at 838.

²⁶⁶ See, e.g., *Multilayered Wood Flooring from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) and accompanying Issues and Decision Memorandum at Comment 21.

²⁶⁷ See 19 CFR 351.102(b)(3).

The costs reported by POSCO are maintained in its normal books and records and are used for inventory purposes. Moreover, we verified such costs.²⁶⁸ For the final determination, we find NEXTEEL and POSCO are affiliated. As such, in accordance with section 773(f)(3) of the Act, we applied the major input rule to NEXTEEL's purchases of hot-rolled coils from POSCO. For the grades of hot-rolled coils purchased by NEXTEEL from POSCO, we computed the market prices based on the weighted average of POSCO's sales to unaffiliated customers. We compared the transfer prices to the corresponding cost of production, and the market prices and where applicable made grade-specific adjustments.²⁶⁹

Comment 21: Propriety of Use of Adverse Facts Available for NEXTEEL

U.S. Steel argues that the Department should use adverse facts available for various aspects of NEXTEEL's responses, and these issues are addressed individually in separate comments. However, NEXTEEL argues that no reasonable basis exists for applying any adverse facts available in this investigation.²⁷⁰ NEXTEEL argues it has been cooperative throughout this investigation, and states the Department applies adverse facts available when parties engage in deliberate attempts to impede the Department's investigation and provide unusable responses, or cease to participate in proceedings.²⁷¹ On the other hand, NEXTEEL notes the Department has declined to apply adverse facts available for inadvertent errors that were later rectified.²⁷² NEXTEEL states the Department also has not found adverse facts available to be warranted for "minute differences."²⁷³ NEXTEEL states the Department has generally declined to apply adverse facts available where the respondent provided information in sufficient time for the Department to conduct a verification.²⁷⁴ NEXTEEL notes that even when it was determined facts available was required, an adverse inference was not drawn when the respondent had otherwise cooperated significantly during the proceeding.²⁷⁵ NEXTEEL indicates the CAFC has held that whether a party has complied to the "best of its ability" under 19 U.S.C. § 1677e(b) can only be determined "by assessing whether the respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation."²⁷⁶ NEXTEEL adds the CAFC noted that perfection is not required and that "mistakes sometimes occur."²⁷⁷ NEXTEEL concludes that it should not be penalized with any adverse facts available given its level of cooperation and the overall accuracy of its responses.

²⁶⁸ See POSCO Cost Verification Report of May 15, 2014 at pages 9 to 11 and Posco Cost Verification Exhibits 10, 11, and 12.

²⁶⁹ See Memorandum to Neal Halper, "Constructed Value Calculation Adjustments for the Final Determination – NEXTEEL Co., Ltd.," dated July 10, 2014, (NEXTEEL's Final Cost Memorandum) at pages 2 to 5 and Attachments 4A, 4B, and 4C.

²⁷⁰ See NEXTEEL Rebuttal Brief at 54-58.

²⁷¹ See NEXTEEL Rebuttal Brief at 55, citing *Lightweight Thermal Paper from Germany*, 78 FR 23220 (April 18, 2013), Issues and Decision Memorandum at Comment 1, and *Welded Stainless Pressure Pipe from Thailand*, 79 FR 10772, 10773-10774 (February 2, 2014).

²⁷² *Id.* at 56, citing *Certain Steel Concrete Reinforcing Bars from Turkey*, 71 FR 65082 (November 7, 2006).

²⁷³ *Id.*, citing *Steel Wire Garment Hangers from the People's Republic of China*, 76 FR 27994 (May 13, 2011).

²⁷⁴ *Id.*, citing *Certain Steel Nails from the People's Republic of China*, 73 FR 33977 (June 16, 2008).

²⁷⁵ *Id.*, citing *Certain Cased Pencils from the People's Republic of China*, 74 FR 33406 (July 13, 2009), Issues and Decision Memorandum at Comment 2.

²⁷⁶ *Id.* at 57, citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

²⁷⁷ *Id.*, citing *Id.*

Department's Position:

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

Furthermore, section 776(b) of the Act states that if the Department “finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority . . . {the Department} . . . may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.”²⁷⁸ Adverse inferences are appropriate to “ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²⁷⁹ In selecting an adverse inference, the Department may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.²⁸⁰

Neither the statute nor the Department's regulations prohibit the Department from applying adverse facts available to limited aspects of a respondent's response. In fact, the Department has done so in recent investigations and reviews, and has done so for over fifteen years, since the concept was devised.²⁸¹ NEXTEEL does not cite any court ruling that prohibits the Department from applying partial adverse facts available to a respondent for specific items.

However, in this investigation, the Department is not applying adverse facts available to any aspects of NEXTEEL's response for the final determination. We find that NEXTEEL has not failed to cooperate to the best of its abilities within the meaning of section 776(b) of the Act.

Comment 22: NEXTEEL's Warranty Expenses

U.S. Steel states NEXTEEL repeatedly reported that it did not incur any warranty expenses on U.S. sales or receive any claims during the POI and also that it did not provide any credits to settle warranty claims.²⁸² U.S. Steel asserts these declarations are false, particularly given

²⁷⁸ See also *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Doc. No. 103-316, at 870 (1994) (SAA).

²⁷⁹ *Id.*

²⁸⁰ See section 776(b) of the Act.

²⁸¹ See e.g. *Final Determination of Sales at Less Than Fair Value: Silica Bricks and Shapes From the People's Republic of China*, 78 FR 70918 (November 27, 2013), and accompanying Issues and Decision Memorandum at Comment 7, and *Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013), and accompanying Issues and Decision Memorandum at Comment 12. For an example of an early application of partial adverse facts available, see *Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 37014, 37020 (July 10, 1997).

²⁸² See U.S. Steel Case Brief on NEXTEEL at 50, citing NEXTEEL's November 4, 2013 section C questionnaire response at C-32; NEXTEEL's December 30, 2013 section C supplemental questionnaire response at 24-25 and

information about average warranty expenses incurred in 2010 and 2011.²⁸³ U.S. Steel also contends NEXTEEL has misrepresented the terms of the sales agreement between itself and other parties, referring to a statement by NEXTEEL's customer that claims that were one and a half years old were just starting to be resolved by the parties to the sales agreement.²⁸⁴

In addition, U.S. Steel contends that NEXTEEL's customer's submissions have provided detailed information about the well-established system between the parties to the sales agreement to settle warranty claims. U.S. Steel argues that under this system, payment is withheld when there is a pending warranty claim; NEXTEEL's customer works to "facilitate communication between the unaffiliated customer and NEXTEEL, assist in determining liability for the claim, and facilitate a consensus between the customer and NEXTEEL;" and NEXTEEL then resolves the claims by discounting prices for a set period until NEXTEEL's customer is reimbursed for the expenses.²⁸⁵ U.S. Steel avers that information on the record shows this system was in place during the POI.²⁸⁶

U.S. Steel argues the record contains sufficient evidence demonstrating that some OCTG sold by NEXTEEL had quality defects, downstream customers submitted warranty claims to NEXTEEL for reimbursement, and some of the claims that have been settled have resulted in NEXTEEL granting a credit or issuing a payment to its customer. U.S. Steel claims that despite this evidence, NEXTEEL consistently denied the existence of any warranty claims and refused to report any warranty expenses to the Department. U.S. Steel insists that NEXTEEL only finally admitted at verification that it had received and resolved warranty claims during the POI.²⁸⁷ Therefore, in accordance with section 776(a)(2) of the Act, U.S. Steel asserts the Department should apply facts available to NEXTEEL's warranty expenses because NEXTEEL withheld information requested by the Department, failed to provide this information within the established deadlines, and impeded the investigation. Moreover, given NEXTEEL's repeated misrepresentations about its warranty expenses and NEXTEEL's failure to act to the best of its ability, U.S. Steel asserts the Department should apply adverse facts available to NEXTEEL's warranty expenses in the final determination, in keeping section 776(a) of the Act. As adverse facts available, U.S. Steel contends the Department should base warranty expenses on the outstanding balances reported as a minor correction at the verification of NEXTEEL's customer.²⁸⁸ According to U.S. Steel, these outstanding balances represent the amount of warranty claims related to OCTG manufactured and sold by NEXTEEL. U.S. Steel maintains

Exhibit 29; and Letter from NEXTEEL to the Department, "Pre-Preliminary Rebuttal Comments of NEXTEEL," dated February 10, 2014, at 23-24.

²⁸³ *Id.* at 51-52, citing NEXTEEL's December 30, 2013 section C supplemental questionnaire response at Exhibit 29.

²⁸⁴ *Id.*, citing NEXTEEL's December 30, 2013 section C supplemental questionnaire response at Exhibit 19 and NEXTEEL's customer's April 14, 2014 section A supplemental questionnaire response at Exhibit SA-12, page 9 and SC-37.

²⁸⁵ *Id.* at 52-53, citing, *e.g.*, NEXTEEL's Customer Sales Verification Report at 20-21 and NEXTEEL's customer's April 14, 2014 section C supplemental questionnaire response at SC-34-SC-35.

²⁸⁶ *Id.* at 53-54, citing NEXTEEL's customer's April 14, 2014 section C supplemental questionnaire response at SC-37 and Exhibit SC-18, pages 1, 4, and 13-16 and NEXTEEL's February 18, 2014 section A and C supplemental questionnaire response at Exhibit S-3-A at pages 206 and 214-217.

²⁸⁷ *Id.* at 54, citing NEXTEEL Sales Verification Report at 7 and 31.

²⁸⁸ *Id.* at 56-57, citing Letter from NEXTEEL to the Department, "Minor Corrections Presented at the Sales Verification of NEXTEEL's Unaffiliated Customer," dated April 25, 2014, at 1 and Attachment 4.

the Department should divide these outstanding balances by the total value of NEXTEEL's sales to NEXTEEL's customer and apply the resulting ratio to all U.S. sales. If the Department does not apply adverse facts available, U.S. Steel maintains the Department should divide these outstanding balances by NEXTEEL's total U.S. sales and apply the resulting ratio to all U.S. sales. U.S. Steel argues this calculation accords with the Department's practice of recognizing that warranties generally extend beyond the POI and that full information regarding warranty claims is not always obtainable at the time of the investigation.²⁸⁹ U.S. Steel claims these outstanding balances provide the most suitable basis for calculating warranty expenses because they are contemporaneous with the POI and accurately reflect the value of the warranty claims submitted by the ultimate customer.

Furthermore, U.S. Steel argues the Department should disregard NEXTEEL's customer's minor correction to remove warranty expenses from the sales database because the underlying claims were still subject to negotiation and some of the claims were withdrawn. U.S. Steel contends this is new information that does represent a minor correction.²⁹⁰ U.S. Steel also contends the Department should reject the SAS programming language that NEXTEEL's customer submitted with respect to the outstanding balances. U.S. Steel claims the programming language produces a different set of data than that in Attachment 4 of NEXTEEL's customer's minor corrections and thus constitutes new information.²⁹¹

Maverick claims that NEXTEEL has not cooperated to the best of its ability in responding to the Department's requests for information with respect to warranty expenses. Maverick contends NEXTEEL did not provide any of the warranty expense information requested by the Department's original questionnaire, merely stating it did not incur any warranty expenses on its U.S. sales during the POI.²⁹² Maverick argues that when the Department repeated its request in a supplemental questionnaire, NEXTEEL provided its warranty expenses for the past three years, but stated its earlier statements were not inconsistent and that it did not have any warranty expenses or receive any claims.²⁹³ Maverick avers NEXTEEL's claims that it did not have any warranty expenses have conflicted with additional information provided by NEXTEEL's customer.²⁹⁴ Maverick states that NEXTEEL's customer declared its role in the warranty claim process is "to facilitate communication between the unaffiliated customer and NEXTEEL, assist

²⁸⁹ *Id.* at 58, citing *Certain Pasta From Turkey: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order in Part*, 67 FR 298 (January 3, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

²⁹⁰ *Id.* at 53-54, footnote 232, citing Letter from NEXTEEL to the Department, "Minor Corrections Presented at the Sales Verification of NEXTEEL's Unaffiliated Customer," dated April 25, 2014, at 2; Letter from U.S. Steel to the Department objecting to submission of new factual information, dated May 2, 2014; NEXTEEL's customer's March 18, 2014 section C questionnaire response at C-30 and Exhibit C-11; and NEXTEEL's customer's April 14, 2014 section C supplemental questionnaire response at SC-34 and SC-37.

²⁹¹ *Id.* at 57-58, citing Letter from NEXTEEL's customer to the Department, "SAS Program Language for Item 4 of NEXTEEL's Unaffiliated Customer's Minor Corrections," dated May 29, 2014.

²⁹² See Maverick Case Brief at 36, citing NEXTEEL's November 4, 2013 section C questionnaire response at C-32.

²⁹³ *Id.*, citing NEXTEEL's December 30, 2013 section C supplemental questionnaire response at 24 and Exhibit 29.

²⁹⁴ *Id.* at 36-37, citing, e.g., NEXTEEL's customer's April 14, 2014 section C supplemental questionnaire response at Exhibit SC-18 and Memorandum to the File through Robert James, Program Manager, Office VI, from Steve Bezirgianian, Deborah Scott, and Victoria Cho, International Trade Compliance Analysts, Office VI, "Verification of the Sales Response of {NEXTEEL's Customer} in the Investigation {of} Oil Country Tubular Goods (OCTG) from the Republic of Korea," dated May 16, 2014 (NEXTEEL's Customer Sales Verification Report), at 21.

in determining liability for the claim, and facilitate a consensus between the customer and NEXTEEL.’”²⁹⁵ Thus, Maverick asserts, all warranty claims reported by NEXTEEL’s customer are in reality NEXTEEL’s warranty expenses, and all claims are brought to NEXTEEL’s attention for resolution. As such, Maverick contends NEXTEEL’s claims that it incurred no warranty expenses during the POI are unbelievable and an attempt to withhold information from the Department.

Further, Maverick claims the amounts reported as a minor correction at the verification of NEXTEEL’s customer are dubious. Maverick states NEXTEEL’s customer stated at verification that its customer will not make a payment if there is a pending claim.²⁹⁶ According to Maverick, NEXTEEL also explained at verification that it has settled some claims by granting future discounts on subsequent sales.²⁹⁷ Thus, Maverick asserts the amounts reported as a minor correction at the verification of NEXTEEL’s customer likely consist of warranty claims, payments, or both.

Based on the foregoing, Maverick contends the record does not contain any reliable information regarding the actual amount of NEXTEEL’s POI warranty payments. Therefore, as provided by the statute, Maverick argues the Department should use facts available to determine NEXTEEL’s warranty expenses, and in doing so, the Department should use an adverse inference because NEXTEEL has not cooperated to the best of its ability.²⁹⁸ Maverick asserts an adverse inference is warranted because both NEXTEEL and NEXTEEL’s customer have withheld information from the Department. As adverse facts available, Maverick avers the Department should divide the amount from the minor correction noted above by the total value of NEXTEEL’s sales to NEXTEEL’s customer and reduce all U.S. sales by the resulting percentage.²⁹⁹ At the very least, Maverick argues that as neutral facts available the Department should divide the amount from the minor correction by the total value of NEXTEEL’s sales to all U.S. customers and reduce all U.S. sales by the resulting percentage.³⁰⁰

NEXTEEL objects to U.S. Steel’s and Maverick’s contentions and argues the Department should not apply adverse facts available to its warranty expenses. First, NEXTEEL contends that U.S. Steel and Maverick misconstrue the Department’s reporting requirements with respect to warranty expenses. According to NEXTEEL, U.S. Steel and Maverick suggest that because NEXTEEL received and considered warranty claims during the POI, NEXTEEL was required to report these unresolved claims as warranty expenses. As such, NEXTEEL avers that petitioners conflate warranty claims with reportable warranty expenses. NEXTEEL claims the Department

²⁹⁵ *Id.* at 37-38, citing NEXTEEL’s customer’s April 14, 2014 section C supplemental questionnaire response at SC-34–SC-35.

²⁹⁶ *Id.* at 38, citing NEXTEEL’s Customer Sales Verification Report at 21.

²⁹⁷ *Id.*, citing Memorandum to the File through Robert James, Program Manager, Office VI, from Victoria Cho, Deborah Scott, and Steve Bezirgianian, International Trade Compliance Analysts, Office VI, “Verification of the Sales Response of NEXTEEL Co. Ltd. (NEXTEEL) in the Investigation of Oil Country Tubular Goods (OCTG) from the Republic of Korea,” dated May 29, 2014 (NEXTEEL Sales Verification Report), at 31.

²⁹⁸ *Id.* at 39, citing section 776(a) and (b) of the Act.

²⁹⁹ *Id.* at 40, citing *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fourteenth Administrative Review and Partial Rescission*, 74 FR 11082 (March 16, 2009), and accompany Issues and Decision Memorandum (CORE from Korea Decision Memo) at Comment 13.

³⁰⁰ *Id.*, citing CORE from Korea Decision Memo at Comment 13.

does not require respondents to report warranty expenses that have not yet been incurred.³⁰¹ NEXTEEL asserts the Department thoroughly verified NEXTEEL's warranty expenses and reviewed warranty claim payments made by NEXTEEL and the related accounts.³⁰² NEXTEEL also maintains that, as the Department validated at verification, not all warranty claims are valid, customers frequently use claims to negotiate discounts on future sales.³⁰³

Second, NEXTEEL contends petitioners mischaracterize information on the record. NEXTEEL avers U.S. Steel and Maverick wrongly allege that NEXTEEL stated it did not receive any warranty claims during the POI. NEXTEEL contends the statement in its first supplemental questionnaire response that it reported the level of warranty services as low because "it would have provided warranty services, had it received any claims" did not mean NEXTEEL received no claims, but, rather, that warranty services are generally low when warranty expenses are incurred.³⁰⁴ In addition, NEXTEEL asserts U.S. Steel incorrectly argued that NEXTEEL reported it did not issue any credits to resolve warranty claims. NEXTEEL states that in response to the Department's question regarding credits granted for any third-party warranty arrangements, it replied that no third party acts on NEXTEEL's behalf to cover warranty expenses.³⁰⁵ NEXTEEL also claims that certain correspondence cited by U.S. Steel and Maverick does not show that NEXTEEL incurred warranty expenses during the POI, but, rather, establishes that claims received by NEXTEEL during the POI have yet to be resolved.³⁰⁶

NEXTEEL argues that it has completely cooperated and complied with the Department's requests for information throughout this investigation, and therefore the Department should not apply adverse facts available to NEXTEEL's warranty expenses. NEXTEEL contends the assumptions behind U.S. Steel and Maverick's suggestion to calculate warranty expenses based on the outstanding balances reported by NEXTEEL's customer are erroneous. NEXTEEL asserts petitioners have confused warranty claims with actual warranty expenses, and argues the amount of warranty claims filed bear little relation to actual warranty expenses, particularly when parties have not agreed on a settlement. Further, NEXTEEL maintains petitioners' presumption that the outstanding balances will not be recovered is unfounded, as warranty claims can be settled through price reductions, warranty payments, or without compensation.³⁰⁷

³⁰¹ See NEXTEEL Rebuttal Brief at 73, citing *Narrow Woven Ribbons from Taiwan* Decision Memo at Comment 14.

³⁰² *Id.*, citing NEXTEEL Sales Verification Report at 31; Letter from NEXTEEL to the Department, "Sales Verification Exhibits," dated May 5, 2014 (NEXTEEL Sales Verification Exhibits), at Exhibit 45; NEXTEEL's Customer Sales Verification Report at 19-20; and Memorandum to the File through Robert James, Program Manager, Office VI, from Victoria Cho and Davina Friedmann, International Trade Compliance Analysts, Office VI, "Verification of the Sales Response of {NEXTEEL's Customer's Affiliate} in the Investigation {of} Oil Country Tubular Goods (OCTG) from the Republic of Korea," dated June 10, 2014 (NEXTEEL's Customer's Affiliate Sales Verification Report) at 10-11.

³⁰³ *Id.* at 74, citing NEXTEEL Sales Verification Report at 31; NEXTEEL's Customer Sales Verification Report at 19-20; NEXTEEL's Customer's Affiliate Sales Verification Report at 10-11; NEXTEEL's customer's March 18, 2014 section C questionnaire response at C-30; and NEXTEEL's customer's April 14, 2014 section C supplemental questionnaire response at SC-33-SC-39.

³⁰⁴ *Id.*, citing NEXTEEL's December 30, 2013 section C supplemental questionnaire response at 24.

³⁰⁵ *Id.* at 74-75, citing NEXTEEL's December 30, 2013 section C supplemental questionnaire response at 25.

³⁰⁶ *Id.* at 75-76, citing NEXTEEL's customer's April 14, 2014 section C supplemental questionnaire response at Exhibit SC-18, pages 1, 4, and 13-16.

³⁰⁷ *Id.* at 77, citing NEXTEEL's Customer Sales Verification Report at 19 and NEXTEEL's customer's April 14, 2014 section C supplemental questionnaire response at SC-38.

Regarding U.S. Steel's assertion that the Department should reject NEXTEEL's customer's minor correction concerning warranty expenses, NEXTEEL argues the Department should accept it, because it clarifies and corrects information already on the record. NEXTEEL claims such minor errors are understandable given the short amount of time that NEXTEEL's customer had to respond to the Department's initial and supplemental questionnaires. With respect to the SAS programming language related to the outstanding balances, NEXTEEL states it has reviewed that language and admits the language does not accurately reflect the minor correction. However, NEXTEEL contends this was an inadvertent error, and the letter accompanying the SAS programming language plainly expresses NEXTEEL's customer intent to provide the correct programming language.

Department's Position:

In general, given the nature of warranty issues, the total actual amount of warranty expenses is unknown at the time of the sale. As a result, the Department has developed a practice of relying on a company's POI warranty expenses, or, if found distortive, its three-year historical warranty expenses regardless of the particular periods in which the related sales took place.³⁰⁸ Thus, even if the POI warranty expenses relate to pre-POI sales they should not be excluded from POI warranty costs. As noted above, the Department's practice is to rely on a company's three-year average of warranty expenses in its calculations in place of the POI warranty expenses if there is evidence that the POI expenses are not representative of a respondent's historical experience, thereby mitigating the impact of warranty claims that may by nature occur at irregular intervals.³⁰⁹

In its original questionnaire, the Department asked NEXTEEL to report warranty expenses for its reported U.S. sales, and to also report its annual warranty expenses for the three most recent fiscal years (which at the time were fiscal years 2010, 2011, and 2012).³¹⁰ In its initial response, NEXTEEL claimed it incurred no warranty expenses for its reported U.S. sales, and failed to respond to the Department's request for annual warranty expenses for the three most recent fiscal years.³¹¹ The Department asked in a supplemental questionnaire why elsewhere in its responses NEXTEEL had stated it provided warranty services to customers if it incurred no warranty expenses during the POI, and also asked NEXTEEL again to submit its warranty expenses for the three most recent fiscal years.³¹² NEXTEEL responded that it provides warranty services to its customers when the need arises, and reiterated its claim that it incurred no warranty expenses

³⁰⁸ See, e.g., *Solar Cells from the PRC*, and accompanying Issues and Decision Memorandum at Comment 28; *Welded P&T from India*, and accompanying Issues and Decision Memorandum at Comment 4; and *Chlo Isos from Spain*, and accompanying Issues and Decision Memorandum at Comment 4.

³⁰⁹ See, e.g., *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination*, 77 FR 63791 (October 17, 2012), and accompanying Issues and Decision Memorandum at Comment 28; *Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part*, 76 FR 49729 (August 11, 2011), and accompanying Issues and Decision Memorandum at Comment 3; and, *Chlorinated Isocyanurates from Spain: Final Results of Antidumping Duty Administrative Review*, 74 FR 50774 (October 1, 2009), and accompanying Issues and Decision at Comment 4.

³¹⁰ See the Department's August 27, 2013 questionnaire at C-30 to C-31.

³¹¹ See NEXTEEL's November 4, 2013 Section C questionnaire response at C-32.

³¹² See the Department's December 2, 2013 supplemental questionnaire at 12.

during the POI.³¹³ At verification, NEXTEEL stated there were outstanding warranty claims for 2012 and 2013 that still had not been resolved.³¹⁴

We disagree with NEXTEEL's claim that the Department validated at verification that customers frequently use claims to negotiate discounts on future sales.³¹⁵ No information in the verification report confirms the degree to which warranty claims were resolved with alleged discounts.³¹⁶

When outstanding warranty claims involving NEXTEEL are ultimately resolved, it is NEXTEEL that can be presumed to bear the expense, given it is NEXTEEL's products that are subject to the claims. As noted above, NEXTEEL has confirmed it has outstanding warranty claims for 2012 as well as for 2013. Consequently, reliance on either NEXTEEL's POI warranty expenses or the full three-year period average of warranty expenses would be distortive. Therefore, in relying on historical fiscal year average warranty expenses, the Department is excluding 2012 from the calculations, and instead using only the first two years (2010 and 2011) to determine the average warranty expenses to be allocated to the sales utilized in the Department's margin calculations, whether they be direct sales by NEXTEEL to unaffiliated U.S. customers, or sales through what the Department has determined is an affiliated party.

We disagree with the petitioners that the Department should apply adverse facts available for warranty expenses. While NEXTEEL may have been less than candid in its questionnaire responses and may have implied it had not received any warranty claims for the POI, failing initially to provide its three year warranty expense data, it does appear that NEXTEEL did not incur any warranty expenses during the POI, as it stated in its questionnaire responses, and NEXTEEL did later submit its three year warranty expense data. Use of all of the outstanding balances of NEXTEEL's customer to determine NEXTEEL's expenses as facts available may yield an excessive estimate, given it is not evident that the outstanding balances are all due to warranty claims, nor is it obvious that all claims would result in actual warranty expenses. Use of the Department's standard historical average methodology, adjusted to exclude the third year (2012) because of admitted unresolved claims for that year and expenses incurred by its affiliated customer and that affiliate's customer, is the most appropriate methodology for estimating NEXTEEL's warranty expenses for the POI.

Comment 23: NEXTEEL's Warehousing Services

U.S. Steel states NEXTEEL reported in its original questionnaire response that it did not incur any warehousing expenses in Korea for OCTG sold in the United States, and that NEXTEEL America LLC and NEXTEEL QNT Co., Ltd. were its only affiliates.³¹⁷ Referring to NEXTEEL's first supplemental questionnaire response, U.S. Steel states NEXTEEL asserted it

³¹³ See NEXTEEL's December 30, 2013 supplemental questionnaire response at 24 and Exhibit 29.

³¹⁴ See the May 29, 2014 NEXTEEL Sales Verification Report at 31.

³¹⁵ *Id.* at 74, citing NEXTEEL Sales Verification Report at 31; NEXTEEL's Customer Sales Verification Report at 19-20; NEXTEEL's Customer's Affiliate Sales Verification Report at 10-11; NEXTEEL's customer's March 18, 2014 section C questionnaire response at C-30; and NEXTEEL's customer's April 14, 2014 section C supplemental questionnaire response at SC-33-SC-39.

³¹⁶ See NEXTEEL Sales Verification Report at 31 and Verification Exhibit 45.

³¹⁷ See U.S. Steel Case Brief on NEXTEEL at 60, citing NEXTEEL's September 17, 2013 section A questionnaire response at A-8-A-9 and NEXTEEL's November 4, 2013 section C questionnaire response at C-23, note 2.

had no warehousing expenses during the POI, indicated it does not transport merchandise to an intermediate warehouse, and stated its freight carriers store OCTG for free at their yards.³¹⁸ However, U.S. Steel asserts that after the preliminary determination, NEXTEEL revealed it incurred warehousing expenses during the POI, and that such warehousing had been provided by an affiliate, NEXTOGY Co. Ltd. (NEXTOGY).³¹⁹ U.S. Steel states NEXTEEL also asserted it had included fees paid to NEXTOGY for warehousing in NEXTEEL's general and administrative expenses (G&A).³²⁰

U.S. Steel contends that NEXTEEL's disclosure regarding NEXTOGY is both unacceptable and untimely. U.S. Steel argues that NEXTEEL belatedly admitted it should have reported its affiliation with NEXTOGY in its original questionnaire response.³²¹ U.S. Steel maintains NEXTEEL's reasons for failing to disclose NEXTOGY are completely inadequate, as NEXTOGY is a fundamental part of NEXTEEL's operations. U.S. Steel asserts that NEXTOGY is located very near NEXTEEL, was used by NEXTEEL during the POI, and held NEXTEEL's stock at the time of verification.³²² U.S. Steel claims accounting documentation obtained at verification demonstrates that NEXTEEL paid NEXTOGY for warehousing services during the POI, establishing that NEXTEEL's accountants knew about NEXTOGY and that NEXTEEL had incurred expenses for warehousing at NEXTOGY.³²³

U.S. Steel alleges the information NEXTEEL finally provided to the Department regarding NEXTOGY contained extensive errors. U.S. Steel claims that after it challenged NEXTEEL regarding its claim that warehousing expenses were captured in G&A expenses, NEXTEEL conceded it had not included these expenses in its G&A expenses.³²⁴ Also, U.S. Steel argues NEXTEEL's explanation regarding the lease contract with an unaffiliated warehousing company was incorrect.³²⁵ U.S. Steel asserts that when correctly translated, it is clear the contract did not relate to NEXTEEL's purchase of warehousing services from an unaffiliated provider and thus it offers no indication of whether NEXTOGY provided warehousing services at arm's length.³²⁶

U.S. Steel argues that under section 776(a)(2) of the Act, the Department applies facts available where an interested party withholds information, fails to comply with the Department's deadlines, significantly impedes a proceeding, or provides unverifiable information. Further, U.S. Steel contends that under section 776(b) of the Act, the Department may use adverse facts available if an interested party does not act to the best of its ability to comply with the Department's requests for information. U.S. Steel contends the standards for applying adverse

³¹⁸ *Id.* at 60-61, citing NEXTEEL's December 30, 2013 section C supplemental questionnaire response at 19-21.

³¹⁹ *Id.* at 61, citing NEXTEEL's February 18, 2014 section A and C supplemental questionnaire response at 9-10.

³²⁰ *Id.* at 61-62, citing NEXTEEL's February 18, 2014 section A and C supplemental questionnaire response at 10.

³²¹ *Id.* at 62, citing Letter from NEXTEEL to the Department, "Response to U.S. Steel's February 28, 2014 Comments," dated March 11, 2014, at 10.

³²² *Id.* at 62-63, citing Letter from U.S. Steel to the Department regarding application of adverse facts available, dated February 28, 2014, at Exhibit 1 and NEXTEEL Sales Verification Report at 19.

³²³ *Id.* at 63, citing NEXTEEL Sales Verification Report at 4-5.

³²⁴ *Id.*, citing Letter from NEXTEEL to the Department, "Response to U.S. Steel's February 28, 2014 Comments," dated March 11, 2014, at 10-11.

³²⁵ *Id.* at 63-64, citing NEXTEEL's February 18, 2014 section A and C supplemental questionnaire response at 10 and Exhibit S-10-B.

³²⁶ *Id.* at 64, citing Letter from U.S. Steel to the Department regarding application of adverse facts available, dated February 28, 2014, at Exhibit 2.

facts available have plainly been met in this case. As adverse facts available, U.S. Steel argues the Department should increase the overhead cost³²⁷ per MT for each CONNUM by the warehousing costs incurred for the months that the contract with NEXTOGY was in effect during the POI.³²⁸ U.S. Steel contends this calculation is appropriate because NEXTEEL utilized NEXTOGY during the POI for the long-term storage of subject merchandise and sold OCTG to U.S. customers from inventory.³²⁹ At a minimum, U.S. Steel asserts the Department should increase the overhead cost per MT of each CONNUM by the warehousing cost for one month.

Maverick states that NEXTEEL indicated in its original questionnaire response that it did not have any affiliates other than NEXTEEL America LLC and NEXTEEL QNT Co., Ltd. and that it did not incur any domestic warehousing expenses in Korea for OCTG sold in the United States.³³⁰ In NEXTEEL's first supplemental questionnaire response, Maverick asserts, NEXTEEL continued to report that it had no warehousing expenses and that its freight providers do not charge NEXTEEL for storing OCTG.³³¹ Maverick argues that NEXTEEL disclosed its purchase of warehousing services from an affiliated party on the same day as the Department's preliminary determination was announced.³³² Maverick contends that given the Department's repeated questions about warehousing, NEXTEEL's claim that it reported its provision of warehousing services from NEXTOGY in a timely manner is not believable.³³³

In addition, Maverick maintains the information NEXTEEL has disclosed was portrayed incorrectly in an effort to distort the dumping calculation. With respect to the contract NEXTEEL provided with an unaffiliated warehousing provider to show the arm's-length nature of its transactions with NEXTOGY, Maverick asserts that contract is completely irrelevant toward showing whether NEXTEEL's purchase of warehousing from NEXTOGY was at arm's length.³³⁴ Maverick also alleges NEXTEEL does not pay NEXTOGY the amount it claimed for warehousing services.³³⁵

Maverick argues NEXTEEL's misrepresentations with respect to NEXTOGY demonstrate that NEXTEEL has not cooperated to the best of its ability in responding to the Department's

³²⁷ *Id.* at 66, footnote 272. U.S. Steel maintains it is appropriate to treat these warehousing expenses as overhead rather than as general operating expenses because they are actual overhead costs that NEXTEEL incurred in relation to the manufacture and pre-sale maintenance of the subject merchandise.

³²⁸ *Id.* at 66, citing Letter from U.S. Steel to the Department regarding application of adverse facts available, dated February 28, 2014, at Exhibits 1 and 3.

³²⁹ *Id.* at 66-67, citing NEXTEEL's February 18, 2014 section A and C supplemental questionnaire response at 9 and NEXTEEL's September 17, 2013 section A questionnaire response at A-12.

³³⁰ See Maverick Case Brief at 41, citing NEXTEEL's September 17, 2013 section A questionnaire response at A-8–A-9 and NEXTEEL's November 4, 2013 section C questionnaire response at C-23, note 2.

³³¹ *Id.*, citing NEXTEEL's December 30, 2013 section C supplemental questionnaire response at 21.

³³² *Id.* at 40-41, citing NEXTEEL's February 18, 2014 section A and C supplemental questionnaire response at 9-10 and Exhibit 10.

³³³ *Id.* at 41-42, citing Letter from NEXTEEL to the Department, "Response to U.S. Steel's February 28, 2014 Comments," dated March 11, 2014, at 9.

³³⁴ *Id.* at 42, citing NEXTEEL's February 18, 2014 section A and C supplemental questionnaire response at 10 and Letter from U.S. Steel to the Department regarding application of adverse facts available, dated February 28, 2014, at 5 and Exhibit 2.

³³⁵ *Id.*, citing Letter from U.S. Steel to the Department regarding application of adverse facts available, dated February 28, 2014, at Exhibits 1 and 3.

requests for information. Therefore, Maverick urges the Department to apply partial adverse facts available to NEXTEEL's warehousing expenses using the methodology proposed by U.S. Steel.

NEXTEEL responds that the application of adverse facts available to its warehousing expenses is completely inappropriate. First, NEXTEEL argues that it reported NEXTOGY's affiliation and related costs in a timely manner. NEXTEEL concedes that it should have reported its affiliation with NEXTOGY in its original section A questionnaire response but did not do so due to an oversight. NEXTEEL maintains it did omit this information in an attempt to mislead the Department, but, rather, corrected this issue at the earliest opportunity, which was two months prior to the Department's verifications.

Second, NEXTEEL claims that U.S. Steel is wrong in asserting the warehousing expenses should be captured in overhead costs instead of G&A expenses. However, NEXTEEL contends, since shares in NEXTOGY were not acquired until December 2012, NEXTEEL had no warehousing payments to NEXTOGY to include in its 2012 G&A expenses, which the Department used to calculate the G&A ratio.³³⁶ NEXTEEL claims that since the Department did not base NEXTEEL's G&A ratio on NEXTEEL's 2013 G&A expenses, the omission of NEXTEEL's warehousing expenses paid to NEXTOGY in 2013 did not have an effect on the margin and surely does not call for the use of facts available, adverse or otherwise.

Third, NEXTEEL asserts that U.S. Steel and Maverick incorrectly characterized the lease contract provided in Exhibit S-10-B of its February 18, 2014 supplemental questionnaire response. NEXTEEL states it provided one lease between NEXTOGY and NEXTEEL, which shows NEXTEEL is storing subject and non-subject merchandise at NEXTOGY, and a second lease between NEXTEEL and the unaffiliated warehousing company, which relates to the rental of space by NEXTEEL to the unaffiliated warehousing company.³³⁷ NEXTEEL asserts these documents clarify the market price for rental space and, thus, show that NEXTEEL's transactions with NEXTOGY were at arm's length.³³⁸

Fourth, NEXTEEL avers that even if the Department included its payments to NEXTOGY for warehousing, the per-unit warehousing expense would be minimal. NEXTEEL indicates what the per-unit expense would be based on the total expenses for the six months of the POI during which NEXTEEL rented NEXTOGY's warehouse divided by total POI sales of OCTG.³³⁹ However, NEXTEEL argues, the per-unit expense likely would be much lower, because the rental fees did not just pertain to OCTG, but to non-subject products as well. NEXTEEL claims that, as a percentage of the average unit selling price, the per-unit warehousing expense (based on sales of just OCTG) is insignificant and can be disregarded under 19 CFR 351.413.

³³⁶ See NEXTEEL Rebuttal Brief at 79, citing NEXTEEL's February 18, 2014 section A and C supplemental questionnaire response at 9 and NEXTEEL Sales Verification Report at 6.

³³⁷ *Id.* at 80, citing NEXTEEL's February 18, 2014 section A and C supplemental questionnaire response at Exhibit S-10-B.

³³⁸ *Id.*, citing NEXTEEL Sales Verification Report at 4-5.

³³⁹ *Id.* at 80-81, citing NEXTEEL's February 18, 2014 section A and C supplemental questionnaire response at Exhibits S-10-A and S-10-B; Letter from U.S. Steel to the Department regarding application of adverse facts available, dated February 28, 2014, at Exhibits 1 and 2; NEXTEEL Sales Verification Exhibits at Exhibit 4; NEXTEEL Sales Verification Report at 6; and NEXTEEL's U.S. sales database.

Moreover, NEXTEEL maintains the Department thoroughly verified the information NEXTEEL provided with respect to NEXTOGY. Specifically, NEXTEEL contends the Department examined NEXTOGY's operations, organization, affiliation with NEXTEEL, shareholders, and history of its acquisition; the contracts in its February 18, 2014 supplemental questionnaire response; the monthly rental payments and the timing of those payments (*i.e.*, they were only made in 2013); and conducted an on-site verification of NEXTOGY.³⁴⁰

Finally, NEXTEEL asserts U.S. Steel's proposed calculation is unreasonable, because it would increase warehousing costs by many times higher than the actual expense incurred. Based on the foregoing reasons, NEXTEEL argues that no form of facts available, much less the exorbitant adverse facts available adjustment suggested by petitioners, is warranted for NEXTEEL's warehousing expenses.

Department's Position:

The Department agrees that NEXTEEL did not disclose the existence of the NEXTOGY warehousing facility until it was too late for the Department to consider using any expenses associated with that facility in its margin calculations for the preliminary determination. Also, it is implausible that NEXTEEL company officials were unaware of the existence of that facility, given not only the ownership structure, but also given the immediate proximity of the facility to NEXTEEL's production lines, and given the prominent sign identifying its name, which shares the first four letters of the respondent's name.³⁴¹

Based on statements made at verification, the NEXTOGY facility was used to house both OCTG and non-subject merchandise, and products not only for domestic sale but also for those needing to be stored "before transporting {the} merchandise to the shipyard."³⁴²

The expenses charged by NEXTOGY to NEXTEEL were booked as "rental expenses," and those identified at verification were incurred in 2013, rather than 2012. NEXTEEL stated at verification the expenses are properly classified as G&A, and given the Department is utilizing G&A from the fiscal year 2012, such expenses are not pertinent to the Department's margin calculations.³⁴³ As noted above, NEXTEEL has reiterated this point in its rebuttal brief. Internal classification of the expenses by NEXTEEL as G&A contributes to the uncertainty regarding the proper classification of these expenses for purposes of the Department's analysis.

In any case, the Department based its CV Selling Rate ratios upon 2012 data in its preliminary determination.³⁴⁴ The Department is continuing to use those 2012 ratios in its final determination, and those would reflect selling expenses for 2012 rather than 2013. Therefore, we are making no adjustment for the NEXTOGY 2012 expenses by expenses incurred in 2013.

³⁴⁰ *Id.* at 83, citing NEXTEEL Sales Verification Report at 3-7, 9-11, and 19 and NEXTEEL Sales Verification Exhibits at Exhibit 4, 8, 14, and 15.

³⁴¹ *See* the May 29, 2014 NEXTEEL Sales Verification Report at 4 and 19.

³⁴² *See* the May 29, 2014 NEXTEEL Sales Verification Report at 4.

³⁴³ *Id.* at 6-7.

³⁴⁴ *See* the February 14, 2014 memo from Victoria Cho to the File entitled "Analysis of Data Submitted by NEXTEEL Co. Ltd. in Oil Country Tubular Goods from the Republic of Korea," at Attachment 2.

This renders moot the remaining issues (*i.e.*, whether NEXTOGY's charges were at arm's-length, and how to estimate adjustments on a per metric ton basis).

Comment 24: NEXTEEL's Direct Sales to U.S. Customers

While a significant majority of NEXTEEL's U.S. sales of OCTG were through a Korean reseller, NEXTEEL made some direct sales to U.S. customers. U.S. Steel argues the Department should assign the highest calculated margin to those direct sales as adverse facts available. U.S. Steel states that all four sales associated with direct sales examined during the NEXTEEL verification were found to involve agents and/or customers that were not identified in NEXTEEL's reported U.S. sales database or its narrative responses. U.S. Steel states a Department completeness check involving NEXTEEL's internal data systems identified three of those sales, which U.S. Steel notes appear to correspond with sale observations in NEXTEEL's reported U.S. sales database, but which, according to NEXTEEL's internal data system, involved one or more parties in the sales chain not identified in the U.S. sales database or NEXTEEL's questionnaire responses. The fourth sale in question was one for which the Department conducted an examination of production and sales documentation during the verification (a "sales trace"), and U.S. Steel notes some of the documentation associated with that sales trace identifies one of the parties associated with two of the aforementioned three U.S. sales. As is the case for those other sales, NEXTEEL's reported sales database and the rest of NEXTEEL's questionnaire responses do not reference that party.

U.S. Steel asserts the Department's verification report records that NEXTEEL denied the involvement of either of the two parties in question in its POI sales of OCTG, but argues that such a denial is not credible, as it would call into question the very internal data system of NEXTEEL that was the basis for much of what the Department verified.

NEXTEEL argues that it informed the Department that the two parties in question were not involved in any U.S. sales of NEXTEEL OCTG during the POI. NEXTEEL argues that one of the two companies had been identified by NEXTEEL, referring to Korean transliteration in the context of the explanation of this claim. Regarding all three sales identified in the completeness test, NEXTEEL agrees with U.S. Steel that they are identified in its U.S. sales database, and also states there is no evidence that other sales involving the entities in question are improperly missing from its U.S. sales database.

Department's Position:

The sales in question were reported in NEXTEEL's sales database. While it appears some of the sales documentation and information in the company's internal system refer incorrectly to two parties, some of the discrepancies (as NEXTEEL explained) may be due to translation errors. Furthermore, there is no indication that expenses associated with the sales were unreported. Consequently, given that the record is too sparse and unclear to make a requested adjustment, we are making no adjustments for the transactions in question.

Comment 25: Alleged Middleman Dumping

U.S. Steel states the Department calculates a middleman dumping margin when it determines that (i) a substantial portion of the middleman's resales in the United States was made at below the middleman's total acquisition costs and (ii) the middleman incurred substantial losses on those resales.³⁴⁵ U.S. Steel also argues the Department may apply the average-to-transaction comparison methodology in a middleman dumping scenario where targeted dumping is found.³⁴⁶

U.S. Steel argues that an analysis of the U.S. sales and acquisition costs of the Korean customer of NEXTEEL that resold most of the NEXTEEL OCTG to the United States shows it engaged in middleman dumping. U.S. Steel also argues that a differential pricing analysis demonstrates the reseller engaged in targeted dumping during the POI and, therefore, the Department should calculate a middleman dumping margin for the reseller's sales of OCTG produced by NEXTEEL using the average-to-transaction methodology.

U.S. Steel states the Department has the data it needs to calculate the reseller's acquisition costs, which it states is the acquisition price for the steel pipe plus amounts for general and administrative expenses (based on the reseller's overall financial statements) and interest expenses. U.S. Steel states this should be compared, on a sale-by-sale basis, to the net price of sales to the first unaffiliated U.S. customer, meaning the gross unit price minus all movement and direct selling expenses reported by the reseller. U.S. Steel argues a downward adjustment to price should also be made to account for warranty expenses not reported in the reseller's U.S. sales database.

U.S. Steel states that comparison of the acquisition prices to the net prices results in a proportion of the reseller's U.S. sales below acquisition cost that comparable to, or greater than, the levels the Department found in prior cases in which it found a substantial portion of the middleman's resales in the United States at prices below acquisition costs.³⁴⁷ U.S. Steel states the second prong of the test is met because the percentage loss incurred by the reseller on its U.S. sales was comparable to, or greater than, the percentage losses the Department found in prior cases in which it found the losses of the middleman to be "substantial."³⁴⁸

U.S. Steel argues that the overall dumping margin for the reseller should be the sum of the dumping margin for NEXTEEL's sales through the reseller based on the sum of NEXTEEL's

³⁴⁵ See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Taiwan*, 64 FR 15493, 15500 (March 31, 1999).

³⁴⁶ See, e.g., 19 U.S.C. § 1677f-1(d)(1)(B); see also *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Taiwan*, 64 FR 15493, 15500 (March 31, 1999).

³⁴⁷ At page 85 of its case brief, U.S. Steel notes those levels sales at prices below acquisition cost to have been found to be "substantial" ranged from 34.7 percent to 44.53 percent, citing *Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Taiwan*, 63 FR 66785, 66786-87 (December 3, 1998) (*Preliminary SSPC*) and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Taiwan*, 64 FR 15493, 15504 (March 31, 1999). (*Final SSPC*).

³⁴⁸ At page 86 of its case brief (footnote 353), U.S. Steel cites percentage loss of 2.61 percent of value as "substantial," from *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Taiwan*, 64 FR 30592, 30621 (June 8, 1999) (Comment 30), and 3.00 percent from *Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Taiwan*, 63 FR 66785, 66786-87 (December 3, 1998) (*Preliminary SSPC*).

and the dumping margin for the reseller's downstream sales.³⁴⁹ U.S. Steel also argues that a separate dumping margin should be calculated for NEXTEEL's U.S. sales to parties other than the reseller.³⁵⁰ U.S. Steel argues this multiple margin methodology has been upheld in litigation.³⁵¹

Boomerang Tube, *et al.* argue that if the Department does not find NEXTEEL to be affiliated with its Korean customer that resells NEXTEEL OCTG to the United States, then the Department should find that reseller to have engaged in middleman dumping. Boomerang Tube, *et al.* cites to calculations in its brief showing that, based on the U.S. sales database submitted by the reseller in its supplemental questionnaire response. The net price calculation performed by Boomerang Tube, *et al.* differed somewhat from that of U.S. Steel; it used NEXTEEL's reported value of warranty expenses rather than a revised version, and, conservatively, it did not use another reported expense that was used by U.S. Steel. Boomerang Tube, *et al.* argues that the results generated by its calculations show numbers of sales made at losses and an overall magnitude of loss substantial enough to warrant a finding of middleman dumping.

In rebuttal, NEXTEEL argues that the Department has refused to initiate middleman dumping investigations when the party making the allegation failed to submit convincing information, citing various cases where such an allegation was rejected due to insufficient rationale.³⁵² NEXTEEL argues the high evidentiary threshold flows from the Department's longstanding presumption that trading companies mark up the sales prices to their customers so as not to incur losses on sales.³⁵³

NEXTEEL argues that Boomerang Tube, *et al.*'s calculations are flawed in various ways. First, NEXTEEL argues that Boomerang Tube, *et al.* derived the reseller's purported acquisition costs by weight-averaging all of NEXTEEL's reported sales by CONNUM, which includes sales that do not involve the reseller. Second, NEXTEEL argues that Boomerang Tube, *et al.* includes an addition to acquisition cost for SG&A, based on a ratio derived from the reseller's consolidated financial statements, but also includes a deduction to U.S. price for movement and direct selling expenses, items which are included in the SG&A calculation in the financial statements. Third, NEXTEEL argues that Boomerang Tube, *et al.*'s methodology results in double counting within the SG&A adjustment expenses already accounted for in the calculation of reported indirect selling expenses. Fourth, NEXTEEL argues that Boomerang Tube, *et al.*'s calculation of total losses fails to show the alleged loss as a percentage of the net value of total sales, contrary to the

³⁴⁹ See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Taiwan*, 64 FR 15493, 15507 (March 31, 1999). (*Final SSPC*) (“{A}dding {the respondent’s} margin to {the middleman’s} margin accurately calculates the extent of middleman dumping”).

³⁵⁰ See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Taiwan*, 64 FR 15493, 15507 (March 31, 1999). (*Final SSPC*)

³⁵¹ See *Tung Mung Dev. Co., Ltd. v. United States*, 354 F.3d 1371 (Federal Circuit 2004).

³⁵² See, e.g., *Certain Cold-Rolled Carbon Steel Flat Products from Korea*, 67 FR 62124 (October 3, 2002), due to the absence of “salient facts,” and *Certain Hot-Rolled Carbon Steel Flat Products from Kazakhstan*, 66 FR 50397, 50398 (October 3, 2001), due to absence of “specific evidence.”

³⁵³ See, e.g., *Certain Cold-Rolled Carbon Steel Flat Products from Korea*, *supra*, Issues and Decision Memorandum at Comment 2, and *Certain Stainless Steel Cooking Ware from Korea*, 51 FR at 42874 (“since trading companies typically operate at small mark-ups, and presumably do not take losses we require specific evidence that the trading company is in fact dumping before initiating an investigation with respect to the trading company.”).

Department's precedent in Stainless Steel Plate in Coils from Taiwan. Finally, NEXTEEL argues that Boomerang, *et al.* inappropriately zeroed negative margins.

NEXTEEL states U.S. Steel failed to even provide a program to show how its middleman dumping calculations were generated and, on this basis alone, the allegation should be rejected. NEXTEEL also criticizes U.S. Steel's effort to revise the reseller's reported warranty expenses based on an adverse facts available calculation for warranty expenses, given the record indicates NEXTEEL, not the reseller, bears the ultimate cost of warranty expenses.

In addition, with regard to the allegations of both Boomerang Tube, *et al.* and U.S. Steel, NEXTEEL argues that if the Department determines, erroneously, that middleman dumping occurred, it must limit its investigation to NEXTEEL's sales to the reseller, so that a combination rate only applies to such sales and not those made directly by NEXTEEL to U.S. customers. NEXTEEL argues this would be consistent with the CIT's finding in a prior case.³⁵⁴

Finally, NEXTEEL argues it would be inappropriate for the Department to make a finding of middleman dumping without releasing the calculations used for such a determination and allowing parties to comment on those calculations. NEXTEEL states that given the late stage of this proceeding, a finding of middleman dumping would not allow the Department to ensure that all parties have a full and fair opportunity to review such calculations.

Department's Position:

For this final determination, because we have found NEXTEEL's customer to be affiliated with NEXTEEL, we are using the sales by NEXTEEL's customer to the first unaffiliated U.S. customer in our margin calculations. Therefore, this issue is moot. Regarding Boomerang Tube, *et al.*'s reference to affiliation between NEXTEEL and its Korean customer involved in certain U.S. sales of NEXTEEL's OCTG, the pertinent issues may only be addressed in a proprietary analysis. For more information, *see* the Affiliation Memorandum, adopted concurrently with this memorandum. We note that consistent with precedent, we are calculating constructed export price (CEP) profit for the sales made by NEXTEEL's customer to the first unaffiliated U.S. customer using the sum of the profit rates of NEXTEEL's affiliated customer and NEXTEEL as derived from their financial statements.³⁵⁵ We also note that for all U.S. sales, if the shipment date from the factory precedes the date by which the companies indicated the essential terms of sale were set (the invoice date for NEXTEEL's direct sales to unaffiliated U.S. customers, and the bill of lading date for NEXTEEL's affiliated customer's sales to the first unaffiliated U.S.

³⁵⁴ See NEXTEEL's Rebuttal Brief at 99-100, citing *Tung Mung Development Co., Ltd. v. United States*, 219 F.Supp.2d 1322 (Court of International Trade).

³⁵⁵ See *Citric Acid and Certain Citrate Salts From Canada: Final Results of Antidumping Duty Administrative Review*; 2012-2013, 79 FR 37286 (July 1, 2014), and accompanying Issues and Decision Memorandum at Comment 2, in turn citing separate memorandum entitled "Further Discussion of Comments 1 and 2 in the Issues and Decision Memorandum." See also *Citric Acid and Certain Citrate Salts From Canada: Final Results of Antidumping Duty Administrative Review*, 77 FR 24461 (April 24, 2012); *Citric Acid and Certain Citrate Salts From Canada: Final Results of Antidumping Duty Administrative Review*; 2011-2012, 78 FR 64914 (October 30, 2013); and *Certain Frozen Warmwater Shrimp From Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 50933 (August 29, 2008), and accompanying Issues and Decision Memorandum at Comment 8.

customer), we are using the shipment date from the factory as date of sale. This conforms to Department precedent.³⁵⁶

Comment 26: Date of Sale

NEXTEEL states it reported invoice date as the date of sale in its original questionnaire response, and in response to the Department's instructions in the first supplemental questionnaire, reported all sales that were shipped during the POI. NEXTEEL states the Department preliminarily determined that invoice date was the appropriate date of sale. However, NEXTEEL contends, the Department did not eliminate sales with invoice dates outside the POI when it set the "ENDDAY" macro equal to "30OCT2013" at line 103 of the Margin program. NEXTEEL therefore requests that the Department amend this error.

No parties responded to this issue in their rebuttal briefs.

Department's Position:

Because we find affiliation between NEXTEEL and NEXTEEL's customer, we have used the POI sales of NEXTEEL's customer for our final analysis, along with NEXTEEL's direct sales to unaffiliated U.S. customers. Our analysis for the final determination limits the sale observations used to those sales that were made to unaffiliated customers during the POI.

Comment 27: The Department Should Apply AFA to NEXTEEL's Direct Material Costs

U.S. Steel argues that NEXTEEL provided unreliable information with regard to the use of hot-rolled coil procured from non-domestic sources. Specifically, U.S. Steel maintains that NEXTEEL reported costs associated with domestic coil for products that were reportedly ordered, produced and sold as OCTG produced from non-domestic coil, even though the reported costs for non-domestic coil are different than the reported costs for hot-rolled coil procured domestically. U.S. Steel provides examples showing that NEXTEEL's sales and cost databases are inconsistent with respect to the source and the cost of the hot-rolled coil used to produce OCTG. U.S. Steel claims that at verification, NEXTEEL sought to reclassify almost all of its sales of OCTG that were reportedly produced using non-domestic coil as having been produced using domestic coils³⁵⁷ U.S. Steel states that it is the Department's practice to apply AFA in situations where a respondent provides such unreliable sales and cost information

³⁵⁶ See e.g. *Certain Stilbenic Optical Brightening Agents From Taiwan: Final Determination of Sales at Less Than Fair Value*, 77 FR 17027 (March 23, 2012), and accompanying *Issues and Decision Memorandum at Comment 1*; *Certain Polyester Staple Fiber from the Republic of Korea: Preliminary Results of the 2007/2008 Antidumping Duty Administrative Review*, 74 FR 27281, 27283 (June 9, 2009), unchanged in *Certain Polyester Staple Fiber from the Republic of Korea: Final Results of the 2007-2008 Antidumping Duty Administrative Review*, 74 FR 65517 (December 10, 2009).

³⁵⁷ See the Memorandum to Neal M. Halper, Director, Office of Accounting, through Taija A. Slaughter, Lead Accountant, from Sheikh M. Hannan, Senior Accountant, titled "Verification of the Cost Response of NEXTEEL Co., Limited In the Antidumping Duty Investigation of Oil Country Tubular Goods from the Republic of Korea" dated May 14, 2014 (NEXTEEL's Cost Verification Report) at page 19.

regarding its raw material inputs.³⁵⁸ U.S. Steel further alleges that there is inconsistency between the hot-rolled coil inventory movement and the OCTG production data. As adverse facts available, U.S. Steel suggests the Department should assign the average reported cost for OCTG made from non-domestic coil to each of the CONNUMs in the February 10, 2014 cost database that corresponds to a CONNUM in NEXTEEL's sales database for products ordered, produced, and sold as OCTG made from non-domestic hot-rolled coil.

NEXTEEL contends that it has clearly explained and accounted for the actual use of non-domestic material versus the identification of products sold as so-called non-domestic origin products pursuant to customer orders. NEXTEEL points out that the company does not specifically track non-domestic coil used to produce OCTG to individual sales. NEXTEEL is able to segregate between products that used non-domestic versus domestic coil only by product code. NEXTEEL states that it segregates such products by purchase order number and additional production data such as outside diameter, thickness, and length, and the segregation was fully and completely verified by the Department during the verification.³⁵⁹ For these reasons, NEXTEEL holds, the Department should reject petitioners' request to apply AFA.

Department's Position:

While the sales database submitted on March 14, 2014 classified certain OCTG products as being manufactured from non-domestic coils, we confirmed at verification that both non-domestic and domestic origin hot-rolled coils were used to produce the OCTG products in question.³⁶⁰

The per-unit costs reported by NEXTEEL are based on the actual product-specific manufacturing costs incurred by NEXTEEL and reflect such costs as recorded in its cost accounting system.³⁶¹ As the reported per-unit costs for the particular OCTG products in question accurately reflect the cost of the coils used to produce such merchandise, we do not find it appropriate to substitute the domestic origin costs with the non-domestic origin costs. Moreover, there is no inconsistency between the hot-rolled coil inventory movement and the OCTG production data. Cost Verification Exhibit 10B at page 63 lists only the OCTG products that were produced at one forming line during July 2012 and does not include the product codes produced from non-domestic origin hot-rolled coils because they were produced at another forming line.³⁶²

Comment 28: The Department Should Adjust NEXTEEL's Reported Data to Correct for the Unreconciled Difference

U.S. Steel points out that the cost reconciliation provided by NEXTEEL at the cost verification includes an unreconciled difference between the costs per books and the reported costs.

³⁵⁸ See *Foshan Shunde Yongjian Housewares & Hardware Co. Ltd v. United States*, Trade LEXIS 123, Slip Op. 2011-123 (Ct. Int'l Trade 2011).

³⁵⁹ See NEXTEEL's Cost Verification Report at page 19.

³⁶⁰ See NEXTEEL's Cost Verification Report at page 19 and Cost Verification Exhibit 16 (APO Version).

³⁶¹ See NEXTEEL's Cost Verification Report at page 9.

³⁶² See NEXTEEL's Cost Verification Exhibit 1 at page 9.

Therefore, U.S. Steel argues, the Department should adjust NEXTEEL's costs for such unreconciled difference.

NEXTEEL, while agreeing with the Department's observations, nevertheless notes that the Department does not require the cost reconciliation to achieve the perfect precision to be accepted as accurate and reasonable.

Department's Position:

We agree with the petitioners. The Department in its section D questionnaire, requested that the respondent prepare a reconciliation of the cost of goods sold in its financial statements and the extended total cost of manufacturing submitted to the Department in its cost database. The objective of this reconciliation is to tie the reported costs in an overall manner to what the company reports in its audited financial statements. When a respondent cannot explain an un-reconciled amount, our general practice is to include the amount if the difference indicates a possible under-reporting of costs. Our general practice is reasonable because it recognizes that the respondent is the sole party who has full knowledge of its reporting methodology, has knowledge of its normal books and records and has access to the documents that are necessary to explain or clarify the un-reconciled difference.³⁶³ For the final determination, we adjusted the reported per-unit costs by the unexplained un-reconciled difference.³⁶⁴

Comment 29: The Department Should Exclude the Transferred Quantity of OCTG from NEXTEEL's Cost File

U.S. Steel suggests that for the final determination the Department continue the adjustment to production quantities made at the preliminary determination to exclude the transferred quantities reclassified as non-prime OCTG (which are separate from the non-prime OCTG sold during the POI), scrap, or inventory losses. U.S. Steel notes that the Department observed at verification that such adjustment may be appropriate, and it is consistent with the Department's finding in the preliminary determination that costs should not be allocated to production that is not sold as prime OCTG.³⁶⁵

NEXTEEL claims that this adjustment in effect renders non-prime OCTG as non-subject merchandise, basing that determination on the product's actual use. Therefore, NEXTEEL holds, if the Department were to make this adjustment, it should also clarify that such products are not included in the scope of this case in the event the Department issues an affirmative determination in this or any of the ongoing OCTG investigations.

Department's Position:

This is an issue associated with the write-off of inventory and whether it is appropriate to include in the total production quantity used to calculate per unit costs, the quantity initially recorded as

³⁶³ See Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta from Turkey, 78 FR 9672 (February 11, 2003), and accompanying Issues and Decision Memorandum at Comment 5..

³⁶⁴ See NEXTEEL's Cost Verification Report at pages 12 to 14 and Cost Verification Exhibit 7 at page 1.

³⁶⁵ See NEXTEEL's Cost Verification Report at page 2 and Preliminary Cost Memo at page 1.

good production, but subsequently removed from inventory as bad product. With the exception of the product consumed internally, we consider the written-off merchandise in question to be akin to yield loss³⁶⁶ in the production of OCTG and accordingly it should not be included in the total production quantity used to calculate per unit costs. For the final determination, we recalculated the reported per-unit costs by removing the net transferred out quantity (less the internal consumption quantity) from the reported total production quantity.

Lastly, this issue has no bearing on the scope of this and the concurrent OCTG investigations.

Comment 30: The Department Should Increase NEXTEEL's TOTCOM for Costs Related to Test Production

U.S. Steel notes that NEXTEEL allocated costs incident to certain test production runs to products sold in third-country markets. U.S. Steel argues that this allocation is incorrect, because the test production runs did not result in commercial production of OCTG sold in any market. Therefore, U.S. Steel concludes, as the Department observed at verification³⁶⁷ the costs associated with these test production runs should be absorbed by other successful OCTG products, and NEXTEEL's reported costs should be adjusted to account for the conversion costs incident to the test production runs.³⁶⁸

NEXTEEL does not disagree with the Department's observation with respect to test production runs, but notes that the Department does not require reconciliation to achieve perfect results to be accepted as accurate and reasonable. NEXTEEL argues that the Department routinely accepts minor discrepancies of the magnitude described above and should follow its practice again in this case by not making the adjustment proposed by petitioners.

Department's Position:

We agree with U.S. Steel. NEXTEEL incurred costs related to particular test production runs. NEXTEEL characterized these costs as "third-country costs"³⁶⁹ even though they do not relate specifically to any production results. These costs were incurred in trying to develop a new grade of OCTG which ultimately did not materialize.³⁷⁰ As this amount relates to the failed development of OCTG pipe, it should be absorbed by all successfully produced OCTG products. Accordingly, for the final determination, we included this amount in the reported costs, allocated over the production of all OCTG products.

³⁶⁶ See NEXTEEL's Cost Verification Report at page 18 and Cost Verification Exhibit 9 at pages 17 to 21.

³⁶⁷ See NEXTEEL's Cost Verification Report at page 2.

³⁶⁸ See NEXTEEL's Cost Verification Report at pages 2 and 4.

³⁶⁹ See NEXTEEL's Cost Verification Report at page 4 and Cost Verification Exhibit 1 at page 1.

³⁷⁰ See NEXTEEL's February 10, 2014 second supplemental section D response at page 4 to 5 and exhibit D-5(APO Version)

Comment 31: The Department Should Increase NEXTEEL's TOTCOM for Expenses Incurred by NEXTEEL's Wholly-Owned Subsidiary NEXTEEL QNT

U.S. Steel points out that during the POI, NEXTEEL QNT incurred expenses related to processing NEXTEEL's OCTG. U.S. Steel argues that because NEXTEEL QNT is wholly-owned by NEXTEEL and is dedicated solely to processing pipe produced by NEXTEEL, these expenses should be included in NEXTEEL's reported costs, consistent with the Department's findings at verification.

NEXTEEL maintains that NEXTEEL QNT was involved in quenching and tempering operations. NEXTEEL claims that according to generally accepted accounting principles ("GAAP"), expenses incurred in a start-up phase prior to normal production, such as these, are considered part of the cost of acquiring the asset rather than overhead cost. Thus, NEXTEEL argues, these costs were reflected in the depreciation of this asset once it began production, and therefore, the adjustment proposed by petitioners should be disregarded.

Department's Position:

We agree with U.S. Steel. NEXTEEL QNT was founded on June 25, 2012 (i.e., a week before the start of the POI).³⁷¹ NEXTEEL QNT is located at NEXTEEL's quenching and tempering plant at Gangdong.³⁷² The respondent submitted NEXTEEL QNT's income statement and balance sheet for June 25 to December 31, 2012.³⁷³ During this period, NEXTEEL QNT incurred expenses for its endeavor to further process NEXTEEL's OCTG which was later abandoned.³⁷⁴ Respondent acknowledges that NEXTEEL QNT was involved in quenching and tempering.³⁷⁵ NEXTEEL QNT is dedicated to providing services solely to NEXTEEL. For part of the POI, NEXTEEL QNT incurred costs for processing NEXTEEL's OCTG products and was never reimbursed by NEXTEEL. We view this as an affiliated party transaction at non-arms' length. The transfer price is zero while the affiliate incurred costs. As such, we consider it appropriate to the adjust NEXTEEL's costs to include the costs incurred by its affiliate for the benefit of NEXTEEL.

We find respondent's reference to GAAP to be off point. The costs at issue were incurred by NEXTEEL QNT and were recorded in NEXTEEL QNT's books and records as expenses. The quenching and tempering plant does not belong to NEXTEEL QNT but belongs to NEXTEEL because NEXTEEL owns the Gangdong plant. These expenses were not capitalized by NEXTEEL because NEXTEEL did not reimburse NEXTEEL QNT for these expenses. As such, these expenses were not captured in the reported cost through depreciation expenses. For this reason, we are including these costs in the reported per-unit costs of all OCTG products because these costs were incurred by NEXTEEL's affiliate for the benefit of NEXTEEL.

³⁷¹ See NEXTEEL's Cost Verification Exhibit 2 at page 5.

³⁷² See NEXTEEL's Cost Verification Report at page 6.

³⁷³ See NEXTEEL's September 17, 2013 section A response at exhibit A-12(APO Version)

³⁷⁴ See NEXTEEL's Cost Verification Report at page 6.

³⁷⁵ See NEXTEEL's June 23, 2014 Rebuttal Brief at page 92.

Comment 32: The Department Should Rely on Facts Available for NEXTEEL's Heat Treatment Costs

U.S. Steel claims that NEXTEEL reported in its variable overhead costs ("VOH") inconsistent and understated costs related to heat treatment services purchased from its affiliate NEXTEEL QNT. U.S. Steel points out that NEXTEEL's reported VOH is significantly lower than the value of services purchased by NEXTEEL from NEXTEEL QNT.³⁷⁶ Therefore, U.S. Steel suggests, the Department should apply facts available in determining the VOH for heat treated products by relying on a price quote for heat treatment services that a U.S. processor offered to NEXTEEL America LLC during the POI.

U.S. Steel further argues that, even if the Department does not apply facts available to NEXTEEL's heat treatment costs, it should still adjust such costs under the transaction disregarded rule of section 773(f)(2) of the Act. According to U.S. Steel, NEXTEEL did not substantiate its claim that these services were purchased on an arm's length basis. U.S. Steel notes that NEXTEEL did not procure such services from any other parties during the POI, and NEXTEEL QNT did not provide such services to other parties, however, the quoted market price for heat treatment services identified on the record conclusively shows that NEXTEEL QNT did not provide such services to NEXTEEL at arm's length. Therefore, U.S. Steel concludes, to ensure that NEXTEEL's costs reflect market prices the Department should increase the VOH for each heat treated product by the difference between the average market price of heat treatment services and the reported cost of such services.

NEXTEEL claims that petitioners' argument is based on a misunderstanding of NEXTEEL's costs. NEXTEEL, referring to its section D response, exhibit D-7, points out that fees paid by NEXTEEL to NEXTEEL QNT for heat treatment services are recorded as subcontractor fees which are categorized as fees and other charges and are classified as fixed overhead ("FOH") for reporting purposes. NEXTEEL further asserts that an examination of the cost database makes clear that the average per-unit FOH well exceeds the average amount paid to NEXTEEL QNT for its quenching and tempering services. Therefore, according to NEXTEEL, petitioners' request for an adjustment which is based on price quotes provided by U.S. service providers in a completely different context, is unwarranted and should be rejected.

Department's Position:

We agree with NEXTEEL. The heat treatment, threading, and coupling costs paid by NEXTEEL to NEXTEEL QNT are recorded in the "fees and other charges" account. NEXTEEL included these costs in the FOH costs and not in the VOH costs. As can be seen from the cost buildup for the one heat treated product that is on the record, the "Fees and Other Charges" amount is included in the FOH costs.³⁷⁷ We also have on the record the cost buildup for one heat treated, threaded, and coupled product, and again the "fees and other charges" are included in the FOH costs.³⁷⁸

³⁷⁶ See NEXTEEL's February 10, 2014 cost database and December 23, 2014 first Supplemental Section D Response at Exhibit SD-5.

³⁷⁷ See NEXTEEL's December 23, 2013 first supplemental section D response at exhibit SD-21E (APO Version)

³⁷⁸ See NEXTEEL's Cost Verification Exhibit 15 at pages 3 and 20

NEXTEEL started further processing OCTG products at its Gangdong plant in March 2013. NEXTEEL QNT only provided workers to perform processing services at the Gangdong plant for OCTG products manufactured by NEXTEEL. NEXTEEL QNT did not provide this service to any unaffiliated company. NEXTEEL did not purchase this service from any unaffiliated company. Therefore, we compared the transfer price (i.e., the amount paid by NEXTEEL to NEXTEEL QNT) to NEXTEEL QNT's cost of providing these services and noted that the transfer price was greater than the cost.³⁷⁹

We also find that the transfer price paid by NEXTEEL to NEXTEEL QNT and the quote for heat treatment services that a U.S. processor offered to NEXTEEL America LLC are not on the same basis. NEXTEEL only purchases labor services from NEXTEEL QNT. NEXTEEL itself pays for the supplies, electricity, and repairs and maintenance, and incurs the depreciation costs associated with the heat treatment services provided by NEXTEEL QNT, which are all evidenced in the cost buildups. In contrast, the quote offered to NEXTEEL America is for the entire heat treatment services.

Comment 33: The Department Erred in Adjusting NEXTEEL's Reported Costs for Apparent Minor Differences in Scrap Value

NEXTEEL points out that in its preliminary determination, the Department adjusted NEXTEEL's costs by reducing the value of the scrap offset because the average scrap unit value used as an offset to the costs of production was slightly higher than the sales value of scrap.³⁸⁰ NEXTEEL argues that such adjustment is inappropriate and should not be made for the final determination.

NEXTEEL explains that it values scrap based on the average sales price for the prior month, and that the minor difference in the POI average unit values is attributable to timing difference. NEXTEEL notes that the POI average unit sales value would necessarily include sales of scrap that was generated before the POI, and it would not include sales of scrap generated during the POI that NEXTEEL sold after the POI. NEXTEEL claims that this kind of timing difference is to be expected as companies cannot know with certainty the unit scrap sales price at the time the scrap is generated. NEXTEEL, citing to section 773(f)(1)(A) of the Act, states that the statute directs the Department to rely on costs based on the records of the producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the producing country, as long as the data reasonably reflect the costs associated with the production and sale of the merchandise. NEXTEEL argues that its methodology for valuing the scrap offset is reasonable and consistent with standard accounting practices used in many industries, therefore, the Department should eliminate this adjustment to NEXTEEL's reported costs in the final determination.

³⁷⁹ See page 3 and exhibit SD-5 of the December 23, 2013 first supplemental section D response and NEXTEEL's Cost Verification Report at page 6.

³⁸⁰ See the Memorandum to Neal M. Halper, Director, Office of Accounting, through Taija A. Slaughter, Lead Accountant, from Sheikh M. Hannan, Senior Accountant, titled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – NEXTEEL Co., Limited" dated February 14, 2014 (NEXTEEL's Preliminary Cost Memo) at page 1 and attachment 3.

Both U.S. Steel and Maverick argue that the Department's scrap adjustment is consistent with its practice and should be applied in the final determination. They point out that for the first time in this investigation NEXTEEL claims that the difference in its reported scrap offset and the value of the scrap generated during the POI is due to a one-month delay in valuing the scrap generated in OCTG production. According to U.S. Steel, where a respondent's reported scrap offset exceeds the amount of scrap actually generated, the Department normally reduces the scrap credit by the amount of the overstatement.³⁸¹ Further, citing to the Department's November 4, 2013 Section D Questionnaire, page 2, they maintain that the Department generally calculates costs based on the respondent's actual costs incurred during the POI. In this regard, U.S. Steel holds, NEXTEEL's methodology is inconsistent with both of these practices, because the reported scrap offset exceeds the value of the scrap actually generated during the POI, and NEXTEEL's methodology incorporates scrap values from outside the POI and excludes scrap values from inside the POI. Maverick notes that NEXTEEL's methodology for valuing its scrap offset is akin to the standard costs that are often set based on the previous period experiences but are always adjusted to actual for the variance to reflect the current period values, and NEXTEEL's system for valuing its scrap offset omits this crucial step. Thus, Maverick concludes, the Department's adjustment, which effectively adjusts NEXTEEL's "standard" scrap offset value to actual, is in line with its practice, and in the final determination the Department should continue to adjust NEXTEEL's cost to reflect the cost of scrap generated during the POI.

Department's Position:

We agree with NEXTEEL. In its normal books and records, NEXTEEL values the scrap generated at the previous-month sales price, and reduces the manufacturing costs by the value of scrap generated.³⁸² During the POI, the per-unit offset values of side scrap and pipe scrap closely approximated the corresponding per-unit sales revenue. For the preliminary determination, we revised the reported manufacturing costs to reflect the per-unit sales revenue for the scrap offset.³⁸³ Section 773(f)(1)(A) of the Act requires the Department to base costs on a respondent's normal books and records kept in accordance with the applicable GAAP unless such costs are unreasonable.³⁸⁴ While the Department's preliminary adjustment attempted to apply a more contemporaneous value to the scrap offset, the slight difference between the values of the scrap offset in NEXTEEL's normal books and records and the corresponding per-unit sales revenue demonstrates that the methodology in NEXTEEL's normal books and records is reasonable. Accordingly, for the final determination, we did not revise the reported manufacturing costs for differences in the scrap values.³⁸⁵

³⁸¹ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from Taiwan, 65 FR 16877 (March 30, 2000), and accompanying Issues and Decision Memorandum at Comment 38.

³⁸² See NEXTEEL's Cost Verification Report at page 22.

³⁸³ See NEXTEEL's Preliminary Cost Memo at page 1 and attachment 3 (APO Version).

³⁸⁴ See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Taiwan, 76 FR 5562 (February 1, 2011), and accompanying Issues and Decision Memorandum at Comment 4.

³⁸⁵ See Notice of Final Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products from Korea, 76 FR 15291 (March 21, 2011), and accompanying Issues and Decision Memorandum at Comment 6 (the Department concluded that Union's scrap valuation methodology based on previous month sales price per its normal books and records is reasonable).

Comment 34: The Department Should Accept NEXTEEL's Reported General and Administrative Expense Ratio Without Adjustment

NEXTEEL argues that the Department erred in the preliminary determination by excluding from the company's general and administrative ("G&A") expenses the gain on disposal of tangible assets related to the Pohang One plant, and including losses incurred in connection with a payment guarantee for the company's domestic standard pipe customer when the customer defaulted on the loan.

NEXTEEL claims that it appropriately included the gain on the sale of the Pohang One plant, because the sale in question involved production equipment located at this facility which was used in the manufacture of subject merchandise during the POI. NEXTEEL holds that it is the Department's practice to include gains and losses resulting from the sale of tangible assets in the G&A expense ratio calculation.³⁸⁶ NEXTEEL maintains that, alternatively, the Department has considered whether expenses associated with a gain or income is reflected in the reported costs to determine whether the offset is appropriate.³⁸⁷ NEXTEEL states that in this case it has demonstrated that the reported costs include the corresponding expenses incurred in this facility during the POI.

NEXTEEL further argues that it appropriately excluded the loss incurred on the payment guarantee for its domestic standard pipe customer. According to NEXTEEL, this loss is no different than a bad debt expense, and the Department has long held that bad debt is a selling expense.³⁸⁸ Moreover, NEXTEEL concludes, this expense is associated with domestic sales of non-subject merchandise and as such, it is completely unrelated to the production or sale of OCTG in any market.

U.S. Steel and Maverick argue that the Department should continue to exclude gains related to the sale of the Pohang One plant because the Department's established practice is to exclude gains or losses on the sale of an entire facility in calculating G&A expenses.³⁸⁹ Maverick, citing to page 3 of the Sales Verification Report, point out that the plant was permanently closed, the equipment was sold leaving only an "empty plant facility" that could be used only as a warehouse, and production ceased entirely, *i.e.*, the sale was not a routine sale of the assets to

³⁸⁶ See Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Steel Concrete Reinforcing Bars from Turkey, 72 FR 51598, 51600 (September 10, 2007); Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Individually Quick Frozen Red Raspberries from Chile, 72 FR 44112, 44119 (August 7, 2007); Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Frozen Warmwater Shrimp from India, 72 FR 10658, 10665 (March 9, 2007); and Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada, 70 FR 73437 (December 12, 2005), and accompanying Issues and Decision Memorandum at Comment 8.

³⁸⁷ See Notice of Final Results and Rescission of Antidumping Duty Administrative Review in Part: Certain Steel Concrete Reinforcing Bars from Turkey, 71 FR 65082 (November 7, 2006), and accompanying Issues and Decision Memorandum at Comment 9.

³⁸⁸ See Notice of Final Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods, Other Than Drill Pipe, from Korea, 72 FR 9924 (March 6, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

³⁸⁹ See Notice of Final Results of Antidumping Duty Administrative Review: Purified Carboxymethylcellulose From Finland, 73 FR 75397 (December 11, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

support on-going production operations as NEXTEEL claims. According to U.S. Steel and Maverick, the fact that the plant was used in the production of OCTG during the POI has no relevance to the treatment of the associated gain, because the sale of the plant is not associated with the production of OCTG, but rather with the cessation of OCTG production.

U.S. Steel further claims that the cases cited by NEXTEEL in support of its position are not on point, because they have no resemblance to the circumstances of the sale of the Pohang One plant, and there is no indication in any of the cited cases that the fixed assets in question constituted an entire plant. U.S. Steel maintains that there is no evidence on the record to support NEXTEEL's claim that the gain on the sale should be allowed because the corresponding expenses were also included in the G&A expenses. Moreover, U.S. Steel states, the Department's practice is clear that both gains and losses related to the sale of assets associated with a permanent closure of a plant should be excluded from the G&A expenses.³⁹⁰

With regard to the losses related to a payment assurance, Maverick notes that NEXTEEL provides no authority for its assertion that these losses are equivalent to a bad debt expense and should be treated as a direct selling expense, and does not offer any analysis of why a loss resulting from a third party's loan default is equivalent to a failure to collect accounts receivable. Maverick holds that a payment guarantee does not involve any receivables, therefore, by its nature, the guarantee is not a bad debt. U.S. Steel notes that the losses are not included in the line item for bad debt expenses under selling expenses on NEXTEEL's income statement, but are classified as non-operating expenses. U.S. Steel also notes that, while arguing for this loss to be treated as selling expense, NEXTEEL failed to include it in selling expenses and instead simply excluded it from the reported costs. U.S. Steel argues that the assumption underlying NEXTEEL's argument that bad debt expenses are treated as selling expenses is flawed, because, depending on the circumstances, bad debts and bad debt reversals can be attributable to G&A expenses.³⁹¹ U.S. Steel contends that NEXTEEL's assertion that this loss relates to domestic sales of non-subject merchandise is not necessarily true, because, while the loss relates to a domestic standard pipe customer, there is no evidence on the record that it was related to any kind of sales to this customer. Thus, they conclude, because these losses were not extraordinary, were related to NEXTEEL's normal activities, they are not bad debt expenses or otherwise treated as such in NEXTEEL's books and records, the Department should continue to include these expenses in the calculation of the company's G&A expense ratio.

Department's Position:

NEXTEEL's Pohang One plant was established in 1990. During the POI, it did not produce OCTG. However, some of its slitting materials were transferred to Pohang Two and were consumed in the production of OCTG products. Pohang One permanently closed its operations in September 2012. Prior to its closing, it produced standard pipe products.³⁹² Included in the gain on sale of tangible assets is an amount earned by NEXTEEL from the sale of the fixed

³⁹⁰ See Notice of Final Results of Antidumping Duty Administrative Review: Purified Carboxymethylcellulose From Finland, 73 FR 75397 (December 11, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

³⁹¹ See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Korea, 63 FR 8934, 8945 (February 23, 1998).

³⁹² See NEXTEEL's Cost Verification Report at page 21.

assets from the permanently closed Pohang One plant.³⁹³ For the preliminary determination, we excluded the gain on sale of the fixed assets from the Pohang One plant from the numerator of the G&A expense ratio calculation.³⁹⁴

When determining if an activity is related to the general operations of the company, the Department considers the nature, the significance, and the relationship of that activity to the general operations of the company.³⁹⁵ It is the Department's practice to include gains or losses incurred on the routine disposition of fixed assets in the G&A expense ratio calculation.³⁹⁶ The Department follows this practice because it is expected that a producer will periodically replace production equipment and, in doing so, will incur miscellaneous gains or losses. Replacing production equipment is a normal and necessary part of doing business. For example, the sale of an old machine that is replaced by a new machine, discarding of existing machines due to modernization, and replacement of equipment for changes in technology are considered routine disposition of fixed assets. In all of these cases, the producer's facility continues to produce the product after the change is made and the facility remains an asset of the respondent. The Department includes such gains and losses from the routine disposal of assets in G&A expense. The gains or losses on the routine disposal or sale of assets of this type relate to the general operations of the company as a whole because they result from activities that occurred to support on-going production operations.³⁹⁷

Non-routine sales of fixed assets do not relate to the general operations of the company and the resulting gains and losses from non-routine sales of fixed assets are not included in the calculation of the G&A expenses. For example, the sale of an entire production facility or the fixed assets from a permanently closed plant is normally a non-routine disposition of fixed assets because it is a significant transaction, both in form and value, and the resulting gain or loss generates non-recurring income or losses that are not part of a company's normal business operations, and are unrelated to the general operation of the company.³⁹⁸ The sale of an entire production facility does not support a company's general operations; rather, it is a sale or removal of certain production facilities themselves. It represents a strategic decision on the part of management to no longer employ the company's capital in a particular production activity. These are transactions that significantly change the operations of the company. From a cost perspective, it would not be reasonable to assign the gain or loss on the disposition of an entire facility to the per-unit cost of manufacturing of the products that are still being produced at the

³⁹³ See NEXTEEL's December 23, 2013 first supplemental section D response at exhibit SD-24C (APO Version)

³⁹⁴ See NEXTEEL's Preliminary Cost Memo at page 2 and attachment 4 (APO Version).

³⁹⁵ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from India, 69 FR 76916 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 16.

³⁹⁶ *Id.*

³⁹⁷ See Notice of Final Determination of Sales at Less Than Fair Value: Bottle Grade Polyethylene Terephthalate Resin from Indonesia, 70 FR 13456 (March 21, 2005) and accompanying Issues and Decision Memorandum at Comment 13 (the Department included the gains from the sales of the respondent's office assets in the G&A expense ratio calculations). Similarly, in Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Carbon-Quality Steel Products from Japan, 64 FR 24329, 24356 (May 6, 1999) the Department included losses from the sales of a respondent's fixed assets used in the production of steel products in the G&A expense ratio calculation.

³⁹⁸ See Notice of final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber from Canada, 69 FR 75921 (December 20, 2004) and accompanying Issues and Decision Memorandum at Comment 9.

respondent's other facilities, because the facility in question now has nothing to do with producing the respondent's products.³⁹⁹

In this case, NEXTEEL sold all the equipment in its permanently shut down Pohang One plant. The sale of the Pohang One equipment at issue constitutes a significant transaction, both in form and value. Moreover, the resulting gain from these transactions generated non-recurring income that is not part of the company's normal operations and is unrelated to the general operations of the company. Therefore, for the final determination, we have continued to recalculate NEXTEEL's reported G&A expense ratio to exclude an offset to the numerator for the gain on sale of the permanently shut down Pohang One plant's machinery and equipment that was dedicated to production of standard pipe products.

Included in the miscellaneous loss is an amount associated with a loss incurred in connection with a payment guarantee for a domestic standard pipe customer for bank financing. When the customer defaulted on the loan, the bank sought recourse against NEXTEEL.⁴⁰⁰ For the preliminary determination, we included the loss on payment guarantee in the numerator of the G&A expense ratio.⁴⁰¹

We have reanalyzed the facts surrounding this issue, and agree with NEXTEEL that the loss at issue is akin to a bad debt expense incurred in connection to the sales of standard pipes in the domestic market. As such, we consider it to be a selling expense associated with non-subject merchandise. Therefore, for the final determination, we did not include this loss in either the G&A or selling expenses.

Comment 35: Miscellaneous Comments on the Department's Cost Verification Report

NEXTEEL notes that during verification the Department identified a number of instances where NEXTEEL may have not properly accounted for its cost of production. In its verification report the Department identified the adjustments that may be required for these discrepancies.⁴⁰² NEXTEEL claims that the Department routinely accepts minor discrepancies of the magnitude stated in the Cost Verification Report and should follow its practice again in this case by not making the above minor adjustments.

U.S. Steel maintains that NEXTEEL's position ignores the fact that the Department was able to readily identify and quantify cost adjustments to correct NEXTEEL's reported costs. Considering the Department's objective of calculating dumping margins as accurately as

³⁹⁹ See Notice of final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber from Canada, 70 FR 73437 (December 12, 20045) and accompanying Issues and Decision Memorandum at Comment 8 (the Department did not include the respondents' gain on a sale of a sawmill and losses on the sale of production facilities in the calculation of the G&A expense ratios). Similarly, in Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil, 69 FR 76910 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 8 the Department did not include the loss from the sale of a respondent's shrimp farm in the G&A expense ratio calculations.

⁴⁰⁰ See NEXTEEL's December 23, 2013 first supplemental section D response at page 19 and exhibit SD-24B (APO Version)

⁴⁰¹ See NEXTEEL's Preliminary Cost Memo at page 2 and attachment 4 (APO Version).

⁴⁰² See NEXTEEL's Cost Verification Report at pages 2-3 (APO Version).

possible⁴⁰³ and the fact that normal value in this case is based on CV, petitioners conclude, there is no question that the Department should apply the above adjustments, regardless of how small they are, to NEXTEEL's costs to ensure that the calculated costs and the dumping margins are as accurate as possible.

Department's Position:

We are making these adjustments. The information to make the adjustments is readily available, straightforward, and not burdensome to apply. Given that we can make the proposed adjustments without undue burden, we have made these adjustments for the final determination.

Issues Raised by Non-Selected Respondents

Comment 36: Respondent Selection and Basis for the Weighted-Average Dumping Margin Assigned to Non-Selected Respondents

SeAH notes the Department's negative preliminary determination was correct, but argues the Department erred by failing to calculate a weighted-average dumping margin for SeAH based on its own information. SeAH notes it submitted a voluntary response to the Department's questionnaire, and that under the standards announced by the Court of International Trade, "the number of exporters or producers who have submitted such information is not so large that individual examination of such exporters or producers would be unduly burdensome and inhibit the timely completion of the investigation."⁴⁰⁴ SeAH rejects the Department's distinction that *Grobest A* was concerned with an administrative review rather than an investigation, and argues there is no basis for the Department to conclude that it has more flexibility in disregarding voluntary responses in investigations than in reviews. SeAH notes that the Department can request from Congress additional resources if they are needed in order to avoid depriving voluntary respondents such as SeAH of their right, under both U.S. statute and international law, to have any antidumping duties that are imposed on it determined based on an examination of SeAH's own data.

ILJIN also argues the Department's negative preliminary determination was correct, and that the Department erred by failing to calculate a weighted-average dumping margin for ILJIN based on its own information. ILJIN also claims that as the only supplier of seamless OCTG from Korea, ILJIN's sales prices and sales practices are distinct from the other Korean suppliers that only produce and sell welded OCTG, and notes that even petitioners, in their comments on respondent selection, had argued that ILJIN should be selected as a mandatory respondent. ILJIN argues that production process and sales prices and practices are factors the Department can consider in selecting respondents under the two factors in section 777A(c)(2) of the Act (selecting respondents based on a statistically valid sample or based on the largest volume exporters and producers). ILJIN notes that under section 777A(c)(2)(A) of the Act, the Department is permitted to limit its examination to "a sample of exporters, producers, or *types of products* that is

⁴⁰³ See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990).

⁴⁰⁴ See SeAH Rebuttal Brief at 2, citing Section 772(a) of the Act. See also *Grobest & I-Mei Industrial v. United States*, 853 F. Supp. 2d 1352, 1363 (Court of International Trade 2012) (*Grobest A*), referencing Article 6.10.2 of the WTO Antidumping Agreement.

statistically valid based on the information available at the time of selection” (emphasis added). ILJIN states that its selection as a respondent would be statistically valid because it would result in all segments of the industry (seamless OCTG suppliers as well as welded OCTG suppliers) being represented by the sample.

ILJIN also argues that any change from the preliminary determination in the *de minimis* weighted-average dumping margins of the two selected respondents would be based only on findings related to the two selected respondents, and therefore would be irrelevant to ILJIN, which should be assigned a zero percent weighted-average dumping margin in the final determination. ILJIN claims its own submitted information, though not verified, provides evidence that the zero percent rate applied to ILJIN in the preliminary determination was correct.

Husteel also argues the Department erred in the preliminary determination by not calculating a weighted-average dumping margin for Husteel based on its own reported information. Husteel argues that the Department violated the statute by relying on its workload as a basis for assessing whether the number of exporters or producers selected to be mandatory respondents is “large” under section 777A(c)(2) of the Act, noting the Court of International Trade had found “Commerce may not rely upon its workload caused by other antidumping proceedings in assessing whether the number of exporters or producers is ‘large,’ and thus deciding that individual determinations are impracticable.”⁴⁰⁵

Husteel also argues the Department did not explain why the number of selected mandatory respondents (*i.e.*, two) is large enough to relieve the Department of its statutory obligation to individually examine all known exporters and producers. Husteel states the Court of International Trade rejected the conclusion “that four was a large number of respondents.”⁴⁰⁶ Husteel also notes that the Court of International Trade had ruled that when the Department “implicitly constructed the statutory term ‘large number’ to mean any number greater than three” in determining to individually examine only three of twelve respondents subject to review, this “was not a reasonable construction of the statute.”⁴⁰⁷ Husteel cites an additional precedent noting the statutory term “large” cannot plausibly be construed by the Department as encompassing any number larger than two.”⁴⁰⁸ Husteel argues the Department’s selection of only two mandatory respondents out of the ten exporter or producers listed in the petition (or out of the slightly larger number listed in entry data obtained by the Department and placed on the record of the investigation) violates the statute, as interpreted by the courts in the aforementioned decisions.

Husteel further notes that even if the Department limits the number of mandatory respondents, in accordance with section 782(a) of the Act, it should also examine voluntary respondents who request review and submit timely questionnaire responses if “the number of exporters or

⁴⁰⁵ See Husteel Case Brief at 7, citing *Zhejiang Native Produce & Animal By-Products Imp. & Exp. Corp. v. United States*, 33 CIT 1125, 1129, 637 F. Supp. 2d 1260, 1263-64 (Court of International Trade 2009) (“*Zhejiang*”). See also *Asahi Seiko Co., Ltd. v. United States*, 751 F. Supp. 2d 1335, 1341 (Court of International Trade 2010) (“*Asahi*”), and *Carpenter Tech. Corp. v. United States*, 662 F. Supp. 2d 1337, 1345 (Court of International Trade 2009) (“*Carpenter Tech*”).

⁴⁰⁶ See Husteel Case Brief at 15, citing *Zhejiang* at 1263.

⁴⁰⁷ See Husteel Case Brief at 9 and 15, citing *Asahi* at 1341.

⁴⁰⁸ See Husteel Case Brief at 8-9, 10, and 15, citing *Carpenter Tech* at 1342.

producers who have submitted such information is not so large that individual examination of such exporters or producers would be unduly burdensome and inhibit the timely completion of the investigation.” Husteel states the Court of International Trade has found that section 782(a) of the Act sets a higher standard than section 777A(c)(2) of the Act.⁴⁰⁹ Husteel also argues that the SAA requires that the Department, “consistent with Article 6.10.2 of the Agreement, will not discourage voluntary responses and *will endeavor to investigate all firms that voluntarily provide timely response in the form required...*”⁴¹⁰ (emphasis added). Husteel notes that the CIT rejected generic explanations of burdens such as those cited by the Department in its selection of two mandatory respondents in this investigation, stating they have “failed to show undue burden” and would render “the statute meaningless” as “the burdens {the Department} names...are the same burdens that occur in every review.”⁴¹¹ Husteel states the Department cannot decline to examine companies requesting selection as voluntary respondents based on the usual burdens associated with conducting a thorough investigation or review, as this is “insufficient to satisfy {section 782(a)’s} standard for rejecting a voluntary respondent request.”⁴¹²

Husteel also notes the burdens associated with examining Husteel would not be significant, because Husteel has recently had sales and cost verifications in an administrative review of an existing antidumping duty order, so the Department is familiar with its sales processes and cost accounting system, and because Husteel, as noted by the Department, timely filed its voluntary responses. In addition, Husteel argues that the number of Korean producers or exporters that submitted voluntary responses (*i.e.*, three) is not large in the context of this investigation, and as above, the courts have rejected prior Department claims that a “large” number of respondents would be any number larger than two or three, so the Department was unjustified in limiting the number of respondents to the two selected mandatory respondents.

Finally, Husteel asserts that the information it submitted in its voluntary response demonstrates it deserves a zero percent weighted-average dumping margin, and states that any determination of above *de minimis* rates for NEXTEEL and/or HYSCO, if applied to Husteel, would violate the mandate that the Department determine weighted-average dumping margins as accurately as possible.⁴¹³

U.S. Steel responds that the Department properly limited the number of mandatory respondents. U.S. Steel states the court found in *Carpenter Tech* and *Zhejiang* that the Department must conduct a two-step analysis when exercising its authority to limit the number of respondents, first determining whether there is a “large” number of foreign producers and exporters such that it would not be practicable to examine all of them.⁴¹⁴ If the Department finds that the number is

⁴⁰⁹ See Husteel Case Brief at 3, citing *e.g. Grobest & I-Mei Indus. (Vietnam) Co. v. United States*, 815 F. Supp. 2d 1342, 1363 (Court of International Trade 2012) (“*Grobest B*”).

⁴¹⁰ See Husteel Case Brief at 11-12, citing *H.R. Rep. No. 103-306*, at 873 (1994), reprinted in 1994 U.S.C.C.A.N. 4040.

⁴¹¹ See Husteel Case Brief at 12, citing *Grobest A* at 1364-65.

⁴¹² See Husteel Case Brief at 12, citing *Ad Hoc Shrimp Trade Action Comm. v. United States*, 925 F. Supp. 2d 1367, 1372 (Court of International Trade 2013) (“*Ad Hoc Shrimp*”).

⁴¹³ See Husteel Case Brief at 16-17, citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185 (Federal Circuit 1990), *Timken US Corp. v. United States*, 28 CIT 329, 318 F.Supp. 2d 1271 (Court of International Trade 2004), and *Taian Ziyang Food Co. v. United States*, 783 F.Supp. 2d 1292 (Court of International Trade 2011).

⁴¹⁴ See U.S. Steel Rebuttal Brief on Husteel Co., Ltd., ILJIN Steel Corporation, AJU

large, it may move to the second step to exercise its authority to limit the respondents it examines to a reasonable number.⁴¹⁵ U.S. Steel argues the Department was correct in determining that the total number of exporters in this investigation (a number over ten that cannot be identified because it has been accorded proprietary treatment). At this point, U.S. Steel notes, the Department determined it was reasonable to limit its examination to two exporters or producers, in accordance with the Court of International Trade decisions in *Carpenter Tech* and *Zhejiang*.

With respect to the Department's decision in this investigation to select only two respondents from a "large" number of possible Korean companies, U.S. Steel states Husteel's reference to the number of exporters and producers in *Zhejiang* and *Asahi* does not apply here, because in those cases the court rejected claims about what the Department considered to be a "large" number of potential respondents that was much smaller than is the case in this investigation. U.S. Steel states that in *Zhejiang*, the Department had considered "four" to be "large," and that in *Asahi*, the Department had considered "any number greater than three" to be large; in contrast, in this investigation the number considered by the Department to be "large" is greater than ten. U.S. Steel also states that the *Carpenter Tech* decision cited by Husteel involved the court's criticism of the Department's conflation of its decision to limit the number of respondents selected for examination with the actual selection of the respondents, where "the starting point for {the Department's} decision on respondent selection was its determination 'that we can examine a maximum of two exporters/producers.'"⁴¹⁶ U.S. Steel states that unlike in *Asahi* and *Carpenter Tech*, in this investigation the Department's starting point was that it would not be practicable to examine all known exporters and producers of subject merchandise. U.S. Steel notes that in another case involving an investigation, the Department found that a total of fifteen exporters and producers was a large number justifying limiting the number of examined respondents, and the Department used language relating to resource constraints similar to what the Department has referenced in this OCTG investigation in choosing to limit the number of examined respondents.⁴¹⁷

With regard to the Department's decision to select none of the voluntary respondents for examination under section 782 of the Act, U.S. Steel states that the Court of International Trade has recognized that the Department has a considerable degree of discretion in exercising its authority under the statutory provision.⁴¹⁸ U.S. Steel notes the Department, in limiting its examination to just HYSCO and NEXTEEL, identified various factors that burdened its investigation, including complex issues relating to corporate structure and affiliation for NEXTEEL and relating to U.S. sales process for HYSCO; substantial deficiency comments and extensive supplemental questionnaires; and lack of Department familiarity with NEXTEEL's and HYSCO's sales and costs with respect to OCTG. U.S. Steel notes that the Department ultimately was compelled to investigate six additional companies associated with NEXTEEL and HYSCO as a result of the complexity of this investigation. U.S. Steel also notes that the two respondents

Besteel Co., Ltd., and SeAH Steel Corporation ("U.S. Steel Rebuttal Brief") at 2, citing *Carpenter Tech* at 1341 and *Zhejiang* at 1263-65.

⁴¹⁵ See U.S. Steel Rebuttal Brief at 2-3, citing *Zhejiang* at 1264.

⁴¹⁶ See U.S. Steel Rebuttal Brief at 4 (footnote 18), citing *Carpenter Tech* at 1342.

⁴¹⁷ See U.S. Steel Rebuttal Brief at 5, citing *Longkou Haimeng Mach. Co., Ltd. v. United States*, 581 F.Supp. 2d 1344, 1349-54 (*Longkou*).

⁴¹⁸ See U.S. Steel Rebuttal Brief at 6, citing *Longkou* at 1353.

themselves have characterized the breadth and depth of the investigation as “burdensome,” “extraordinary,” and “unprecedented.”⁴¹⁹

U.S. Steel states that the reference to *Grobest A* by Husteel and SeAH is misplaced. U.S. Steel argues that the fact that *Grobest A* pertained to an administrative review rather than an investigation is relevant, because the statutory deadlines for an investigation are shorter, and the inclusion of voluntary respondents in the investigation would have required additional verifications as well as additional questionnaire responses and analysis.

Finally, U.S. Steel rejects Husteel’s and ILJIN’s claims they are entitled to a zero percent weighted-average dumping margin regardless of the Department’s decision regarding respondent selection and regardless of the final results with respect to the examined respondents, NEXTEEL and HYSCO. U.S. Steel states the statute requires the assignment of an “all others” rate to parties that are not individually examined.⁴²⁰ U.S. Steel states that the zero percent weighted-average dumping margins issued at the preliminary determination have nothing to do with the voluntary respondents but, rather, were based on the Department’s tentative analysis of incomplete information submitted by HYSCO and NEXTEEL. U.S. Steel concludes that, consistent with the statute, the Department should apply the all others rate to all non-examined companies in the final determination.

In its rebuttal brief, SeAH states that it concurs with Husteel’s analysis of the relevant legal issues. However, SeAH contends, if the Department selects Husteel as a mandatory or voluntary respondent based on the arguments raised by Husteel, then it must also select SeAH as a mandatory or voluntary respondent on the same basis.

Department’s Position:

The Department agrees with the petitioners and disagrees with SeAH, ILJIN, and Husteel. The Department thoroughly considered the issues raised by the non-examined respondents during the course of this proceeding. At the outset of this investigation, after considering comments raised by interested parties, including Husteel, ILJIN, and SeAH, we determined it was appropriate to limit our selection of mandatory respondents to the two companies accounting for the largest volume of U.S. imports of subject merchandise during the POI, HYSCO and NEXTEEL.⁴²¹ Subsequent to this determination, Husteel, ILJIN, and SeAH submitted further comments in which they requested anew that they be selected as voluntary respondents. Husteel, ILJIN, and SeAH also timely submitted voluntary responses to the Department’s antidumping questionnaire. At the request of respondents, the Department held a series of *ex parte* meetings with representatives of ILJIN, Husteel and SeAH which, in the case of ILJIN, included officials of the

⁴¹⁹ See U.S. Steel Rebuttal Brief at 8, citing NEXTEEL Case Brief at 3 and 5 (public version) and HYSCO Case Brief at 2-3 (public version).

⁴²⁰ See U.S. Steel Rebuttal Brief at 9, citing 19 U.S.C. § 1673d(c)(1)(B)(i)(II).

⁴²¹ See Memorandum to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, from Richard Weible, Director, Antidumping and Countervailing Duty Operations, Office 7, “Antidumping Duty Investigation of Certain Oil Country Tubular Goods from the Republic of Korea: Respondent Selection Memorandum,” dated August 26, 2013.

Embassy of Korea.⁴²² After considering whether the Department could select any additional respondents for individual examination, the Department determined, based on an examination of its resources, that it could not individually examine any of the voluntary respondents as this would be unduly burdensome to the Department, and inhibit the timely completion of this investigation.⁴²³

This is a complex investigation and the Department has conducted nine separate verifications of the cost, sales, and further manufacturing responses of NEXTEEL, NEXTEEL's customer and its U.S. subsidiary, HYSCO, HHU, HYSCO's U.S. customer, and POSCO, in a very constrained time period. The Department had to analyze a host of complex issues, including complicated issues related to affiliation, cost of production and calculation of CV.

The non-examined respondents argue that they should have been chosen during the Department's respondent selection as mandatory respondents or at least examined as voluntary respondents in this investigation and that they fully cooperated by responding to the Department's questionnaire. The Department from the beginning of this investigation and at the time of the respondent selection process has stated repeatedly that the Department's resources were limited, and our resource constraints have only increased. It is unduly burdensome on the Department to examine four more respondents on a mandatory or voluntary basis. If it had done so, the Department would have been required to conduct four more separate sales and costs verifications in Korea, analyze original questionnaires and numerous supplemental responses, and deal with any other issues that might have surfaced in this investigation as proven by the complexity of this investigation for the two mandatory respondents. To examine four additional voluntary respondents would have tripled the administrative burden on the Department's increasingly limited resources in this investigation. This would have inhibited the timely completion of this investigation. Moreover, the Department's limited resources have to handle several concurrent investigations on OCTG from various countries in addition to numerous, more recently initiated LTFV and CVD investigations.

With respect to Husteel's and ILJIN's claims that the Department should assign them zero percent weighted-average dumping margins in the final determination, we note that the Act directs the Department to calculate an "all others" rate for parties that are not individually examined.⁴²⁴ Thus, we disagree with Husteel and ILJIN. The Department will determine the weighted-average dumping margin for all other producers or exporters in accordance with the

⁴²² See Memorandum to the File, "*Ex-Parte* Meeting with ILJIN Steel Corporation (ILJIN) and Embassy of the Republic of Korea," dated November 12, 2013; Memorandum to the File, "*Ex-Parte* Meeting with Husteel Co. Ltd. (Husteel)," dated November 19, 2013; and Memorandum to the File, "*Ex-Parte* Meeting with SeAH Steel Corporation (SeAH)," dated November 20, 2013.

⁴²³ See Memorandum to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, from Richard Weible, Director, AD/CVD Enforcement Office VI, "Antidumping Duty Investigation of Certain Oil Country Tubular Goods from the Republic of Korea: Treatment of Voluntary Respondents," dated December 30, 2013.

⁴²⁴ See section 735(c)(5) of the Act; *see also* Memorandum to the File through Robert James, Program Manager, AD/CVD Operations, Office VI, from Victoria Cho, International Trade Compliance Analyst, AD/CVD Operations, Office VI, "Calculation of the Weighted-Average Dumping Margin for All Other Producers and Exporters for the Final Affirmative Determination in the Less than Fair Value Investigation of Certain Oil Country Tubular Goods from the Republic of Korea," dated July 10, 2014.

requirements of section 735(c)(5) of the Act, and it will not arbitrarily assign zero or *de minimis* rates to Husteel and ILJIN.

Comment 37: Critical Circumstances

ILJIN argues that had it been selected as a mandatory or voluntary respondent, a finding that ILJIN had massively increased its imports to the United States would have been impossible. ILJIN notes that its shipments did not rise by the 15 percent threshold amount between the base period and the comparison period, however those periods are defined, and that ILJIN's shipments actually declined. ILJIN argues that reliance on aggregate import data for calculations applied to ILJIN would be incorrect if the aggregate data reflect both seamless and welded OCTG, given that ILJIN only produces seamless OCTG. While ILJIN argues that its own shipment data should be considered for such an analysis, if aggregate data are used, ILJIN states an analysis of the figures adjusted for the shipments of mandatory respondents would also demonstrate there was not a rise of at least 15 percent.

ILJIN also argues that the record does not establish a history of dumping by ILJIN, or that ILJIN knew or should have known it was selling OCTG at prices that were less than fair value, which ILJIN claims is a requirement for a finding of critical circumstances with respect to it. ILJIN states petitioners rely on an earlier order as such evidence, but ILJIN states it was not producing OCTG when that prior order was in effect, and only started to do so six years after the revocation of the earlier order. ILJIN argues that the earlier Korean OCTG order only involved sales of welded OCTG, a product ILJIN does not produce. ILJIN argues that its own data, which it submitted in its voluntary response, demonstrates it was not selling OCTG at prices below fair value. ILJIN also argues that the negative preliminary determination of the Department supports the fact that there was no knowledge or belief on ILJIN's part that it was selling at prices below fair value. ILJIN argues the intent of the statute is that the Department will make company-specific determinations with respect to critical circumstances, as opposed to the country-specific determination at the U.S. International Trade Commission (ITC). Finally, ILJIN argues the ITC's preliminary determination of injury is meaningless with respect to ILJIN with regard to whether ILJIN should have known dumping was occurring, given there are allegedly many references in that ITC determination regarding the need for more and better information regarding seamless OCTG, the product sold by ILJIN. No other party provided comments on this issue.

Department's Position:

In the *Preliminary Determination*, the Department made a negative determination of critical circumstances with regard to all parties, including ILJIN. Both criteria referenced above were absent, when both are required for a finding of critical circumstances. No new factual information has been placed on the record indicating that the Department should find both criteria are met, and no parties have challenged the Department's negative preliminary determination of critical circumstances. For the final determination, we continue to find no critical circumstances exist with respect to all parties, including ILJIN. Accordingly, ILJIN's arguments are moot and we do not need to address them.

Comment 38: Incorporating Arguments by Reference

AJU BESTEEL states that it agrees with the arguments HYSCO and NEXTEEL presented in their case briefs and incorporates those arguments by reference. AJU Besteel asserts the Department's *de minimis* finding from the *Preliminary Determination* should remain unchanged for the final determination and that no antidumping duty order should be imposed as a result of this investigation.

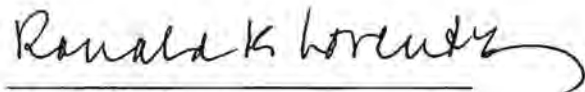
Department's Position:

Except for AJU BESTEEL's comments on CV profit, which are discussed in the context of that issue, AJU BESTEEL has provided no additional argument beyond incorporating, by general reference, the arguments presented by HYSCO and NEXTEEL. The arguments presented by HYSCO and NEXTEEL have been addressed in this Issues and Decision Memorandum. Therefore, no specific response to AJU BESTEEL's statements is required here.

Conclusion

We recommend following the above methodology for this Final Determination.

Agree ✓ Disagree _____



Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

July 10, 2014
Date