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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman 
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty
Administrative Review of Certain Cut-to-Length Carbon-Quality
Steel Plate Products from the Republic of Korea for the Period of
Review February 1, 2012, through January 31, 2013

Summary

We analyzed the comments filed in the administrative review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products (CTL plate) from the Republic of Korea (Korea) for the period of review (POR) February 1, 2012, through January 31, 2013. We recommend that you approve the positions described in the Discussion of the Issues section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments and rebuttal comments by parties:

1. Differential Pricing
2. Request for Rescission of Review in Part
3. Major Input Adjustments

Background

On March 10, 2014, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on CTL plate from Korea.¹ We invited interested parties to comment on the *Preliminary Results*. We received case and rebuttal briefs from interested parties.²

Company Abbreviations

DSM – Dongkuk Steel Mill Co., Ltd.
DKC – Dongkuk Corporation

¹ See *Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 13275 (March 10, 2014) (*Preliminary Results*).

² See the case briefs from DSM, Nucor, and Samsung dated April 16, 2014, and the rebuttal briefs from DSM and Nucor dated April 30, 2014.



DKA – Dongkuk International, Inc.
Nucor – Nucor Corporation
Samsung – Samsung C&T Corporation

Other Abbreviations

A-A – average-to-average
A-T – average-to-transaction
APA – Administrative Procedure Act
APO – Administrative Protective Order
CAFC – Court of Appeals for the Federal Circuit
CBP – U.S. Customs and Border Protection
CEP – constructed export price
CIT – Court of International Trade
CONNUM – control number
COP – cost of production
DP – differential pricing
EP – export price
FOB – free on board
I&D Memo – Issues and Decision Memorandum adopted by a *Federal Register* notice of final determination of an investigation or final results of review
LTFV – less than fair value
POR – period of review
The Act – The Tariff Act of 1930, as amended
USTR – United States Trade Representative
WTO – World Trade Organization

Scope of the Order

The products covered by the antidumping duty order are certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to length (not in coils) and without patterns in relief), of iron or non-alloy quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products included in the scope of the order are of rectangular, square, circular, or other shape and of rectangular or non-rectangular cross section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been “worked after rolling”) – for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished, or coated with plastic or other non-metallic substances are included within the scope. Also, specifically included in the scope of the order are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products included in the scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each

of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of the order unless otherwise specifically excluded. The following products are specifically excluded from the order: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

Imports of CTL plate are currently classified in the HTSUS under subheadings 7208.40.30.30, 7208.40.30.60, 7208.51.00.30, 7208.51.00.45, 7208.51.00.60, 7208.52.00.00, 7208.53.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.13.00.00, 7211.14.00.30, 7211.14.00.45, 7211.90.00.00, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00, 7225.40.30.50, 7225.40.70.00, 7225.50.60.00, 7225.99.00.90, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the merchandise covered by the order is dispositive.

Final Determination of No Reviewable Entries

For the final results of this review, we determine that Daewoo International Corp., Dongbu Steel Co., Ltd., GS Global Corp., Hyosung Corporation, and Hyundai Steel Co. had no reviewable entries during the POR.

Changes Since the Preliminary Results

We made no changes from the *Preliminary Results*.

Discussion of the Issues

Differential Pricing

Comment 1: According to DSM, the Department's DP analysis uses the Cohen's *d* test to identify price differences that the Department considers to be significant. DSM explains that the first step of the Cohen's *d* test evaluates whether there is a pattern of prices for comparable merchandise that differ significantly by region, time period, or customer. DSM asserts that the Cohen's *d* coefficient equals the difference of the weighted-average net prices between the base group and the test group, divided by the pooled standard deviation of the test and base group.

DSM states that the Department considers the Cohen's d coefficient equal to or exceeding 0.8 to be a significant price difference (*i.e.*, passing the Cohen's d test).

DSM contends that the Cohen's d test is not an appropriate statistical test to find the "targeted dumping" described in the statute and legislative history. DSM argues that section 777A(d) of the Act allows the use of the A-T method only when (1) there is a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or period of time and (2) the Department explains why such differences cannot be taken into account using one of the standard comparison methodologies.

Citing Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, Vol. 1 (1994) at 843 (SAA), DSM claims that Congress made clear that the A-T method was only intended to be used to capture targeted dumping. According to DSM, the SAA also explained that the Department was previously reluctant to use an A-A method because this method could conceal targeted dumping. DSM argues that, given this clear intent that the A-T method is only to be applied where targeted dumping may be occurring, a test which does not distinguish such sales is inconsistent with Congressional intent and thus unlawful.

DSM contends that the Cohen's d test does not (1) identify causal links or statistical significance, let alone significance as intended by the statute, and (2) distinguish between high and low priced sales. DSM explains that the Cohen's d test measures the size of a difference between the means of two groups relative to the population's standard deviation. DSM explains further that the Cohen's d test only measures the extent of the difference between the mean of a test group and the mean of a comparison group called "effect size." DSM claims that, because the denominator in the Cohen's d test shows nothing about relative magnitude, tiny price variations can result in passing the Cohen's d values. In addition, according to DSM, the Cohen's d test cannot differentiate between targeted dumping and other potential causes of price variations, *e.g.*, market factors, differences in producers' costs, or differences in material, which can be relevant to the Department's analysis.

DSM states that the Cohen's d test can produce a strong positive result when the price variations are insignificant to the market but happen to exceed the standard deviation between the two sets of values. DSM asserts that this is particularly the case when the price variations in the sample being tested are relatively small and overall prices are stable because standard deviations under such circumstances will also be quite small, meaning that even minor deviations in price around the mean may be measured as significant. DSM argues that the Cohen's d test cannot differentiate between market driven price fluctuations and actual targeting and therefore is an inappropriate tool for identifying targeted dumping.

DSM claims that the Cohen's d test does not distinguish between positive and negative deviations. In other words, DSM explains, the Cohen's d test does not distinguish between circumstances in which the mean prices of the target group are above or below the mean prices of the base group. According to DSM, targeted dumping is by definition pricing that is aberrationally low. DSM explains that a producer is not targeting a particular purchaser, region, or time period when the producer is selling identical product to the target group at higher prices than to the control group. However, DSM argues, the Cohen's d test treats prices of the test

group that are high (in relation to standard deviations) the same as those that are low. Therefore, according to DSM, a sale with a Cohen's *d* coefficient of 0.8 or greater would pass the Cohen's *d* test regardless of whether the sale was priced higher or lower than the comparison group and be categorized as targeted. DSM states that a certain percent of the total sales by DSM that passed the Cohen's *d* test passed based on negative Cohen's *d* values, *i.e.*, sales at prices higher than their comparison group. DSM contends that a higher price cannot be evidence of targeted dumping because it means the targeted price is higher than the base price. DSM insists that these sales are not dumped and the Cohen's *d* test did not distinguish between sales that are above or below their comparison group.

Finally, DSM contends that the Cohen's *d* test does not distinguish between dumped and non-dumped sales. DSM explains that the Cohen's *d* test measures only differences in U.S. prices and wholly ignores the mandate expressed in the SAA to address "masked" or targeted dumping. Thus, according to DSM, if the Cohen's *d* test finds that one non-dumped sale is made to a customer at a higher price than several other non-dumped sales made to several other customers at a level exceeding the Cohen's *d* coefficient at or exceeding .80, the Department counts that higher-priced non-dumped sale as evidence of targeted dumping. DSM calls it contrary to the statutory requirements and argues that the Department should not rely on the Cohen's *d* test to use the A-T method.

Nucor argues that the Department satisfied the statutory criteria in section 777A(d) of the Act to apply the A-T method to DSM in the *Preliminary Results*. According to Nucor, section 777A(d) of the Act requires that (1) "there is a pattern of export prices ... for comparable merchandise that differ significantly among purchasers, regions, or periods of time; and (2) the administering authority explains why such differences cannot be taken into account" using one of the standard comparison methodologies. Nucor states that the Department's DP analysis addressed both statutory criteria in the *Preliminary Results* and applied the A-T method in accordance with section 777A(d) of the Act.

Citing, *e.g.*, *Certain Steel Nails From the People's Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014) (*Steel Nails*), and the accompanying I&D Memo at Comment 7, Nucor explains that section 777A(d) of the Act only requires a finding of a pattern of prices that differ significantly, not statistically significantly, and that statistical significance is not a relevant consideration in the DP analysis. Citing and quoting *Steel Nails* and the accompanying I&D Memo at Comment 7, Nucor claims that "the Cohen's *d* test is a generally recognized measure of the significance of the difference of two means and the Department has set a threshold of 'large' to provide the strongest indications that there is a significant difference between the means of the test and comparison groups." Nucor contends that DSM did not demonstrate that the Department's Cohen's *d* test is unreasonable and that some higher threshold that is not in the statute must be satisfied.

Citing, *e.g.*, *Steel Nails*, Nucor claims that (1) both higher and lower priced sales are equally capable to create a pattern of prices that differ significantly and (2) higher priced sales will offset lower priced sales either implicitly through the calculation of a weighted average price or explicitly through the granting of offsets. Citing *Steel Nails*, Nucor insists that the Department's use of the Cohen's *d* test is consistent with the SAA, which states that there may be targeted

dumping when there is a pattern of prices that differ significantly among purchasers, regions, or time periods. Nucor argues that a finding of targeted dumping is not a precondition to use the A-T method as long as there is a pattern of prices that differ significantly.

Department's Position: We disagree with DSM. The SAA expressly recognizes that the statute "provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an average-to-average or transaction-to-transaction methodology cannot account for a pattern of prices that differ significantly among purchasers, regions, or time periods, *i.e.*, where targeted dumping may be occurring."³ As the SAA implies, we are not tasked with determining whether targeted dumping is, in fact, occurring. Rather, the SAA recognizes that targeted dumping may be occurring where there is a pattern of prices that differ significantly among purchasers, regions, or time periods. In our view, the purpose of section 777A(d)(1)(B) of the Act is to evaluate whether the A-A method or the A-T method is the appropriate tool to measure whether, and if so to what extent, a given respondent is dumping the merchandise at issue.⁴ While targeting may be occurring with respect to such sales, it is neither a requirement nor a precondition for us to otherwise determine that the A-T method is warranted based upon a finding of a pattern of prices that differ significantly as provided in the statute.

We use the A-A method unless we determine that another method is appropriate in a particular case.⁵ In order to determine whether the A-A method or an alternative comparison method is an appropriate tool with which to measure the extent of a respondent's dumping in a given situation, we look to section 777A(d)(1)(B) of the Act. Section 777A(d)(1)(B)(i) of the Act requires that there exists "a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time." The statute leaves to our discretion how to determine the existence of such a pattern under section 777A(d)(1)(B) of the Act and does not provide a specific direction on how to make such determination. The statute simply requires that we find the existence of a pattern of prices that "differ significantly," and we reasonably demonstrated that such a pattern exists in this administrative review.

The Cohen's *d* coefficient is a statistical measure which gauges the extent (or "effect size") of the difference between the means of two groups. "Effect size is a simple way of quantifying the difference between two groups and has many advantages over the use of tests of statistical significance alone."⁶ In *Xanthan Gum*, we stated as follows:

Effect size is the measurement that is derived from the Cohen's *d* test. Although Deosen argues that effect size is a statistic that is "widely used in meta-analysis," we note that the article also states that "{e}ffect size quantifies the size of the difference between two groups, and may therefore be said to be a *true measure of*

³ See SAA at 843.

⁴ See 19 CFR 351.414(c)(1).

⁵ *Id.*

⁶ See *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) (*Xanthan Gum*) and the accompanying I&D Memo at Comment 3, quoting from Coe, Robert, "It's The Effects Size, Stupid: What effect size is and why it is important," presented at the Annual Conference of British Educational Research Association (September 12-14, 2002).

the significance of the difference.” The article points out the precise purpose for which the Department relies on Cohen’s *d* test to satisfy the statutory language, to measure whether a difference is significant.⁷

Accordingly, we disagree with DSM’s claim that the Cohen’s *d* test is not an appropriate and reasonable approach to examine whether there exists a pattern of prices that differ significantly.

The statute only requires a finding of a pattern of prices that differ “significantly.” The statute does not require that the difference be “statistically significant.” DSM does not demonstrate that our reliance on the Cohen’s *d* test, which is a generally recognized statistical measure of effect size, is unreasonable and that some higher threshold, not enumerated in the statutory language, must be satisfied. Further, as discussed above, the Cohen’s *d* test is a generally recognized measure of the significance of the differences of two means, and we set a threshold of “large” to provide the strongest indication that there is a significant difference between the means of the test and comparison groups.

If Congress intended to require a particular result be obtained, with a level of “statistical significance” of price differences as a condition for finding that there exists a pattern of prices that differ significantly, then Congress presumably would have used language beyond the stated requirement and more precise than “differ significantly.” This is what Congress did, for example, with respect to enacting the sampling provision for respondent selection in section 777A(c)(2)(A) of the Act. But it did not do so with respect to the determination of the existence of a pattern in section 777A(d)(1)(B)(i) of the Act. As the executive agency tasked with implementing the antidumping law, resolving statutory ambiguities, and filling gaps in the statute, we do not agree with DSM’s opinion that the term “significantly” in the statute can mean only “statistically significant.” The law includes no such directive. Our analysis, including the use of the Cohen’s *d* test, reasonably fills the statutory gap as to how to determine whether a pattern of prices “differ significantly.”

The Cohen’s *d* test does not need to take into account any “causal links” for the identified pattern of prices that differ significantly. The statute does not require that we account for some kind of causality for any observed pattern of prices that differ significantly, such as differences in market factors, production costs, or material inputs. Congress did not speak to the intent of the producers or exporters in setting export prices that exhibit a pattern of significant price differences. Nor is an intent-based analysis consistent with the purpose of the statutory provision, as noted above, which is to determine whether averaging is a meaningful tool to measure whether, and if so, to what extent, dumping is occurring. Consistent with the statute and the SAA, we determined whether a pattern of significant price differences exists. Neither the statute nor the SAA requires us to conduct an additional analysis to account for potential reasons for the observed pattern of prices that differ significantly.

We agree with DSM’s description of effect size but we disagree with DSM’s contention that the Cohen’s *d* test does not measure the significance of the differences between the mean prices between the test and comparison groups. The examination of the price differences between test and comparison groups is relative to the “pooled standard deviation.” The pooled standard

⁷ *Id.* Footnote omitted and emphasis originally included.

deviation reflects the dispersion, or variance, of prices within each of the two groups. When the variance of prices is small within these two groups, then a smaller difference between the weighted-average sale prices of the two groups represents a more significant difference because there is less of an overlap in the prices between the test and comparison groups. When the variance within the two groups is larger (*i.e.*, the dispersion of prices within one or both of the groups is greater), then the difference between the weighted-average sale prices of the two groups must be larger in order for the difference to be significant. When the difference in the weighted-average sale prices between the two groups is measured relative to the pooled standard deviation, this value is expressed in standardized units based on the dispersion of the prices within each group. This is the concept of an effect size, as represented in the Cohen's *d* coefficient.

We disagree with DSM's interpretation of the statute and the SAA that the purpose of the differential pricing analysis should be to identify "targeted dumping." Rather, as discussed above, the purpose of the application of the differential pricing analysis in this review is to determine whether the A-A method is the appropriate tool to evaluate the extent of dumping by DSM. We disagree further with DSM's interpretation that a pattern of prices that differ significantly necessarily involves only lower priced sales as these can be the only sales which are "targeted" or that higher priced sales are incapable of masking dumping. The statute does not require that we consider only lower-priced sales when considering whether the A-A method is appropriate. In our view, it is reasonable for us to consider sales information on the record and to draw reasonable inferences as to what the data show. Contrary to DSM's claim, it is reasonable for us to consider both lower-priced and higher-priced sales in the Cohen's *d* analysis because higher-priced sales are equally capable as lower-priced sales to create a pattern of prices that differ significantly.

Further, the statute states that we may apply the A-T method if "there is a *pattern of export prices . . . for comparable merchandise that differ significantly among purchasers, regions, or periods of time,*" and we explain "why *such differences* cannot be taken into account" using the A-A method.⁸ The statute directs us to consider whether a pattern of significantly different prices exist. The statutory language references prices that "differ" and does not specify whether the prices differ by being lower or higher than the remaining prices. The statute does not provide that we consider only higher-priced sales or only lower-priced sales when conducting the analysis, nor does the statute specify whether the difference must be the result of certain sales being priced higher or lower than other sales. Higher-priced sales and lower-priced sales do not operate independently; all sales are relevant to the analysis.⁹

Comment 2: DSM argues that, even if the Department continues to apply the Cohen's *d* test, it should apply the A-T method only to the low-priced differential sales. The second step in the Department's analysis is to determine the percentage of the total value that pass the Cohen's *d* test by purchaser, region, or time period. According to DSM, the Department will apply (1) the A-A method to all U.S. sales if less than 33 percent pass, (2), the A-T method to all U.S. sales if more than 66 percent pass, and (3) the A-A method to those U.S. sales that do not pass the

⁸ See section 777A(d)(1)(B) of the Act (emphasis added).

⁹ See *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 the accompanying I&D Memo at Comment 5.

Cohen's *d* test and the A-T method to those U.S. sales that pass the Cohen's *d* test if between 33 percent and 66 percent of U.S. sales pass the Cohen's *d* test. DSM explains that the Department also compares the margin based solely on the A-A method to the margins based wholly or in part on the A-T method to examine whether the margins based wholly or in part on the A-T method yield a "meaningful difference."

DSM contends that the Department did not explain its reasons for establishing the cutoff percentages (*i.e.*, 33 percent and 66 percent) for the use of the A-T method and that these cutoff percentages appear to be arbitrary. DSM argues that, although the Department found that more than 66 percent of DSM's U.S. sales passed the Cohen's *d* test, if only the U.S. sales with a positive Cohen's *d* were counted, less than 33 percent of DSM's U.S. sales pass the Cohen's *d* test. DSM claims that this means that, even under its current arbitrary methodology, the Department would apply the A-A method to all of DSM's U.S. sales. DSM explains that this is the correct result because sales with a negative Cohen's *d* (*i.e.*, higher priced sales) are not targeted and not dumped. DSM argues that, even if the Department continues to apply the Cohen's *d* test as it did in the *Preliminary Results*, the Department should apply the A-T method only to the low priced differential sales because such sales are the only ones that are priced below the control group and therefore the only ones that are targeted.

Nucor argues that the Department is not required to apply the A-T method only to the low priced differential sales. According to Nucor, the Department explained in *Xanthan Gum* and the accompanying I&D Memo at Comment 4, that 66 percent or more of the value of the sales passing the Cohen's *d* test is an indication that the pattern of prices that differ significantly is so pervasive in the reported prices that application of the A-T method to all sales is appropriate to address all masked dumping that may result from such differences. Moreover, citing *Xanthan Gum*, Nucor explains that the Department does not limit the application of the A-T method only to the low priced sales with a positive Cohen's *d* because the statute does not mandate such a limit. Nucor claims that, because more than 66 percent of DSM's sales pass the Cohen's *d* test, the Department's application of the A-T method to all of DSM's U.S. sales is appropriate.

Department's Position: The statute allows us to apply the A-T method if "there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time," and we explain "why such differences cannot be taken into account" using the A-A comparison method.¹⁰ The first requirement examines a pattern of EPs or CEPs (*i.e.*, the prices of transactions in the U.S. market) and makes no provision for comparisons with NVs as is provided for when examining dumping.¹¹ In other words, the statute does not require us to find whether higher-priced sales are not dumped or lower-price sales are dumped before we examine whether a pattern of prices exists that differ significantly. Therefore, whether U.S. prices are above or below their comparable NVs, *i.e.*, whether they are dumped or not, is not a consideration when examining whether there exists a pattern of prices that differ significantly consistent with section 777A(d)(1)(B)(i) of the Act.

The purpose of considering an alternative comparison method is to examine whether the A-A method is appropriate to measure the amount of DSM's dumping, some of which may be

¹⁰ See section 777A(d)(1)(B) of the Act.

¹¹ See section 771(35)(A) of the Act.

masked. Masked dumping is the result of two concurrent situations: dumped sales and non-dumped sales. One without the other does not result in masked dumping. Because the existence of both dumped and non-dumped sales creates the potential for masked dumping, we must consider both low-priced and high-priced sales to determine whether a pattern of prices that differ significantly exists and whether masking is occurring. When we look for a pattern of prices that differ significantly pursuant to section 777A(d)(1)(B)(i) of the Act, a pattern can involve prices that are higher and/or lower than the comparison price.

Consequently, it is reasonable for us to consider the sales prices that are higher and lower than the comparison sales price in the Cohen's *d* analysis because higher priced sales are equally capable as lower priced sales to create a pattern of prices that differ significantly. Further, higher priced sales will offset lower priced sales, either implicitly through the calculation of a weighted-average price or explicitly through the granting of offsets, that can mask dumping. The statute directs us to consider whether there is a pattern of prices that differ significantly. The statutory language references prices that "differ" and does not specify whether the prices differ by being lower or higher than the remaining prices. The statute does not provide that we consider *only* higher priced sales or only lower priced sales when conducting its analysis, nor does the statute specify whether the difference must be the result of certain sales being priced higher or lower than other sales.¹²

Higher priced sales and lower priced sales do not operate independently; all sales are relevant to the analysis. Higher or lower priced sales could be dumped or could be masking other dumped sales – this is immaterial in the Cohen's *d* test and the question of whether there is a pattern of prices that differ significantly because this analysis includes no comparisons with normal values. By considering all sales, higher priced sales and lower priced sales, we are able to (1) analyze an exporter's pricing behavior and (2) identify whether there is a pattern of prices that differ significantly. Moreover, finding such a pattern of prices that differs significantly among purchasers, regions, or periods of time signals that the exporter is discriminating between purchasers, regions, or periods of time within the U.S. market, rather than following a more uniform pricing behavior. Where the evidence indicates that the exporter is engaged in a pricing behavior which creates a pattern, there is cause to continue with the analysis to determine whether masked dumping is occurring. Accordingly, both higher and lower priced sales are relevant to our analysis of DSM's pricing behavior.

Finally, as we explained in *Xanthan Gum*, when 66 percent or more of the value of the U.S. sales pass the Cohen's *d* test, this (1) indicates that the pattern of prices that differ significantly is pervasive in the reported prices and (2) justifies our application of the A-T method to all of the U.S. sales to address all masked dumping that may result from such differences.¹³ We find that the thresholds employed in the Cohen's *d* test are a reasonable way of determining whether and how to apply the A-T method as an alternative methodology.¹⁴

Comment 3: DSM requests that the Department use the targeted dumping analysis, not the DP analysis, and apply the A-T method only to the targeted sales for the final results of this review.

¹² See section 777A(d)(1)(B)(i) of the Act.

¹³ See *Xanthan Gum* and the accompanying I&D Memo at Comment 4.

¹⁴ *Id.*

Citing *Gold East Paper (Jiangsu) Co., Ltd. v. United States*, 918 F. Supp. 2d 1317 (CIT 2013) (*Gold East*), DSM argues that the targeted dumping regulations that the Department withdrew in *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (December 10, 2008) (*2008 Withdrawal*), are still valid because the Department withdrew those regulations improperly in violation of the APA requirements for notice and opportunities for comments. Thus, DSM claims, that the application of the A-T method only to the targeted sales under the targeted dumping regulations is appropriate and consistent with *Gold East*.

DSM argues that the Department improperly withdrew the targeted dumping regulations (19 CFR 351.414(f)) without providing notice and opportunity to comment as required by the APA, specifically 5 U.S.C. 553(b)(3) and (c). According to DSM, the Department stated in the *2008 Withdrawal* that it is withdrawing its targeted dumping regulations without a notice and an opportunity to comment because (1) the notice and comment requirements were impracticable and contrary to the public interest and (2) thus good cause existed to waive these requirements under 5 U.S.C. 553(b)(B). According to DSM, the Department stated specifically in the *2008 Withdrawal* that an immediate revocation of its targeted dumping regulations was necessary because the targeted dumping regulations (1) were promulgated without the benefit of experience, (2) may contain thresholds or other criteria that have prevented the use of the comparison method to unmask dumping, (3) may have established an impractical deadline for filing such allegations, and (4) would deny relief to domestic industries suffering material injury from unfairly traded imports.

DSM contends that the Department did not substantiate these reasons and thus no good cause existed to withdraw the targeted dumping regulations without the notice and opportunities for comments required by the APA. DSM contends further that the Department's avowed lack of experience with targeted dumping makes it hard to understand the basis on which the Department determined that the thresholds and deadlines acted to deny relief to the domestic industry. DSM claims that the Department's withdrawal of the targeted dumping regulations without the notice and opportunities for comments under the APA does not satisfy the CAFC's "narrowly construed and only reluctantly countenanced" good cause exceptions as stated in *Tunik v. Merit System Protection Board*, 407 F.3d 1326, 1342 (Fed. Cir. 2005). DSM argues that the CAFC accepted the claims that notice and opportunities for comments required by the APA are impracticable primarily in cases involving petroleum price controls during the national economic emergencies in the 1970s, e.g., *Reeves v. Simon*, 507 F.2d 455, 459 (Temp. Emer. Ct. App. 1974); *Shimek v. Department of Energy*, 685 F.2d 1372, 1375 (Temp. Emer. Ct. App. 1981).

DSM states that there is no public interest justification for the Department to waive the notice and comment opportunities under the APA because the public interest in the APA refers to the threat of anticipatory evasion by the regulated parties once they know that they will face new restrictions in the near future, like in *DeRieux v. Five Smiths, Inc.*, 499 F.2d 1321, 1332 (Temp. Emer. Ct. App. 1974). DSM argues that the withdrawal of the targeted dumping regulations, which had been in place but rarely used for more than a decade, did not pose such a threat.

Nucor explains that the Department did publish notices and provided opportunities to comment for the withdrawal of the targeted dumping regulations. According to Nucor, after the Department ceased to use zeroing in LTFV investigations, targeted dumping allegations increased, and the Department provided the public with notices and opportunities to comment on two separate occasions. Specifically, Nucor explains, the Department published in 2007 a *Federal Register* notice soliciting comments on what guidelines, thresholds, and tests should be used to conduct an analysis under section 777A(d)(1)(B) of the Act and in 2008 another *Federal Register* notice proposing a new methodology and soliciting public comments. Nucor states that, after receiving numerous comments criticizing the targeted dumping regulations for being inconsistent with the statute and impeding the development of an effective remedy for masked dumping, the Department determined to withdraw the targeted dumping regulations and yet provided another opportunity to comment on the withdrawal that took an immediate effect back then.

Nucor insists that the Department's withdrawal of the targeted dumping regulations was consistent with the APA's notice-and-comment requirements but, even if it were not, the Department properly relied on the good cause exception to withdraw the targeted dumping regulations. Nucor explains that, in response to numerous parties' critical comments, the Department withdrew the targeted dumping regulations in order to extensively analyze the concept of targeted dumping and develop a meaningful targeted dumping practice.¹⁵ Nucor claims that the CAFC (1) held in *National Customs Brokers and Forwarders Ass'n of Am., Inc. v. United States*, 59 F.3d 1219, 1223 (Fed. Cir. 1995) (*National Customs Brokers*) that the good cause exception and the public interest exception to the notice-and-comment requirements are satisfied where providing the notice-and-comment requirements would delay statutorily mandated relief and (2) thus supports the Department's conduct in its withdrawal of the targeted dumping regulations in order to allow parties to take advantage of the statutory remedies that the targeted dumping regulations inadvertently denied, among other reasons. Nucor contends that *Gold East* is not final and conclusive and the withdrawn targeted dumping regulations covered LTFV investigations, not administrative reviews, when they were in effect.

Department's Position: The targeted dumping regulations withdrawn in the 2008 *Withdrawal* are no longer in effect and, when they were in effect, they applied only to the LTFV investigations, not administrative reviews. Likewise, *Gold East* involves a LTFV investigation, not a review and the *Gold East* decision is not final. Furthermore, the currently effective 19 CFR 351.414 specifically fills the statutory gap regarding the selection of an appropriate comparison method in the context of administrative reviews.¹⁶ This process was done with proper notice and opportunity to comment, and no party could reasonably have been left with the impression that the Department would be bound by the withdrawn targeted dumping regulations in administrative reviews.

¹⁵ Subsequently, according to Nucor, the Department developed the *Nails* test described in *e.g.*, *Mid Continent Nail Corporation v. United States*, 712 F. Supp. 2d 1370 (CIT 2010) and refined it further in additional investigations and reviews involving targeted dumping.

¹⁶ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

In any event, the targeted dumping regulation was properly withdrawn pursuant to the APA. During the withdrawal process, the Department engaged the public to participate in its rulemaking process. In fact, the Department's withdrawal of its regulations in 2008 came after two rounds of soliciting public comments on the appropriate targeted dumping analysis.

The Department solicited the first round of comments in October 2007, more than one year before it withdrew the regulation, by posting a notice in the *Federal Register* seeking public comments on what guidelines, thresholds, and tests it should use in conducting an analysis under section 777A(d)(1)(B) of the Act.¹⁷ As the notice explained, because the Department had received very few targeted dumping allegations under the regulations then in effect, it solicited comments from the public to determine how best to implement the remedy provided under the statute to address masked dumping. The notice posed specific questions, and allowed the public 30 days to submit comments. Various parties submitted comments in response to the Department's request.¹⁸ After considering those comments, the Department published a proposed new methodology in May 2008 and again requested public comment.¹⁹ Among other things, the Department specifically sought comments "on what standards, if any, {it} should adopt for accepting an allegation of targeted dumping."²⁰ Several of the submissions²¹ received from parties explained that the Department's proposed methodology was inconsistent with the statute and should not be adopted.²² Moreover, several entities explicitly stated that the Department should not establish minimum thresholds for accepting allegations of targeted dumping because the statute contains no such requirements.²³

After considering the parties' comments the Department explained that because "the provisions were promulgated without the benefit of any experience on the issue of targeted dumping, the Department may have established thresholds or other criteria that have prevented the use of this comparison methodology to unmask dumping."²⁴ For this reason, the Department determined that the regulation had to be withdrawn.²⁵ Although this withdrawal was effective immediately, the Department again invited parties to submit comments, and gave them a full 30 days to do

¹⁷ See *Targeted Dumping in Antidumping Investigations; Request for Comment*, 72 FR 60651 (October 25, 2007) (*Targeted Dumping*).

¹⁸ See Public Comments Received December 10, 2007, available at <http://enforcement.trade.gov/download/targeted-dumping/comments-20071210/td-cmt-20071210-index.html> (listing the entities that commented).

¹⁹ See *Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations*, 73 FR 26371, 26372 (May 9, 2008).

²⁰ *Id.*

²¹ The public comments received by June 23, 2008, and submitted on behalf of several domestic parties can be accessed at <http://enforcement.trade.gov/download/targeted-dumping/comments-20080623/td-cmt-20080623-index.html>.

²² See, e.g., letter from Kelley, Drye and Warren on behalf of Various Domestic Producers entitled "Comments on Targeted Dumping Methodology" (Kelley Drye Comments) (June 23, 2008), at 2, available at <http://enforcement.trade.gov/download/targeted-dumping/comments-20080623/td-cmt-20080623-index.html>.

²³ See, e.g., letter from Committee to Support U.S. Trade Laws entitled "Comments on Targeted Dumping Methodology" (June 23, 2008), at 25, available at <http://enforcement.trade.gov/download/targeted-dumping/comments-20080623/td-cmt-20080623-index.html>; see also Kelley Drye Comments at 29.

²⁴ See *2008 Withdrawal*.

²⁵ *Id.*

so.²⁶ The comment period ended on January 9, 2009, with several parties submitting comments.²⁷

The course of the Department's decision-making demonstrates that it sought to actively engage the public. This type of public participation is fully consistent with the APA's notice-and-comment requirement.²⁸ Moreover, various courts have rejected the idea that an agency must give the parties an opportunity to comment before every step of regulatory development.²⁹ Rather, where the public is given the opportunity to comment meaningfully, consistent with the statute, the APA's requirements are satisfied. The touchstone of any APA analysis is whether the agency, as a whole, acted in a way that is consistent with the statute's purpose.³⁰ Here, similar to the agency in *Fed. Express Corp.*, the Department provided the parties more than one opportunity to submit comments before issuing the final rule. As in *Fed. Express Corp.*, the Department also considered the comments submitted and based its final decision, at least in part, upon those comments. Just as the court in *Fed. Express Corp.* found all of those facts to indicate that the agency's actions were consistent with the APA, so too the Department's actions here demonstrate that it fulfilled the notice and comment requirements of the APA.

The APA does not require that a final rule that the agency promulgates must be identical to the rule that it proposed and upon which it solicited comments.³¹ Here, the Department actively engaged the public in its rulemaking process; it solicited comments and considered the submissions it received. In fact, that the numerous comments prompted the Department to withdraw the regulation demonstrates that the Department provided the public with an adequate opportunity to participate. In doing so, the Department fully complied with the APA.

Further, even if the two rounds of comments that the Department solicited before the withdrawal of the regulation were insufficient to satisfy the APA's requirements, the Department properly declined to solicit further comments pursuant to the APA's "good cause" exception. This exception provides that an agency is not required to engage in notice and comment if it determines that doing so would be "impracticable, unnecessary, or contrary to the public interest."³² The CAFC recognized that this exception can relieve an agency from issuing notice and soliciting comment where doing so would delay the relief that Congress intended to provide; in *National Customs Brokers*, the CAFC rejected a plaintiff's argument that the U.S. Customs Service failed to follow properly the APA in promulgating certain interim regulations when it had published these regulations without giving the parties a prior opportunity to comment. Moreover, although the U.S. Customs Service solicited comments on the published regulations,

²⁶ *Id.*

²⁷ See *Public Comments Received January 23, 2009*, Department of Commerce, (January 23, 2009).

²⁸ See, e.g., *Arizona Pub. Serv. Co. v. EPA*, 211 F.3d 1280, 1299-1300 (D.C. Cir. 2000) (holding that the EPA's decision to not implement a rule upon which it had sought comments did not violate the APA's notice and comment requirements because the parties should have understood that the agency was in the process of deciding what rule would be proper).

²⁹ See *Fed. Express Corp. v. Mineta*, 373 F.3d 112, 120 (D.C. Cir. 2004) (*Fed. Express Corp.*) (holding that the Department of Transportation's promulgation of four rules, each with immediate effect, only after the issuance of which the public was given the opportunity to comment, afforded proper notice and comment).

³⁰ *Id.*

³¹ See, e.g., *First Am. Discount Corp. v. CFTC*, 222 F.3d 1008, 1015 (D.C. Cir. 2000).

³² See 5 USC 553(b)(B).

it stated that it “would not consider substantive comments until after it implemented the regulations and reviewed the comments in light of experience” administering those regulations.³³ The U.S. Customs Service explained that “good cause” existed because the new requirements did not impose new obligations on parties, and emphasized its belief that the regulations should “become effective as soon as possible” so that the public could benefit from “the relief that Congress intended.”³⁴ The court recognized that this explanation was a proper invocation of the “good cause” exception and explained that soliciting and considering comments was *both* unnecessary (because Congress had passed a statute that superseded the regulation) “*and* contrary to the public interest because the public would benefit from the amended regulations.”³⁵ For this reason, the court affirmed the regulation against the plaintiff’s challenge.³⁶

In short, the regulation at issue may have had the unintentional effect of preventing the Department from employing an appropriate remedy to consider whether the A-A method is the appropriate tool with which to measure each respondent’s amount of dumping. Such effect would have been contrary to congressional intent. Notwithstanding that we satisfied the APA’s requirements as discussed above, the Department’s revocation of such a regulation without additional notice and comment was based upon a recognized invocation of the “public interest” exception because good cause existed to waive the notice and comment period. Accordingly, we have no basis to use the withdrawn targeted dumping regulations for the final results of this review.

Comment 4: DSM contends that section 777A(d)(i)(B) of the Act is clearly specific to LTFV investigations and thus does not authorize the Department to apply the DP analysis in administrative reviews. DSM explains that, in section 777A of the Act, Congress included a specific exception for targeted dumping for investigations but intentionally omitted a similar exception from the statutory provision dealing with administrative reviews. DSM explains further that there is no legislative intent for an additional exception for targeted dumping in administrative reviews. Thus, DSM argues, the Department should interpret the statute accordingly. Citing and quoting *Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616-17 (1980), DSM states that the Department may not add additional exceptions because when “Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied in the absence of evidence of a contrary legislative intent.” Citing, *e.g.*, *Marine Harvest (Chile) S.A. v. United States*, 244 F. Supp. 2d 1364, 1379 (CIT 2002), DSM claims that, because section 777A of the Act clearly provides the targeted dumping exceptions in LTFV investigations only, not in administrative reviews, the Department does not have a statutory gap to fill and cannot take authority upon itself where no such authority has been granted either explicitly or implicitly. According to DSM, *Final Modification for Reviews* does not provide the Department with legal authority to apply the targeted dumping exception in section 777A(d)(1)(B) of the Act in this review because the statute covers LTFV investigations only.

Nucor argues that section 777A(d)(2) of the Act is silent on the particular comparison methods to use in administrative reviews and that section 777A(d)(2) of the Act does not explicitly prohibit

³³ See *National Customs Brokers*, 59 F.3d at 1220-21.

³⁴ *Id.*, at 1223.

³⁵ *Id.*, at 1224 (emphasis added).

³⁶ *Id.*

the use of the A-T method in administrative reviews. According to Nucor, section 777A(d)(2) of the Act simply states that if the Department decides to use the A-T method in a review, then it will conduct price-averaging on a monthly basis. Nucor contends that Congress did not explicitly enumerate certain exceptions to a general prohibition in section 777A(d)(2) of the Act. Citing *Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013), and the accompanying I&D Memo at Comment 4, Nucor explains that the absences of the comparison methods in section 777A(d)(2) of the Act leaves a statutory gap that the Department needs to fill and the 19 CFR 351.414(c)(1) fills that gap by stating that in both LTFV investigations and administrative reviews, the A-A method will be used unless another method is appropriate in a particular case.

Department's Position: We do not agree with DSM's assertion that we have no authority to use the A-T method in administrative reviews. Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." By definition, a "dumping margin" requires a comparison of normal value and EP or CEP. Before making the comparison required, it is necessary to determine how to make the comparison.

Section 777A(d)(1) of the Act discusses the standard comparison methods (*i.e.*, A-A and T-T) in investigations and then provides for an alternative comparison method (*i.e.*, A-T) that is an exception to the standard methods when certain criteria are met. For reviews, section 777A(d)(2) of the Act discusses the maximum length of time over which the Department may calculate weighted-average NV when using the A-T method. Section 777A(d)(2) of the Act has no provision specifying the comparison method to be employed in administrative reviews. However, concluding that the statute makes no provision for comparison methods in administrative reviews would infer that Congress did not give us the authority to use a comparison method at all in administrative reviews, with the result that we would not be permitted to make a comparison of normal values and EPs or CEPs in order to calculate a dumping margin as described in section 771(35)(A) of the Act.

We find that, contrary to DSM's claim, the silence of the statute with regard to application of the A-T comparison method in administrative reviews does not preclude us from applying such a practice in administrative reviews. Indeed, the CAFC stated that the "court must, as we do, defer to Commerce's reasonable construction of its governing statute where Congress leaves a gap in the construction of the statute that the administrative agency is explicitly authorized to fill or implicitly delegates legislative authority, as evidenced by the agency's generally conferred authority and other statutory circumstances."³⁷ Further, this "silence has been interpreted as 'an invitation' for an agency administering unfair trade law to 'perform its duties in the way it believes most suitable' and courts will uphold these decisions {s}o long as the {agency}'s analysis does not violate any statute and is not otherwise arbitrary and capricious."³⁸

³⁷ See *United States Steel Corp. v. United States*, 621 F.3d 1351, 1357 (Fed. Cir. 2010).

³⁸ See *Mid Continent Nail Corp. v. United States*, 712 F. Supp. 2d 1370, 1376-77 (CIT 2010), citing *US. Steel Group v. United States*, 96 F.3d 1352, 1362 (Fed. Cir. 1996).

To fill this gap in the statute, the Department promulgated regulations to specify how comparisons between normal value and EP or CEP would be made in administrative reviews. With the implementation of the URAA, the Department promulgated the final rule in 1997 in which 19 CFR 351.414(c)(2) stated that the Department would normally use the A-T method in administrative reviews. In 2010, the Department published *Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings: Proposed Rule; Proposed Modification; Request for Comment*, 75 FR 81533 (December 28, 2010) pursuant to section 123(g)(1) of the URAA. This proposal was in reaction to several WTO Dispute Settlement Body panel reports which had found the denial of offsets for non-dumped sales in administrative reviews to be inconsistent with the WTO obligations of the United States. When considering the proposed revisions to 19 CFR 351.414, the Department gave proper notice and opportunity to comment to all interested parties. Pursuant to section 123(g)(1)(D) of the URAA, in September 2011, the USTR submitted a report to the House Ways and Means and Senate Finance Committees which described the proposed modifications, the reasons for the modifications, and a summary of the advice which the USTR had sought and obtained from relevant private sector advisory committees pursuant to section 123(g)(1)(B) of the URAA. Also, in September 2011, pursuant to section 123(g)(1)(E) of the URAA, the USTR, working with the Department, began consultations with both congressional committees concerning the proposed contents of the final rule and the final modification. As a result of this process, the Department published *Final Modification for Reviews*. These revisions were effective for all preliminary results of review issued after April 16, 2012, as is the situation for this administrative review.

The revised 19 CFR 351.414 (b) describes the methods by which normal value can be compared to EP and CEP in LTFV investigations and administrative reviews (*i.e.*, A-A, T-T, and A-T). These comparison methods are distinct from each other. When we use the T-T or A-T method, a comparison is made for each export transaction to the United States. When we use the A-A method, a comparison is made for each group of comparable export transactions for which the EPs or CEPs have been averaged together (*i.e.*, for an averaging group). We do not interpret the Act or the SAA to prohibit the use of the A-A comparison method in administrative reviews, nor does the Act or the SAA mandate the use of the A-T comparison method in administrative reviews; 19 CFR 351.414(c)(1) fills the gap in the statute concerning the choice of a comparison method in the context of administrative reviews. In both LTFV investigations and administrative reviews, the A-A method will be used unless we determine that another method is appropriate in a particular case.

Request for Rescission of Review in Part

Comment 5: Samsung requests that the Department rescind the review in part for Samsung. Samsung asserts that, while the Department generally establishes deadlines for parties to submit no-shipment letters, such deadlines are discretionary and the Department has discretion to rescind an administrative review with respect to a particular exporter or producer if there were no entries, exports, or sales of subject merchandise in accordance with 19 CFR 351.213(d)(3) without a submission of a no-shipment letter. Samsung asserts further that the Department does not have a consistent practice with regards to the amount of time it granted interested parties to submit no-shipment letters. Citing *Initiation of Antidumping and Countervailing Duty*

Administrative Reviews and Request for Revocation in Part, 74 FR 68229 (December 23, 2009), *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 60834, 60834-5 (October 2, 2013), and *Certain Activated Carbon From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision*, 76 FR 69705 (November 9, 2011), and the accompanying I&D Memo at Comment 11, Samsung explains that the Department has, in past cases, established 30-day deadlines and 60-day deadlines and even accepted no-shipment letters filed after the established deadline.

Samsung contends that the Department did not (1) undertake any further analysis as to whether Samsung made exports, sales, or entries of subject merchandise during the POR and (2) try to communicate directly with Samsung during the course of this review. Samsung requests that the Department rely on the CBP data used for the respondent selection to rescind the review for Samsung. Samsung states that, because it has no access to the business proprietary information under the APO in this review, it does not know the details of the CBP data. Samsung argues that, if the CBP data show no entries of subject merchandise exported by Samsung, then the Department should rescind the review for Samsung. Samsung comments that the Department solely relied on the CBP data to select respondents without issuing separate quantity-and-value questionnaires and no interested parties raised any issues with the CBP data. Samsung claims that, because the CBP data were reliable for the Department to select respondents, they should be also reliable for the Department to determine whether Samsung had any entries during the POR.

Nucor requests that the Department continue to assign DSM's margin to Samsung for the final results of this review because Samsung failed to submit its no shipment letter even after it received several notices and opportunities from the Department. According to Nucor, *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 19197 (March 29, 2013) (*Initiation Notice*) named Samsung as one of the respondents and established the 60-day period within which respondents must submit no-shipment letters if a producer or exporter named in the *Initiation Notice* had no exports, sales, or entries during the POR. In addition, according to Nucor, the Department provided Samsung with a second opportunity to submit information relating to any entries it may have had during the POR when the Department released the CBP data to all interested parties and invited comments on CBP data. Nucor claims that Samsung responded to none of these opportunities and made no appearance in this review until after it received a preliminary margin that it apparently does not like. Nucor contends that Samsung blames the Department for not having done more to determine whether Samsung had exports, sales, or entries of subject merchandise during the POR. Citing *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937 (November 18, 2005) (*Brake Rotors*), and the accompanying I&D Memo at Comment 8, and *Hyosung Corporation v. United States*, 2011 Ct. Intl. Trade LEXIS 54, 2011 WL 1882519 (CIT) (*Hyosung Corporation*), Nucor argues that Samsung solely possessed the information regarding its own shipments and the burden of producing such evidence rested with Samsung, but Samsung failed to satisfy the burden.

Nucor argues that the CBP data alone cannot be a basis to rescind an administrative review. Citing *Brake Rotors* and *Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part*, 75 FR 10207 (March 5, 2010) (*CTL Plate 2008-2009*), and the accompanying I&D Memo at Comment 2, *affirmed in Hyosung Corporation*, Nucor explains that the Department's current practice is to corroborate or contradict a respondent's reported no-shipment letter with the CBP data, not to solely rely on the CBP data alone to rescind an administrative review, because CBP data alone does not capture all entries, such as those not made electronically, and thus does not provide conclusive information of whether a respondent had shipments.

Department's Position: For the final results of this review, we continue to assign DSM's rate to Samsung. In the *Initiation Notice*, we stated as follows:

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review ("POR"), it must notify the Department within 60 days of publication of this notice in the *Federal Register*.³⁹

Publication of a notice in the *Federal Register* is a familiar method of providing notice to interested parties in antidumping duty proceedings.⁴⁰ The publication of the *Initiation Notice* provided sufficient constructive notice to Samsung that this review was being initiated and that it needed to file a no-shipment letter if it had no exports, sales, or entries during the POR.⁴¹ After being notified by the *Initiation Notice*, it was incumbent on Samsung to supply the information on whether it had no exports, sales, and entries of the subject merchandise during the POR because the burden of producing evidence belongs to the party in possession of the necessary information and, for this issue, that party is Samsung.⁴² However, Samsung filed no letter stating whether or not it had shipments. Also, Samsung's counsel could have applied for an APO in order to access to the CBP data on behalf of its client, but did not do so.

It is the Department's long-standing practice to rely on both a company's timely filed no-shipment letter and the CBP data corroborating the company's no-shipment claim to determine that the company made no shipments during the POR.⁴³ In this review, unlike other companies for which we determined that they made no reviewable entries during the POR, we do not have the necessary information, *i.e.*, no-shipment claim, from Samsung which we can corroborate with the CBP data. Moreover, we no longer rescind the review in part for companies which we

³⁹ See *Initiation Notice*.

⁴⁰ See, e.g., *Int'l Trading Co. v. United States*, 281 F.3d 1268, 1275-76 (Fed. Cir. 2002).

⁴¹ See *Initiation Notice*.

⁴² See *Zenith Electronics Corp. v. United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993).

⁴³ See *CTL Plate 2008-2009 affirmed in Hyosung Corporation*.

determine to have made no shipments of subject merchandise during the POR.⁴⁴ Our current practice is to determine that such companies had no reviewable entries during the POR.⁴⁵

Major Input Adjustments

Comment 6: DSM argues that the Department should not apply the major input rule because DSM's affiliated suppliers DKC and DKA merely acted as DSM's purchasing agents for its purchases of slabs from unaffiliated suppliers. DSM contends that this arrangement is not the proper circumstance for application of the major input rule. DSM believes, however, that, if the Department continues to apply the major input rule, then it should revise its methodology for the major input analysis and compare prices on an FOB basis exclusive of freight and movement expenses, by grade and month and calculate an overall adjustment to direct material costs, rather than use the POR average transfer price and market price. DSM notes that the information needed to perform this analysis is in Exhibit D-26 of DSM's October 21, 2013, supplemental response. According to DSM, because it could not obtain the COP of its affiliated producer, the Department should compare the market price with the transfer price from DKC and DKA as it has done in previous reviews.

DSM argues that DKC and DKA are not producers of slab and the major input rule only applies to producers of slab. DSM explains that DKC and DKA purchase the slab they sell to DSM from various unaffiliated foreign suppliers. According to DSM, the merchandise is shipped directly from the supplier and DKC and DKA do not hold any inventory of slab. DSM argues that DKC and DKA add a markup to cover their costs. Thus, DSM argues, the statutory predicate for applying the major input rule, the "production" of the input by one of the parties to the affiliated party transaction, is not satisfied and the Department should value DSM's slabs based on its actual purchase prices from DKC and DKA, which reflect prices charged by unaffiliated slab producers.

DSM argues that if the Department continues to apply the major input rule to DSM's purchases of slab, it should do so in a manner that is reasonable and which accurately compares the prices of slab purchased from affiliated and unaffiliated parties on an "apples-to-apples" basis by performing the comparison by grade and by month. DSM notes that it submitted a comparison by grade of slab and month from November 2011 to January 2013. According to DSM, the prices used in the comparison were FOB prices net of any freight or other transportation charges, representing the net price actually received by the slab supplier.

DSM claims the Department's preliminary methodology of calculating an overall POR average transfer price and market price is flawed because an average for all grades purchased

⁴⁴ See, e.g., *Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 75 FR 56989, 56990 (September 17, 2010).

⁴⁵ *Id.*; see also the "Final Determination of No Reviewable Entries" section, *supra*, and *Preliminary Results* and the accompanying Preliminary Decision Memorandum at 4, and *Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 4385 (January 22, 2013), and the accompanying Preliminary Decision Memorandum at 3-4, unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 29113 (May 17, 2013).

ignores price differences between grades and fails to account for price changes over time during a period of significant volatility in slab prices.

According to DSM, the prices it paid to both affiliated and unaffiliated suppliers of slab varied significantly by grade. DSM notes that certain grades of slab are not purchased from unaffiliated suppliers but are purchased in significant quantities from DKC. DSM claims that these grades tend to have a lower POR average price than other grades, and therefore argues that they unfairly lower the overall POR average sales price for DKC, which is then compared to the overall average price from unaffiliated suppliers that includes purchases of higher-priced grades. DSM contends that ignoring these significant differences in price by grade leads to a distorted comparison of slab prices over the POR. According to DSM, the price also fluctuates by month, which further distorts the Department's comparison methodology. Thus, DSM argues that an averaging methodology which fails to isolate and account for these monthly price fluctuations renders the overall average price comparison essentially meaningless, because the Department has no way of discerning whether the observed differences in prices are attributable to changes in market prices over time or to actual price differences between affiliated and unaffiliated suppliers.

Citing *SeAH Steel Corp. v. United States*, 764 F. Supp. 2d 1322, 1325-26 (CIT 2011) and *Huvis Corp. v. United States*, 570 F.3d 1347 (Fed. Cir. 2009), DSM argues that the Department has analyzed prices by grade for purposes of the major input analysis in previous cases. According to DSM, when presented with sufficient information to provide for a more precise comparison of affiliated and unaffiliated suppliers for the major input test, it is incumbent on the Department to use the more precise information in order to comply with its mandate to calculate antidumping duty margins as accurately as possible as stated in *Rhone Poulenc, Inc. v United States*, 899 F.2d 1185 (Fed. Cir. 1990) and *Timken US Corp. v United States*, 318 F. Supp. 2d 1271 (CIT 2004).

DSM claims that it is unable to force its affiliated supplier to provide its slab COP. Thus, DSM argues that the Department should limited its major input analysis to a comparison of the transfer price paid to DKC and DKA for slab and the market price (*i.e.*, the prices paid to unaffiliated suppliers for slab) as it has done in previous reviews. DSM argues that neither the statute nor the Department's regulations or policies require consideration of all three values. According to DSM, section 773(f)(3) of the Act states that the Department may use the three values. Citing *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53370 (September 11, 2006), unchanged in *Notice of Final Results of the Twelfth Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 72 FR 13086 (March 20, 2007) (collectively *CORE*), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea*, 65 FR 16880 (March 30, 2000), and the accompanying I&D Memo at 6, DSM claims that when one of the three values is unavailable, it is Department policy to compare only the two remaining values, *e.g.*, compare transfer price to the market price. DSM notes that this same methodology has been consistently applied in administrative reviews of cut to length plate from Korea.

Citing Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Carbon Steel Flat Products From Turkey, 67 FR 62126 (October 3, 2002), and the accompanying I&D Memo at 3, DSM explains that the Department has declined to apply adverse facts available in calculating COP for the major input rule in instances where the respondent has been cooperative and has attempted to acquire accurate COP data but is unable to do so through no fault of its own. DSM argues that the Department should continue to apply the same methodology as it has in past reviews.

Nucor argues that Department should continue to apply the major input rule in the final results because the slabs DSM consumed were produced by an affiliated producer. Nucor argues that the major input analysis should include the affiliated producer's slab COP using the producer's parent's consolidated financial statements. In addition, Nucor argues that the Department's normal methodology is to analyze inputs under the major input rule based on actual POR average values. Nucor argues that in order to avoid distortions, the values calculated for inputs analyzed under the major input rule should be calculated on the same basis as the overall COP of cut-to-length plate. Nucor contends that because the COP calculations and the sales-below-cost test are performed based on the POR, the slab COP for the major input analysis should be valued over the same period.

Nucor argues that the comparison of transfer price and the market price of the slab used in in the major input analysis should be inclusive of all costs, including freight costs. Nucor notes that the Department's preliminary analysis was based on the material values booked by DSM in the normal course of business, which included the necessary freight and movement charges in the materials cost. Nucor argues that while delivery terms may differ from purchase to purchase, the final overall acquisition cost to be booked as raw materials cost by the company is relevant to the Department's analysis. Nucor argues that the slab purchase including freight and movement expenses represents the actual cost to the company and can be reconciled to DSM's accounting records. According to Nucor, the Department's standard section D questionnaire explains that "direct material costs should include transportation charges, import duties and other expenses normally associated with obtaining the materials that become an integral part of the finished product." According to Nucor, the record does not contain the necessary information for the Department to conduct a major input rule analysis on a grade-specific level because the reported slab purchase prices are FOB exclusive of transportation charges. Nucor further argues that the grade-specific data on the record does not represent the company's actual costs, but instead represent slab costs that were adjusted to an FOB basis purchase prices. According to Nucor, FOB purchase prices are irrelevant for purposes of the major input rule. Nucor argues that the major inputs should be reported in a manner consistent with the calculation of COP and constructed value, which requires that major inputs include transportation charges associated with obtaining the materials.

Moreover, Nucor believes that DSM's proposed methodology to compare slab by grade is distortive, because it fails to cover all of DSM's purchases during the POR, unlike the Department's use of POR average values. Nucor claims that DSM's methodology fails to account for at least 30 percent of its total purchase quantity from its affiliated suppliers and 25 percent of its total purchase quantity from its unaffiliated suppliers.

Nucor argues that the Department should use DSM's affiliated supplier's slab COP in applying the major input in accordance with section 773(f)(3) of the Act. According to Nucor, while the affiliated producer did not provide its slab COP, and DSM claims it cannot compel it to do so, the Department can and should calculate the affiliated producer's slab COP based on the consolidated financial statement of its parent.

Nucor argues that it is the Department's practice to analyze any and all information on the record demonstrating that the affiliated party's input COP is greater than the market or transfer price under the major input rule. Nucor believes that an affiliated supplier's failure to provide its COP should not prevent the Department from comparing the affiliated supplier's COP, transfer price, and market price when such information can be reasonably and accurately derived from information on the record. Nucor notes that in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 65 FR 5554 (February 4, 2000), the respondents, Usiminas Siderurgicas de Minas Gerais (USIMINAS) and Companhia Siderurgica Paulista (COSIPA) could not compel CVRD (their affiliated supplier), to provide its COP for iron ore which is a major input in the production of cold-rolled flat products. According to Nucor, that case is similar to this case in that (1) CVRD had a minority stock ownership in USIMINAS and (2) because the affiliated producer would not supply its cost information, the Department used information provided by the petitioners to apply the major input rule. Nucor argues that while DSM failed to provide its affiliated producer's COP as requested by the Department, the COP can be derived from the affiliated producer's parent's consolidated financial statements. Therefore, Nucor argues that the Department should use the affiliated producer's slab COP in its major input analysis for the final results and make the appropriate adjustments to DSM's COM.

Department's Position: We agree with Nucor that we should apply the "major input" rule in valuing the slab purchased from an affiliated producer through affiliates DKC and DKA. We determine that DSM is affiliated with its slab suppliers DKC, DKA, as well as the slab producer.⁴⁶ While DSM purchased slab from its affiliated trading companies, DKC and DKA, the slab was produced by an affiliated producer.

Pursuant to section 773(f)(3) of the Act, we may value major inputs purchased from affiliated parties at the higher of the market value, transfer price, or the affiliated supplier's COP. We will determine the value of the major input purchased from an affiliated person based on the higher of: 1) the price paid by the exporter or producer to the affiliated person for the major input; 2) the amount usually reflected in sales of the major input in the market under consideration between unaffiliated parties; and 3) the cost to the affiliated person of producing the major input.⁴⁷ We relied on this methodology in other cases involving trading companies.⁴⁸ Moreover, the CIT

⁴⁶ See the March 4, 2014, memorandum to the File entitled "Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Analysis Memorandum for Dongkuk Steel Mill Co., Ltd." (Preliminary Analysis Memo) at 3.

⁴⁷ See 19 CFR 351.407(b).

⁴⁸ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From Taiwan*, 65 FR 16877 (March 30, 2000), and the accompanying I&D Memo at Comment 11, where we stated as follows:

upheld our application and interpretation of this statutory provision.⁴⁹ The major input rule applies to slab transactions between DSM and its affiliated suppliers.⁵⁰

However, in this case, DSM was unable to obtain the slab COP from its affiliated producer.⁵¹ We requested that DSM provide its affiliate's slab COP information. DSM indicated that, despite its repeated requests, its affiliated producer refused to provide the COP information. Where an interested party or any other person withholds information that has been requested, the application of facts available is appropriate in reaching a determination, in accordance with section 776(a)(2)(A) of the Act. Under section 776(b) of the Act, we may use an inference adverse to the interests of an interested party that failed to cooperate by not acting to the best of its ability to comply with a request for information. In determining whether a respondent acted to the best of its ability in seeking the COP information from its affiliate, the Department usually examines the nature of the affiliation, in addition to other facts.⁵² Given the fact that the affiliate in question only owned a small percentage of DSM's shares, we determine that DSM could not compel it to provide its COP. Therefore, we are not applying an adverse inference in selecting from the facts available. In prior cases, we turned to other COP information on the record, if available, as non-adverse "gap-filling" facts available.

We disagree with Nucor that it would be appropriate to use the segment information from the affiliated producer's parent's consolidated financial statements to calculate the affiliated producer's COP for slab as a gap filler. The segment information contained in the affiliated producer's parent's financial statements would be inappropriate to use as an estimate of the cost

FETL does not purchase EG, the input at issue, directly from its affiliated producer. Rather, it is obtained through a line of affiliates, including the affiliated producer. Since the affiliated producer and all of the parties in the transaction between the producer and the respondent are affiliated with FETL, and the total value of the purchases of the EG from the affiliates is significant in relation to the total cost of manufacture of the subject merchandise, we have determined that section 773(f)(3) of the Act applies in this case. We disagree with FETL that the intent of section 773(f)(3) of the Act and the related regulations is only to be concerned with the cost of production of the immediate affiliated supplier. To do so in this case would mean to blindly base the cost of production computation of the affiliated supplier immediately preceding the respondent on the transfer price between the affiliated supplier and its affiliate, which in effect, contradicts the purpose of section 773(f)(3) of the Act. As discussed in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada*, the intent of sections 773(f)(2) and (3) of the Act "and the related regulations is to account for the possibility of shifting costs to an affiliated party. This possibility arises when an input passes to the responding company through the hands of an affiliated supplier, regardless of the value added to the product by the affiliated supplier." As such, we consider the appropriate method for computing the cost of production for a major input obtained from an affiliated producer through a chain of affiliated party transactions to be based on the actual cost of production incurred by the affiliated producer plus a portion of the general expenses of all of the affiliates involved in the transaction between the affiliated producer and the respondent. Thus, for the final determination, we computed the cost of production for the affiliated EG purchases based on the affiliated producer's cost of production plus a portion of the general expenses for each affiliate involved in the transaction.

⁴⁹ See *Mannesmann v. United States*, 77 F. Supp. 2d 1302 (CIT 1999).

⁵⁰ See section 773(f)(3) of the Act.

⁵¹ See DSM's October 21, 2013 supplemental response at 29.

⁵² See *Certain Cut-to-Length Carbon Steel Plate from Brazil: Final Results of Antidumping Duty Administrative Review*, 63 FR 12744, 12751 (March 16, 1998) (*Plate from Brazil*).

of slab because it represents all of the activities of the segment and is not limited to the production of slab.⁵³ The segment includes the production of various higher end steel products in addition to slab as well as other activities. Therefore, no reasonable information exists on the record to calculate the COP of slab from the affiliated producer.

In prior cases, when there is no such COP data on the record and no indication that the affiliated supplier's COP is higher than the transfer or market price, we used the higher of the transfer price or the market price as facts available.⁵⁴ As facts available in this case, we used the higher of the transfer price or the market price that DSM reported for its purchases of slab.⁵⁵ This treatment is consistent with *CORE*. Thus, as we did in the *Preliminary Results*, we examined these slab purchases for the final results and adjusted DSM's cost of manufacturing to reflect the higher of market price or transfer price.⁵⁶

Further, we disagree with DSM that a monthly major input analysis is appropriate. The use of a POR average transfer price and market price is consistent with the COP that is calculated for the merchandise under consideration. Our normal practice is to calculate an annual weighted-average cost for the merchandise under consideration for the POR.⁵⁷ If costs change significantly during the POR, we may resort to calculating the cost of the merchandise under consideration using shorter averaging periods (*i.e.*, quarterly costs). However, in this case, costs have not changed significantly.⁵⁸ Given that there were no significant cost changes in this case, we determined to use our normal methodology of calculating an average annual cost of production.⁵⁹ Thus, in applying the major input rule, we compared the POR average transfer price of slab with the POR average market price of slab. As explained in *Stainless Steel Bar from Germany: Final Results of Antidumping Duty Administrative Review*, 71 FR 42802 (July 28, 2006), and the accompanying I&D Memo at Comment 11, our practice is to compare the average transfer prices for each affiliate to the average unaffiliated purchase prices. In *Certain Welded Stainless Steel Pipes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 75 FR 27987 (May 19, 2010), and the accompanying I&D Memo at Comment 3, we stated as follows:

We continue to find that using all sales to unaffiliated purchasers in the market under consideration provides a reasonable basis for determining market value.

⁵³ See the December 23, 2013, supplemental response at Exhibit D-23, pages 15-16, which lists the activities performed at the steel segment.

⁵⁴ See *Plate from Brazil*, 63 FR at 12751; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea*, 65 FR 16880 (March 30, 2000), and the accompanying I&D Memo at Comment 6.

⁵⁵ See Preliminary Analysis Memo at 3.

⁵⁶ *Id.*

⁵⁷ See *Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review*, 65 FR 77852 (December 13, 2000), and the accompanying I&D Memo at Comment 18, and *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006), and the accompanying I&D Memo at Comment 5 (explaining our practice of computing a single weighted-average cost for the entire period).

⁵⁸ See *Preliminary Results* and the accompanying Preliminary Decision Memorandum at 10, where we stated, "We examined DSM's cost data and determined that our quarterly cost methodology is not warranted and, therefore, we have applied our standard methodology of using annual costs based on the reported data,"

⁵⁹ *Id.*

This POR average price to unaffiliated purchasers provides a reasonable measure of the value of the commodity in the market under consideration since it quantifies what unaffiliated purchasers have paid for the commodity during the period. Sections 773(f)(2) and (3) of the Act do not explicitly direct the Department to apply a particular methodology in determining market price. Thus, because the statute is silent and Congress has not directly spoken to the issue, the Department is permitted to determine a reasonable methodology for establishing market price. The Department's approach in this proceeding has been consistently applied by the agency, is predictable, is based on record evidence, and results in a reasonable reflection of market prices for purposes of the major input rule.

We disagree with DSM that the major input comparison should be on an FOB basis excluding transportation and freight. DSM's normal books and records record the cost of materials as the cost of purchased inputs plus delivery costs. Since materials are recorded in DSM's normal books and records on a delivered basis, and they are reported on a delivered basis for the purposes of the reported costs, the major input analysis should be performed on the same delivered basis. The material cost used in calculating a respondent's COP is recorded at the price plus the cost associated with obtaining the raw material, *i.e.*, taxes, freight *etc.* The key is that the comparison should be an apples-to-apples comparison.⁶⁰ The same holds true for the comparison of transfer price and market price in this case, which should include the transportation and freight expenses which are on the same basis as the reported cost.

We disagree with DSM that the major input analysis should be conducted on what it characterizes as a "grade-specific" basis. The first problem with DSM's proposed major input analysis is that it was performed on a transportation- and freight-exclusive basis, which we have determined is inappropriate, and information does not exist on the record to adjust DSM's "grade-specific" analysis to include transportation and freight expenses. Second, DSM has not actually provided a grade specific analysis, but instead the analysis provided by DSM was by internal material code classifications.⁶¹ There is no record evidence explaining in detail what each material code represents or to show how any of the material codes can be grouped into various grades. In addition, DSM has not demonstrated how each specific grade or material code is used in the production of specific CONNUMs. As such, any resulting adjustment could not be appropriately applied to the related products. We applied the major input rule on a grade-specific basis in past cases where specific grades were used in the production of specific CONNUMs and record evidence shows that there are measurable cost differences associated with the grade differences.⁶² In this case, we do not have grade-specific information to allow for such analysis.

For the reasons stated above, we have not made any changes in our major input analysis from the *Preliminary Results*.

⁶⁰ See *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from Indonesia*, 72 FR 60636 (October 25, 2007), and the accompanying I&D Memo at 2, where we stated "in order to insure a proper comparison between COP and transfer price, the amounts being compared should be on the same basis."

⁶¹ See the October 22, 2013, supplemental response at Exhibit D-26.

⁶² See, *e.g.*, *Stainless Steel Sheet and Strip in Coils From Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 47780, 47786 (August 9, 2010), unchanged in *Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review*, 76 FR 2332 (January 13, 2011).

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of the review and the final dumping margin for DSM in the *Federal Register*.

Agree ✓

Disagree _____


Paul Piquado
Assistant Secretary
for Enforcement and Compliance

4 SEPTEMBER 2017
(Date)