




A-580-809  
Administrative Review  
POR 11/01/12-10/31/13  
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June 3, 2015

MEMORANDUM TO: Ronald K. Lorentzen  
Acting 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 Final Results of  
Antidumping Duty Administrative Review: Circular Welded Non-  
Alloy Steel Pipe from the Republic of Korea: 2012-2013

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## SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty (AD) order on circular welded non-alloy steel pipe (CWP or subject merchandise) from the Republic of Korea (Korea). 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 from parties.

### List of Comments

#### General

- Comment 1: Differential Pricing Analysis Should Not Be Used Because the *Cohen's d* Test Does Not Measure Targeted or Masked Dumping.
- Comment 2: Differential Pricing Analysis Reasoning for Use of Average-to-Transaction Comparison Methodology is Arbitrary and Unlawful
- Comment 3: Differential Pricing Analysis is Not Permitted to be Used in Administrative Reviews

#### Husteel

- Comment 4: Defining the Universe of Sales
- Comment 5: Narrative Description of Calculation Methodology Contained An Error

#### HYSCO

- Comment 6: The Department Changed Its Practice Regarding Treatment of HYSCO's Costs Without Giving Prior Notice



- Comment 7: The Department Should Use GNA\_I In Its Margin Calculation and Should Adjust HYSCO's Reported Costs
- Comment 8: HYSCO's Reported Costs and Control Number (CONNUM) Characteristics Are Consistent with the Department's Reporting Requirements and Should Not Be Reallocated
- Comment 9: The Petitioner's Analysis of HYSCO's Cost Reporting Does Not Support Revision To Costs and a Complete Reallocation of HYSCO's Cost is Unwarranted
- Comment 10: Cost Adjustments Eliminate Cost Differences Associated with Product Characteristics and Reallocating Total Material Costs Rather Than Only Hot-Coil Costs Is An Error
- Comment 11: The Department Should Adjust for Certain of HYSCO's Affiliated Hot-Rolled Coil Purchases
- Comment 12: The Department Should Adjust HYSCO's G&A Ratio
- Comment 13: Grade Coding Adjustments Contained Clerical Errors
- Comment 14: Draft Assessment Instructions Contained Errors
- Comment 15: Application of Total Adverse Facts Available is Warranted Due to HYSCO's Repeated Failure to Provide Necessary Information for Affiliated Hot-Rolled Coil Purchases

## **BACKGROUND**

On December 5, 2014, the Department of Commerce (the Department) published the *Preliminary Results* of the administrative review of the AD order on CWP from Korea, covering the period of review (POR) November 1, 2012, through October 31, 2013.<sup>1</sup> The administrative review covers two producers/exporters of the subject merchandise to the United States: HYSCO and Husteel.

Following the *Preliminary Results*, the Department sent a supplemental questionnaire<sup>2</sup> to HYSCO and received a timely response from both HYSCO and its affiliate, Hyundai Steel.<sup>3</sup>

On March 10, 2015, the Department issued a memorandum extending the deadline for issuing the final results of this administrative review by 30 days from April 4, 2015 to May 4, 2015, as

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<sup>1</sup> See *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 72168 (December 5, 2014) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

<sup>2</sup> See Letter to HYSCO, "Antidumping Duty Administrative Review of Circular Welding Non-Alloy Steel Pipe from the Republic of Korea: Supplemental Questionnaire," (December 16, 2014)(HYSCO Post-Prelim SQ1).

<sup>3</sup> See Letter to the Department, "Twenty-First Administrative Review of Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Supplemental Section D Questionnaire Response," (January 7, 2015) (HYSCO Post-Prelim SQR1-A) and see Letter to the Department regarding, "Twenty-First Administrative Review of Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Response of Hyundai Steel to Question 1 of the Supplemental Section D Questionnaire to HYSCO," (January 7, 2015) (Hyundai Steel Q1QR).

permitted by section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).<sup>4</sup> We again, on April 15, 2015, extended the final results by thirty days from May 4, 2015 to June 3, 2015.<sup>5</sup>

On January 26, 2015, we received case briefs from Wheatland Tube Company (Wheatland, or the petitioner), Husteel, and HYSCO.<sup>6</sup> On February 2, 2015, we received rebuttal briefs from Wheatland and HYSCO.<sup>7</sup>

## SCOPE OF ORDER

The merchandise subject to the order is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in the order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of the order except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit.<sup>8</sup>

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<sup>4</sup> See Memorandum from Joseph Shuler, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations entitled “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review,” (March 10, 2015).

<sup>5</sup> See Memorandum from Joseph Shuler, to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations entitled “Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review,” (April 15, 2015).

<sup>6</sup> See Case Brief of Wheatland Tube Company (Petitioner), “Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Case Brief,” (January 26, 2015)(Petitioner’s Case Brief); see also Case Brief of Husteel Co., LTD., “Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, Case No. A-580-809: Case Brief,” (January 26, 2015) (Husteel’s Case Brief), and see, also, Case Brief of HYSCO, “Twenty-First Administrative Review of Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Case Brief and Request for Closed Hearing,” (January 26, 2015)(HYSCO’s Case Brief).

<sup>7</sup> See Rebuttal Brief of Wheatland Tube Company, “Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Rebuttal Brief of Wheatland Tube Company,” (February 2, 2015)(Wheatland’s Rebuttal Brief), and see Rebuttal Brief from HYSCO, “Twenty-First Administrative Review of Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Rebuttal Brief,” (February 2, 2015)(HYSCO’s Rebuttal Brief).

<sup>8</sup> See *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube From Brazil, the Republic of Korea, Mexico, and Venezuela*, 61 FR 11608 (March 21, 1996). In accordance with this determination, pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A-53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines, is outside of the scope of the AD order.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) numbers: 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. Although the HTSUS numbers are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

## **CHANGES SINCE THE *PRELIMINARY RESULTS***

As a result of our analysis, we have made changes to the dumping margin calculations for Hyundai HYSCO (HYSCO) and Husteel Co. Ltd. (Husteel) since the preliminary results. Specifically, with respect to HYSCO, we made changes to our calculation of HYSCO's General and Administrative Expense variable, certain program and administrative corrections, and adjustments to HYSCO's material inputs; with respect to Husteel, we made changes to the starting date in defining the universe of Husteel's U.S. sales.<sup>9</sup>

## **DISCUSSION OF THE ISSUES**

Comment 1: Differential Pricing Analysis Should Not Be Used Because the *Cohen's d* Test Does Not Measure Targeted or Masked Dumping  
*Husteel*

Husteel argues the *Cohen's d* test is an inappropriate statistical test to use in the differential pricing analysis.<sup>10</sup> Husteel claims the *Cohen's d* test does not find targeted dumping as described in the statute and legislative history, distinguish between positive and negative deviations, or measure causal links or statistical significances. Husteel also claims that the *Cohen's d* test cannot differentiate between market driven price fluctuations and actual targeted dumping.

Specifically, Husteel states the *Cohen's d* test is used to identify targeted dumping, *i.e.* "significant" price differences by evaluating whether there is a pattern of prices for comparable merchandise that "differ significantly" by region, time period, or customer. Referencing section 777A(d)(1)(B) of the Act, Husteel argues that the average-to-transaction (A-T) comparison methodology is to be used as an "exception" to using average-to-average (A-A) and transaction to transaction (T-T) comparison methodologies to capture targeting dumping. Husteel claims that the *Cohen's d* test does not distinguish sales in which targeted dumping may be occurring as is a prerequisite to the application of the A-T method.

Husteel further argues that the *Cohen's d* test does not distinguish between positive and negative deviations. Husteel claims that the *Cohen's d* test treats prices of the test group that are high (in relation to the mean, as measured based on the standard deviation) in the same manner as those that are low, and therefore it fails to distinguish between sales that are above and sales that are below the comparison group. For these reasons, Husteel also argues that if the Department continues to apply the differential pricing test, it should consider only the low-priced differential sales for the purposes of its application of the A-T comparison methodology.

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<sup>9</sup> See *Preliminary Results* and accompanying Preliminary Decision Memorandum.

<sup>10</sup> See Husteel's Case Brief at 3-10.

Husteel also argues the *Cohen's d* test is an inappropriate statistical test because it does not measure causal links or statistical significances, and cannot differentiate between market driven price fluctuations and actual targeted dumping. Rather, Husteel argues 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. Husteel further argues that the *Cohen's d* test does not address "relative magnitude," which allows sales with tiny price differences to have "passing" *Cohen's d* values. Also, Husteel argues that market factors, such as differences in producers' costs or differences in material costs, and targeted dumping cannot be distinguished by the *Cohen's d* test because a strong positive result can occur under circumstances where variations in price are insignificant to the market but exceed the standard deviation between the two sets of values.

### *The Petitioner*

Wheatland notes that the Department has considered and rejected Husteel's arguments in *Welded Pipe and Tube from Turkey*<sup>11</sup> and *Carbon from China*.<sup>12</sup> Regarding Husteel's arguments that the test treats "targeted" higher-priced sales and lower-priced sales in the same fashion, Wheatland notes that the Department recently explained that "it is reasonable for us to consider both lower-priced and higher-priced sales as potentially passing the *Cohen's d* test because higher-priced sales and lower-priced sales are equally capable of creating a pattern of prices that differ significantly, which may mask dumping."<sup>13</sup>

### *Department's Position*

We disagree with Husteel and continue to find that the differential pricing test reasonably fills a statutory gap as to which comparison method the Department may use in a given administrative review.

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 {A-A} or {T-T} 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."<sup>14</sup> Thus, the SAA states that in order to use the A-T method, the two statutory requirements must be fulfilled. The SAA's reference to where targeted dumping may be occurring reflects the concern regarding the use of the A-A method in investigations and the possible concealment of targeted dumping.<sup>15</sup> Thus, 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; however, it does not limit the consideration of the A-T method to only situations where "targeted dumping" exists. 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

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<sup>11</sup> See *Welded Carbon Steel Standard Pipe and Tube Products from Turkey*, 79 FR 71087 (December 1, 2014) (*Welded Pipe from Turkey*) at Issue 5.

<sup>12</sup> See *Certain Activated Carbon from China*, 79 FR 70163 (November 25, 2014) (*Carbon from China*), and accompanying Issues and Decision Memorandum at Comment 2.B.

<sup>13</sup> Petitioner references *Welded Pipe from Turkey* at Issue 5.

<sup>14</sup> See SAA at 843 (emphasis added).

<sup>15</sup> See SAA at 842.

extent, a given respondent is dumping the merchandise at issue.<sup>16</sup> While targeting may be occurring with respect to such sales, identifying targeted sales is neither a requirement nor a precondition for a determination that the A-T method is warranted because of a finding of a pattern of prices that differ significantly and a determination that the A-A method or T-T method cannot account for such differences, as provided in the statute.

As noted, we use the A-A method unless we determine that another method is appropriate in a particular situation.<sup>17</sup> The purpose of considering the application of an alternative comparison method is to determine whether the application of the A-A method is appropriate pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act. The A-A method compares “the weighted average of the normal values with the weighted average of the export prices (or constructed export prices) for comparable merchandise.”<sup>18</sup> Consideration of an alternative comparison method consistent with section 777A(d)(1)(B) of the Act involves examination of whether there exists a pattern of prices that differ significantly among purchasers, regions or time periods within these weighted-average prices. Thus, the Department has divided the weighted-average price used in the calculation of individual dumping margins into a weighted-average price to a given purchaser (or region or time period) – *i.e.*, the test group – and a weighted-average price to all other purchasers (or regions or time periods) – *i.e.*, the comparison group – in order to examine whether there is a pattern of prices that differ significantly among purchasers, regions or time periods. This is the same approach used by the Department in the *Nails*<sup>19</sup> test with the targeted dumping analysis, where the Department used weighted-average prices for purchasers, regions and time period in both the “standard deviation test” and the “gap test” of the *Nails* test.<sup>20</sup> Furthermore, neither the statute nor the regulations specify how the Department should examine whether there exists a pattern of prices that differ significantly.

In the context of administrative reviews, the statute is silent on when and how the Department may determine whether the A-A method is appropriate or whether an alternative comparison method should be applied.<sup>21</sup> The Department has filled this statutory gap by looking to section 777A(d)(1)(B) of the Act 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. 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)(i) of the Act and does not

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<sup>16</sup> See 19 CFR 351.414(c)(1)(2012).

<sup>17</sup> *Id.*.

<sup>18</sup> See section 777A(d)(1)(A)(i) of the Act and 19 CFR 351.414(b)(1).

<sup>19</sup> See *Certain Steel Nails from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) (*Nails from the PRC*); and *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008) (collectively, *Nails*).

<sup>20</sup> See *Certain Frozen Warmwater Shrimp From India: Preliminary Results of Antidumping Duty Administrative Review*; 2011-2012, 78 FR 15691 (March 12, 2013) and the accompanying Decision Memorandum (March 4, 2013) (*India Shrimp AR-7 Preliminary Results*) at page 8; unchanged in *Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*; 2011-2012; 78 FR 42492 (July 16, 2013).

<sup>21</sup> See section 777A(d)(2) of the Act.

provide a specific direction on how to make such a 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.

With respect to the Cohen’s *d* test, 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. In the final determination for *Xanthan Gum from the PRC*,<sup>22</sup> the Department stated “{e}ffect 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.”<sup>23</sup> In addressing Deosen’s comment in *Xanthan Gum from the PRC*, the Department continued:

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 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.<sup>24</sup>

The idea behind the Cohen’s *d* coefficient is that it indicates the degree by which the distribution of prices within the test and comparison groups overlaps or, conversely, how significant the difference is between the prices in the test and comparison groups. This measurement is based on the difference between the means of the test and the comparison groups relative to the variances within the two groups, *i.e.*, the pooled standard deviation. When the difference in the weighted-average sale prices between the two groups is measured relative to the pooled standard deviation, then this value is expressed in standardized units (*i.e.*, the Cohen’s *d* coefficient) based on the dispersion of the prices within each group, and quantity of the overlap or, conversely, the significance of the differences, in the prices within the two groups. In other words, the “significance” of differences specifically to purchasers within a given group is addressed through the Cohen’s *d* test.

We disagree with Husteel’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 more appropriate tool to evaluate the extent of dumping by Husteel. We disagree further with Husteel’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. Further, the SAA states when recognizing the concerns of concealed

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<sup>22</sup> 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 from the PRC*) and the accompanying Issues and Decision Memorandum at Comment 3.

<sup>23</sup> See *Xanthan Gum from the PRC* at Comment 3.

<sup>24</sup> *Id.*

“targeted dumping” that “{i}n such situations, an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions.”<sup>25</sup>

Thus, the SAA recognizes that “targeted dumping” involves both higher- and lower-priced sales. 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 Husteel’s claim, it is reasonable for us to consider both lower-priced and higher-priced sales as potentially passing the Cohen’s *d* test because higher-priced sales and lower-priced sales are equally capable of creating a pattern of prices that differ significantly, which may mask dumping. 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.<sup>26</sup> The statute directs us to consider whether a pattern of significantly different prices exists. The statutory language references prices that “differ” and does not specify whether the prices differ by being lower or higher than the prices for comparable merchandise to other purchasers, regions or time periods. The statute does not provide that we consider only higher-priced 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.<sup>27</sup>

We also emphasize that whether any of the U.S. sale prices, lower or higher than those to other purchasers, regions, or time periods in the U.S. market, are actually above or below their comparable normal value is not part of determining whether there exists a pattern of prices that differ significantly. Section 777A(d)(1)(B)(i) of the Act specifies a “pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time.” Such a pattern is strictly between the sale prices in the U.S. market, and has no relationship with the comparable normal values for these U.S. sales. Accordingly, consideration of whether these U.S. sales are dumped is not part of fulfilling this requirement. Indeed, the lower-priced U.S. sales could be below their normal value, the high-priced U.S. sales could also be below their normal value, or none of the U.S. sales could be below their normal value. Therefore, the Cohen’s *d* test, in its application to determine whether there exists a pattern of prices that differ significantly, is not required to identify “targeted dumping” or “dumped” sales as asserted by Husteel.

With respect to the arguments pertaining to masked dumping, for these final results, the Department considered all of the U.S. sales information on the record for the respondents in its analysis and drew reasonable inferences as to what the data showed. The purpose of considering an alternative comparison method is to examine whether the A-A method is appropriate to measure each respondent’s amount of dumping, some of which may be hidden because of masked dumping. 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. The existence of

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<sup>25</sup> See SAA at 842.

<sup>26</sup> See section 777A(d)(1)(B) of the Act (emphasis added).

<sup>27</sup> 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 Issues and Decision Memorandum at Comment 5.



both dumped and non-dumped sales is necessary to have the potential for masked dumping, and one must consider both low-priced and high-priced sales when determining whether a pattern of prices that differ significantly exists and whether masking is occurring. When the Department looks for a pattern of prices that differ significantly, a pattern can involve prices that are lower than the comparison price or higher than a comparison price. Lower, higher, or both are all possibilities for establishing a pattern consistent with section 777A(d)(1)(B)(i) of the Act.

The Act states that the Department may apply the A-T comparison method if: 1) “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 2) the Department “explains why such differences cannot be taken into account” using the A-A comparison method. The first requirement examines a pattern of export prices or constructed export prices, *i.e.*, the prices of transactions in the U.S. market, and makes no provision for comparisons with normal value (NV), as is provided for when examining dumping. 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. Higher-priced sales may be dumped; lower-priced sales may not be dumped; and, we do not know at the time that the pattern is analyzed and discerned whether such pattern reveals dumping; nor does the Act require that the Department make a finding of dumping when examining whether there exists a pattern of prices that differ significantly.

With respect to Husteel’s arguments that the Department must account for some kind of causality for any observed price differences, we disagree. Congress did not speak to the intent of the producers or exporters in setting prices that exhibit a pattern of significant price differences. Consistent with the Act and the SAA, the Department determined whether a pattern of significant price differences exists, and neither the Act, nor the SAA, requires the Department to conduct an additional analysis as argued by the respondents to account for potential reasons that the observed price differences exist. This position has been affirmed by the CIT.<sup>28</sup>

Accordingly, we disagree with Husteel’s arguments with respect to the analysis employed by the Department, including the use of the Cohen’s *d* and ratio tests, for discerning whether a pattern of prices that “differ significantly” exists. We determine that this test is reasonable and is in accordance with the requirements of the Act and the SAA.

#### Comment 2: Differential Pricing Analysis Reasoning for Use of A-T Comparison Methodology is Arbitrary and Unlawful

##### *Husteel*

Husteel argues that the Department arbitrarily determined the 33 percent and 66 percent cutoffs used in its differential pricing analysis.<sup>29</sup> Husteel also argues the Department has not explained why price differences cannot be taken into account using the normal A-T method, as required by

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<sup>28</sup> See *JBF RAK LLC v. United States*, 991 F. Supp. 2d 1343, 1355 (CIT 2014) (interpreting *Nails* test) (*JBF Rak*); *Borusan Mannesmann Boru Sanayi ve Ticaret A.S., v. United States*, 990 F. Supp. 2d 1384, 1389 (CIT 2014).

<sup>29</sup> See Husteel’s Case Brief at 7.

section 777A(d)(1)(B) of the Act or whether the price differences indicate the occurrence of targeted dumping.<sup>30</sup>

Specifically, Husteel states that the Department considers using the alternative A-T methodology if more than 66 percent, and sometimes if 33 to 66 percent, of the total value of sales pass the *Cohen's d* test.<sup>31</sup> Husteel claims that these cutoffs are arbitrary and have never been explained, rendering them unlawful.

Husteel further argues the Department's current methodology to determine when to use the alternative A-T methodology does not comply with section 777A(d)(1)(B)(ii) of the Act because it does not consider whether the significant pattern of price differences found under section 777A(d)(1)(B)(i) of the Act indicates targeted dumping (in which case it cannot be taken into account using A-A).<sup>32</sup> Husteel claims the Department needs to consider the basis for price differences, and not rely solely on the finding that two different methodologies yield different dumping margins, as the basis for using the alternative A-T methodology. Husteel claims that this explanation is required by the statutory scheme, which contemplates that departures from the A-A methodology must be well-justified.

Husteel notes that the Department's examination of whether the results of the two methodologies yield a meaningful difference in the dumping margins is the closest to an explanation by the Department as to whether to use the alternative A-T methodology. Husteel disputes that this explanation, which effectively equates a significant pattern of price differences to targeted dumping, satisfies the requirements of the statute that mandates the pricing patterns identified by the Department must reflect targeted dumping. Husteel cites *Beijing Tianhai*<sup>33</sup> to support this argument, that averaging a set of prices "masks" the differences in individual prices when a pattern of disparate pricing exists, and thus the Department has collapsed the distinct requirements of sections 777A(d)(1)(B)(i) and (ii) of the Act.<sup>34</sup> Husteel concludes by claiming that the fact that use of A-T methodology generates higher dumping margins is insufficient to explain why the price differences measured by the *Cohen's d* test cannot be taken into account using A-A methodology. Such a finding, according to Husteel, is inconsistent with the Department's ultimate obligation to determine margins as accurately as possible.

#### *The Petitioner*

Wheatland disputes Husteel's argument, and states that in *Welded Pipe from Turkey* the Department explained that these thresholds are reasonable and consistent with the statute.<sup>35</sup> Wheatland argues that Husteel presents no new or compelling reasons for the Department to depart from its established practice in this case.

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<sup>30</sup> *Id.* at 7-10.

<sup>31</sup> *Id.* at 7.

<sup>32</sup> *Id.* at 7-10.

<sup>33</sup> See *Beijing Tianhai Indus. Co. Ltd. v. United States*, 7 F. Supp. 3d 1318, 1332 (CIT 2014) (*Beijing Tianhai*).

<sup>34</sup> Husteel references *Beijing Tianhai*, 7 F. Supp. 3d at 1332. See also Husteel's Case Brief at 9.

<sup>35</sup> Wheatland references *Welded Pipe from Turkey*.

Wheatland also rejects Husteel's arguments that the Department's "meaningful difference" test does not satisfy the statutory requirement of showing why pricing patterns cannot be taken into account by the A-A method. According to Wheatland, in the *Beijing Tianhai* case referenced by Husteel, the Department did not use a "meaningful difference" test, but instead used an older approach in which targeted dumping was applied regardless of the magnitude of the margin difference between the A-A and A-T methods.<sup>36</sup> Wheatland further notes that in *Apex*,<sup>37</sup> a more recent case than the example provided by Husteel, the CIT upheld the approach of finding a "meaningful difference" where the application of the alternative A-T methodology moved the margin across the *de minimis* threshold.

### *Department's Position*

The Department disagrees with Husteel's claim that the thresholds provided for in its differential pricing analysis regarding the results of the ratio test and the identification of an appropriate alternative comparison, if any, are unlawful. As stated in Comment 1, neither the statute nor the SAA provides any guidance in determining how to apply the A-T method once the requirements of section 77A(d)(1)(B)(i) and (ii) have been satisfied. Accordingly, the Department has reasonably created a framework to determine how the A-T method may be considered as an alternative to the standard A-A method based on the extent of the pattern of prices that differ significantly as identified with the Cohen's *d* test.

As stated in the *Preliminary Results*, the purpose of the Cohen's *d* test is to evaluate the extent to which the net prices to a particular purchaser, region, or time period differ significantly from the net prices of all other sales of comparable merchandise."<sup>38</sup> When 66 percent or more of the value of a respondent's U.S. sales are found to establish a pattern of prices that differ significantly, then the Department finds that the extent of these price differences throughout the pricing behavior of the respondent does not permit the segregation of this pricing behavior which constitute the identified pattern or prices that differ significantly from that which does not. Accordingly, the Department determines that considering the application of the A-T method to all U.S. sales to be reasonable. Further, when 33 percent or less of the value of a respondent's U.S. sales constitute the identified pattern of prices that differ significantly, then the Department considers this extent of the pattern to not be significant in considering whether the A-A method is appropriate, and has not considered the application of the A-T method as an alternative comparison method. When between 33 percent and 66 percent of the value of a respondent's U.S. sales constitute a pattern of prices that differ significantly, then the Department considers this extent of the pattern to not be significant in considering whether the A-A method is appropriate, but also finds that segregating this pricing behavior from the pricing behavior which does not contribute to the pattern to be reasonable, and has then only considered the application of the A-T method as an alternative comparison method to this limited portion of a respondent's U.S. sales.

The statute requires only a finding of a pattern of prices that differ "significantly." The statute does not require that the difference be "statistically significant." Husteel does not demonstrate

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<sup>36</sup> Wheatland's Rebuttal Brief at 22-23.

<sup>37</sup> See *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1299-1300 (CIT 2014) (*Apex*).

<sup>38</sup> See *Preliminary Results* and the accompanying Preliminary Decision Memorandum at 6.

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. As we stated in the *Preliminary Results*, the Department finds that the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, as well as the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

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.<sup>39</sup> The first requirement examines the pattern of export prices (EPs) or constructed export prices (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.<sup>40</sup> In other words, the statute does not require us to find whether higher-priced sales are not dumped or lower-priced sales are dumped before we examine whether a pattern of prices that differ significantly exists. 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.

As explained in the *Preliminary Results*, if the difference in the weighted-average dumping margins calculated using the A-A method and an appropriate alternative comparison method is meaningful, then this demonstrates that the A-A method cannot account for price differences and, therefore, an alternative comparison method would be appropriate.<sup>41</sup> We decided that a difference in the weighted-average dumping margins is considered meaningful if: 1) there is a 25 percent relative change in the weighted-average dumping margin between the A-A method and the appropriate alternative method when both margins are above the *de minimis* threshold; or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.<sup>42</sup> For these final results, we find that the resulting weighted-average dumping margin moves across the *de minimis* threshold for Husteel. As a result, we continue to find that there is a meaningful difference in the weighted-average dumping margins for Husteel.

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<sup>39</sup> See section 777A(d)(1)(B) of the Act.

<sup>40</sup> See section 771(35)(A) of the Act.

<sup>41</sup> See *Preliminary Results* and the accompanying Preliminary Decision Memorandum at 5-7. See also, *e.g.*, *Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 11160 (March 2, 2015), and the accompanying I&D Memo at Comment 3, and *Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 10051 (February 25, 2015) (*PET Film Taiwan*), and the accompanying I&D Memo at Comment 2.

<sup>42</sup> *Id.*

### Comment 3: Differential Pricing Analysis is Not Permitted to be Used in Administrative Reviews

#### *HYSCO*

HYSCO argues that the Department has no statutory authority, under 777A(d)(1)(B) of the Act, to use differential pricing in administrative reviews; this methodology is only permitted in investigations.

According to HYSCO, the statutory authority on which the Department relies for its use of differential pricing analysis, is “solely and exclusively” contained 777A(d)(1)(B) of the Act, and therefore, it falls under the “exception” to the general rule (which is delineated under paragraph (d)(1)(A) and intended only for investigations). As such, the statute limits the Department’s authority to use an alternative pricing methodology as an exception to the general calculation rule to investigations.

HYSCO notes that where Congress has specifically acted to include or exclude particular language in one section of a statute, it is understood to be intentional and with purpose.<sup>43</sup> HYSCO argues that the alternative pricing analysis does not appear elsewhere in the statute and that its omission from 777A(d)(2) of the Act (which sets forth the calculation rule for administrative reviews) is salient here; there is no reference to differential pricing or an alternative calculation analysis and this omission undermines the Department’s authority for the use of an alternative calculation in this administrative review.

The statute’s structure is basic evidence of Congress’s intent: the lack of an alternative calculation exception under (d)(2) (the relevant section for administrative reviews), demonstrates that Congress acted intentionally and the Department has no basis to use differential pricing in this administrative review because Congress did not confer upon it the authority to do so.<sup>44</sup>

Based on the disparate statutory language between investigations and administrative reviews, the Department holds no authority to conduct a differential pricing analysis in administrative reviews. Instead, the Department should continue to use the A-A comparison methodology without zeroing to calculate HYSCO’s weighted-average dumping margin for the final results. Failing to do so would undermine the Department’s own *Final Modification for Reviews* and contradict many World Trade Organization (WTO) Appellate Body decisions.<sup>45</sup>

However, if the Department continues to use an alternative pricing analysis to make A-T comparisons, it remains unlawful to use the zeroing methodology when making such comparisons.<sup>46</sup> HYSCO contends that the WTO’s Dispute Settlement Body has held that the

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<sup>43</sup> See HYSCO’s Case Brief at 34-35 referencing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987).

<sup>44</sup> See HYSCO’s Case Brief at 35, citing to *FAG Italia S.p.A. v. United States*, 291 F.3d 806, 816 (Fed. Cir. 2002) (quoting *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986)).

<sup>45</sup> See HYSCO’s Case Brief at 35; see also *Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*). For reference to the WTO proceedings cited by HYSCO, see HYSCO’s Case Brief at 36 and examples at footnote 34.

<sup>46</sup> See HYSCO’s Case Brief at 36.

Department's zeroing practice in administrative reviews is inconsistent with Articles 2.4 and 9.3 of the WTO Antidumping Agreement and Article VI:2 of the General Agreement on Tariffs and Trade 1994.<sup>47</sup> Responding to the WTO decisions, the Department modified its calculation methodology in administrative reviews by adopting the preference for A-A comparisons without zeroing in the *Final Modification for Reviews*.

### *The Petitioner's Rebuttal*

Wheatland disputes HYSCO's claim that the Department lacks statutory authority to apply differential pricing in administrative reviews.<sup>48</sup> Wheatland states the Department has rejected this claim, citing *Wood Flooring from China*,<sup>49</sup> *PTFS from the United Arab Emirates*,<sup>50</sup> and *Copper Pipe and Tube from China*<sup>51</sup> as examples. Moreover, Wheatland claims that the CIT recently confirmed the Department's ability to conduct a targeted dumping analysis in reviews.

Wheatland also disputes HYSCO's argument that the Department's use of zeroing is prohibited, stating the Court of Appeals for the Federal Circuit (CAFC) and the CIT affirmed zeroing under the A-T method in the targeted dumping context.<sup>52</sup> Wheatland argues that the WTO Appellate Body has never ruled that zeroing is impermissible in cases involving the alternative comparison methodology described in the second sentence of Article 2.4.2, *i.e.*, where there exists "a pattern of export prices which differ significantly among different purchasers, regions, or time period."<sup>53</sup>

### *Department's Position*

The Department disagrees with HYSCO's claim that it does not have the authority to consider an alternative comparison 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 NV and EP or CEP. Before making the required comparison, it is necessary to determine how to make the comparison.

HYSCO argues that the Department has no statutory authority to consider the application of an alternative comparison method in administrative reviews. HYSCO also states that Congress made no provision for the Department to apply an alternative comparison method in an administrative review under section 777A(d) of the Act. Indeed, section 777A(d)(1) of the Act

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<sup>47</sup> See, e.g., United States-Continued Existence and Application of Zeroing Methodology, Report of the Appellate Body, WT/DS350/AB/R (February 4, 2009).

<sup>48</sup> See HYSCO's Case Brief at 34-35.

<sup>49</sup> See *Multilayered Wood Flooring from the People's Republic of China*, 79 FR 26712 (May 9, 2014), and accompanying Issues and Decision Memorandum at Comment 1 (*Wood Flooring from China*).

<sup>50</sup> See *Polyethylen Terephthalate Film, Sheet, and Strip from the United Arab Emirates*, 79 FR 24401 (April 30, 2014) (*PTFS from the United Arab Emirates*).

<sup>51</sup> See *Seamless Refined Copper Pipe and Tube from the People's Republic of China*, 79 FR 23324 (April 28, 2014) (*Copper Pipe and Tube from China*), and accompanying Issues and Decision Memorandum at Comment 4.

<sup>52</sup> See Wheatland's Rebuttal Brief at 20-21; see also *Union Steel v. United States*, 713 F.3d 1101 (Fed. Cir. 2013); and see *Apex*, 37 F. Supp. 3d at 1303-06.

<sup>53</sup> Wheatland cites *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea*, 79 FR 37284 (July 1, 2014) at Comment 8, and *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 78 FR 16247 (March 14, 2013), and accompanying Issues and Decision Memorandum at Comment 1E.

applies to “Investigations” and section 777A(d)(2) of the Act applies to “Reviews.” Section 777A(d)(1) of the Act discusses, for investigations, the standard comparison methods (*i.e.*, A-A or T-T), and then provides for an alternative comparison method (*i.e.*, the A-T method) that may be applied as an exception to the standard methods when certain criteria have been met. Section 777A(d)(2) of the Act discusses, for administrative reviews, the maximum period of time over which the Department may calculate weighted-average NVs when using the A-T method. Section 777A(d)(2) is silent with regard to the comparison method to be employed in administrative reviews.

To fill the gap in the statute, the Department promulgated regulations to specify how comparisons between NV and EP or CEP would be made in administrative reviews. With the implementation of the Uruguay Round Agreements Act (URAA), the Department promulgated 19 CFR 351.414(c)(2) (1997), which stated that the Department would normally use the A-T comparison method in administrative reviews. In 2010, the Department published its *Proposed Modification for Reviews*,<sup>54</sup> 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 that 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 U.S. Trade Representative (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 the *Final Modification for Reviews*.<sup>55</sup> These revisions were effective for all preliminary results of review issued after April 16, 2012, and thus apply to this administrative review.

The methods by which NV may be compared to EP or CEP in less-than-fair-value investigations and administrative reviews (*i.e.*, A-A, T-T, and A-T) are described in 19 CFR 351.414(b). These comparison methods are distinct from each other. When using T-T or A-T comparisons, a comparison is made for each export transaction to the United States. When using A-A comparisons, 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).<sup>56</sup> The Department does 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. The regulations, at 19 CFR 351.414(c)(1) (2012), fill the gap

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<sup>54</sup> See *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) (*Proposed Modification for Reviews*).

<sup>55</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

<sup>56</sup> See 19 CFR 351.414(d)(2).

in the statute concerning the choice of a comparison method in the context of administrative reviews. In particular, the Department determined that in both less-than-fair-value investigations and administrative reviews, the A-A method will be used “unless the Secretary determines another method is appropriate in a particular case.”<sup>57</sup>

The Act, the SAA, and the Department’s regulations do not address the circumstances that could lead the Department to select a particular comparison method in an administrative review. Indeed, whereas the statute addresses this issue specifically with regard to investigations, the statute conspicuously leaves a gap to fill on this same question with regard to administrative reviews.<sup>58</sup> In light of the statute’s silence on this issue, the Department indicated that it would use the A-A method as the default method in administrative reviews but would consider whether to use an alternative comparison method on a case-by-case basis.<sup>59</sup> At that time, the Department also indicated that it would look to practices employed by the Department in less-than-fair-value investigations for guidance on this issue.<sup>60</sup>

In less-than-fair-value investigations, the Department examines whether to use the A-T method consistent with section 777A(d)(1)(B) of the Act:

The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if:

- (i) 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
- (ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).<sup>61</sup>

Although section 777A(d)(1)(B) of the Act does not strictly govern the Department’s examination of this question in the context of an administrative review, the Department nevertheless finds the issue arising under 19 CFR 351.414(c)(1) in an administrative review to be analogous to the issue in less-than-fair-value investigations. Accordingly, the Department finds the analysis that has been used in less-than-fair-value investigations instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. In less-than-fair-value investigations, the Department considers an alternative comparison method to unmask dumping consistent with section 777A(d)(1)(B) of the Act.<sup>62</sup> Similarly, the Department considers an alternative comparison method to unmask dumping under 19 CFR

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<sup>57</sup> See 19 CFR 351.414(c)(1).

<sup>58</sup> See section 777A(d)(1)(B) of the Act; SAA, H.R. Doc 103-316, vol. 1 (1994), at 842-43; and 19 CFR 351.414.

<sup>59</sup> See *Final Modification for Reviews*, 77 FR at 8107.

<sup>60</sup> *Id.* at 8102.

<sup>61</sup> See section 777A(d)(1)(B) of the Act.

<sup>62</sup> See, e.g., *Polyethylene Retail Carrier Bags From Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 16431 (April 1, 2010); *Certain Stilbenic Optical Brightening Agents From Taiwan: Final Determination of Sales at Less Than Fair Value*, 77 FR 17027 (March 23, 2012); and *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 from the PRC*) and accompanying IDM at 5.



351.414(c)(1).<sup>63</sup> For this administrative review, the Department continues to find the consideration of an alternative comparison method to be reasonable where the statute made no provision for the Department to follow.

The SAA does not demonstrate that the Department may consider the application of an alternative comparison method in investigations only. The SAA does discuss section 777A(d)(1)(A)(i) of the Act, concerning the types of comparison methods that the Department may use in investigations. That provision, however, is silent on the question of choosing a comparison method in administrative reviews. Section 777A(d)(1)(A) of the Act does not require or prohibit the Department from adopting a similar or a different framework for choosing a comparison method in administrative reviews as compared to the framework required by the statute in investigations. The SAA states that “section 777A(d)(1)(B) provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an {A-A} or {T-T} methodology cannot account for a pattern of prices that differ significantly among purchasers, regions or time periods.”<sup>64</sup> Like the statute, the SAA does not limit the Department to undertake such an examination in investigations only.<sup>65</sup>

The silence of the statute with regard to the application of an alternative comparison method in administrative reviews does not preclude the Department from applying such a practice in this situation. 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.”<sup>66</sup> Further, the CIT, quoting the CAFC, stated that 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.”<sup>67</sup> The Department filled a gap in the statute with a logical, reasonable and deliberative comparison method for administrative reviews.

Notably, the CIT recently recognized that section 777A(d)(2) of the Act is “completely silent as to how Commerce should conduct its determination of less than fair value in reviews, leaving Commerce substantial discretion as to the methodologies it wishes to employ.”<sup>68</sup> The Court reasoned that “{i}n the light of this broad discretion, Commerce acted reasonably and did not abuse its discretion by basing its practice in reviews on its practice in investigations, which

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<sup>63</sup> See, e.g., *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012); *Stainless Steel Plate in Coils From Belgium: Antidumping Duty Administrative Review, 2010-2011*, 77 FR 73013 (December 7, 2012); *Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 65272 (October 31, 2013).

<sup>64</sup> See SAA, at 843.

<sup>65</sup> *Id.*

<sup>66</sup> See *United States Steel Corp. v. United States*, 621 F.3d 1351, 1357 (Fed. Cir.2010).

<sup>67</sup> See *Mid Continent Nail Corp. v. United States*, 712 F. Supp. 2d 1370, 1376-77 (CIT 2010) (quoting *U.S. Steel Group v. United States*, 96 F.3d 1352, 1362 (Fed. Cir.1996)).

<sup>68</sup> See *Timken Co. v. United States*, 968 F. Supp. 2d 1279, 1286 n.7 (CIT 2014).

includes the use of the targeted dumping analysis.”<sup>69</sup> Although *Timken* was decided in the context of upholding the Department’s ability to apply an alternative comparison method based on a targeted dumping analysis pursuant to section 777A(d)(1)(B) of the Act in the context of an administrative review by looking to its practice in investigations, the Court’s rationale applies equally to consideration of an alternative comparison method based on a differential pricing analysis, as in this administrative review, which derives from the same statutory provision. The CIT’s holding in *Timken* has been echoed in other recent CIT cases.<sup>70</sup>

#### Comment 4: Defining the Universe of Sales

##### *Husteel*

Husteel argues that the Department erroneously defined the universe of Husteel’s U.S. sales by limiting it to the entries of the U.S. sales with the dates of sale within the period September 1, 2012, through September 30, 2013, in the margin calculation program for the *Preliminary Results*. The result of this programming error was that certain sales that entered during the POR were excluded. Citing *Corrosion-Resistant Carbon Flat Products from Korea*<sup>71</sup> and *CWP from Korea 08-09 AR*,<sup>72</sup> Husteel argues that the Department must correct this error for the final results by changing the date in order to correctly define the universe of Husteel’s U.S. sales by including all reported U.S. sales entered for consumption during the POR.

##### *The Petitioner*

The petitioner argues that all of Husteel’s U.S. sales are CEP sales and that it is the Department’s normal practice to use the sale date (rather than entry date) to define the universe of CEP sales, as in *Wire Rod from Mexico*.<sup>73</sup> The petitioner notes that programming language used in the preliminary margin program for Husteel is consistent with the programming language used in the final margin program of the last completed review of this order.

##### *Department’s Position*

The Department agrees with Husteel. All of Husteel’s reported U.S. sales are CEP sales and Husteel reported the dates of entry for all of its CEP sales. Those dates of entry are within the POR. In our *Preliminary Results*, we used an incorrect date, *i.e.*, September 1, 2012, to define the universe of U.S. sales entered during the POR and, as a result, we did not capture all of

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<sup>69</sup> *Id.*

<sup>70</sup> See *Apex*, 37 F. Supp. 3d at 1293; *DuPont Teijin Films China Ltd. v. United States*, 7 F. Supp. 3d 1338, 1355-56 (CIT 2014); *JBK RAK*, 991 F. Supp. 2d at 1347-49; *CP Kelco Oy v. United States*, 978 F. Supp. 2d 1315, 1321-24 (CIT 2014).

<sup>71</sup> See *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea; Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 16247 (March 14, 2013) and corresponding Issues and Decision Memorandum (*Corrosion-Resistant Carbon Steel Flat Products from Korea*) at Comment 5.

<sup>72</sup> See *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review*, 76 FR 36089 (June 21, 2011) and corresponding Issues and Decision Memorandum (*CWP from Korea 11-12 AR*) at Comment 5.

<sup>73</sup> See Rebuttal Brief of Wheatland Tube Company (February 2, 2015)(Petitioner’s Rebuttal Brief) at 2 and 19. Petitioner references *Carbon and Certain Alloy Steel Wire Rod from Mexico*, 78 FR 28190 (May 14, 2013) (*Wire Rod from Mexico*) at Comment 2.

Husteel's CEP sales in the universe of sales. For the final results of this review, we used the correct date to define the universe of U.S. sales to capture all U.S. sales entered during the POR.<sup>74</sup>

Although the petitioner argues that our practice is to use the date of sale to define the universe of CEP sales, we define the universe of CEP sales using the date of entry if a respondent reported the dates of entry and those dates are within the POR.<sup>75</sup> For example, in *Wire Rod From Mexico*, a respondent reported two channels of CEP sales as follows:

Deacero reported two types of CEP sales made during the POR. Specifically, direct shipments from Mexico that were invoiced by Deacero USA (Channel 1) and Deacero USA shipments from inventory maintained in the United States (Channel 2). When defining the universe of sales in the Preliminary Results, we used the entry date for Channel 1 sales and sale date for Channel 2 sales, explaining that for Channel 2 sales Deacero was unable to link the sale back to the actual entry.<sup>76</sup>

Because Husteel reported dates of entry for all of its CEP sales, our use of the correct date to define the universe of Husteel's CEP sales to capture all CEP sales entered during the POR is consistent with the way we defined the universe of Deacero's Channel 1 sales.

#### Comment 5: The Narrative Description of Calculation Methodology Contained An Error

##### *The Petitioner*

Wheatland observes that in the *Preliminary Results*, the Department correctly calculated Husteel's margin applying the A-T methodology after determining that 54.12 percent of U.S. sales passed the *Cohen's d* test and that there was a meaningful difference between the margins calculated using A-A and those calculated using A-T.<sup>77</sup> Petitioner notes that Husteel's calculation memorandum<sup>78</sup> contained an erroneous description in the narrative, stating that there is no meaningful difference and the A-A methodology was used for all U.S. sales, and that this should be corrected in the final results.

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<sup>74</sup> See the Husteel final analysis memorandum dated concurrently with this Issues and Decision Memorandum for business proprietary details on the changes we made with respect to this issue.

<sup>75</sup> See, e.g., *Carbon and Certain Alloy Steel Wire Rod From Mexico: Final Results of Antidumping Duty Administrative Review*; 2010-2011, 78 FR 28190 (May 14, 2013) (*Wire Rod From Mexico*), and the accompanying I&D Memo at Comment 2, and *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of the Antidumping Duty Administrative Review*, 76 FR 36089 (June 21, 2011), and the accompanying I&D Memo at Comment 5.

<sup>76</sup> See *Wire Rod From Mexico* and the accompanying I&D Memo at Comment 2.

<sup>77</sup> See Case Brief of Wheatland Tube Company (January 26, 2015) (Wheatland's Case Brief).

<sup>78</sup> See Memorandum to the File, regarding, "2012-2013 Antidumping Duty Administrative Review of Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results Calculation Memorandum for Husteel Co., Ltd." (November 28, 2014)

### *Department's Position*

The Department agrees with Wheatland that the narrative regarding the differential pricing analysis was inaccurate and the final results will contain a correct description of the results of the *Cohen's d* test.

### Comment 6: The Department Changed Its Practice Regarding Treatment of HYSCO's Costs Without Giving Prior Notice

#### *HYSCO*

HYSCO argues that the Department is required to maintain consistency with previous segments of the proceeding unless it provides adequate cause, a reasoned explanation, timely notice, and sufficient opportunity to provide the information required by the revised methodology in regard to changes in practice or methodology.<sup>79</sup> HYSCO contends that the Department has not revised HYSCO's costs in prior proceedings, despite having done so for Husteel.<sup>80</sup> HYSCO objects to the Department's sudden change of course in the current review without providing either a reasoned explanation or requesting additional information from HYSCO. Accordingly, the Department does not have adequate cause to change its methodology and should accept HYSCO's reported costs for the final results.

#### *The Petitioner's Rebuttal*

Wheatland argues that the Department provided appropriate notice in the *Preliminary Results* and allowed an opportunity for the parties to comment on the methodologies used therein in the briefing period that followed. Moreover, Wheatland cautions that the widespread distortions in HYSCO's reported costs render the data inappropriate without adjustment. Wheatland notes that HYSCO was notified about certain cost reporting deficiencies in the September 12, 2014 Supplemental Section D questionnaire.<sup>81</sup> Finally, Wheatland argues the Department should continue to use HYSCO's adjusted cost data for the final results.<sup>82</sup>

### *Department's Position*

HYSCO's argument that it had inadequate notice of a cost reallocation, or that the Department failed to provide a reasoned explanation for departure from its established "practice" is without merit. Although HYSCO reported its costs based on its normal books and records (and consistent with Korean generally accepted accounting principles), the Department may depart from such costs if they do not "reasonably reflect the costs associated with the production and sale of the merchandise."<sup>83</sup> Contrary to HYSCO's argument, we provided an explanation for the

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<sup>79</sup> See HYSCO's Case Brief at 23-24; see also *Clearon Corp. and Occidental Chemical Corp. v. United States*, Slip-Op. 2014-88 (CIT, July 24, 2014) at 22; see also *Solvay Solexis S.p.A. and Solvay Solexis, Inc. v. United States*, 628 F. Supp. 2d 1375, 1381-82 (CIT 2009).

<sup>80</sup> See HYSCO's Case Brief at 5-6.

<sup>81</sup> See Petitioner's Rebuttal Brief at 16.

<sup>82</sup> *Id.* at 1-2.

<sup>83</sup> See section 773(f)(1)(A) of the Act.

reallocation of costs in the *Preliminary Results* and in further detail at Comments 8-10.<sup>84</sup> Specifically, we based our cost reallocation on HYSCO's CONNUM-based cost reporting because of significant distortions among similar CONNUMs that were not related to the physical characteristics of the finished product.

In the most recently completed administrative review, we reallocated Husteel's hot-rolled coil and fabrication costs to mitigate cost differences that were unrelated to the reported products' physical characteristics.<sup>85</sup> In addition, HYSCO concedes that in a recent administrative review, the Department determined that a cost adjustment was warranted for Husteel due to distortions unrelated to the physical characteristics of the subject merchandise. We find parallels in HYSCO's reported costs in the current review, which we describe in additional detail at Comments 8-10.

Contrary to HYSCO's assertions, the Department has not acted inconsistently with its practice and has not failed to give adequate notice. We note that no party raised the issue of possible distortions in HYSCO's cost reporting in previous reviews, and thus we did not address this issue with respect to HYSCO. Moreover, the circumstances have changed from prior reviews in that the Department switched to a new methodology for reporting physical characteristics in this review.<sup>86</sup> While cost distortions may have been less apparent in prior reviews, they are readily apparent in this review. Due to these observed distortions, we determined that it was necessary to reallocate HYSCO's costs. This decision was based on the specific facts on the record of this review, and HYSCO was notified of the decision, and of the rationale upon which it was based, in the *Preliminary Results*.

Comment 7: The Department Should Use GNA\_I In Its Margin Calculation and Should Adjust HYSCO's Reported Costs

### *HYSCO*

HYSCO explains that prior to December 31, 2013 (and throughout the entire POR), its operations included cold-rolled and flat-rolled steel production. HYSCO spun-off its cold-rolled products business to its affiliate, Hyundai Steel, on the last day of 2013. Consequently, HYSCO's 2013 financial statements reflect the company's expenses only for the post-spin-off operations. According to HYSCO, the spin-off substantially reduced HYSCO's reported sales, cost of goods sold (COGS), selling expenses, administrative expenses, financial income, financial expenses, other income, and other expenses.

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<sup>84</sup> See *Preliminary Results* and accompanying Decision Memorandum at 14 where we "we have reallocated certain costs among products with common grade and surface finish" for HYSCO's reported costs.

<sup>85</sup> See *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 37284 (July 1, 2014) and accompanying Decision Memorandum at Comment 1.

<sup>86</sup> In this administrative review, under the "grade" physical characteristic, we instructed parties to report product categories (e.g., pressure, ordinary, structural) rather than the actual industry specification and grade combinations (e.g., ASTM A53, grade A). For details, please see *Preliminary Results* and accompanying Preliminary Decision Memorandum at 8-10.

For this reason, HYSCO derived its General and Administrative Expense (G&A) ratio, GNA\_I, directly from its year-end audited financial statements, based on the full-year results of the company prior to the spin-off of its cold-rolled operations. HYSCO also provided an alternative G&A ratio (GNA\_II), which derives from the 2013 financial statements in their entirety, only after the Department requested it.

But, because it reflects HYSCO's expenses in the post-spin-off period, HYSCO contends that GNA\_II is not the appropriate ratio. GNA\_II, which the Department used in the *Preliminary Results*, is not indicative of HYSCO's full year expenses (which HYSCO reported as GNA\_I), HYSCO argues. GNA\_II is a distorted calculation of HYSCO's G&A expenses in that it reflects HYSCO's remaining operations after a transfer of assets to its affiliate, occurring on the last day of 2013 and months outside of the POR in this review. HYSCO urges the Department to calculate the G&A ratio using GNA\_I.

HYSCO further argues that continued use of GNA\_II is unreasonable and distortive because it is based on financial statements unrepresentative of the POR. HYSCO reports that the spin-off significantly reduced HYSCO's reported sales, costs of goods sold, and several other business expenses.<sup>87</sup> Therefore, the Department should use GNA\_I because it is based directly on the full-year results of the company prior to the spin-off. HYSCO states that the Department has, in other cases like *Mexican OCTG*, recognized that significant events can be distortive and yield ratios that are not appropriate.<sup>88</sup>

HYSCO disputes Wheatland's allegation in pre-preliminary comments that it did not provide an audited income statement to substantiate the calculation of GNA\_I. HYSCO contends that its calculation of GNA\_I is supported by documents it provided in its May 22, 2014 Section A questionnaire response and in its October 8, 2014 Supplemental Section D questionnaire response, including the independent auditors' report accompanying its financial statements, and income statements for the spun-off operation.<sup>89</sup> As a result, and contrary to Wheatland's assertion, HYSCO asserts that GNA\_I is not based on a purely hypothetical company.

HYSCO contends that the facts in this review are similar to those in *Mexican OCTG*: in the latter, the Department did not rely on the respondent's financial statements for the relevant period. The Department based its decision on the sudden and severe devaluation of the Mexican peso and determined that the respondent's audited financial statements were unrepresentative of the period of investigation (POI) and severely distorted, even though the devaluation occurred subsequent to the POI.<sup>90</sup> In this review, HYSCO claims that the post-POR spin-off of its cold-rolled operations resulted in financial statements that are unrepresentative of the POR and therefore distortive.

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<sup>87</sup> See HYSCO's Case Brief at 26 for reduced expenditures and corresponding rates.

<sup>88</sup> Citing to *Oil Country Tubular Goods from Mexico*, HYSCO explains that there the Department accounted for the devaluation of the peso that occurred at the end of the POR, and therefore, did not rely on the 1994 audited financial statements, and instead calculated an interest rate based on the first six months of 1994. See *Oil Country Tubular Goods from Mexico*, 60 FR 33567, 33572 (June 28, 1995) (*Mexican OCTG*).

<sup>89</sup> See HYSCO's Case Brief at 27.

<sup>90</sup> *Id.* at 29; see also *Mexican OCTG* at 33572.

Though Wheatland in pre-preliminary comments attempted to distinguish *Mexican OCTG*, HYSCO contends that this attempt fails. HYSCO maintains that Wheatland's contention that *Mexican OCTG* predates the Uruguay Round Agreements Act is irrelevant because the Department relied on full-year financial statements to calculate both G&A and interest expense ratios before *Mexican OCTG* and has continued to do so after. Furthermore, HYSCO disagrees that *Mexican OCTG* is inapposite because the Department applied "Best Information Available" in that case, because there, like here, severe devaluation of the peso occurred after the POI.<sup>91</sup>

HYSCO provides two additional examples in which the Department did not rely on the POR financial statements for certain calculations. In *Stainless Steel Wire Rod from Korea*, HYSCO continues, Korea experienced a currency devaluation and respondent companies incurred significant interest expenses associated with dollar-denominated debt; the Department determined that it would be distortive to use the respondent's financial statements because of the country's currency devaluation following the POI.<sup>92</sup> And, in *Purified Carboxymethylcellulose from the Netherlands*, the Department preferred to rely on the respondent's financial information prior to a merger.<sup>93</sup> As in those cases, in the instant review, relying on the post-POR financial statements results in ratios that are unrepresentative of the POR and severely distortive. The Department should use GNA\_I, because it is derived directly from HYSCO's year-end audited financial statements but based on the full year results of the company prior to the spin-off.<sup>94</sup>

#### *The Petitioner's Rebuttal*

Wheatland supports the Department's use of GNA\_II as the appropriate G&A calculation for HYSCO because this ratio is based on audited financial data and there is no legal or logical rationale for the Department to deviate from its position for the final results.<sup>95</sup> Further, Wheatland disagrees with HYSCO's analogy to *Mexican OCTG* because there the Department applied "best information available" for the respondent, which failed to provide financial statements during a severe devaluation period. Wheatland asserts that the circumstances between *Mexican OCTG* and the current review are dissimilar.

Where HYSCO avers a similarity to *Stainless Steel Wire Rod from Korea*, Wheatland disagrees, reasoning that the POR in that case, unlike here, straddled two accounting periods and preceded a severe devaluation of the Korean won. Wheatland also disagrees that *Purified Carboxymethylcellulose from the Netherlands* is relevant here because there the Department expressed an interest in using actual financial statements prepared by the company, but could not do so because they were not on the record. Here, HYSCO's financial statements are on the record, but HYSCO is instead relying upon a hypothetical company whose operations would be removed from the production of subject merchandise. Wheatland argues that the Department

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<sup>91</sup> See HYSCO's Case Brief at 28-29.

<sup>92</sup> See HYSCO's Case Brief at 29; see also *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Korea*, 63 FR 40404, 401413 (July 29, 1998) (*Stainless Steel Wire Rod from Korea*).

<sup>93</sup> See HYSCO's Case Brief at 29-30; see also *Purified Carboxymethylcellulose From the Netherlands: Final Results of Antidumping Duty Administrative Review*, 76 FR 66687 (October 27, 2011) (*Purified Carboxymethylcellulose from the Netherlands*).

<sup>94</sup> See HYSCO's Case Brief at 30-31.

<sup>95</sup> See Wheatland's Rebuttal Brief at 2.

should reject a hypothetical G&A calculation that is not supported by an audited income statement.

### *Department's Position*

The Department agrees with HYSCO that GNA\_I, and not GNA\_II, is the appropriate variable for HYSCO's G&A expense ratio. GNA\_I is reflective of the company's operations for the entire POR, whereas GNA\_II reflects HYSCO's operations outside of the POR. GNA\_I thus accurately depicts the cost environment for HYSCO during the POR, because it includes the G&A and cost of goods sold of both the sold and retained operations of HYSCO. By contrast, GNA\_II excludes a significant portion of the cost of goods sold (*i.e.*, the denominator of the calculation) associated with the assets that were sold, which results in a distorted ratio that is not reflective of the POR. As a result, although our normal practice is to rely on a company's full-year financial statements to calculate G&A expense ratios, in these circumstances and consistent with the proceedings cited above, we agree that it is more accurate to rely upon GNA\_I.

In so finding, we disagree with Wheatland's contention that GNA\_I is based on a purely hypothetical company. Rather, we find that HYSCO has provided documents from the company's 2013 financial statements that correspond to the income from discontinued operations.<sup>96</sup> Specifically, HYSCO provided notes in the financial statement demonstrating the Board of Directors' approval for the transfer of assets, and calculation worksheets linking the spin-off to specific amounts contained within the POR audited financial statements. Therefore, we find that GNA\_I is the appropriate variable for HYSCO's G&A expense ratio for the final results and we have updated our calculations accordingly.<sup>97</sup>

Comment 8: HYSCO's Reported Costs and Control Number (CONNUM) Characteristics Are Consistent with the Department's Reporting Requirements and Should Not Be Reallocated

### *HYSCO*

HYSCO disagrees with our decision to reallocate their costs in the *Preliminary Results*. Pursuant to section 773(f)(1)(A) of the Act, the Department must normally calculate costs based on a company's record if those records are "kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise." Here, HYSCO continues, the Department instructed it to calculate CONNUM-specific costs by relying on the actual costs calculated by the company's accounting records. Because HYSCO's accounting records comply with the Department's instructions (that it be based on the relevant product characteristics) and the statute, HYSCO had no need to calculate a cost difference associated with the merchandise or support its data in any form other than its normal books and records and as requested by Commerce.

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<sup>96</sup> See HYSCO's October 8, 2014 Supplemental Section D Questionnaire Response at 8-9 and Exhibit SD-11-A and B.

<sup>97</sup> See HYSCO's May 22, 2014 Section A questionnaire response at Exhibit A-16 (at pages 48-49 or footnote 31) and HYSCO's October 8, 2014 Section D Supplemental questionnaire response at Exhibit SD-11-A.



HYSCO argues that the reliance on actual production costs means that there may be variances in some production data because of manufacturing or other issues, but that calculating a cost of production for the entire POR generally averages the anomalies that sometimes occur. CONNUMs consisting solely of products with limited production runs are more likely to show disparities in the production data because they are the result of unusual production events. However, these disparities are not distortive, but rather normal anomalies expected to occur in a production run with a factor many times greater. Because of the limited universe of potential anomalies, if the Department continues to make an adjustment to HYSCO's cost reporting, it should limit any adjustment to the few CONNUMs that have been identified as anomalous rather than across the entire cost dataset.<sup>98</sup> Alternatively, HYSCO urges the Department to clarify if it is now modifying the cost reporting requirements as outlined in Section D in all cases and the circumstances to which the modifying requirements apply.

HYSCO also contends that the Department has not revised HYSCO's costs in prior proceedings, finding them to be dissimilar to those reported by Husteel.<sup>99</sup> HYSCO objects to the Department's sudden change of course in the current review. HYSCO points to the Department's single supplemental question regarding CONNUM pairs to which HYSCO provided a full and complete response. According to HYSCO, the record does not establish that HYSCO's costs in this review fluctuated in a manner similar to Husteel's or that an adjustment to HYSCO's reported costs is otherwise warranted.

HYSCO reasons that averaging material costs among products that use different material inputs is actually distortive. This methodology may be appropriate for a manufacturer that uses one primary input, but not for a manufacturer that employs more than one significant input for the manufacture of subject merchandise, such as in HYSCO's case.<sup>100</sup>

HYSCO cites to *SSB from the United Kingdom* where the Department adjusted a respondent's reported cost.<sup>101</sup> In that proceeding, the respondent tracked specific billet inputs to specific production runs. But the Department determined that this input was highly dependent on the timing and terms of billet purchases and instructed the respondent to report weighted-average billet costs by grade for all billets consumed during the POR.<sup>102</sup> In contrast, the Department has made no similar determination or instructed HYSCO to revise its cost reporting. HYSCO argues its cost reallocation rests solely on certain limited and specific instances, though fully explained, in HYSCO's dataset as identified by Wheatland.

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<sup>98</sup> See HYSCO's Case Brief at 21-22.

<sup>99</sup> See HYSCO's Case Brief at 5-6.

<sup>100</sup> See HYSCO's Case Brief at 9-10.

<sup>101</sup> *Id.* at 10; see also *Stainless Steel Bar from the United Kingdom: Final Results of Antidumping Duty Administrative Review*, 72 FR 43598 (August 6, 2007) (*UK Bar*) and accompanying Decision Memorandum at Comment 1.

<sup>102</sup> HYSCO argues that this instance is similar to *Nails from the United Arab Emirates*, where the Department determined that the respondents costs should be adjusted because significant differences in production were observed. See *Certain Steel Nails From the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 77 FR 17027 (March 23, 2012) and accompanying Decision Memorandum at Comment 9; see also HYSCO's Case Brief at 9-10.

### *The Petitioner's Rebuttal*

Wheatland argues that HYSCO's cost allocation methodology is based on factors other than the physical characteristics of the subject merchandise. When the Department requested an explanation of cost variances, HYSCO reported that they were due to the input used to manufacture the product, the production process, and to the efficiency of the production run.<sup>103</sup> The Department mitigated the distortions in HYSCO's costs in the preliminary results and should continue to do so for the final results.

Wheatland contends that it is the Department's longstanding practice to require that costs be allocated relative to the product's physical characteristics. In the margin calculation, models with different physical characteristics are often compared, and the Department can make an allowance for the difference between these models—the DIFMER adjustment—based on the cost of manufacturing for each product. Therefore, the respondent must base its costs on the product's physical differences rather than on tertiary characteristics, such as production efficiencies or other manufacturing circumstances.<sup>104</sup> According to Wheatland, in circumstances where reported costs do not reflect the physical characteristics of the product, the statute requires the Department to mitigate the distortion through a cost reallocation.

Wheatland disputes HYSCO's argument that its cost reporting is discretely different from that of Husteel and its attempt to explain that the Department has previously examined this issue and concluded that a cost adjustment was unnecessary for HYSCO.

Wheatland refutes HYSCO's argument that material inputs used to create nearly identical products logically result in cost differences. For that reason, Wheatland argues, inputs are not related to the physical characteristics of the subject merchandise and therefore the cost reporting methodology requires an adjustment.<sup>105</sup> Wheatland also contends that HYSCO primarily used hot rolled coil to produce the subject merchandise and that the consumption of any other material input is insignificant. Wheatland points to only one CONNUM that was manufactured using a non hot-rolled coil input.<sup>106</sup>

### *Department's Position*

The Department agrees with Wheatland and has reallocated HYSCO's reported costs to mitigate cost differences that cannot be explained by differences in the products' physical characteristics. HYSCO explained that its cost reporting in prior administrative reviews is differentiated from Husteel's. However, in the current review, HYSCO's cost reporting demonstrates distortions among similar CONNUMs not related to the physical characteristics of the product.

When the Department must evaluate a respondent's submitted costs, section 773(f)(1)(A) of the Act advises that "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted

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<sup>103</sup> See Wheatland's Rebuttal Brief at 7-8.

<sup>104</sup> See Wheatland's Case Brief at 4-6.

<sup>105</sup> See Wheatland's Rebuttal Brief at 12.

<sup>106</sup> *Id.* at 13.

accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise.” Accordingly, the Department will normally rely on a company’s normal books and records if two conditions are met: 1) the books are kept in accordance with the home country’s generally accepted accounting principles (GAAP); and 2) the books reasonably reflect the cost to produce and sell the merchandise. Here, it is unchallenged that the unadjusted per-unit costs are derived from HYSCO’s normal books and that those books are in accordance with Korean GAAP. Hence, the question facing the Department is whether the per-unit costs from HYSCO’s normal books reasonably reflect the cost to produce and sell the merchandise under consideration. Despite HYSCO’s contrary assertions, we do not find that to be the case here.

At the outset of a case, the Department identifies the physical characteristics that are the most significant in differentiating between products. These are the physical characteristics that define unique products, *i.e.*, the CONNUMs, for sales comparison purposes. The level of detail within each physical characteristic (*e.g.*, the multiple different grades or sizes of a product) reflects the importance the Department places on comparing the most similar products in a price-to-price comparison. Thus, under sections 773(f)(1)(A) and 773(a)(6)(C)(ii) and (iii) of the Act, a respondent’s reported product costs should reflect meaningful cost differences attributable to these different physical characteristics. This ensures that the product-specific costs we use for the sales-below-cost test, constructed value (CV), and the difference-in-merchandise (DIFMER) adjustment accurately reflect the precise physical characteristics of the products whose sales prices are used in the Department’s dumping calculations.

The physical characteristics comprising the CONNUM in this case are pipe grade, nominal pipe size, pipe wall thickness, surface finish, and end finish.<sup>107</sup> Based on an analysis of HYSCO’s reported cost database, the Department continues to find that the fluctuation in costs between CONNUMs cannot be wholly explained by the minor differences in the physical characteristics of those demonstrably similar CONNUMs. As noted by Wheatland, simplified examples of these inconsistencies include CONNUMs where nearly all physical characteristics between the products are nearly identical and there are significant cost differences. It appears that these CONNUMs differ for reasons unrelated to relevant physical characteristics—*e.g.*, the fact that they consumed a separate production input in making subject merchandise, underwent an annealing process (which is not a relevant physical characteristic in this administrative review), that the production run recorded different overhead costs, or other factors.<sup>108</sup>

HYSCO disputes our characterization that the distortions are unrelated to relevant physical characteristics and argues that cost differences between associated CONNUM pairs relate solely to differences in physical characteristics. However, our examination of HYSCO’s argument indicates that the reported cost differences are not related to physical differences in the finished products, but rather, as noted above, to differences in the manufacturing inputs, manufacturing processes, and production run efficiencies.<sup>109</sup> HYSCO incorrectly equates the difference between material inputs with the difference in the physical characteristics output. When two different inputs or production methods can be used to make the same finished good, we use the

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<sup>107</sup> See, *e.g.*, the Department’s April 17, 2014 section B questionnaire at B-9 through B-11.

<sup>108</sup> See HYSCO’s Case Brief at 8.

<sup>109</sup> See HYSCO’s explanation regarding specific CONNUM pairs in its Case Brief at 8.

average cost for all the output product, not the specific input cost or differing production process. The end products are nearly identical and there is no record evidence that the customer pays a different price based on which input was used. Therefore, we are examining the physical characteristics of the finished product, not the product in a prior stage of production, and attributing cost differences to the type of raw material input.

The Department has faced similar situations in which a CONNUM's costs were highly dependent on either specific production runs or on the timing of the main raw material purchases under a cost allocation methodology that reflects a narrow population of the main raw material purchases (*e.g.*, coil-specific, first in first out, monthly weight-averages, *etc.*) when allocating raw material costs to the products produced. For example, in *UK Bar*, the Department found that the respondent's costs derived from its normal books and records were distortive and reallocated them.<sup>110</sup> In that case, the respondent assigned a specific billet purchase price to each job order within a CONNUM, and because it produced and sold each product only a limited number of times during the cost reporting period, the specific billet costs did not represent the unit cost normally experienced by the company to produce the product during that time period. Similarly, in *Nails from the UAE*, the Department reallocated the respondent's direct material costs as recorded in its normal books and records because the product-specific cost differences were related to differences in the timing of input purchases rather than differences in physical characteristics.<sup>111</sup> In fact, the CIT has upheld our reallocation of costs for the sales-below-cost test, the CV calculations, and the DIFMER adjustment where a respondent's reported costs reflect cost differences due to factors other than physical characteristics.<sup>112</sup>

Under section 773(b)(1)(B) of the Act, the Department tests whether sales in the home market were made at prices which permit recovery of all costs within a reasonable time period. In doing so, the Department's normal practice is to use POR annual average costs to calculate cost of production (COP). The Department uses annual average costs in order to even out swings in the production costs experienced by the respondent over short periods of time. This way, we smooth out the effect of cost differences that are not explained by the products' physical characteristics and that result from fluctuating raw material costs, erratic production levels, major repairs and maintenance, inefficient production runs, and seasonality.<sup>113</sup>

Fluctuations in raw material costs, in particular, can be influenced by discretionary business practices such as the inventory valuation method used by the company (*e.g.*, first-in, first-out, weighted-average, specific identification, *etc.*), purchase transaction terms, purchase dates, the raw material inventory turnover period, the extent to which raw materials are purchased pursuant to long-term contracts, and whether finished merchandise is sold to order or from inventory. Over a reasonable period of time, these factors tend to smooth out, resulting in an average cost

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<sup>110</sup> See *UK Bar* and accompanying IDM at Comment 1.

<sup>111</sup> See *Nails from the UAE* and accompanying IDM at Comment 9.

<sup>112</sup> See *Thai Plastic Bag Indus. Co., Ltd. v. United States*, 752 F. Supp. 2d 1316, 1324-25 (CIT 2010).

<sup>113</sup> See, *e.g.*, *UK Bar* and accompanying IDM at Comment 1; *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 70 FR 67665, (November 8, 2005), and accompanying IDM at Comment 1; *Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 55 FR 26225 (June 27, 1990) at Comment 10; *Grey Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 58 FR 47253, 47256 (September 8, 1993) and accompanying IDM at Comment 3.

that reasonably reflects the COP for sales of a particular product made during the POR. In this instance, however, HYSCO uses more than one significant input to produce the subject merchandise. While HYSCO then weight-averaged its POR monthly CONNUM-specific per-unit costs, HYSCO produced and sold certain CONNUMs only a limited number of times during the cost reporting period. As a result, cost differences emerged between products that were related to the timing of production, *i.e.*, the monthly production efficiency and nature and price of the input consumed, rather than related to the physical characteristics of the pipe produced.

If raw material prices are relatively stable and production runs always exhibit the same efficiency, or if products were produced evenly over all months of the POR, HYSCO's cost reporting methodology would not result in cost distortions. However, as explained above, these are not the circumstances of this review. Based on the fact that the reported costs for different products do not reflect cost differences that logically result from differences in the products' physical characteristics, the Department finds that HYSCO's reported costs do not reasonably reflect POR average costs.<sup>114</sup> Consequently, the Department determines that in this POR, HYSCO's methodology results in arbitrary cost differences between CONNUMs which are independent of, and not attributable to, the physical differences between products. Thus, for these final results, the Department has reallocated HYSCO's reported raw material costs among products of the same pipe grade, nominal pipe size, surface finish, and end finish (coupled versus non-coupled pipe) and has reallocated fabrication costs among products of the same thickness, surface finish, and end finish.

Comment 9: The Petitioner's Analysis of HYSCO's Cost Reporting Does Not Support Revision To Costs and a Complete Reallocation of HYSCO's Cost is Unwarranted

### *HYSCO*

HYSCO argues that the Department relied solely on Wheatland's analysis to preliminarily conclude that HYSCO's cost reporting demonstrated significant cost differences between similar CONNUMs unrelated to physical characteristics. The Department's review of Wheatland's allegation was narrowed to the selected examples, as evidenced by the Department's failure to conduct an additional and comprehensive analysis of Wheatland's claim or of HYSCO's response. Wheatland identified only eight instances in which reported material costs for certain CONNUM pairs were allegedly distortive, and eight instances in which material or fabrication costs were "dissimilar."

In each case, HYSCO argues, Wheatland's argument is flawed. First, Wheatland failed to account for the raw material inputs used in production. HYSCO uses two primary raw material inputs, *X* and *Y*, in producing subject merchandise. As previously demonstrated, *X* has a relatively high material cost and a relatively low fabrication cost when compared to *Y*, because *X* requires fewer production processes than *Y*. In other words, "...material and fabrication costs may differ from CONNUM to CONNUM, even where product characteristics are similar, simply depending on the type of input used in the individual products making up the CONNUMs."<sup>115</sup> Although the material and fabrication costs may differ according to the type of input used, the

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<sup>114</sup> See, e.g., Wheatland's Case Brief at Attachments 1-3.

<sup>115</sup> See HYSCO's Case Brief at 13.

cost of manufacturing, is similar in these paired CONNUMs, all other production variables being equal.

Second, Wheatland identified a small number of possibly anomalous CONNUM pairs, out of hundreds of possible CONNUM pairs (where characteristics are identical except for one). HYSCO explained that these differences were either related to the raw material input or to the small production quantity.

Importantly, HYSCO contends, Wheatland's allegation that the cost differences between the paired CONNUMs move disproportionately to the physical characteristics is unsubstantiated. Moreover, an analysis of the sales dataset would demonstrate that prices and reported costs move in a similar direction.

Finally, HYSCO contends that none of the cited CONNUM pairs consisted of grades of subject merchandise that were sold in the United States or that were similar to sales made to the United States and therefore its cost reporting methodology would have no impact on the Department's margin calculations. As such, there are no irregularities here that provide a basis for the Department to reallocate HYSCO's reported costs.<sup>116</sup>

However, if the Department determines to reallocate HYSCO's reported cost data, HYSCO urges the Department to limit any cost adjustment to the specific CONNUMs that the Department determines do not accurately reflect the costs associated with the production of the merchandise rather than a wholesale reallocation of HYSCO's reported costs.<sup>117</sup> As in prior reviews, there were minimal, but not significant, fluctuations in HYSCO's reported costs associated with a limited number of CONNUMs which reflect the actual costs incurred. But a limited number of fluctuations do not substantiate the need for an entire cost reallocation.

#### *The Petitioner*

Wheatland argues that the Department's reallocation of HYSCO's cost is reasonable, supported by substantial evidence, and necessary under the Act. In HYSCO's reporting methodology, coil purchases, production timing, and production volumes, not physical differences, drive costs, and the Department should correct for these unusual cost distortions.<sup>118</sup>

Wheatland disputes HYSCO's claim that only a small fraction of total CONNUM pairs show evidence of distortion. Petitioner continues that HYSCO's CONNUM pairs did not include the corresponding material, fabrication, and total manufacturing cost information related to the relevant CONNUM pairs. Had HYSCO provided this information, it would be apparent that many of HYSCO's CONNUM pairs suffer from arbitrary cost differences unrelated to the physical differences of the product. The Department should continue to reject HYSCO's explanation that the distortive cost anomalies are minor and arbitrary, or that the relevant CONNUMs were not similar to those sold in the United States. Wheatland provided examples of

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<sup>116</sup> See HYSCO's Case Brief at 14-15.

<sup>117</sup> *Id.*, at 15-17.

<sup>118</sup> See Wheatland's Rebuttal Brief at 1.

CONNUM pair differences resulting from production timing rather than physical characteristics as confirmation that the Department's cost reallocation is appropriate.<sup>119</sup>

### *Department's Position*

HYSCO argues that the Department relied entirely on the domestic industry's analysis in order to reallocate HYSCO's cost. But our examination of HYSCO's arguments, as well as of its cost dataset, indicates that there are significantly more CONNUMs that demonstrate distortions than even those identified by Wheatland. And, HYSCO has failed to provide an explanation that directly links these cost differences to the physical characteristics of the finished product. Instead, HYSCO has insisted that cost differences occur infrequently and are only related to material inputs, production runs, or are otherwise anomalies. However, as we found above, we do not consider these cost differences to be related to relevant physical characteristics of the finished product.

Though HYSCO argues that the total number of "anomalous" CONNUMs is a small percentage of the total quantity produced, the Department disagrees with HYSCO that its cost distortions are related to a limited number of CONNUMs. HYSCO's characterization that the cost distortions are irrelevant because they are confined to "limited" production quantity CONNUMs is flawed. HYSCO selectively picked certain CONNUMs to demonstrate that its "anomalous" CONNUMs are insignificant and the distortions are limited. However, we found significant distortions within the limited production CONNUMs group and this is evidence that HYSCO's cost reporting warrants a whole-sale reallocation.<sup>120</sup> Therefore, we continue to find that HYSCO's costs warrant a reallocation for the final results.

Comment 10: Cost Adjustments Eliminate Cost Differences Associated with Product Characteristics and Reallocating Total Material Costs Rather Than Only Hot-Coil Costs Is An Error

### *HYSCO*

HYSCO argues that the Department erred in reallocating HYSCO's hot-rolled coil costs. Although the Department intended to reallocate HYSCO's hot rolled coil costs across grade and surface finish and conversion costs across thickness, surface finish, and end finish, the actual reallocation eliminated cost differences associated with product characteristics. The Department inappropriately applied the cost reallocation to HYSCO's DIRMAT variable, which is the sum of all direct materials, including substrate and scrap offset, coating materials, and other materials, thereby severely distorted the resulting calculation.<sup>121</sup> The result was the reallocation not only of hot-rolled coil costs, but also of other material costs, none of which is based on the physical characteristics of the merchandise.<sup>122</sup>

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<sup>119</sup> *Id.* at CONNUM pair chart at 14.

<sup>120</sup> See "Final Results Calculation Memorandum for Hyundai HYSCO," dated concurrently with this memorandum.

<sup>121</sup> See HYSCO's Case Brief at 17-18.

<sup>122</sup> *Id.* at 17-19.

HYSCO explains that the wall thickness of the manufactured pipe corresponds to the hot-rolled coil thickness and the record is clear that these characteristics should be reflected in the CONNUM to avoid distortions in cost. Because HYSCO cannot produce a pipe with a wall thickness other than the same wall thickness of the hot-rolled coil input, calculating a single material cost by grade without including wall thickness ignores these facts. And, the Department failed to account for the nominal pipe size in reallocating the material costs.<sup>123</sup> The Department has deviated from prior practice in its cost reallocation for HYSCO and should eliminate these adjustments in the final results.

Finally, HYSCO urges the Department to apply any adjustments to the SUBSTRATE and SCRAP variables, if the Department continues to find that an adjustment to cost is warranted in the final results.<sup>124</sup>

#### *The Petitioner's Rebuttal*

The petitioner supports the Department's cost reallocation controlled for grade, size, surface finish and end finish as requested by HYSCO and contends that the weighted-average material costs accurately correspond with the physical characteristics of the product. Wheatland contends that there is no evidence that wall thickness is a significant driver of hot-rolled coil costs and the Department should continue to reject HYSCO's claim that the Department average material costs across the SUBSTRATE and SCRAP variables. Doing so would inappropriately combine galvanizing and coupling costs across products that do not contain those physical descriptions.<sup>125</sup>

#### *Department's Position*

The Department agrees with HYSCO, in part. The Department agrees that it made an inadvertent error in its cost reallocation of HYSCO's dataset because we did not account for the hot rolled coil variable as assigned under SUBSTRATE and we assigned the reallocation to the DIRMAT variable. HYSCO contends that the averaging of material costs should also control for thickness because "the wall thickness of the pipe corresponds to the hot-rolled coil thickness."<sup>126</sup> However, HYSCO cites no support for its claim, that substrate/HRC cost differs on a per ton basis by thickness. There is no evidence that thickness is a significant driver of hot rolled coil costs. Thus differences in wall thickness alone among similar CONNUMs do not substantiate HYSCO's argument that cost reallocation is unwarranted. Moreover, differences in wall thickness are already accounted for in the reallocation of the fabrication costs. Accordingly, for the final results, we will reallocate HYSCO's costs to the sum of the variables SUBSTRATE and SCRAP.

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<sup>123</sup> *Id.* at 19-20.

<sup>124</sup> See HYSCO's Case Brief at 21.

<sup>125</sup> See Wheatland's Rebuttal Brief at 15-16.

<sup>126</sup> See HYSCO's Case Brief at 19.



## Comment 11: The Department Should Adjust for Certain of HYSCO's Affiliated Hot-Rolled Coil Purchases

### *The Petitioner*

Wheatland argues that, pursuant to Section 773(f)(2) of the Act, the Department should disregard reported transfer prices of hot-rolled coil purchases from HYSCO's affiliates. For certain grades of hot-rolled coil, Wheatland argues that comparisons of purchases from affiliates with purchases from non-affiliates display significant disparities and the Department should adjust HYSCO's reported material costs for those grades accordingly.<sup>127</sup>

### *HYSCO's Rebuttal*

HYSCO argues that its purchases of hot-rolled coil from its affiliates were made at arm's length and the Department should not disregard these transactions under section 773(f)(2) of the Act.<sup>128</sup> HYSCO argues that the Department's arm's length test typically identifies transactions from affiliated parties that range from 98 to 102 percent of comparable transactions made between unaffiliated parties. HYSCO continues that if the Department compared grade-specific average prices of hot rolled coil purchases from Hyundai Steel with purchases from unaffiliated parties, the Department would find that these purchases were made at arm's length.<sup>129</sup>

### *Department's Position*

Based on our analysis of the data provided by HYSCO related to its purchases of hot-rolled coil from affiliates, and after considering sections 773(f)(2) and (3) of the Act and 19 CFR 351.407(b), we are applying the major input rule for these final results. Accordingly, we valued inputs that were purchased from affiliated suppliers at the higher of the market price, the affiliated transfer price, or the affiliates' cost of production of the input, where applicable.

## Comment 12: The Department Should Adjust HYSCO's G&A Ratio

### *The Petitioner*

Wheatland argues that HYSCO excluded an investment from its G&A expenses but because it relates to the general operations of the company, this treatment is inappropriate and the investment should be included within the G&A expenses.<sup>130</sup>

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<sup>127</sup> See Petitioner's Case Brief at 7.

<sup>128</sup> See HYSCO's Rebuttal brief at 10. Under section 773(f)(2) of the Act, the Department may disregard affiliated party transactions where the price does not "fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration."

<sup>129</sup> See HYSCO's Rebuttal brief at 11.

<sup>130</sup> See Petitioner's Case Brief at 7-8; the petitioner also cites to *Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014) (*OCTG from Korea*) where the Department determined that G&A expenses are those expenses that relate to the general operations of the company as a whole rather than to the production process.

### *HYSCO's Rebuttal*

HYSCO disputes Wheatland's contention that its investment should be included in its G&A calculation. HYSCO asserts that it correctly excluded its investment from its G&A expense because this was an investment in an entirely separate company and therefore this investment is unrelated to production of subject merchandise. HYSCO is not a fully integrated producer, as demonstrated by HYSCO's purchases of hot-rolled coil.

Wheatland's reliance on *OCTG from Korea* to support its claim is dissimilar to HYSCO's experience. In *OCTG from Korea*, the respondent closed a plant that produced a related product and the Department still excluded the gain from the sale of the plant equipment from G&A calculation because it was non-recurring income that is not part of the company's normal operations and unrelated to the general operations of the company. This provides a fitting parallel that HYSCO's exclusion of its investment from the G&A calculation is also appropriate.<sup>131</sup>

### *Department's Position*

The Department agrees with HYSCO that the expense excluded from G&A expenses relates to investment income, and more specifically, interest income. Interest income is considered a financial expense and therefore we have excluded these expenses from HYSCO's G&A calculation. In addition, because HYSCO has provided the major inputs used in the production of subject merchandise, and HYSCO reported that it is not a vertically integrated producer, we are not concerned that this investment is related to production of the subject merchandise. Further, there is no information on the record of this proceeding that links HYSCO's investment directly to the production of subject merchandise and therefore would lead the Department to conclude that this investment should be included in the G&A expense ratio. For the above mentioned reasons, this investment has been excluded from HYSCO's G&A calculations.

### Comment 13: Grade Coding Adjustments Contained Clerical Errors

### *HYSCO*

HYSCO argues that the changes that the Department intended to make to certain grade codes as announced in the *Preliminary Results* were not implemented in the Department's home market dataset. Specifically, the Department did not update the control number in HYSCO's home market dataset and correspond it with the correct field. In the cost dataset, the Department failed to create corresponding costs for the revised control numbers. Thus, these intended changes were not incorporated into the Department's margin calculations.<sup>132</sup>

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<sup>131</sup> See HYSCO's Rebuttal brief at 11-13.

<sup>132</sup> See HYSCO's Case Brief at 31-32.

### *Department's Position*

The Department has corrected the errors identified by HYSCO for the final results.

#### Comment 14: Draft Assessment Instructions Contained Errors

### *HYSCO*

HYSCO argues that the importer-specific duty assessment rates calculated in the draft liquidation instructions contained errors, and the instructions should be revised for the final results.<sup>133</sup>

### *Department's Position*

We corrected the errors in the importer-specific rates as appropriate for the final results.

#### Comment 15: Application of Total Adverse Facts Available is Warranted Due to HYSCO's Repeated Failure to Provide Necessary Information for Affiliated Hot-Rolled Coil Purchases

### *The Petitioner*

Wheatland urges the Department to apply total adverse facts available because HYSCO repeatedly failed to provide necessary input data for the Department to analyze, and when HYSCO did provide the data, Wheatland contends that what HYSCO provided is insufficient.

Under Section 773(f)(3) of the Act, the Department compares the cost of production and transfer price for major inputs purchased from affiliated parties. And, under 19 CFR 351.407(b), the Department will normally determine the value of a major input purchased from an affiliate using one of three methods: 1. Using the price paid by the exporter or producer to the affiliated person for the major input; 2. Using the amount usually reflected in sales of the major input in the market under consideration, or; 3. The cost to the affiliate of producing the major input.

Wheatland argues that the information provided by HYSCO and Hyundai Steel is insufficient to make an apples-to-apples comparison between the affiliated transfer price from Hyundai Steel to HYSCO and Hyundai Steel's cost of production. According to Wheatland, Hyundai Steel submitted the cost of manufacturing, G&A, and financial expenses for each hot-coil grade coil sold to HYSCO during the POR for use in the manufacture of standard pipe. As required under the major input rule, HYSCO also reported the average price it paid for inputs sourced from Hyundai Steel, which included all manufacturing, selling, freight, and packing costs. Wheatland continues that to perform the test required under the major input rule, a fully loaded cost should be compared to the affiliated purchase prices. Or, alternatively, a net affiliated purchase price that has been stripped of selling, freight, and packing costs, could also be compared to a cost amount that includes cost of manufacturing, G&A, and interest. In this case, the Department is unable to undertake the necessary comparison because HYSCO has failed to provide certain

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<sup>133</sup> See HYSCO's Case Brief at 33.

information that would permit an apples-to-apples comparison. The missing information, related to HYSCO's purchases of hot rolled coil from Hyundai Steel, are not minor.

HYSCO has failed to provide the necessary information to accurately compare transfer prices and the affiliated supplier's costs despite repeated requests for this information. Therefore, the Department should apply total adverse facts available, or at a minimum, partial adverse facts available for purposes of the major input cost test. Wheatland cites to a Federal Circuit case where the Department was faced with a similar situation and encourages the Department to proceed as it did there.<sup>134</sup>

### *HYSCO's Rebuttal*

HYSCO rebuts Wheatland's argument that the Department should apply total adverse facts available to HYSCO's reported costs. HYSCO maintains that the data HYSCO provided is accurate and reliable and no adjustment is necessary. In particular, HYSCO argues that the record contains sufficient information to conduct the major input comparison because HYSCO provided the prices it paid to Hyundai Steel for the hot rolled coil; the prices paid by HYSCO to unaffiliated suppliers for hot-rolled coil; and, the cost to Hyundai Steel of producing the hot-rolled coil. And, HYSCO continues, both the purchase price reported by HYSCO and Hyundai Steel's cost of production are inclusive of the costs identified by Wheatland as missing from Hyundai Steel's cost of production. As such, there are no adjustments necessary to achieve an apples-to-apples comparison between the two items.

HYSCO claims that record evidence demonstrates that the SG&A reported by Hyundai Steel, a component of Hyundai Steel's cost of production, includes selling costs. With respect to freight expenses, HYSCO argues that the Department's normal practice is to perform the major input comparison on a delivered basis if the respondent reported the cost of materials on a delivered basis in its normal books and records, which is HYSCO's case. With respect to the remaining item, HYSCO reasons that the record reflects that Hyundai Steel's cost of manufacture is inclusive of these costs.

HYSCO argues that its reporting methodology and Hyundai Steel's general methodology were fully disclosed prior to the preliminary results without comment from Wheatland, and HYSCO argues that under 19 U.S.C. 1677m(d), the Department is obligated to offer HYSCO an opportunity to remedy any deficiencies.<sup>135</sup> If the Department does find it necessary to adjust Hyundai Steel's reporting costs to include freight costs, which it should not, the record contains sufficient information for the Department to proceed accordingly.<sup>136</sup>

HYSCO disputes that it withheld information that the Department requested, failed to provide information by established deadlines, significantly impeded this proceeding, or provided

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<sup>134</sup> Wheatland cites to *Mukand, Ltd. v. United States*, 767 F.3d 1300 (Fed. Cir. 2014) where the respondent (Mukand) claimed that it could not, initially, produce the requested production data until it did so following issuance of the preliminary results. The Court noted that the respondent's change in position demonstrated that it failed to cooperate to the best of its ability. See Wheatland's Case Brief at 5-6.

<sup>135</sup> See HYSCO's Rebuttal Brief at 4-5.

<sup>136</sup> *Id.* at 6.

information that could not be verified. HYSCO argues that the record confirms that it has fully complied with the Department's requests to the best of its ability, has expended substantial effort and acted in good faith in responding to the Department's questionnaires. As such, HYSCO claims that it is inappropriate to apply an adverse inference under section 776(b) of the Act.

HYSCO disputes Wheatland's allegation that HYSCO failed to provide accurate transfer prices and the affiliated supplier's costs for the coils. HYSCO summarized its repeated efforts to solicit hot rolled coil costs from Hyundai Steel and explains that its efforts were eventually persuasive.<sup>137</sup>

HYSCO is not persuaded that the case Wheatland referenced, in support of its total adverse facts available argument, involves facts similar to those in the instant case. In *Mukand*, the Department repeatedly requested size-specific cost information but the respondent explained that size does not affect costs when all other physical characteristics remain the same. Following the preliminary results, the respondent provided the requested information. In this proceeding, HYSCO put forth maximum efforts, outlined its efforts to obtain the information requested by the Department and, as a direct result of these efforts, Hyundai Steel provided the data to the Department in response to a supplemental questionnaire.

#### *Department's Position*

We agree with HYSCO that the application of total adverse facts available or partial adverse facts available is not warranted. The Department will resort to facts available only when one of the circumstances enumerated in section 776(a) of the Act is present (*e.g.*, necessary information is missing from the record, etc.) and only after notifying the party in question of a deficiency pursuant to section 782(d) of the Act. Here, we do not find the information provided by HYSCO's affiliate, Hyundai Steel, to be deficient, and nothing on the record appears to undermine HYSCO's claim that all information needed to perform the major input rule has been provided.<sup>138</sup> Moreover, we note that we did not ask (and no one requested that we ask) Hyundai Steel to offer any additional explanation or documentation in support of its COP figures.

As such, we have determined that it was appropriate to use the COP data provided by HYSCO's affiliate, Hyundai Steel as a comparison to the affiliated transfer price in accordance with section 773(f)(3) of the Act and 19 CFR 351.407(b). Therefore, for the final results, where necessary, we adjusted the reported transfer price to reflect the higher COP data.

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<sup>137</sup> See HYSCO's Rebuttal Brief at 7-9.

<sup>138</sup> See Hyundai Steel's January 7, 2015 Supplemental Questionnaire Response, "Response of Hyundai Steel to Question 1 of the Supplemental Section D Questionnaire to HYSCQ" at 1 where "Hyundai Steel provides at Exhibit 1 the COM, G&A and financial expenses for each hot-coil grade coil used in the manufacture of standard pipe and sold to HYSCO during the POR" and Exhibit 1.

## RECOMMENDATION

We recommend applying the above methodology for these final results.

✓  
Agree

                      
Disagree

Ronald K. Lorentzen  
Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

June 3, 2015  
(Date)