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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh *cm*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in the Less-Than-Fair-Value Investigation of
Welded Line Pipe from the Republic of Korea

Summary

We analyzed the comments of the interested parties in the less-than-fair-value (LTFV) investigation of welded line pipe from the Republic of Korea (Korea). As a result of our analysis, and based on our findings at verification, we made changes to the margin calculations for Hyundai HYSCO (HYSCO)¹ and SeAH Steel Corporation (SeAH), the two mandatory respondents in this case. 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 LTFV investigation for which we received comments from interested parties:

General Comments

1. Differential Pricing Analysis
2. Other Issues Related To Differential Pricing Analysis
3. Selection of Additional Mandatory/Voluntary Respondent
4. Consolidation of Grade Codes
5. Reasonableness of the Reported Costs

Company- Specific Comments

HYSCO

6. HYSCO's Classification of Certain "Local Sales" as Home Market Sales

¹ On July 1, 2015, HYSCO completed its merger with Hyundai Steel Company. HYSCO is now part of Hyundai Steel Company and no longer uses the HYSCO name. However, for purposes of this investigation, we continue to refer to the respondent as "HYSCO."

7. Sales of Non-Prime Merchandise
8. Revision of Certain Home Market Shipment and Sales Dates
9. Allocation of Full Costs to the Production of Non-Prime Products
10. Alleged Errors Relating to the Major Input Analysis
11. Revision of G&A Expenses
12. Financial Expense Ratio
13. Constructed Value Profit
14. Affiliated Processors' Cost Data and Adjustments to the Toll Processing Costs
15. Adjustment to Steel Costs to Reflect Yield Loss
16. Unreconciled Cost Difference
17. Adjustment for Certain Fees Paid to Affiliates

SeAH

18. Domestic Inland Freight
19. U.S. Credit Expenses
20. U.S. Indirect Selling Expenses
21. Affiliated Party Purchases
22. G&A Expenses
23. Production Costs of the Pohang Plant
24. Financial Expenses

Background

On May 22, 2015, the Department of Commerce (the Department) published the Preliminary Determination of sales at LTFV of welded line pipe from Korea.² The period of investigation (POI) is October 1, 2013, through September 30, 2014. During the period June through August 2015, the Department conducted sales and cost verifications at the offices of HYSCO and SeAH, in accordance with section 782(i) of the Tariff Act of 1930, as amended (Act). On August 24 and August 28, 2015, respectively, we requested that HYSCO and SeAH submit revised U.S. and home market databases as a result of changes found at verification. We received the revised databases from HYSCO and SeAH on August 31, and September 4, 2015, respectively.

We invited parties to comment on the Preliminary Determination. On September 1 and September 8, 2015, respectively, the petitioners,³ Maverick, HYSCO and SeAH submitted case and rebuttal briefs.⁴ Additionally, we received a timely case brief from Husteel, an interested party in this case which requested mandatory or voluntary respondent status but was denied. The public hearing in this case was held on September 16, 2015. Based on our analysis of the comments received, as well as our findings at verification, we recalculated the weighted-average

² See Welded Line Pipe From the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 80 FR 29620 (May 22, 2015) (Preliminary Determination), and the accompanying Decision Memorandum (Preliminary Decision Memorandum).

³ The petitioners include American Cast Iron Pipe Company; Energex Tube, a division of JMC Steel Group; Northwest Pipe Company; Stupp Corporation, a division of Stupp Bros., Inc.; Tex-Tube Company; TMK IPSCO; and Welspun Tubular LLC USA (collectively, the petitioners); and Maverick Tube Corporation (Maverick).

⁴ SeAH's initial case brief was rejected because it contained new factual information. A revised version of the brief was filed on September 9, 2015.

dumping margins for HYSCO and SeAH from the Preliminary Determination, which in turn resulted in a recalculation of the estimated all-others rate.

Scope of the Investigation

The merchandise covered by this investigation is circular welded carbon and alloy steel (other than stainless steel) pipe of a kind used for oil or gas pipelines (welded line pipe), not more than 24 inches in nominal outside diameter, regardless of wall thickness, length, surface finish, end finish, or stenciling. Welded line pipe is normally produced to the American Petroleum Institute (API) specification 5L, but can be produced to comparable foreign specifications, to proprietary grades, or can be non-graded material. All pipe meeting the physical description set forth above, including multiple-stenciled pipe with an API or comparable foreign specification line pipe stencil is covered by the scope of this investigation.

The welded line pipe that is subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.5000, 7305.12.1030, 7305.12.5000, 7305.19.1030, 7305.19.5000, 7306.19.1010, 7306.19.1050, 7306.19.5110, and 7306.19.5150. The subject merchandise may also enter in HTSUS 7305.11.1060 and 7305.12.1060. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Margin Calculations

We calculated export price (EP), constructed export price (CEP), and normal value (NV) using the same methodology stated in the Preliminary Determination,⁵ except as stated in the sales and cost calculation memoranda.⁶

Furthermore, for SeAH, in accordance with section 773(a)(4) of the Act, we determined it appropriate to use constructed value (CV) as the basis for NV for certain sales comparisons.

Pursuant to section 773(e) of the Act, we calculated CV based on the sum of SeAH's cost of materials and fabrication employed in producing the subject merchandise, plus amounts for general and administrative (G&A) expenses and U.S. packing costs. We calculated the cost of materials and fabrication, G&A and interest based on information submitted by SeAH, except in instances where we determined that the information was not valued correctly. For a detailed explanation of these adjustments, see the SeAH Final Cost Calculation Memo.

For comparisons to CEP, we deducted from CV an amount for selling expenses. See SeAH Final Sales Calculation Memo at Attachment 2.

⁵ See Preliminary Determination and accompanying Preliminary Decision Memorandum, at pages 11-20.

⁶ See memoranda entitled "Final Determination Margin Calculation for HYSCO" (HYSCO Final Sales Calculation Memo), "Final Determination Margin Calculation for SeAH" (SeAH Final Sales Calculation Memo), "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Hyundai HYSCO Co. Ltd." (HYSCO Final Cost Calculation Memo), "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – SeAH Steel Corporation" (SeAH Final Cost Calculation Memo), dated October 5, 2015.

Discussion of the Issues

General Comments

Comment 1: Differential Pricing Analysis

In a less-than-fair-value (LTFV) investigation, pursuant to section 777A(d)(1)(A) of the Act and 19 CFR 351.414(c)(1), the Department normally uses the standard average-to-average (A-A) comparison method to calculate each respondent's weighted-average dumping margin. As described in the Preliminary Determination,⁷ the Department applied a differential pricing analysis to determine whether application of the A-A method is appropriate for both HYSCO and SeAH pursuant to section 777A(d)(1)(B) of the Act and 19 CFR 351.414(c)(1).⁸ The Department may determine, pursuant with section 777A(d)(1)(B) of the Act, that it is appropriate to use the average-to-transaction (A-T) method as an alternative comparison method to the A-A method.

Based on our analysis since the Preliminary Determination, we found that 77.11 percent of the value of HYSCO sales passed the Cohen's *d* test, thus confirming the existence of a pattern of prices that differ significantly among purchasers, regions or time periods.⁹ Further, we found that the A-A method could not appropriately account for the pattern of CEPs or EPs for comparable merchandise that differ significantly because there was a meaningful difference in the weighted-average dumping margins calculated using the A-A method and the alternative A-T method (*i.e.*, the difference in the resulting weighted-average dumping margin is greater than 25 percent). Accordingly, the Department applied the A-T method for all of HYSCO's U.S. sales in the final determination.

Based on our analysis since the Preliminary Determination, we found that 39.72 percent of the value of SeAH's U.S. sales passed the Cohen's *d* test, thus confirming the existence of a pattern of prices that differ significantly among purchasers, regions or time periods.¹⁰ Further, we found that the A-A method could not appropriately account for pattern of CEPs for comparable merchandise that differ significantly because there was a meaningful difference in the weighted-average dumping margins calculated using the A-A method for all U.S. sales and the mixed alternative method¹¹ (*i.e.*, the difference in the resulting weighted-average dumping margin moves across the de minimis threshold).

HYSCO contends that the Department's differential pricing analysis is flawed in multiple respects. Specifically, using the section headings provided in HYSCO's Case Brief:

⁷ See Preliminary Determination Decision Memo at pages 6-9.

⁸ See, *e.g.*, Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33350 (June 4, 2013) (Xanthan Gum from the PRC), and the accompanying Issues and Decision Memorandum at Comment 3; see also Large Residential Washers From the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2012-2014, 80 FR 55595 (September 16, 2015) (LRW from Korea) and the accompanying Issues and Decision Memorandum at Comment 5.

⁹ See HYSCO Final Sales Calculation Memo.

¹⁰ See SeAH Final Sales Calculation Memo.

¹¹ The mixed alternative method applies the A-T method for sales which pass the Cohen's *d* test and the A-A method for sales which do not pass the Cohen's *d* test.

1. The Department's Differential Pricing Analysis Yielded Unreasonable Results and Should be Modified
 - The differential pricing analysis (specifically the Cohen's *d* test) compares the standard deviations of the test and comparison groups of sales against one another and yields unreasonable results. Such distortions lead to erroneous conclusions within "the meaning of any reasonable interpretation of the term" "differentially priced."¹²
 - However, if the Department continues to use the Cohen's *d* test,¹³ it must make two modifications: (1) the comparison group must account for at least 50 percent of all sales; and (2) "an additional step to ensure that the transactions identified as being differentially prices {sic} are actually differentially priced in some meaningful commercial way."¹⁴
 - HYSCO provides an example for each of the proposed changes based on the Preliminary Determination for a specific CONNUM.¹⁵
2. The Department Should Not Include Above-Normal Value Sales in its Measure of Differential Pricing or Targeted Dumping
 - "The objective of the Department's {sic} differential pricing test is to determine whether there are patterns of prices that differ across time, regions, or customers to such an extent that any dumping may be 'masked.' That is to say, the Department analyzes these sales and patterns to determine whether 'targeted dumping' may be occurring."¹⁶
 - The differential pricing analysis unreasonably resulted in a "targeted dumping" finding predicated on non-dumped sales. Thus, the Department must exclude from its Cohen's *d* analysis sales which have not been dumped. Otherwise, the Department's results are dependent significantly on non-dumped sales.¹⁷
3. Any "Meaningful Difference" in HYSCO's Margin is Attributable to Zeroing and not Differential Pricing
 - The "meaningful difference" analysis identifies differences in margins attributable to zeroing and not attributable to any purported targeted dumping.¹⁸

¹² See HYSCO Case Brief at 18.

¹³ In its case brief, HYSCO refers to a "comparison" group and a "base" group. In this document, the Department will refer to these as the "test" group and the "comparison" group, consistent with its terminology elsewhere in this investigation. The "test" group includes those U.S. sales for a specific purchaser, region or time period, the mean (or weighted-average) price to which is compared with the mean (*i.e.*, weighted-average) price for U.S. sales to all other purchasers, regions, or time periods, respectively – the "comparison" group.

¹⁴ *Id.* at 20.

¹⁵ See HYSCO Case Brief at 18-21.

¹⁶ *Id.* at 21, quoting the SAA at 843.

¹⁷ *Id.* at 21-22.

¹⁸ *Id.* at 22-23.

- For the Preliminary Determination, HYSCO shows that the amount of dumping for dumped sales (i.e., the total positive comparison results) differs by only a small amount – the difference between 2.24 percent and 2.52 percent. This difference, HYSCO asserts, is not a meaningful difference and is not “the margin moves across the de minimis threshold”¹⁹ which the Department claimed in its Preliminary Determination.
 - Accordingly, HYSCO asserts that there is no meaningful difference between the two comparison methods except that due to zeroing.
4. The A-to-A Methodology Accounts for Any Dumping Attributable to Sales that are Targeted
- The “meaningful difference” analysis focuses on the resulting “**margins**” and ignores the “differences in **prices**” “as required by the statute.”²⁰
 - According to HYSCO’s further analysis of the Preliminary Determination, the results of which are presented in Exhibit 2 of HYSCO’s Case Brief, where “under the A-to-T methodology, the Department identified only a small fraction of addition dumping for targeted sales” which “{contributed} only a de minimis amount to HYSCO’s dumping margin.”²¹
 - Thus, this “difference in the amount of dumping found under the A-to-A and A-to-T methods does not constitute a meaningful difference” and “the dumping attributable to sales that were targeted was taken into account in the Department’s standard A-to-A methodology.”²²
5. The “Meaningful Difference” Between the A-to-A Methodology and the A-to-T Methodology Is Due to the Inclusion of Non-Targeted Sales in the A-to-T Calculations
- Any “meaningful difference” in the margin is attributable to the Department’s application of the A-to-T method to both targeted and non-targeted sales, rather than to only the targeted sales.
 - HYSCO points to the results of the “mixed” alternative comparison method, where the alternative A-to-T method is applied to only those sales which passed the Cohen’s d test (i.e., those U.S. sales which satisfy the pattern requirement). This result is also de minimis, and the “meaningful difference” of crossing the de minimis threshold identified by the Department is only realized when comparing this result with the result of applying the A-to-T method to all U.S. sales (i.e., where the A-to-T method is also applied to “non-targeted” sales).
 - Thus, because HYSCO claims that it is “unlawful” for the Department to apply the alternative A-to-T method to “non-targeted” sales, the Department’s

¹⁹ See HYSCO Case Brief at 22, quoting the Preliminary Results.

²⁰ Id. at 23 (emphasis from HYSCO’s Case Brief)..

²¹ Id. at 24.

²² Id.

application of the A-to-T method to “untargeted dumping” cannot result in a “meaningful difference in margins attributable to differential pricing.”²³

The petitioners state that the Department’s application of the differential pricing methodology has been consistently upheld by reviewing courts.²⁴ They agree with the Department’s defense of its methodology in determinations such as CWP from Korea,²⁵ and assert that the Department should respond to HYSCO’s arguments in the same manner. Maverick agrees that the Department has considered and rejected these statistical objections in past cases. Maverick acknowledges that the Cohens *d* test, as with any statistical measure, has its limitations, but none of these limitations make it invalid under the statute. Maverick disputes HYSCO’s contention that the Department failed to explain satisfactorily why the A-A method could not account for price differences, noting that, in fact, the Department’s reasoning has been explained and accepted by reviewing courts.²⁶

DOC Position:

As an initial matter, we note that there is nothing in section 777A(d) of the Act that mandates how the Department measures whether there is a pattern of prices that differs significantly or explains why the A-A method or the transaction-to-transaction (T-T) method cannot account for such differences. On the contrary, carrying out the purpose of the statute here is a gap filling exercise properly conducted by the Department.²⁷ As explained in the Preliminary Determination, as well as in various other proceedings,²⁸ the Department’s differential pricing analysis is reasonable, including the use of the Cohen’s *d* test as a component in this analysis, and it is in no way contrary to the law.

With Congress’ enactment of the Uruguay Round Agreements Act (URAA), section 777A(d) of the Act states:

(d) Determination of Less Than Fair Value.--
(1) Investigations.--

²³ Id. at 25.

²⁴ The petitioners cite in particular JBF RAK, LLC v. United States, 790 F.3d 1358 (CAFC 2015), Borusan Mannesmann Boru Sanayi Ve Ticaret A. S. v. United States, 990 F. Supp. 2d 1384 (CIT 2014), aff’d 608 Fed. Appx. 948, 2015 U.S. App. LEXIS 10653, 37 Int’l Trade Rep. (BNA) 1327 (CAFC. 2015), and Golden Dragon Precise Copper Tube Group, Inc. v. United States, Slip Op. 15-89 (CIT August 19, 2015)

²⁵ See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 32937 (June 10, 2015), and accompanying Issues and Decision Memorandum at Comment 1 (CWP from Korea).

²⁶ Maverick cites Apex Frozen Foods Private Ltd. v. United States, 37 F. Supp. 3d 1286 (CIT 2014) (Apex).

²⁷ See Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 842-43 (1984) (Chevron) (recognizing deference where a statute is ambiguous and an agency’s interpretation is reasonable); see also Apex, 37 F. Supp. 3d at 1302 (applying Chevron deference in the context of the Department’s interpretation of section 777A(d)(1) of the Act).

²⁸ See, e.g., CWP from Korea at Comments 1 and 2, and Large Residential Washers From the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2012-2014, 80 FR 55595 (September 16, 2015) (LRW from Korea) and accompanying Issues and Decision Memorandum at Comment 5.

(A) In General. In an investigation under subtitle B, the administering authority shall determine whether the subject merchandise is being sold in the United States at less than fair value--

- (i) by comparing the weighted average of the normal values to the weighted average of the export prices (and constructed export prices) for comparable merchandise, or
- (ii) by comparing the normal values of individual transactions to the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(B) Exception. 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).

(2) Reviews.--In a review under section 751, when comparing export prices (or constructed export prices) of individual transactions to the weighted average price of sales of the foreign like product, the administering authority shall limit its averaging of prices to a period not exceeding the calendar month that corresponds most closely to the calendar month of the individual export sale.

The SAA expressly recognizes that:

New 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 average-to-average or transaction-to-transaction methodology cannot account for a pattern of prices that differ significantly among purchasers, regions, or time periods, i.e., where targeted dumping may be occurring.²⁹

The SAA further discusses this new section of the statute and the Department's change in practice to using the A-A method:

In part the reluctance to use the average-to-average methodology had been based on a concern that such a methodology could conceal "targeted dumping." In 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."³⁰

²⁹ See SAA at 843.

³⁰ See SAA at 842.

With the enactment of the URAA, the Department's standard comparison method in an LTFV investigation is normally the A-A method. This is reiterated in the Department's regulations, which state that "the Secretary will use the A-A method unless the Secretary determines another method is appropriate in a particular case."³¹ As recognized in the SAA, the application by the Department of the A-A method to calculate a company's weighted-average dumping margin has raised concerns that dumping may be masked or hidden. The SAA states that consideration of the A-T method, as an alternative comparison method, may respond to such concerns "where targeted dumping *may* be occurring."³² Neither the statute nor the SAA state that this is the only reason why the Department could resort to the A-T method, simply that this *may* be a situation where the A-T method would be appropriate. As stated in the statute, the requirements for considering whether to apply the A-T method are that there exist a pattern of prices that differ significantly and that the Department explains why either the A-A method or the T-T method cannot account for such differences.

Accordingly, the Department finds that the purpose of section 777A(d)(1)(B) of the Act is to evaluate whether the A-A method is the appropriate tool to measure whether, and if so to what extent, a given respondent is dumping the subject merchandise at issue in the U.S. market.³³ While "targeting" and "targeted dumping" may be used as a general expression to denote this provision of the statute,³⁴ these terms impose no additional requirements beyond those specified in the statute for the Department to otherwise determine that the A-A method is not appropriate based upon a finding that the two statutory requirements have been satisfied. Furthermore, "targeting" implies a purpose or intent on behalf of the exporter to focus on a sub-group of its U.S. sales. The court has already found that the purpose or intent behind an exporter's pricing behavior in the U.S. market is not relevant to the Department's analysis of the statutory provisions of section 777A(d)(1)(B) of the Act.³⁵ The Court of Appeals for the Federal Circuit (CAFC) has stated:

Section 1677f-1(d)(1)(B) does not require Commerce to determine the reasons why there is a pattern of export prices for comparable merchandise that differs significantly among purchasers, regions, or time periods, nor does it mandate which comparison methods Commerce must use in administrative reviews. As a

³¹ See 19 CFR 351.414(c)(1). This approach is also now followed by the Department in administrative and new shipper reviews. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (February 14, 2012) (Final Modification for Reviews) (where the Department explained that it would now "calculate weighted-average margins of dumping and antidumping duty assessment rates in a manner which provides offsets for non-dumped comparisons while using monthly average-to-average ('A-A') comparisons in reviews, paralleling the WTO-consistent methodology that the Department applies in original investigations").

³² See SAA at 843 (emphasis added).

³³ See 19 CFR 351.414(c)(1).

³⁴ See e.g., Samsung v. United States, Slip Op. 15-58, p. 5 ("Commerce may apply the A-to-T methodology 'if (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or period of time, and (ii) the administering authority explains why such differences cannot be taken into account using' the A-to-A or T-to-T methodologies. Id. § 1677f-1(d)(1)(B). Pricing that meets both conditions is known as 'targeted dumping.'").

³⁵ See JB F RAK LLC v. United States, 991 F. Supp. 2d 1343, 1355 (CIT 2014); aff'd JB F RAK LLC v. United States, 790 F.3d 1358 (Fed. Cir. 2015) ("JB F RAK").

result, Commerce looks to its practices in antidumping duty investigations for guidance. Here, the CIT did not err in finding there is no intent requirement in the statute, and we agree with the CIT that requiring Commerce to determine the intent of a targeted dumping respondent “would create a tremendous burden on Commerce that is not required or suggested by the statute.”³⁶

As stated in section 777A(d)(1)(B) of the Act, the requirements for considering whether to apply the A-T method are that there exists a pattern of prices that differ significantly and that the Department explains why either the A-A method or the T-T method cannot account for such differences. The Department’s application of a differential pricing analysis in this investigation provides a complete and reasonable interpretation of the language of the statute, regulations and SAA to identify when pricing cannot be appropriately taken into account when using the normal A-A methodology, and it provides a remedy for masked dumping when the conditions exist.

As described in the Preliminary Determination, the differential pricing analysis addresses each of these two statutory requirements. The first requirement, the “pattern requirement,” is addressed using the Cohen’s *d* test and the ratio test. The pattern requirement will establish whether conditions exist in the pricing behavior of the respondent in the U.S. market where dumping may be masked or hidden, where higher-priced U.S. sales offset lower-priced U.S. sales. Consistent with the pattern requirement, the Cohen’s *d* test, for comparable merchandise, compares the mean price to a given purchaser, region or time period to the mean price to all other purchasers, regions or time periods, respectively, to determine whether this difference is significant. The ratio test then evaluates the results of these individual comparisons from the Cohen’s *d* test to determine whether the extent of the identified differences in prices which are found to be significant is sufficient to find a pattern and satisfy the pattern requirement, i.e., that conditions exist which may result in masked dumping.

When the respondent’s pricing behavior exhibits conditions in which masked dumping may be a problem – i.e., where there exists a pattern of prices that differ significantly – then the Department considers whether the standard A-A method can account for “such differences” – i.e., the pattern or conditions found pursuant to the pattern requirement. To examine this second statutory requirement, the “explanation requirement,” the Department considers whether there is a meaningful difference between the weighted-average dumping margin calculated using the A-A method and that calculated using the appropriate alternative comparison method based on the A-T method. Comparison of these results summarize whether the differences in U.S. prices mask or hide dumping when normal values are compared with average U.S. prices (the A-A method) as opposed to when normal values are compared with sale-specific U.S. prices (the A-T method). When there is a meaningful difference in these results, the Department finds that the extent of masked dumping is meaningful to warrant the use of an alternative comparison method to quantify the amount of a respondent’s dumping in the U.S. market, thus fulfilling the language and purpose of the statute and the SAA.

1. The Department’s Differential Pricing Analysis Yielded Unreasonable Results and Should be Modified

³⁶ See JBF RAK, 790 F.3d at 1368 (internal citations omitted).

As stated in the Preliminary Determination, 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."³⁷ The Cohen's d coefficient is a recognized 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, the Department explained that "{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." 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 the Cohen's d test to satisfy the statutory language, to measure whether a difference is significant.³⁸

The Cohen's d coefficient 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, and is based on the dispersion of the prices within each group. In other words, the "significance" of differences between the average prices of the test group and the comparison group (i.e., between a specific purchaser, region or time period and all other purchasers, regions or time periods, respectively) is measure by how widely the individual prices differ within these two groups. When there is little variation in prices within each of these groups (i.e., not between the two groups), then a small difference in the mean prices of the test and comparison groups will be found to be significant. Conversely, when there are wide variations in prices within each of these groups, then a much larger difference in the mean prices of the test and comparison groups will be necessary in order to find that the difference is significant.

The Department thus relies on the Cohen's d coefficient as a measure of effect size to determine whether the observed price differences are significant. In this application, the difference in the weighted-average (i.e., mean) U.S. price to a particular purchaser, region or time period (i.e., the test group) and the weighted-average U.S. price to all other purchasers, regions or time periods (i.e., the comparison group) is measured relative to the variance of the U.S. prices within each of these groups (i.e., all U.S. prices).

HYSCO's understanding of the Cohen's d test is not consistent and partially incorrect.³⁹ The Cohen's d test does not compare "the standard deviation of one group 'the test group' against the

³⁷ See Preliminary Decision Memo at page 7.

³⁸ Xanthan Gum from the PRC at Comment 3 (emphasis in original).

³⁹ See HYSCO's Case Brief at 18.

standard deviation of another group of sales ‘the base group’,”⁴⁰ but does measure “the difference between the mean prices in the two groups against the standard deviations.”⁴¹ HYSCO also concludes that its review of the Department’s approach “reveals certain distortions” and “erroneous conclusions” that sales have been “differentially priced within the meaning of any reasonable interpretation of the term.”⁴² However, HYSCO fails to support this assertion, does not provide its suggestion of what a “reasonable interpretation” of the statute might be, but provides two recommendations for modifying the Cohen’s *d* test.

First, HYSCO states that “the Department’s analysis sets no limitation on what set of sales can comprise a reasonable ‘base’ comparison group”⁴³ and recommends that the Department require that the comparison group account for “more than 50 percent of the total.”⁴⁴ HYSCO also provides an example from page 62 of the SAS output of the margin program from the Preliminary Determination.⁴⁵ In this example, the test group comprises 73 sales and the comparison group comprises two sales where the variation in prices within the comparison group is very small while the test group “evidenced price fluctuations, as one would expect in a typical commercial circumstances for such a large group”⁴⁶ however one would define that, but presumably at least at a level that is not very small. In response to the fact pattern, HYSCO insists that the comparison group must “include a meaningful volume of sales to qualify as a reasonable benchmark against which to {compare the test group}.”⁴⁷

The Department disagrees first that the Department has set no limitations on the comparison group, and second that these limits are not reasonable and that HYSCO’s recommended 50 percent threshold is necessary. In the Preliminary Determination, the Department stated that “for comparable merchandise, the Cohen’s *d* test is applied when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise.”⁴⁸ The five percent threshold is analogous to the five percent threshold for home market viability where the quantity (or alternatively value) of sales in the comparison market normally must be at least five percent of the quantity or value of sales of subject merchandise. Thus, similar to finding that a comparison market is suitable for the calculation of normal values for comparison to U.S. price, the Cohen’s *d* test imposes a five percent threshold on the volume of the comparison group to ensure a sufficient basis for comparison with the test group of sales. The Department finds that this is a reasonable approach and disagrees that HYSCO’s recommendation of a 50 percent threshold is warranted.

HYSCO also insists that “the Department should take an additional step to ensure that the transactions identified as being differentially prices {sic} are actually differentially prices in

⁴⁰ Id.

⁴¹ Id.

⁴² Id.

⁴³ Id. at 19.

⁴⁴ Id. at 20.

⁴⁵ Id. at 19.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ See Preliminary Decision Memorandum at 7.

some meaningful commercial way.”⁴⁹ HYSCO states that the prices from the same example on page 62 noted above vary by only 3.52 percent which HYSCO claims as resulted in a “false positive” finding of being “differentially priced.” HYSCO points to the SAA that the Department must “proceed on a case-by-case basis, because small differences may be significant for one industry or one type of product, but not for another.”⁵⁰ HYSCO asserts that in this instance that the Department has failed to act accordingly, and recommends that the Department “should establish additional parameters as reasonableness tests” such as testing whether “the total variance across all sales of one CONNUM is less than the variance that is significant for the industry or product at issue (for example, 5 or 10 percent), {where if true, then} the Department should conclude that such sales are not differentially priced and exclude them from the Cohen’s *d* analysis.”⁵¹

The Department disagrees. HYSCO’s claim that the relative differences in sale-specific U.S. prices of 3.52 percent as not being significant in no way discredits that Department’s approach based on the Cohen’s *d* analysis. As described above, the Department finds its approach reasonable that the use of the Cohen’s *d* test to evaluate whether differences in prices of two groups is significant. As noted from Xanthan Gum from the PRC, effect size, “may therefore be said to be a true measure of the significance of the difference.” Therefore, although there may be other approaches to determine whether a respondent’s pricing behavior exhibits prices differences which are significant, these would not diminish the reasonableness of the approach selected by the Department.

2. The Department Should Not Include Above-Normal Value Sales in its Measure of Differential Pricing or Targeted Dumping

The Department disagrees with HYSCO’s contention that U.S. sales which are not dumped “should be exclude{d} from its targeted dumping and Cohen’s *d* analysis.” Section 777A(d)(1)(B)(i) of the Act requires “a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time.” The pattern requirement neither provides nor even contemplates comparison of the U.S. prices with normal values. Therefore, dumping, a determination that can only be made after the comparison of U.S. price and normal value, is not relevant to the examination of whether there exists a pattern of prices that differ significantly. The only comparisons contemplated by the statute are the differences between U.S. prices among purchasers, regions or time periods, and whether these differences are significant.

Likewise, HYSCO’s analysis of the results of the Preliminary Determination where HYSCO parses the results of the Cohen’s *d* test according to whether U.S. sales are priced above or below normal value is inapposite. As discussed above, normal value is not relevant to the Department’s examination of the pattern requirement, and thus dumping is also irrelevant.

⁴⁹ See HYSCO’s Case Brief at 20.

⁵⁰ *Id.*, quoting from the SAA at 843.

⁵¹ *Id.* at 21.

Therefore, HYSCO's assertion that the Department must segregate dumped and non-dumped U.S. sales and only use HYSCO dumped sales as the basis for a differential pricing analysis is unsupported by the statute.

3. Any "Meaningful Difference" in HYSCO's Margin is Attributable to Zeroing and not Differential Pricing

The Department disagrees with HYSCO that the differences in the calculated weighted-average dumping margins are not a result of "differential pricing." As discussed above, the pattern of prices that differ significantly – "differential pricing" – establish that conditions exist in which dumping may be hidden or masked.⁵² In this situation, lower-priced U.S. sales (*i.e.*, sales which may be at less than normal or fair value) are offset by higher-priced U.S. sales.⁵³ The conditions thus established, however, do not indicate that "targeted," masked, or hidden dumping is present or present to an extent that is meaningful. That determination is made when the Department examines the explanation requirement of the statute.

If the pattern requirement is met and conditions exist which may permit masked dumping, the Department then examines the explanation requirement by considering whether there is a meaningful difference in the weighted-average dumping margins calculated using the A-A method and an appropriate alternative comparison method. The Department agrees with HYSCO that the differences in the calculated weighted-average dumping margins are solely due to zeroing or the denial of offsets for non-dumped U.S. sales. However, if zeroing is not used, then the results of the A-A method and any alternative comparison method based on the A-T method as an alternative to the A-A method will always be identical.

For HYSCO in this investigation, this can be seen by examining the calculations for both the preliminary and final determinations. For the A-A method, the A-T method, and the "mixed" alternative comparison method, the sum of the total positive comparison results and the total negative comparison results is identical.⁵⁴ Therefore, if zeroing is not used when applying the A-T method, the results of such calculations will always be identical between the A-A method and any alternative, "exceptional" comparison method, and application of the A-T method, as provided by the statute, would be rendered *in utile*.

In its case brief, HYSCO provides values from the Preliminary Determination which HYSCO claims demonstrates that the actual difference in the amount of dumping between the A-A method, 2.24 percent, and the A-T method, 2.52 percent, is not meaningful. HYSCO's argument is erroneous and misleading in that it assumes that zeroing is used for both the A-A method and the A-T method. The fact that the weighted-average dumping margin calculated using the A-A method, with zeroing, is also not de minimis is of no consequence to the Department's analysis. HYSCO's weighted-average dumping margin using the A-A method for these final results is

⁵² See, in general, the SAA at 842-843; see also U.S. Steel ("the exception contained in {section 777A(d)(1)(B) of the Act} indicates that Congress gave Commerce a tool for combating targeted or masked dumping by allowing Commerce to compare weighted average normal value to individual transaction values when there is a pattern of prices that differs significantly among purchasers, regions, or periods of time").

⁵³ See the SAA at 842 (where "targeted dumping" is defined as a situation where "an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions").

⁵⁴ See HYSCO Final Sales Calculation Memorandum at Attachment 3.

2.31 percent, and its weighted-average dumping margin using the appropriate alternative comparison method is 6.19 percent. These results are based on not zeroing for the A-A method, and including zeroing when applying the A-T method as an alternative comparison method for the A-A method. If the A-T method did not include zeroing, as seemingly advocated by HYSCO, then these results would be identical, as demonstrated in the HYSCO Final Sales Calculation Memo and discussed above, thus resulting in no meaning for the application of an alternative comparison method under the statute.

As reasonably established in this analysis, a difference in the calculated results between a weighted-average dumping margin which is zero or de minimis, and weighted-average dumping margin which is above the de minimis threshold is meaningful.⁵⁵ The application of an alternative comparison method has revealed hidden or masked dumping. Such masked dumping was reasonably suspected as a result of the Department's finding of a pattern or prices that differ significantly which created conditions which could lead to hidden or masked dumping. Therefore, the Department's analysis is a reasonable approach to address the statutory requirements in reaching the conclusion to apply an alternative comparison method to calculate HYSCO's weighted-average dumping margin for this final determination.

4. The A-to-A Methodology Accounts for Any Dumping Attributable to Sales that are Targeted

The Department disagrees with HYSCO's claim that a comparison of the weighted-average dumping margins calculated using the A-A method and an alternative method do not result in differences in prices in the U.S. market. As discussed above, when using the A-A method, lower-priced U.S. sales (*i.e.*, sales which may be dumped) can be offset by higher-priced U.S. sales. This is reflected in the SAA which states that targeted dumping is a situation where "an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions."⁵⁶ The comparison of a dumping margin based on a weighted-average U.S. price with a dumping margin based on the individual, constituent transaction-specific U.S. prices precisely examines the impact on the amount of dumping which is hidden or masked. Both the weighted-average U.S. price and the individual U.S. prices are compared to a normal value that is independent and constant because the characteristics of the individual U.S. sales remain constant whether a weighted-average U.S. price or individual U.S. prices are used in the analysis.

When considering the simple situation where there is a single weighted-average U.S. price, this average is made up of a number of individual U.S. sales which exhibit different prices; and where the two comparison methods under consideration are the A-A method and the A-T method. The normal value used to calculate a dumping margin for these sales will fall into one of five scenarios with respect to the range of these different, individual U.S. sale prices:

- 1) the normal value is less than all of the U.S. prices and there is no dumping;
- 2) the normal value is greater than all of the U.S. prices and all sales are dumped;

⁵⁵ See Beijing Tianhai Indus. Co. v. United States, 7 F. Supp. 3d 1318 (CIT 2014); Apex Frozen Foods Private Ltd., et al. v. United States, 37 F. Supp. 3d 1286 (CIT 2014).

⁵⁶ See SAA at 842.

- 3) the normal value is nominally greater than the U.S. prices such that there is a minimal amount of dumping and a significant amount of offsets from non-dumped sales;
- 4) the normal value is nominally less than the U.S. prices such that there is a significant amount of dumping and a minimal amount of offsets generated from non-dumped sales;
- 5) the normal value is in the middle of the range of individual U.S. prices such that there is both a significant amount dumping and a significant amount of offsets generated from non-dumped sales.

Under scenarios (1) and (2), either there is no dumping or all U.S. sales are dumped such that there is no difference between the A-A method with offsets⁵⁷ and the A-T method with zeroing – i.e., there is no meaningful difference as described in the Preliminary Decision Memorandum. Under scenario (3), there is a minimal (i.e., de minimis) amount of dumping, such that the A-A method and the A-T method result in either a zero or de minimis weighted-average dumping margin which also does not constitute a meaningful difference. Under scenario (4), there is a significant (i.e., non-de minimis) amount of dumping with only a minimal amount of non-dumped sales, such that there is not a meaningful difference in the weighted-average dumping margins (i.e., less than a 25 percent relative change or no change from de minimis to non-de minimis) calculated using offsets or zeroing. Lastly, under scenario (5), there is a significant, non-de minimis amount of dumping and a significant amount of offsets generated from non-dumped sales such that there is a meaningful difference in the weighted-average dumping margins calculated using offsets and zeroing (i.e., there is at least a 25 percent relative change in the dumping margin or there is a change from de minimis to non-de minimis).

Only under scenarios (3), (4) and (5) are the granting or denial of offsets relevant to whether dumping is being masked, as there are both dumped and non-dumped sales, to an extent that the A-A method is not an appropriate comparison method. The extent of the amount of dumping and potential offsets for non-dumped sales is measured relative to the total export value (i.e., the denominator of the weighted-average dumping margin) of the subject merchandise. Thus, the differential pricing analysis does account for the difference in the U.S. prices relative to the absolute price level of the subject merchandise. Only under scenario (5) will the Department find that the A-A method is not appropriate – where there is an above de minimis amount of dumping along with an amount of potential offsets generated from non-dumped sales such that the amount of dumping is changed by a meaningful amount. Both of these amounts are measured relative to the total export value (i.e., absolute price level) of the subject merchandise sold by the exporter in the U.S. market.

HYSCO argues that “the Department identified only a small fraction of additional dumping (i.e., de minimis) for targeted sales,” and concludes that, therefore, “the dumping attributable to sales that were targeted was taken into account in the Department’s standard A-to-A methodology.”⁵⁸ This is based on HYSCO’s analysis of the calculation results from the Preliminary Determination which are summarized in Exhibit 2 of HYSCO’s Case Brief. However, HYSCO’s argument and conclusion suffer the same fatal flaw as discussed above, namely

⁵⁷ As discussed above, the A-A method with offsets (i.e., without zeroing) is identical to the A-T method with offsets. Therefore, as concluded above, the only difference between these two calculations is whether offsets are granted for non-dumped sales (i.e., whether zeroing is or is not used).

⁵⁸ See HYSCO Case Brief at 24.

HYSCO's insistence that all sales which constitute a pattern of prices that differ significantly must also be dumped. As discussed above, the statute does not provide for or even consider that the Department must find significant differences in U.S. prices among purchasers, regions or time periods, but that it must also find that these sales are at less than normal (or fair) value. After parsing of the results of the Cohen's *d* analysis by whether the U.S. sales had been dumped or not, HYSCO then only considered the change in the amount of dumping for sales that had passed the Cohen's *d* test and which were at less than fair value.⁵⁹ This myopic analysis is optically defective as it completely ignores a large majority of HYSCO's U.S. sales. Therefore, the Department finds no merit in HYSCO's analysis or conclusions.

Therefore, not only are the individual, transaction-specific U.S. prices considered in the Department evaluation of whether the A-A method is appropriate, but the Department's approach also considers the absolute price level in the U.S. market, which establishes the relevance of the observed differences in U.S. prices relative to the U.S. marketplace.

5. The "Meaningful Difference" Between the A-to-A Methodology and the A-to-T Methodology Is Due to the Inclusion of Non-Targeted Sales in the A-to-T Calculations

HYSCO's asserts that the Department can only apply the A-T method, as an alternative to the A-A method, to U.S. sales which are "differentially priced." HYSCO states that the only reason why the Department has found an affirmative weighted-average dumping margin is because of its "extension of the alternative methodology to typical, untargeted dumping."⁶⁰ The Department disagrees. As discussed elsewhere, the statute is silent on how, or to which U.S. sales, the Department may apply the A-T method. Accordingly, this is a gap filling exercise in which the Department must employ its discretion in a logical and reasoned manner. As such, the Department established three ranges of results from the Cohen's *d*/ratio tests which will normally inform the Department on the appropriate manner in which to apply the A-T method as an alternative comparison method for the A-A method.⁶¹ Furthermore, no party to this investigation has argued or provided factual information on the record indicating that the Department should modify the boundaries of these three ranges.⁶² Therefore, the Department continues to find for this final determination that these three ranges of results for the Cohen's *d*/ratio tests are reasonable and that the application of the A-T method to all of HYSCO's U.S. sales, as described in the introduction to this comment, is likewise reasonable.

The Department, as a result, finds HYSCO's reliance on the weighted-average dumping margin calculated using the mixed comparison method to be misplaced. As discussed above, the appropriate alternative comparison method which the Department is considering for HYSCO in this final determination is the application of the A-T method to all of HYSCO's U.S. sales. The Department's analysis shows that 77.11 percent of HYSCO's U.S. sales passed the Cohen's *d* test, which, when following the Department stated approach in this investigation, supports the

⁵⁹ Nonetheless, if the calculation results from HYSCO's analysis in Exhibit 2 of the HYSCO Final Sales Calculation Memo are totaled, they still results in the same sum of total positive comparison results and total negative comparison results. See the HYSCO Final Sales Calculation Memo at Attachment 4.

⁶⁰ See HYSCO's Case Brief at 25.

⁶¹ See Preliminary Decision Memorandum at 7-8.

⁶² See Preliminary Decision Memorandum at 8.

application of the A-T method to all of HYSCO's U.S. sales. Accordingly, the mixed comparison method is not a relevant alternative comparison method for HYSCO in this final determination.

SeAH agrees with HYSCO's contention that the Department's differential pricing methodology is flawed. SeAH asserts that the conclusions stemming from the Department's differential pricing analysis are unsupported by the record, and, therefore, the Department cannot apply the alternative, A-T method in this situation and must apply the A-A method to calculate SeAH's weighted-average dumping margin. Specifically, SeAH claims:

1. The Department has never adequately demonstrated that its definition of "pattern" meets the statutory definition for identifying a pattern of prices that differ significantly among purchasers, regions, or period of time. SeAH asserts that "a pattern" as contemplated by the statute must be more than random fluctuations in the data. SeAH claims that the Department's analysis, in being unable to distinguish between a pattern and random fluctuations, is thus unable to distinguish between significant price differences and minor differences. Thus, the Department's analysis generates "false positives" to identify a pattern of prices that differ significantly.
2. SeAH insists, in order for the Department to rely upon a Cohen's *d* test, that the Department must demonstrate that the underlying data approximate a normal distribution. This is necessary because the calculation of the Cohen's *d* coefficient is based on the means and standard deviations of the U.S. sale price data. Furthermore, SeAH rejects the Department's response to this issue in a prior determination.⁶³ If the Department fails to establish that SeAH's pricing data are normally distributed, then its results and conclusions are invalid.
3. SeAH asserts that the three thresholds established by Dr. Cohen – "small," "medium" and "large" – are arbitrary "and cannot properly be applied as bright-line tests." Accordingly, the Department's approach "is not consistent with recognized statistical principles."
4. SeAH challenges the application of the 33 and 66 percent thresholds used in the ratio test, and asserts that these thresholds are arbitrary. SeAH insists that the Department must establish these thresholds either through a notice-and-comment rulemaking process, or it must explain how these thresholds are supported by substantial evidence on the record of each proceeding in which the thresholds are applied. SeAH states that the Department has failed to provide any theoretical or empirical justification for these thresholds.
5. SeAH claims that the Department's analysis fails to meet the statutory requirement to explain why the A-A method cannot account for the observed pattern of price that differ significantly. Without satisfying the statutory requirements for departing from the standard A-A method, SeAH concludes that the Department is not permitted to use the A-T method for any of its sales.

⁶³ See Seamless Refined Copper Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review: 2011-2012, 79 FR 36719 (June 30, 2014).

With respect to SeAH's arguments, the petitioners contend that, if the Department's analysis results in the application of the A-A method for SeAH's sales, the Department should consider the argument moot and not devote its limited resources to developing positions where there is no controversy.

DOC Position:

6. The Meaning of "Pattern of Prices That Differ Significantly"

The Department's disagrees with SeAH that the Cohen's *d* and ratio tests fail to reasonably evaluate whether there exists a pattern of prices that differ significantly – the "pattern requirement." As we have explained in past cases, the Department interprets "pattern" in the context of the statute to mean some type of order or arrangement which can be discerned.⁶⁴

When looking at an exporter's pricing behavior overall, as when using the A-A method to ascertain the extent of an exporter's dumping, no order may be apparent; however, when this same behavior is arranged by purchasers, regions or time periods, then an order of prices may be apparent, and such an order of prices may exhibit significant differences. When such significant differences in prices exist to a reasonable extent, then the Department will find that a "pattern" has been found to exist.

Furthermore, the statute requires that this arrangement or order of prices, which is apparent when examined by purchaser, region, or time period, must exhibit significant differences. As discussed in the Preliminary Determination as well as herein, the Department has established a Cohen's *d* and ratio tests to examine whether HYSCO's and SeAH's pricing behavior in the U.S. market exhibits a pattern of prices that differ significantly. The Cohen's *d* test examines whether significant price differences exist between each purchaser and all other purchasers, between each region and all other regions, and between each time period and all other time periods.

Section 777A(d)(1)(B)(i) of the Act specifies "a pattern of {prices} for comparable merchandise that differ significantly." The Department notes that the term "differ" in the statute is modified by "significant." From Webster's dictionary,⁶⁵ "significant" has the following meanings:

1. having meaning;
2. a. having or likely to have influence or effect, of a noticeably or measurably large amount;
b. probably caused by something other than mere chance.

Thus, the term "differ significantly" connotes not just being "not identical" but also where it has meaning, where it has or may have influence or effect, where it is noticeably or measurably large, and where it may be beyond something that occurs by chance. The observed differences in prices must be taken in context when discerning whether they are significant. This is done not on a product or industry level, but on an exporter-specific basis in relation to the pricing behavior

⁶⁴ See, e.g., LRW from Korea and the accompanying Issues and Decision Memorandum at Comment 5.

⁶⁵ See Webster's Ninth New Collegiate Dictionary (1986) at page 1096; discussed in LRW from Korea at Comment 5.

exhibited by each individual exporter. Thus, as a significant difference is not defined as a difference in the average prices of, for example, two dollars per kilogram, but rather this threshold is established based on the prices for actual sales in the U.S. market as reported by the respondent under examination. Therefore, a price difference which may be significant for one industry, product and exporter, may not be significant for a different industry, product and exporter.

From Webster's dictionary, "pattern" has the following meanings:

1. a form or model proposed for imitation;
2. something designed or used as a model for making things;
3. a model for making a mold into which molten metal is poured to form a casting;
4. an artistic, musical, literary, or mechanical design or form;
5. a natural or chance configuration;
6. a length of fabric sufficient for an article (as of clothing);
7. a. the distribution of shrapnel, bombs on a target, or shot from a shotgun;
b. the grouping made on a target by bullets;
8. a reliable sample of traits, acts, tendencies, or other observable characteristics of a person, group, or institution (behavior pattern) (spending pattern);
9. a. the flight path prescribed for an airplane that is coming in for a landing;
b. a prescribed route to be followed by a pass receiver in football;
10. a standard diagram transmitted for testing television circuits;
11. a discernible coherent system based on the intended interrelationship of component parts (foreign policy patterns);
12. frequent or widespread incidence (a pattern of dissent).

Of these possible meanings, items (8) and (12) are relevant to the provision at hand. Here "a pattern" is a reliable sample of traits, acts, tendencies or other observable characteristics, with frequent or widespread incidences. As described above, the ratio test quantifies the extent of the significant differences which has been identified by the Cohen's *d* test. The Department finds that this definition of pattern, as provided for in section 777A(d)(1)(B)(i) of the Act supports the Department's approach in this analysis.

Therefore, a "pattern of prices that differ significantly among purchasers, regions or time periods" means that the Department is examining the extent to which the prices, when ordered by purchaser, region or time period, exhibit differences which have meaning, which have or may have influence or effect, which are noticeably or measurably large, and which may be beyond something that occurs by chance; and whether from the extent of these price differences one can reasonably make a conclusion about the characteristics of the exporter's pricing behavior.

Therefore, the Department disagrees that the results of the Cohen's *d* and ratio tests of SeAH's U.S. sales merely reflect random price variations that do not constitute a pattern of prices that differ significantly. Moreover, as discussed in detail below, randomness is not part of the Department's analysis as the Department's analysis is based on the complete universe of U.S. sale prices during the POI, and thus these calculations are not based on estimated values which would include sampling error (or noise) which is inherent with analyses based on random samples. Furthermore, one cannot claim that randomness would be a characteristic inherent to

SeAH's U.S. prices themselves because it is reasonable to infer that SeAH's pricing behavior is based on rational and deliberate pricing decisions made pursuant to corporate goals and is not random or done by chance. Accordingly, SeAH assertions as to the failings of the Department's approach to examine the existence of a pattern of prices that differ significantly are meritless.

7. SeAH's U.S. Prices Must Exhibit a Normal Distribution

The Department disagrees with SeAH's contention that the Department must verify that a normal distribution exists in order for the Department's Cohen's *d* analysis to be valid. SeAH appears to misunderstand the distinctions between statistical analysis, random sampling, and statistical significance and the role of a normal distribution in each of these.

A "statistical analysis" is another name for data analysis – what the Department does in every proceeding to calculate a weighted-average dumping margin or a cost of production. In this context, "data" and "statistical" can be considered synonymous, just as data and statistics can be as well (e.g., import statistics are simply data points which quantify the imports of a given country). As an example, a one pound bag of M&Ms will have candy with blue, green, yellow, red and brown coatings. To count up the number of each color in this individual one pound bag and to calculate the percentages of each color relative to the total number of candies in the bag is a statistical analysis. Likewise, a "statistical measure" is merely a value which quantifies some aspect in a statistical analysis. The number (i.e., frequency) and proportion of each color of candy in the one pound bag of M&Ms are each statistical measures.

In this example, if there exists only a single, one pound bag of M&Ms, then the range of the color of candies in that bag would reflect the colors of these candies for the entire universe of M&Ms. However, if this one pound bag is only one of ten thousand bags filled at given plant on October 5, 2015, then one may consider the number and proportion of the color of candies in this bag to be a sample of the production at that plant on that day. If there was no inherent bias in how these bags of M&Ms were filled on October 5th at the M&M factory, then the sample represented in the one pound bag under examination may be considered a "random sample." If this is so, then any one of the other 9,999 bags of M&Ms filled on October 5th could also be considered as a random sample of the number of each color of candy produced on that fifth day in October.

Lastly, "statistical significance" quantifies the randomness, or sampling error, or "noise" that is inherent in any sample from a population universe. In this example, at the M&M factory, the number of candies of each color is distributed equally, such that each color has 20 percent of the total number of candies made that day. In the one-pound bag which has 500 candies and for which we counted the number of each color, there are 102, 94, 99, 104 and 100 blue, green, yellow, red and brown candies, respectively. Each of these five values is an estimate of the number of each color of candy produced on that day. The difference between these numbers (i.e., estimated values) and the actual number of each color produced (i.e., 100 for each color for a 500-count bag) reflects the randomness of the sample or its sampling error. If the number of each color of candy were calculated for another, and another, one-pound bag of M&Ms, then these numbers may, or mostly likely will, be different from the first bag and also from the actual numbers from the factory as a whole.

The statistical significance of the number of each color of candies in a single one-pound bag measures how accurate and confident one is of this estimation to represent the actual distribution of the colors of different candies for the factory as a whole. A typical way to express this would be that with 95 percent confidence that the number of each color of candy in a one-pound bag is between 95 and 105. This estimate, with the associated statistical significance or statistical inference, has the principle assumption of a normal distribution of the underlying randomness of the sample. A normal distribution is a primary characteristic of a random sample.

Nonetheless, in the Department's analysis of SeAH's U.S. price data, it has all of the prices of SeAH's sales in the U.S. market during the POI. When the Department calculates a Cohen's *d* coefficient, preceded by its constituent means and standard deviations of the test and comparison groups, these values include the complete population universe of SeAH's U.S. price data. This is equivalent to having all of the data from the M&M factory for that day's production of ten thousand one-pound bags of M&Ms. The Department is not limited, as implied by SeAH's arguments, to only knowing the number of each color of candy in a single one pound bag.

SeAH's liberal scattering of terms and concepts like t-test, power analysis, samples, "randomly and independently drawn from normal populations," sample size and "normal distribution" all reflect SeAH's attempt to obfuscate the issue. Such diversions are not relevant to the Department's analysis as explained above, and SeAH's claims are meritless.

8. Dr. Cohen's "Small," "Medium" and "Large" Thresholds Are Arbitrary and Cannot Be Used

The Department disagrees with SeAH's assertion that the three thresholds established by Dr. Cohen are arbitrary and impermissible in its analysis. As noted above, the Department's examination of the two statutory requirements under section 777A(d)(1)(B) of the Act is by necessity a gap-filling exercise. The Department must exercise its discretion in order to fill such gaps in a reasonable and logical manner or else the Department would be unable to execute its obligation to administer the statute.

The Department disagrees with SeAH's argument that it must pursue a notice-and-comment rulemaking process unless it justifies its analysis in each and every proceeding. The notice and comment requirements of the Administrative Procedures Act (APA) do not apply "to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice."⁶⁶ Further, as the Department has noted, it normally makes these types of changes (e.g., the evolution from the targeted dumping analysis, including the Nails test, to the current differential pricing analysis) in the context of the Department's proceedings, on a case-by-case basis.⁶⁷ As the Federal Circuit has recognized, the Department is entitled to make changes and adopt a new approach in the context of its proceedings, provided it explains the basis for the change, and the change is a reasonable interpretation of the statute.⁶⁸ As with the Department's

⁶⁶ See 5 U.S.C. § 553(b)(3)(A).

⁶⁷ See Differential Pricing Analysis; Request for Comments, 79 FR 26720, 26722 (May 9, 2014) (Differential Pricing Comment Request).

⁶⁸ See Saha Thai Steel Pipe Company v. United States, 635 F.3d 1335, 1341 (Fed. Cir. 2011); Washington Red Raspberry Com. v. United States, 859 F.2d 898, 902-03 (Fed. Cir. 1988). See also Carlisle Tire & Rubber Co. v.

prior interpretation of the provision at issue, the Department adopted the targeted dumping analysis, including the Nails test, in the context of its proceedings.⁶⁹ There, the Department explained the basis for its interpretation and provided parties with an opportunity to comment. Similarly, with respect to the Department's differential pricing analysis, the Department has explained the basis for the change in practice and provided SeAH with an opportunity to comment on the Department's interpretation and methodology. Moreover, as the Department noted, as it "gains greater experience with addressing potentially hidden or masked dumping that can occur when the Department determines weighted-average dumping margins using the average-to-average comparison method, the Department expects to continue to develop its approach with respect to the use of an alternative comparison method."⁷⁰ Further developments and changes, along with further refinements are expected in the context of its proceedings based upon an examination of the facts and the parties' comments in each case. Accordingly, the Department's development of the differential pricing analysis and its use of the Dr. Cohen's small, medium and large thresholds in this investigation are consistent with established law.

In the final results of the administrative review of Shrimp from Vietnam, the Department stated:

The Department disagrees with VASEP's claim that the Cohen's *d* test's thresholds of "small," "medium," and "large" are arbitrary, and that consequently the Department should use a higher threshold for the Cohen's *d* coefficient in order to find that the sales of the test group pass the Cohen's *d* test. In his text Statistical Power Analysis for the Behavioral Sciences, Dr. Cohen himself describes these three cut-offs. The effect size at the small threshold "is the order of magnitude of the difference in mean IQ between twins and non-twins, the latter being the larger. It is also approximately the size of the difference in mean height between 15- and 16-year-old girls." For the medium threshold, the "effect size is conceived as one large enough to be visible to the naked eye. That is, in the course of normal experience, one would become aware of an average difference in IQ between clerical and semiskilled workers or between members of professional and managerial occupational groups" or "the magnitude of the difference in height between 14- and 18-year-old girls." For the large threshold, the difference "is represented by the mean IQ difference estimated between holders of the Ph.D. degree and typical college freshmen, or between college graduates and persons with only a 50-50 chance of passing an academic high school curriculum. These seem like grossly perceptible and therefore large differences, as does the mean difference in height between 13- and 18-year-old girls..."⁷¹

United States, 634 F. Supp. 419, 423 (Fed. Cir. 1986) (discussing exceptions to the notice and comment requirements of the APA).

⁶⁹ See Nails from the PRC, 73 FR 33977.

⁷⁰ See Differential Pricing Comment Request, 79 FR at 26722.

⁷¹ See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 20132014, 80 FR 55328 (September 15, 2015); quoting from Cohen, Jacob, Statistical Power Analysis for the Behavioral Sciences, Lawrence Erlbaum Associates, Publishers (1988), at 27 (citations omitted).

Although these descriptions by Dr. Cohen are qualitative in nature, they are not arbitrary but represent real world observations. As noted above from Webster's dictionary,⁷² "significant" has the following meanings:

1. having meaning;
2. a. having or likely to have influence or effect, of a noticeably or measurably large amount;
b. probably caused by something other than mere chance.

Thus, the term "prices that differ significantly" connotes different prices where the difference has meaning, where it has or may have influence or effect, where it is noticeably or measurably large, and where it may be beyond something that occurs by chance. Certainly the examples for both Dr. Cohen's medium and large thresholds for effect size reasonably meet this level of difference. But as the Department noted in its Preliminary Decision Memorandum, the Department used the large threshold because "the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups..."⁷³ In other words, the significance required by the Department in its Cohen's *d* test affords the greatest meaning to the difference of the means of the prices among purchasers, regions and time periods.

In the final determination of Xanthan Gum from the PRC, the Department recognized:

In "Difference Between Two Means," the author states that "there is no objective answer" to the question of what constitutes a large effect. Although Deosen focuses on this excerpt for the proposition that the "guidelines are somewhat arbitrary," the author also notes that the guidelines suggested by Cohen as to what constitutes a small effect size, medium effect size, and large effect size "have been widely adopted." The author further explains that Cohen's *d* is a "commonly used measure" to "consider the difference between means in standardized units."⁷⁴

Therefore, the Department continues to find that three thresholds established by Dr. Cohen, which even if they are somewhat subjective, have a substantive foundation in the real world and have engendered wide acceptance in the academic community. Accordingly, the Department also continues to find that their use as part of the Cohen's *d* test is appropriate.

9. The 33 and 66 Percent Thresholds from the Ratio Test Are Arbitrary and Cannot Be Used

The Department disagrees with SeAH's assertion that the three thresholds established by Dr. Cohen are arbitrary and impermissible in its analysis. As noted above, the Department's

⁷² See Webster's Ninth New Collegiate Dictionary (1989), p. 1096.

⁷³ See Preliminary Decision Memorandum at 7.

⁷⁴ 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 Memo at Comment 3 (internal citations omitted); quoting from David Lane, et al., Chapter 19 "Effect Size," Section 2 "Difference Between Two Means."

examination of the two statutory requirements under section 777A(d)(1)(B) of the Act is by necessity a gap-filling exercise. The Department must exercise its discretion in order to fill such gaps in a reasonable and logical manner or else the Department would be unable to execute its obligation to administer the statute. Furthermore, for the reasons indicated above, the Department does not need to conduct a notice-and-comment rulemaking process in order to include these thresholds in a differential pricing analysis. Lastly, these thresholds, as with the approach incorporated in the differential pricing analysis itself, may be modified given factual information and argument on the record of a proceeding.⁷⁵

Neither the statute nor the SAA provides any guidance in determining whether the requirements of section 77A(d)(1)(B)(i) and (ii) of the Act are satisfied and, if satisfied, how to apply the A-T method. 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 by the Cohen's *d* and ratio tests.

The Department has discussed in numerous instances that our price percentage thresholds are reasonable and consistent with the statute. 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 constitutes the identified pattern of 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 the extent of this pattern not to be significant and does not consider the application of the A-T method as an alternative comparison method to be appropriate. 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 the extent of this pattern not to be significant in applying the A-A method, in part, but also finds that segregating this pricing behavior from the pricing behavior which does not contribute to the pattern to be reasonable, and accordingly considers the application of the A-T method as an alternative comparison method to this limited portion of a respondent's U.S. sales.

10. The Department Must Explain Why the A-A Method Cannot Account For the Pattern of Prices That Differ Significantly

The Department disagrees with SeAH's assertion that it has not provided an adequate explanation why the A-A method cannot account for such differences. As explained in the Preliminary Determination, 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. A difference in the weighted-average dumping margins is considered meaningful if: 1) there is a 25 percent relative

⁷⁵ See the Preliminary Decision Memorandum at 8 ("Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.").

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.⁷⁶

For a complete discussion of this issue, please refer to the Department's position above in response to issue (4) for HYSCO. Likewise, the Department finds SeAH's claim meritless.

Comment 2: Other Issues Related to Differential Pricing Analysis

A. Zeroing and the Alternative A-T Method

HYSCO contends that the Department's differential pricing methodology with respect to the denial of offsets for non-dumped U.S. sales, i.e., "zeroing," is unlawful pursuant to the World Trade Organization (WTO) Antidumping (AD) Agreement. According to HYSCO, Article 2.4.2 of the WTO AD Agreement states that the determination of dumping must be made with respect to the product as a whole, and not a subset of the product under consideration. HYSCO contends that by the denial of offsets for non-dumped U.S. sales from the calculation of the weighted-average dumping margin, the Department is calculating a rate that is not based on the product as a whole, and thus the Department's approach is inconsistent with the WTO AD Agreement. Thus, HYSCO concludes, any application of zeroing under the A-T method or the A-A method is inconsistent with the WTO AD Agreement.⁷⁷

Maverick contends that WTO determinations are not a source of legal authority unless specifically implemented in U.S. law.⁷⁸ Further, Maverick states that the WTO has not promulgated a decision addressing consideration of an alternative comparison method as applied in this investigation. The petitioners did not respond to HYSCO's arguments except to note that HYSCO failed to cite any U.S. litigation that resulted in its favor and instead appears to be directing its argument to a WTO dispute panel.

DOC Position:

The Department disagrees with HYSCO that the Department must amend its Preliminary Determination because of an inferred requirement imposed by the WTO AD Agreement or an adverse WTO panel report. No WTO panel or appellate body determination has addressed the use of an alternative comparison methodology or the denial of offsets for non-dumped sales pursuant to section 777A(d)(1)(B) of the Act or the second sentence of Article 2.4.2 of the AD Agreement. Each of the WTO panel reports in which it found that the United States had not fulfilled its obligations under the AD Agreement by denying offsets for non-dumped sales involved the first sentence of Article 2.4.2. The United States has fully implemented these

⁷⁶ See Preliminary Decision Memo at pages 6-8. 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 Issues and Decision Memorandum 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), (and the accompanying Issues and Decision Memorandum at Comment 2.

⁷⁷ See HYSCO Case Brief at pages 11-17, which include citations to a number of WTO Appellate Body findings.

⁷⁸ Maverick cites the following in support of its position: NSK Ltd. v. United States, 510 F.3d 1375, 1380 (CAFC 2007), and Corus Staal BV v. United States, 502 F.3d 1370, 1375 (CAFC 2007).

decisions pursuant to the requirements established by the Uruguay Round Agreements Act (URAA).⁷⁹

Furthermore, the Federal Circuit has held that WTO reports are without effect under U.S. law, “unless and until such a {report} has been adopted pursuant to the specified statutory scheme” established in the URAA.⁸⁰ Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.⁸¹ As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department’s discretion in applying the statute.⁸² With regard to the denial of offsets for non-dumped sales when using the average-to-transaction method under the second sentence of Article 2.4.2, the Department has issued no new determination and the United States has adopted no change to its methodology pursuant to the URAA’s statutory procedure.

Finally, the Federal Circuit has affirmed that Department’s practice of denying offsets for non-dumped sales when using the average-to-transaction method.⁸³ Thus, the denial of offsets for non-dumped sales, i.e., zeroing, when using the average-to-transaction method is fully consistent with U.S. law.

B. Application of the A-T Method to All U.S. Sales

HYSCO contends that the Department’s application of the A-T method to all U.S. sales is prohibited by the second sentence of Article 2.4.2 of the AD Agreement. HYSCO states

The purpose for which the second sentence of this Article {2.4.2} may be employed is to “unmask” differential pricing. However, the Department has employed the second sentence in a manner that extends far beyond its intended purpose.⁸⁴

HYSCO further asserts that the Department’s application of the A-T method to all U.S. sales “is equally defective under U.S. law.”⁸⁵ HYSCO points to the Department final determination in PRCBs from Taiwan,⁸⁶ where it claims that the Department inadequately supported its decision to apply the A-T method to all U.S. sales, contrary to the Department prior interpretation to only apply the A-T method to “differential pricing transactions.”⁸⁷

⁷⁹ See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006); and Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (February 14, 2012).

⁸⁰ See Corus Staal BV v. U.S. Dep’t of Commerce, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), cert. denied 126 S. Ct. 1023 (2006); accord Corus Staal BV v. United States, 502 F.3d 1370, 1375 (Fed. Cir. 2007).

⁸¹ See, e.g., 19 U.S.C. § 3533, 3538.

⁸² See, e.g., 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary).

⁸³ See Union Steel v. United States, 713 F.3d 1101, 1103 (Fed. Cir. 2013).

⁸⁴ See HYSCO Case Brief at 12.

⁸⁵ Id. at 14.

⁸⁶ Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value, 75 FR 14569 (March 26, 2010) (PRCBs from Taiwan).

⁸⁷ See HYSCO Case Brief at 14.

DOC Position:

As discussed in the previous comment, the Department disagrees with HYSCO that the Department must amend its Preliminary Determination because of an inferred requirement imposed by the WTO AD Agreement or an adverse WTO panel report. No WTO panel or appellate body determination has addressed the use of an alternative comparison methodology or the denial of offsets for non-dumped sales pursuant to section 777A(d)(1)(B) or the second sentence of Article 2.4.2 of the AD Agreement. Each of the WTO panel reports in which it found that the United States had not fulfilled its obligations under the AD Agreement by denying offsets for non-dumped sales involved the first sentence of Article 2.4.2. The United States has fully implemented these decisions pursuant to the requirements established by the URAA.⁸⁸

Furthermore, the Federal Circuit has held that WTO reports are without effect under U.S. law, “unless and until such a {report} has been adopted pursuant to the specified statutory scheme” established in the URAA.⁸⁹ Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.⁹⁰ As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department’s discretion in applying the statute.⁹¹ With regard to the denial of offsets for non-dumped sales when using the average-to-transaction method under the second sentence of Article 2.4.2, the Department has issued no new determination and the United States has adopted no change to its methodology pursuant to the URAA’s statutory procedure.

The Department further disagrees with HYSCO’s argument that the application of the alternative A-T method is impermissible under U.S. law. Section 777A(d)(1)(B) of the Act places no restrictions or requirements on the application of the A-T method beyond the requirements specified under subsections (i) and (ii), both of which must be satisfied in order to consider whether to apply an alternative comparison method. The statute makes no provision for whether the A-T method may be applied to all or some portion of the U.S. sales as an alternative to one of the standard comparison methods provided for under section 777A(d)(1)(A) of the Act.⁹² HYSCO has provided no support for its argument that the statute provides any such limitations on the application of the A-T method; accordingly, HYSCO’s arguments are meritless.

The Department also finds misleading HYSCO’s trivialization of the quotation from PRCBs from Taiwan. The Department’s explanation in that final determination regarded the application

⁸⁸ See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006); and Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (February 14, 2012).

⁸⁹ See Corus Staal BV v. U.S. Dep’t of Commerce, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), cert. denied 126 S. Ct. 1023 (2006); accord Corus Staal BV v. United States, 502 F.3d 1370, 1375 (Fed. Cir. 2007).

⁹⁰ See, e.g., 19 U.S.C. § 3533, 3538.

⁹¹ See, e.g., 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary).

⁹² 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 28-30; Steel Threaded Rod From India: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part; 2012-2013, 79 FR 40714 (July 14, 2014) and the accompanying Issues and Decision Memorandum at 19-21; and Xanthan Gum from the PRC and the accompanying Issues and Decision Memorandum at 27-31.

of the A-T method to all U.S. sales as a change from the limited application of the A-T method under the now-withdrawn regulations (which had governed targeted dumping (specifically 19 CFR 351.414(f)(2) (2007) and limited the application of the A-T method to those sales which the Department identified as targeted). In full:

The Department finds that the language of section 777A(d)(1)(B) of the Act does not preclude adopting a similarly uniform application of average-to-transaction comparisons for all transactions when satisfaction of the statutory criteria suggests that application of the average-to-transaction method is the appropriate method. The only limitations the statute places on the application of the average-to-transaction method are the satisfaction of the two criteria set forth in the provision. When the criteria for application of the average-to-transaction method are satisfied, section 777A(d)(1)(B) of the Act does not limit application of the average-to-transaction comparison methodology to certain transactions. Instead, the provision expressly permits the Department to determine dumping margins by comparing weighted-average normal values to the export prices (or constructed export prices) of individual transactions. While the Department does not find that the language of section 777A(d)(1)(B) of the Act mandates application of the average-to-transaction method to all sales, it does find that this interpretation **is a reasonable one** and is more consistent with the Department's approach to selection of the appropriate comparison method under section 777A(d)(1) of the Act more generally. Accordingly, the Department is departing from the practice adopted under the now-withdrawn regulation of applying average-to-transaction comparisons to only a subset of sales. Instead, if the criteria of section 777A(d)(1)(B) of the Act are satisfied, the Department will apply average-to-transaction comparisons for all sales in calculating the weighted-average dumping margin.⁹³

Therefore, contrary to HYSCO's assertion, the Department provided an explanation for its change to apply the A-T method to all U.S. sales in PRCBs from Taiwan, as it has for this final determination above.

Comment 3: Selection of Additional Mandatory/Voluntary Respondent

Husteel argues that the Department should have selected and investigated it as a mandatory or, in the alternative, a voluntary respondent in this investigation. Husteel asserts that section 777A of the Act sets forth a general requirement that the Department shall determine weighted-average dumping margins for each known exporter and producer of the subject merchandise, with exceptions to be made only in cases where there are too many exporters and producers to individually investigate. According to Husteel, the Department did not explain why the number of Korean exporters and producers eligible for individual examination constituted such a "large" number. Although Husteel acknowledges that the statute does not define specifically the number of producers/exporters that constitutes a "large" number, it maintains that the Court of International Trade (CIT) has held that the statutory term "large" cannot plausibly be construed by the Department as encompassing any number larger than two.⁹⁴

⁹³ See PRCBs from Taiwan, Issues and Decision Memorandum at 5 (emphasis added to identify HYSCO's quotation in its case brief).

⁹⁴ See Carpenter Tech. Corp. v. United States, 662 F. Supp 2d 1337 (CIT 2009) at 1342 (Carpenter Tech).

In addition, Husteel contends that the Department's determination of what constitutes a large number of exporters or producers based on resource constraints has been rejected by the CIT. Husteel claims that the resource constraints identified by the Department in the instant investigation are almost identical to those offered and rejected by the court in the cases it cites in its case brief in support of its claim.⁹⁵ Husteel submits that, just as in those cases, in this case the Department has exceeded its statutory authority by limiting the number of mandatory respondents based on its own resource constraints.

Furthermore, Husteel argues that if the Department limits the number of mandatory respondents, section 782 of the Act directs that it also examine voluntary respondents who submit timely questionnaire responses in accordance with section 782(a)(2). Husteel contends that the CIT has found that section 782 sets a higher standard than section 777A and requires examination of voluntary respondents unless the Department finds that this review would be unduly burdensome.⁹⁶ Husteel asserts that the Statement of Administrative Action accompanying the Uruguay Round Agreements (SAA) requires that "Commerce, consistent with Article 6.10.2 of the Agreement, will not discourage voluntary responses and will endeavor to investigate all firms that voluntarily provide timely response in the form required"⁹⁷ Husteel adds that it was the only entity in this investigation to request voluntary status and it timely submitted all required questionnaire responses.

Moreover, Husteel maintains that the burdens identified by the Department as reasons for refusing to accept voluntary respondents do not rise to the level of "unduly burdensome" because they are only those normally encountered by the Department in an investigation. Husteel explains that, because it has participated in numerous sales and cost verifications, the Department is quite familiar with Husteel's sales processes and cost accounting system, which are virtually the same for line pipe and other pipe products. Furthermore, Husteel maintains that, unlike the mandatory respondents in this investigation, there are no complex issues regarding its corporate structure or accounting and selling practices. As such, Husteel argues that the burden associated with examining Husteel would be relatively low. In addition, Husteel contends that the Department did not even address whether the number of voluntary respondents was so large as to be unduly burdensome, and submits that one voluntary respondent is not large in the context of this, or any, investigation. Husteel emphasizes that it has complied with the Department's requests and policies throughout the investigation (*i.e.*, timely filing responses to the Department's questionnaire) in an effort to be individually examined and receive its own weighted-average dumping margin.

Finally, Husteel reasons that because the Department's determination not to accept voluntary respondents in this investigation was made on February 27, 2015, this investigation is not

⁹⁵ See, e.g., Zhejiang Native Produce & Animal By-Products Imp. & Exp. Corp. v. United States, 637 F. Supp. 2d 1260, 1263-64 (CIT 2009) (Zhejiang Native Produce), where the court stated that Commerce may not rely upon its workload caused by other antidumping proceedings in assessing whether the number of exporters or producers is "large," and thus deciding that individual determinations are impracticable.

⁹⁶ See, e.g., Grobtest & I-Mei Indus. Vietnam Co. v. United States, 853 F. Supp. 2d 1352 (CIT 2012) (Grobtest).

⁹⁷ See Uruguay Round Agreements Act Statement of Administrative Action, attached to H.R. No. 103-316, vol. 1 at 872 (1994), reprinted in 1994 U.S.C.C.A.N. 37773, 4163.

impacted by the Trade Preferences Extension Act of 2015,⁹⁸ which applies to determinations made on or after August 6, 2015. However, even if the Department were to retroactively apply the amendments to the voluntary respondent determination in this investigation,⁹⁹ Husteel believes that the Department's determination would still be unlawful because examining Husteel as a voluntary respondent would not be "unduly burdensome."

The petitioners did not comment on this issue.

DOC Position:

Section 777A(c)(2) of the Act permits the Department, in an AD investigation, to limit its examination of all known exporters and producers of subject merchandise to a reasonable number of exporters or producers, if it is not practicable to determine individual weighted-average dumping margins because of the large number of exporters or producers involved. Under section 777A(c)(2)(A) and (B), the Department may limit its examination to (1) a sample of exporters or producers that it determines is statistically valid based on the information available to it at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that the Department determines can be reasonably examined. The SAA interprets these provisions to mean that the authority to select respondents, whether by using a "statistically valid" sample or by examining respondents accounting for the largest volume of subject merchandise, rests exclusively with the Department.¹⁰⁰

As we stated in the Respondent Selection Memorandum,¹⁰¹ we found it not practicable to examine each producer/exporter of subject merchandise. The petitioners had previously identified 13 producers and/or exporters of welded line pipe from Korea, and data from U.S. Customs and Border Protection placed on the record by the Department indicated as many as 42 possible producers and/or exporters of the subject merchandise during the POI.¹⁰² Although Husteel cites to various CIT decisions to support its contention that the Department erred in determining that the investigation involved a "large" number of companies, its reliance is misplaced. For instance, all of the cases cited by Husteel involved challenges to the Department's final results of administrative reviews, not investigations, which present unique and complex issues for the Department.¹⁰³ Specifically, investigations involve products, industries, and companies which may not have been previously analyzed by the Department and require significant additional research and analysis under more rigid statutory deadlines, all of

⁹⁸ See Trade Preferences Extension Act of 2015, Pub. L. 114-27, 129 Stat. 362, 386-387. The Department "shall establish . . . an individual weighted average dumping margin . . ." for any exporter or producer that submits a timely voluntary response and may limit the number of voluntary respondents investigated only if the number of exporters or producers subject to the investigation is so large as to be unduly burdensome to the Department and inhibit the timely completion of the investigation.

⁹⁹ Id.

¹⁰⁰ See SAA.

¹⁰¹ See Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations from Ross Belliveau, David Goldberger, and Katherine Johnson, International Trade Compliance Analysts, entitled "Respondent Selection for the Antidumping Duty Investigation of Welded Line Pipe from the Republic of Korea," dated December 5, 2014.

¹⁰² Id.

¹⁰³ See Zhejiang Native Produce, 637 F. Supp. 2d at 1261; Carpenter Tech, 662 F. Supp. 2d at 1338.

which must factor in the Department's determination of what constitutes a "large" number of companies. Furthermore, the cases cited by Husteel involved different factual circumstances than those present here. In Zhejiang Native Produce, for instance, the Department began with a pool of four companies, two of which subsequently withdrew from the proceeding.¹⁰⁴ Here, the Department is conducting an investigation with as many as 42 possible producers and/or exporters.

Accordingly, we limited our investigation to two producers/exporters. The Department was faced with analyzing the complex corporate structure, production information, accounting and selling practices of those companies selected for individual investigation, as well as resource constraints; and individual examination of more than two companies would have placed greater pressure on the Department to complete its determinations under the tight deadlines established by law.

In determining whether to examine voluntary respondents, pursuant to section 782(a) of the Act, the Department considers whether examination of the voluntary respondents would be unduly burdensome and inhibit the timely completion of the investigation. Husteel cites Grobest and Zhejiang Native Produce for the proposition that the selection of voluntary respondents in this case would not constitute an undue burden. However, both cases pertained to reviews rather than investigations. This case by contrast involves an investigation, which the CIT recently observed requires Commerce to "initially familiarize itself with the product and respondents," verify all information it relies upon, complete the administrative proceeding within shortened statutory deadlines, and handle concurrent investigations (in this case, 10 concurrent AD and countervailing duty (CVD) investigations).¹⁰⁵ In Grobest, the Court remanded to the Department its decision to not review a voluntary respondent due to the administrative burden of reviewing the number of mandatory respondents selected.¹⁰⁶ The Court held that "Commerce {must} separately determine whether reviewing the voluntary respondents 'would be unduly burdensome and inhibit the timely completion of the investigation.'" Because of the resources required to investigate an additional company as a voluntary respondent, the Department must consider its available resources before doing so, i.e., the Department must examine its current and anticipated workload and any deadlines coinciding with the segment of the proceeding in question. Therefore, individual examination of a voluntary respondent, which typically requires multiple rounds of supplemental questionnaires and extensive analysis in order to calculate a weighted-average dumping margin, would have been unduly burdensome given the Department's resource availability. Moreover, because of the significant workload throughout all of Enforcement and Compliance (E&C), we were not able to obtain additional resources from elsewhere in E&C to devote to this AD investigation. Additionally, examination of another company requires a separate verification, extending the time required for overseas travel, as well as the accompanying verification reports. Each of these requirements would place greater pressure on the Department to complete this investigation under the tight deadlines established by law, and would be unduly burdensome and inhibit the timely completion of the investigation.

¹⁰⁴ See Zhejiang Native Produce, 637 F. Supp. 2d at 1261-62.

¹⁰⁵ See Husteel Co., Ltd., et al., v. United States, Slip Op. 15-100 at 30-31 (CIT 2015).

¹⁰⁶ See Grobest, 815 F. Supp. 2d 1342, 1362 (CIT 2012).

Furthermore, on June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to section 782(a) of the Act.¹⁰⁷ Under the current language of that provision, when the Department limits the number of producers and/or exporters examined in an investigation, section 782(a) of the Act directs the Department to calculate individual antidumping duty margins for companies not initially selected for examination who voluntarily provide information if: 1) the information is submitted by the due date specified for producers and/or exporters initially selected for examination, and 2) the number of producers and/or exporters subject to the investigation is not so large that any additional individual examination of such companies would be unduly burdensome to the Department and inhibit the timely completion of the investigation. Husteel argues that the amendments to section 782(a) should not apply to the Department's determination not to accept voluntary respondents in this investigation because it came before the August 6, 2015 effective date of the amendments. However, the amendments to section 782(a) of the Act apply to "determinations made on or after August 6, 2015" and, therefore, apply to the disposition of this issue in the final determination of this investigation.¹⁰⁸

Notwithstanding the effective date of the amendment, the amendment "*compliments {sic} the Department's voluntary respondent analysis and does not require parties...to submit additional information or argument.*"¹⁰⁹ Specifically, under section 782(a) of the Act as amended by the TPEA, in determining whether it would be unduly burdensome to examine a voluntary respondent, the Department may consider: (A) the complexity of the issues or information presented in the proceeding, including questionnaires and any responses thereto; (B) any prior experience of the administering authority in the same or similar proceedings; (C) the total number of investigations and reviews being conducted by the administering authority as of the date of the determination; and (D) other factors relating to the timely completion of each such investigation and review as the administering authority considers appropriate. Throughout this proceeding, there have been a number of complex issues (*e.g.*, the classification of certain of HYSCO's home market sales and the reasonableness of the reported costs) which required the Department to expend significant time and resources in order to thoroughly analyze the issues. In addition, since the initiation of this investigation, the office to which this investigation is assigned has been responsible for administering numerous proceedings.¹¹⁰

Accordingly, for the reasons discussed above, we declined to accept additional mandatory or voluntary respondents in this investigation.

¹⁰⁷ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission. See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) (Applicability Notice).

¹⁰⁸ *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

¹⁰⁹ *Id.* (emphasis added).

¹¹⁰ See Memorandum entitled "Antidumping and Countervailing Duty Investigations of Welded Line Pipe from the Republic of Korea: Whether to Select Additional Mandatory and/or Voluntary Respondents," dated February 27, 2015.

Comment 4: Consolidation of Grade Codes

The petitioners contend that the Department should revise HYSCO and SeAH's reported product characteristic for the grade of welded line pipe (GRADEH/U) to treat grade codes "2" and "3" (representing Grade B and Grade X42, respectively) as a single grade code for purposes of product matching. According to the petitioners' analysis, the physical characteristics of the line pipe sold by both HYSCO and SeAH as Grade B or Grade X42 are virtually identical, with respect to the yield strengths and tensile strengths for selected sales examined by the petitioners.¹¹¹ In addition, with respect to SeAH, the petitioners contend, based on their analysis,¹¹² that SeAH used steel input from the same heats, or of the identical composition, to produce both the reported grade B and grade X42 pipe. The petitioners contend further that the respondents are able to mask dumping by reporting these products under different grade codes, resulting in product matching based on similar products with difference-in-merchandise adjustments, rather than product matching based on identical products.

SeAH responds that it is normal for product grade specifications to overlap in the steel industry, and that if the petitioners are requesting a change to the product-matching criteria to combine the grade coding for the products at issue, they are untimely in doing so. SeAH notes that producers are required to stencil a grade onto line pipe once it has been tested, and that after stenciling, the grade is fixed, which, in turn, defines the grade product characteristic. HYSCO responds that it is the petitioners who are attempting to manipulate product matching by requesting changes to product characteristics late in this investigation. HYSCO notes that yield and tensile strength are only a portion of the requirements for the certification of X42 line pipe, and that the petitioners' argument is based on a miniscule sample of HYSCO's sales during the POI. HYSCO asserts that it properly reported, in compliance with the Department's instructions, the highest grade of multiple-stenciled line pipe it sold.

DOC Position:

We disagree with the petitioners. Welded line pipe has characteristics beyond yield strength and tensile strength that define its grade, such as chemical composition and testing requirements.¹¹³ Furthermore, the requirements for Grade B and Grade X42 certification are not identical with regard to minimum yield strength and chemical composition.¹¹⁴ Moreover, the petitioners' argument that similarities in yield and tensile strengths are justification to combine grades for product-matching purposes is based on analysis of yield and tensile strengths of a small percentage of total sales for both HYSCO and SeAH during the POI.¹¹⁵ We find that such an insignificant sample of sales is inadequate justification to make broad statements concerning

¹¹¹ See the petitioners' Case Brief at pages 17 and 27.

¹¹² See the petitioners' Case Brief at page 27. The petitioners cite to the section D supplemental questionnaire response from SeAH, dated April 28, 2015, and allege that SeAH's purchases, when analyzed by grade and supplier, show that SeAH used coil graded at one specification to produce line pipe of a different specification. The petitioners then note that an examination of the mill certificates provided in the sections B and C supplemental questionnaire response from SeAH, dated April 10, 2015, shows that the tensile and yield strengths of grade code 2 and grade code 3 line pipe are almost identical, and that the chemical compositions are the same.

¹¹³ See section A questionnaire response from HYSCO, dated January 14, 2015, at Exhibit A-23.

¹¹⁴ Id.

¹¹⁵ See the petitioners' Case Brief at pages 16, 17, 25, and 26.

product characteristics and/or to recode the reported grades in either company's sales databases. In addition, the petitioners' request to modify the reporting of the grade product characteristic to treat Grades B and X42 as identical for product-matching purposes not only affects this investigation, but also the companion investigation of welded line pipe from the Republic of Turkey (Turkey). Furthermore, we note that the grade characteristic reporting in this and the Turkish investigation follows the same methodology adopted in previous welded line pipe proceedings,¹¹⁶ as specifically requested by the petitioners in their product-matching comments submitted prior to the issuance of questionnaires in this proceeding.¹¹⁷ In the absence of any compelling evidence on the record to demonstrate that Grade B and Grade X42 pipe represent essentially the same grade of pipe, such that they should be treated as a single grade code for purposes of product matching, we find no basis to modify our product-matching criteria to combine these grades.

Comment 5: Reasonableness of the Reported Costs

The petitioners stress that the Department should be consistent in not using SeAH's and HYSCO's reported costs when there are significant cost differences between similar CONNUMs that are not related to the physical characteristics of the products, and cite to CWP from Korea where the Department recently revised HYSCO's costs.¹¹⁸ The petitioners explain that before the adoption of SAP cost accounting systems the issues revolved around whether the allocation bases used or the allocation of costs between subject and non-subject merchandise were reasonable. The petitioners add that SAP systems allow companies to track actual product-specific costs. However, the petitioners assert that control number (CONNUM) costs generated by SAP systems can result in wildly varying costs that the company does not take into consideration when pricing its products. The petitioners compared the home market sales prices and total cost of manufacturing (TOTCOMs) for several CONNUMs, for both SeAH and HYSCO, to validate their assertion.

The petitioners maintain that neither the statute nor the regulations force the Department to accept the product-specific actual costs generated by a respondent's SAP system. The petitioners explain that in calculating a dumping margin there are at least three functions of cost (i.e., the cost test, constructed value, and the adjustment for differences in merchandise (DIFMER)). The petitioners state that the Department may disregard sales made at less than the cost of production (COP).¹¹⁹ The petitioners add that according to the regulations, in determining the appropriate method for allocating costs among products, the Secretary may take into account production quantities, relative sales values, and other quantitative and qualitative factors associated with the

¹¹⁶ See Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Certain Circular Welded Carbon Quality Steel Line Pipe from the Republic of Korea, 73 FR 66020 (November 6, 2008). This investigation was terminated (Certain Circular Welded Carbon Quality Steel Line Pipe from the Republic of Korea: Termination of Antidumping Duty Investigation, 73 FR 72766 (December 1, 2008)).

¹¹⁷ See Welded Line Pipe from the Republic of Korea and Turkey: Rebuttal Comments on Model Matching, dated December 2, 2014, at 2 (wherein the petitioners reference the 2008 welded line pipe investigations).

¹¹⁸ See CWP from Korea and accompanying Issues and Decision Memorandum at Comment 9. See also Memorandum to the File "2012-2013 Antidumping Administrative Review of Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results Calculation Memorandum for Hyundai HYSCO," dated November 28, 2014.

¹¹⁹ The petitioners cite to section 773(b) of the Act.

manufacture and sale of the subject merchandise and the foreign like product.¹²⁰ The petitioners infer that the Department has the discretion to re-allocate the respondent's reported costs to take these factors into account. The petitioners state that, in deciding what is a reasonable allowance for differences in physical characteristics the Department will consider only differences in variable costs associated with the physical differences.¹²¹ The petitioners reiterate that the Department does not need to accept a respondent's product-specific variable costs that are generated by the SAP system.

For HYSCO, the petitioners allege that its variable and fixed overhead (FOH) costs cannot be deemed to be verified simply because the costs appear in HYSCO's computer system. The petitioners assert that the Department failed to verify how these costs were allocated among individual products within the computer system and whether or not HYSCO's allocations of variable and FOH costs reasonably reflect differences in the products' physical characteristics. The petitioners explain that if conversion costs are allocated based on machine time then all products should have the same allocation of elements of fixed or variable overhead (VOH) costs. The petitioners add that the verification exhibits do not show the total cost of an element or the machine times. According to the petitioners, record evidence shows that differences in HYSCO's allocated VOH and FOH costs among products are inconsistent with differences between the products' physical characteristics. The petitioners assert that even if the Department determines that HYSCO's costs are verified, the reported cost differences are not related to physical characteristics. The petitioners assert that the Department should not focus on whether HYSCO's costs were verified, but should focus on whether the cost differences as reported accurately reflect true differences in physical characteristics. The petitioners argue that, for the final determination, consistent with CWP from Korea, the Department should re-allocate HYSCO's hot-rolled direct material costs among products with common grade, and re-allocate HYSCO's fabrication costs among products with common thickness, surface finish, and end finish.

For SeAH, the petitioners argue that its data show wildly varying costs between CONNUMs that are nearly identical in physical characteristics. The petitioners point out certain products that have a slight difference in physical characteristics (e.g., wall thickness) but a large difference in VOH and FOH costs which bears no relation to the physical characteristic of the products. The petitioners note that, contrary to SeAH's claim that there is normally a correlation between the pipe size and its production cost, the record shows that SeAH's reported costs do not exhibit such correlation. The petitioners, considering SeAH's explanation that such differences are mostly due to the different production processes, argue that the Department did not verify why the cost of different processes would be significantly different. The petitioners further argue that at verification the Department simply checked that the numbers in the response could be traced back to the costs recorded in the computer system, without checking whether the expenses have been correctly allocated between products or that the costs are reflective of differences in physical characteristics. The petitioners maintain that the Department should not use SeAH's reported costs when there are significant cost differences between similar CONNUMs that are not related to physical characteristics. The petitioners conclude that, as in CWP from Korea which they referenced in the discussion of HYSCO's costs, the Department should re-allocate

¹²⁰ The petitioners cite to 19 CFR 351.407(c).

¹²¹ The petitioners cite to 19 CFR 351.411(b).

SeAH's direct material costs among products with common grade, and re-allocate SeAH's fabrication costs among products with common thickness, surface finish, and end finish.

HYSCO clarifies that fixed costs are not expected to be identical for all products during the POI; the fixed unit cost reflected in product costs will vary with changes in the volume of merchandise produced at a given level of production; fixed costs are often allocated using machine time; and the total fixed costs can change from one period to the next. HYSCO explains that, as the record demonstrates, its overhead costs are accumulated and allocated on a product line basis (segregated by outer diameter). HYSCO adds that CONNUMs including products with limited production runs are more likely to show unusual patterns. HYSCO argues that, for the final determination, any adjustments made by the Department should be limited to the CONNUMs showing anomalies.

Further, HYSCO maintains that re-allocating HYSCO's costs as suggested by the petitioners would be distortive and creates a disconnect between the product costs and product characteristics. HYSCO asserts that calculating a single material cost by grade, without taking into consideration wall thickness, ignores the fact that the wall thickness of the line pipe corresponds to the hot-rolled coil (HRC) thickness. In addition, HYSCO notes that the record shows the average purchase price of HRC can vary based on thickness.¹²² HYSCO adds that, consistent with CWP from Korea 11-12 and CWP from Korea 10-11, nominal size should also be incorporated, because material yield losses vary based on nominal size which impacts direct material costs.¹²³ As HYSCO stated above, the accuracy of HYSCO's reported tolling costs has not been challenged and HYSCO's conversion costs correspond to production lines segregated by outer diameter. As such, HYSCO contends, it would be distortive to calculate average conversion costs without regard to outer diameter. HYSCO argues that because the Department requires that sales and cost data reflect all CONNUM characteristics, eliminating certain characteristics when recalculating direct material and conversion costs, as suggested by the petitioners, would create distortions and should be rejected.

SeAH points out that at verification the Department found that the cost differences for products with similar physical characteristic are due primarily to the differences in production processes. For example, products manufactured using a submerged-arc-welding (SAW) process normally have higher per-ton conversion costs than products manufactured using an electric-resistance-welding (ERW) process. SeAH notes that the company's reported costs were based on the costs recorded for each pipe production order in SeAH's normal cost accounting system. As such, SeAH holds, those costs take into account the actual production equipment and process used to produce the product. Therefore, according to SeAH, it is not surprising that production costs may vary based on factors other than the physical characteristics of the pipe.

¹²² HYSCO cites to the memoranda entitled "Verification of the Cost Response of Hyundai HYSCO Co. Ltd. in the Antidumping Duty Investigation of Welded Line Pipe from South Korea," dated July 31, 2015 (HYSCO Cost Verification Report), at Exhibit 13.

¹²³ HYSCO cites to 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) (CWP from Korea 11-12), and accompanying Issues and Decision Memorandum at Comment 1; and Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 35248 (June 12, 2013) (CWP from Korea 10-11), and accompanying Issues and Decision Memorandum at Comment 6.

SeAH refutes the petitioners' claim that the Department failed to go beyond verifying "actual costs" and that the "reasonableness of the reported conversion costs was not verified." According to SeAH, not only did the Department verify the reported costs for sample CONNUMs, but it also compared the reported costs for seven pairs of CONNUMs (including those identified by the petitioners), requiring SeAH to demonstrate why products that appeared to be relatively similar would have different reported costs. SeAH further argues that the petitioners in their earlier comments on model matching contended that the production process used to produce the product should not be considered when identifying control numbers for product matching purposes.¹²⁴ Thus, SeAH concludes, the fact that similar products may have different costs is the consequence of the decision that production processes not be considered one of the characteristics used to define the CONNUMs.

DOC Position:

We agree with the petitioners, in part, and for the final determination we re-allocated HYSCO's and SeAH's conversion (i.e., fabrication) costs among products with common outside diameters.

As an initial matter, contrary to the petitioners' claim that at verification the Department simply "traced back" reported costs to HYSCO's and SeAH's accounting systems without verifying the reasonableness of the cost allocations, we note that the Department's verification reports show that, in addition to tracing the costs to HYSCO's and SeAH's normal books and records, the Department performed a detailed testing and analysis of the reasonableness of the reported costs.¹²⁵ Moreover, as discussed in this Issues and Decision Memorandum, our decision with respect to potential adjustments to HYSCO's and SeAH's reported costs for the final determination was based in part on our analysis of the reasonableness of HYSCO's and SeAH's costs performed at verification.

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 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, the record is clear that the reported costs are derived from HYSCO's and SeAH's normal books and records, 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 and SeAH's normal books reasonably reflect the cost to produce and sell the merchandise under consideration (MUC). Despite HYSCO's and SeAH's contrary assertions, we do not find that to be the case here for conversions costs.

¹²⁴ See the petitioners' letter to the Department – "Rebuttal Comments on Model Matching," dated December 2, 2014 (Petitioners Model Matching Comments), at 2.

¹²⁵ See memorandum entitled "Verification of the Cost Response of SeAH Steel Corporation in the Antidumping Duty Investigation of Welded Line Pipe from Korea, dated July 31, 2015 (SeAH Cost Verification Report) at 13-24. See also HYSCO Cost Verification Report at 13-30.

At the outset of this investigation, the Department identified the physical characteristics that are the most significant in differentiating the costs between products, i.e., epoxy finish, steel grade, outside diameter, wall thickness, end finish, and surface finish.¹²⁶ We note that the petitioners supported the use of these physical characteristics that define unique products, i.e., the CONNUMs, for sales-comparison purposes.¹²⁷ 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 price-to-price comparisons. Thus, under sections 773(f)(1)(A) and 773(a)(6)(C)(ii) and (iii) of the Act, a respondent's reported 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, CV, and DIFMER adjustment accurately reflect the precise physical characteristics of the products whose sales prices are used in the Department's dumping calculations.

An analysis of HYSCO's and SeAH's reported cost databases show that the fluctuation in costs between CONNUMs cannot be wholly explained by the differences in the physical characteristics of those demonstrably similar CONNUMs. As noted by the petitioners, the examples of these inconsistencies include CONNUMs where all physical characteristics between the products are nearly identical and there are significant cost differences. At verification the Department found that these CONNUMs differ for reasons unrelated to their physical characteristics, primarily because they were produced using different production processes.¹²⁸

The Department verified, and the petitioners do not dispute the fact, that HYSCO's and SeAH's reported costs were taken directly from their normal cost accounting systems which record the actual costs incurred to manufacture each pipe product. However, notwithstanding the fact that both respondents' costs were reported in accordance with their normal books and records, we agree with the petitioners that we must use costs that reasonably reflect differences in costs between products. For example, when comparing sales of similar merchandise the Department makes a reasonable allowance for the differences in physical characteristics of the products (the DIFMER adjustment). Pursuant to section 773(a)(6)(C)(ii) of the Act and section 351.411 of the Department's regulations, in determining such allowance the Department will consider "only differences in variable costs associated with the physical differences." While the record shows that the differences in HYSCO's and SeAH's reported costs for nearly identical CONNUMs result primarily from different production processes (which is an inherent result of the respondents' normal cost accounting system), the distortion we find in HYSCO's and SeAH's reporting methodology is one of not neutralizing such cost differences that are unrelated to the physical characteristics identified by the Department. As a result, HYSCO's and SeAH's reported conversion costs do not reasonably reflect the weighted-average POI costs, as their methodology results in arbitrary cost differences between CONNUMs which are independent of, and not attributable to, the physical differences between products.

In past cases, the Department has revised reported CONNUM-specific costs which were based on normal books and records, in order to smooth out large cost differences among products that

¹²⁶ See the Department's December 8, 2014, questionnaire.

¹²⁷ See Petitioners' Model Matching Comments.

¹²⁸ See SeAH Cost Verification Report at 19-20. See also HYSCO Cost Verification Report at 14-15.

have minor differences in physical characteristics. In deciding whether to adjust for unusual cost differences between similar products, we consider the magnitude of the cost differences and the number of CONNUMs affected.¹²⁹ In this case, as the petitioners pointed out in their brief and as HYSCO's and SeAH's reported costs show, there are significant differences in fabrication costs for products with nearly identical physical characteristics.¹³⁰ However, we disagree with the petitioners that the respondents' fabrication costs should be re-allocated among products with common wall thickness, surface finish, and end finish. We note that by doing so, we would ignore the cost differences attributable to the different outside diameters of the products. The record shows that HYSCO's and SeAH's conversion costs are largely influenced by the outside diameter of the finished pipe.¹³¹ Therefore, in order to preserve the cost differences related to outside diameter, for the final determination, we re-allocated HYSCO's and SeAH's fabrication costs among products with common outside diameter. Further, our analysis of HYSCO's and SeAH's data indicates that for material costs, the reported cost differences among CONNUMs with similar grade characteristics are for the most part not significant, and the number of CONNUMs for which such material cost differences are larger than the norm is relatively small.¹³² As such, we did not adjust HYSCO's and SeAH's reported material costs for the final determination.

Company- Specific Comments

Comment 6: HYSCO's Classification of Certain "Local Sales" as Home Market Sales

As discussed in the Preliminary Determination, HYSCO's home market sales database included a significant quantity of "local sales" – sales made to customers in Korea that are likely to export the merchandise, either subsequent to further manufacturing or "as-is." HYSCO claimed that, for virtually all of these local sales, at the time of sale, it did not have knowledge of the final destination of its merchandise or whether the merchandise in specific sales will be further processed.¹³³ In the Preliminary Determination, we accepted as home market sales the local sales for which HYSCO reports it does not know the ultimate disposition of the merchandise, and included these sales in our determination of home market viability for HYSCO. Our preliminary determination was based on our precedent in previous cases, where we accepted the reporting of Korean "local sales" as home market sales in instances where the Korean respondent sells merchandise that will be further processed prior to export and/or does not know the ultimate destination of the merchandise.¹³⁴

¹²⁹ See CWP from Korea; Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Brazil, 60 FR 31960, 31969 (June 19, 1995); and Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from the United Kingdom, 72 FR 43598 (August 6, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

¹³⁰ See SeAH's May 11, 2015 submission at Appendix SD-10 (cost database). See also cost database "hyscp02" included in HYSCO's DSQR1.

¹³¹ See HYSCO Cost Verification Report at 8-9, 21 and 24.

¹³² See SeAH Final Cost Calculation Memorandum. See also HYSCO Final Cost Calculation Memorandum.

¹³³ See sections B and C supplemental questionnaire response part 1 from HYSCO, dated March 24, 2015 (HYSCO BCSQR1) at pages 2-4; section B and C supplemental questionnaire response part 2 from HYSCO, dated April 9, 2015 (HYSCO BCSQR2), at 2-4; and home market viability questionnaire response from HYSCO, dated April 29, 2015 (HM Viability QR), at 1-3, and Exhibits 1 and 2.

¹³⁴ See Preliminary Decision Memorandum at 13, citing as examples: Certain Polyester Staple Fiber

Maverick, supported by the other petitioners, contends that HYSCO knew or should have known that its “local sales” were sales that were exported without further manufacture and, therefore, these sales should be excluded from the home market database. According to Maverick, the legal standard for determining whether such sales should be home market sales derives from the CIT’s opinion in Allegheny Ludlum,¹³⁵ where the CIT relied on section 773(a)(1)(B)(i) of the Act for determining whether merchandise is an export sale. Maverick asserts that Allegheny Ludlum established a test under which if the respondent knew or should have known that the merchandise was not for consumption in the home market, the sale is an export sale, not a home market sale.¹³⁶ Furthermore, Maverick contends that HYSCO previously applied this test in a separate proceeding, CORE from Korea, using HYSCO’s knowledge of the customer’s business operations to identify which sales were further manufactured into non-subject merchandise and which sales were exported directly as subject merchandise.¹³⁷ In contrast, Maverick asserts that under a nearly identical fact pattern in this investigation, HYSCO claims it lacks the specific knowledge of the customer’s activity after sale and thus, unlike in CORE from Korea, improperly classified as home market sales those “local sales” HYSCO knew or should have known would be exported without further manufacture.

Specifically, Maverick asserts that HYSCO had imputed knowledge that its “local sales” invoiced in U.S. dollars and shipped to Korean port destinations were not further manufactured prior to being exported. According to information Maverick placed on the record, the available information regarding the business operations of a number of HYSCO’s “local sales” customers, and the Korean destination to which the merchandise was shipped, supports Maverick’s contention that HYSCO knew or should have known that sales to these customers and locations would be exported without further manufacture, and thus these sales should be excluded from the home market database.¹³⁸ Maverick also takes issue with HYSCO’s classification of “local sales” as export sales only when HYSCO prepares the export license, which Maverick asserts is improperly elevating the imputed knowledge test to an actual knowledge test. Moreover, Maverick contends that the export license information the Department obtained at verification as

from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review, 72 FR 69663 (December 10, 2007) (PSF), and accompanying Issues and Decision Memorandum at Comment 2 ; and Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 70 FR 12443 (March 14, 2005) (CORE from Korea), and accompanying Issues and Decision Memorandum at Comment 28.

¹³⁵ See Allegheny Ludlum Corp. v. United States, 215 F. Supp. 2d 1322 - 1345 (CIT 2000) (Allegheny Ludlum).

¹³⁶ Id. at 1331-1332, cited in Maverick Case Brief at 5-6.

¹³⁷ See Maverick Case Brief at 6 – 7, quoting from a HYSCO submission in CORE from Korea: “HYSCO knows, based on its customers’ product brochures, that they do not produce subject merchandise. Also, HYSCO knows, based on the destination and the use of a local letter of credit, whether a local sale will be directly exported to an overseas market or will be sufficiently transformed into non-subject merchandise. Specifically, if the customer’s destination is a port, the sale will be for export, but if the customer’s destination is its factory, then the local sale will be transformed into non-subject merchandise.” (Placed on this record in Maverick’s June 8, 2015, submission (Maverick June 8) at Exhibit 8.)

¹³⁸ Id. at 7-13, which includes business proprietary information. Maverick cites to information previously placed on the record in Maverick June 8, as well as to memorandum entitled “Verification of the Sales Responses of Hyundai HYSCO (HYSCO),” dated August 18, 2015 (HYSCO SVR), at 8.

part of its review of “local sales” supports Maverick’s assertion that the “local sales” in question were exported without further manufacture and thus not home market sales.¹³⁹

As further support for its contention that HYSCO knew or should have known that the “local sales” were exported without further manufacture, Maverick discusses the role of letters of credit to establish that a sale is exempt from Korean value-added tax (VAT). Maverick notes that in previous reviews, such as PSF and CORE from Korea, the respondent differentiated between “local sales” based on letters of credit.¹⁴⁰ According to Maverick, Korean law requires that a letter of credit must serve as the basis for VAT-free treatment of the sale when the VAT exemption is claimed due to export. Maverick notes that HYSCO may have provided written confirmations of purchase to support the VAT-free treatment of the “local sales,” but has failed to provide any letters of credit for them. Maverick continues that HYSCO’s refusal to provide the Department with letters of credit in this investigation, when HYSCO has relied on them in previous proceedings, suggests that HYSCO is concealing that it knew or should have known that its “local sales” would be exported without further manufacture.¹⁴¹ Therefore, Maverick asserts that the Department should exclude from HYSCO’s home market database any VAT-exempt sales denominated in U.S. dollars, sold to certain customers, that were shipped to port destinations and for which no VAT was collected. Maverick concludes that, after excluding these sales, HYSCO’s home market will be found not viable for purposes of establishing NV.¹⁴²

HYSCO defends its classification of the “local sales” at issue as home market sales and maintains that these sales should continue to be treated as home market sales in the final determination. HYSCO disputes Maverick’s interpretation of a knowledge test that would rely on post-facto research and analysis regarding HYSCO’s exact shipping destinations and customer’s (or customer’s customer’s) precise intentions with respect to each sale. Rather, HYSCO asserts that the court cases cited by Maverick support HYSCO’s position that the Department should focus its analysis on the information HYSCO was aware of at the time of the sales, according to HYSCO’s records maintained in its ordinary course of business, as it classified its sales and set prices for its home market customers.¹⁴³

More specifically, HYSCO asserts that imputing knowledge of export without further manufacture based on shipment to a port is not probative of HYSCO’s knowledge at the time of sale as to whether a product would be exported without further manufacture. HYSCO notes that many industrial locations in Korea where products are further manufactured, as well as warehousing facilities where industrial goods are stored for shipment to domestic and export locations are largely clustered around ports. HYSCO emphasizes that it does not maintain information on whether shipments go to a port, nor do HYSCO’s sales personnel track this information or consider it as part of their sales process and pricing decisions. While HYSCO may have been able to research after the fact which deliveries were made to or near port

¹³⁹ Id. at 13 – 17, which includes business proprietary information.

¹⁴⁰ Id. at 17- 20. Maverick cites to Maverick June 8 at Exhibits 1 and 2, which includes information from the PSF respondent on how it used letters of credit to differentiate between local sales intended for export without further manufacture and local sales that underwent further manufacture prior to export. Maverick also cited to Maverick June 8 at Exhibits 4 and 8, which includes information from HYSCO submitted in CORE from Korea.

¹⁴¹ Id. at 20-22.

¹⁴² Id. at 23.

¹⁴³ See HYSCO Rebuttal Brief at 3-6.

locations, HYSCO asserts that the record does not support the conclusion that HYSCO's sales personnel, at the time of sale, knew which addresses in Korea were ports, nor that HYSCO should have known the merchandise would be exported without further manufacture.¹⁴⁴

HYSCO objects to Maverick's assertion that, based on HYSCO's alleged knowledge or imputed knowledge of certain customers' operations, HYSCO should have known that merchandise sold to these customers would not be further manufactured prior to export. Referring to information included in the HYSCO SVR, HYSCO contends that, once it sells its merchandise, the pipe enters the commercial stream and may be sold and re-sold such that HYSCO has no way of knowing, let alone at the time of sale, how a particular pipe will be used, consumed, or in what condition or by whom it may be exported.¹⁴⁵

Additionally, HYSCO maintains that its reporting of "local sales" is consistent with the reporting methodology applied by HYSCO and other respondents in previous cases to distinguish between "local export" sales and "local domestic" sales, including those proceedings cited by Maverick, such as CORE from Korea. HYSCO explains that it has consistently classified line pipe sales as "local export" sales where the product is sold to a trading company for export with HYSCO's knowledge, and where HYSCO itself prepares the export license and records the sale in its accounting system as a local export sale. In contrast, HYSCO continues, it classifies "local domestic" sales as domestic sales. HYSCO adds that the distinguishing characteristic is whether or not HYSCO issues the export license, and where it does not, the sale is classified as a domestic sale. Further, HYSCO notes that this approach is consistent with SeAH's treatment of "local sales."¹⁴⁶

HYSCO claims that, contrary to Maverick's assertion, a local letter of credit is not required under Korean law for the sale of merchandise to qualify for VAT-free treatment. HYSCO disagrees with Maverick's interpretation of the Korean VAT law, referring to the translated excerpt from the law in HYSCO SVE 31, which states that the VAT exemption on local sales may be established with either a local letter of credit or written confirmation of purchase.¹⁴⁷ Finally, HYSCO contends that, even if the Department were to exclude certain home market sales from its analysis and the remaining sales in the analysis were less than five percent of the volume of U.S. sales, the Department should still rely on HYSCO's home market for the calculation of NV. According to HYSCO, in such a circumstance, the Department retains statutory discretion and authority to use HYSCO's home market as the basis for its margin comparisons.¹⁴⁸

¹⁴⁴ Id. at 7-10.

¹⁴⁵ Id. at 10 – 13. HYSCO cites to the HYSCO SVR at page 8 and HYSCO Sales Verification Exhibit (SVE) 30, where it is reported, HYSCO notes, that HYSCO's customer may, in turn, re-sell this merchandise to other domestic customers prior to export.

¹⁴⁶ Id. at 16 – 21. HYSCO cites HYSCO SVE 11, 22, and 26 to support its contention regarding its classification of local domestic sales, and to HYSCO SVR at 8 and memorandum entitled "Verification of the Sales Responses of SeAH Steel Corporation (SeAH) and Pusan Pipe America (PPA)," dated August 24, 2015 (SeAH SVR), at 11 to support the consideration of export license issuance as a distinguishing characteristic for classifying local sales. HYSCO adds that this approach was applied in PSF at Comment 2, and CORE from Korea at Comment 28.

¹⁴⁷ Id. at 13-14. HYSCO also cites its second section D supplemental questionnaire response, dated May 27, 2015 (HYSCO DSQR2), at SD-2 and the HYSCO SVR at 9.

¹⁴⁸ Id. at 21 – 25, citing sections 773 (a)(1)(B)(ii)(II) and (a)(4) of the Act, and the SAA at 821 ("...Commerce will normally use the five percent threshold except where some unusual situation renders its application

DOC Position:

Based on our review of the facts on the record of this investigation and consistent with administrative and CIT precedent, we disagree with Maverick and the other petitioners that HYSCO knew or should have known at the time of sale that the local sales in question would be exported without further manufacture. We agree with HYSCO that these sales were properly classified as home market sales for the purposes of this investigation. As a result, we affirm our Preliminary Determination that HYSCO's home market is viable for the purpose of calculating NV, in accordance with sections 773(a)(1)(A) and (B) of the Act.

HYSCO and Maverick both point correctly to the standard identified by the CIT in Allegheny Ludlum, that if a company knew or should have known that, at the time of a particular sale, the product sold was destined for export, the particular sale should be considered an export sale and, if the destination is the United States, the sale should be reported as a U.S. sale. Conversely, if a company knew or should have known that, at the time of the sale, the merchandise sold would be further processed domestically prior to export, the sale should be considered a home market sale and reported in the home market sales database. As a result, this issues centers on what HYSCO "knew or should have known" about its "local sales." Allegheny Ludlum provides guidance in this regard. In that case, the Taiwanese respondent did not report as home market sales certain sales consumed (*i.e.*, further processed) in the home market prior to export. The CIT agreed with the Department's finding that the respondent in that case, known as YUSCO, knew or should have known that the sales in question would undergo further manufacturing in Taiwan prior to export. Specifically, with respect to a group of sales known as "U" sales, the CIT concluded that:

{YUSCO} knew that one customer, at least, purchased the product for further manufacturing domestically. That knowledge provides substantial evidence supporting Commerce's determination that YUSCO knew or should have known that the other "U" sales would be further manufactured domestically and should properly have been included in the list of home market sales provided to Commerce.¹⁴⁹

That is, the respondent's knowledge that at least one customer in a group of sales would perform further manufacturing on the merchandise prior to export was considered sufficient to impute knowledge – *i.e.*, what YUSCO knew or should have known at the time of sale - that the other sales in the group may be subject to further manufacturing prior to export. Accordingly, the Court affirmed the Department's determination that sales in this group should be included in the home market sales database.

HYSCO's "local sales – domestic" in question are those sales sold to a customer in the home market, which are exempt from Korean VAT because HYSCO has purchase confirmation from the customer that the merchandise will eventually be exported, but for which HYSCO did not

inappropriate... In unusual situations, however, home market sales constituting less than five percent of sales to the United States could be considered viable.")

¹⁴⁹ See Allegheny Ludlum at 1336.

prepare the export license. HYSCO maintains it did not have “specific knowledge of further processing or final destination of these products after it sells the line pipe to unaffiliated domestic customers.”¹⁵⁰ In contrast, HYSCO’s “local sales – export” are similar to the “local sales – domestic” except that HYSCO prepares the export license and, as a result, has knowledge that the sale will be exported to a specific country (including the United States) without further manufacture.¹⁵¹

While we agree with Maverick that the knowledge test under Allegheny Ludlum for classifying these sales does not require “specific knowledge” of their actual disposition, at the same time, under Allegheny Ludlum Commerce will evaluate what a respondent “knew or should have known” that a group of sales may be further manufactured before export on the basis of its knowledge of one customer in that group, as discussed above. HYSCO’s “local sales – domestic” include sales to at least one customer that may further manufacture HYSCO’s welded line pipe prior to export.¹⁵² In addition, other sales in this category are made to distributors and resellers who may, in turn, re-sell to other customers in Korea. HYSCO states it does not know the disposition of the products at the time of sale, nor did we find any evidence to the contrary at verification.¹⁵³ Based on this record information, we find that HYSCO did not know or should not have known that its “local sales – domestic” would be exported without undergoing further manufacture and, therefore, consistent with Allegheny Ludlum, that these sales are properly classified in this investigation as home market sales. Indeed, were HYSCO to have excluded these sales from the home market sales database, as the respondent YUSCO did in the antidumping duty proceeding underlying Allegheny Ludlum, the precedent in Allegheny Ludlum would direct us to determine that HYSCO had improperly classified these sales as export sales because at least one of the customers in this group may have further manufactured the welded line pipe prior to export.

Maverick’s argument suggests that the imputed knowledge test must be applied on a more specific basis, such as customer-specific, destination-specific, or even sale-specific. HYSCO responds that such an elevated level of analysis places an unreasonable burden on respondents.¹⁵⁴ Specifically, that it would require respondents to conduct post-sale research outside the ordinary course of business. We find no support in Allegheny Ludlum or other case precedent that a respondent must be required to determine the likelihood of further manufacture prior to export at

¹⁵⁰ See HYSCO BCSQR1 at 3-4; see also HYSCO BCSQR2 at 2, and HM Viability QR at 2.

¹⁵¹ See HYSCO SVR at 8. See also HYSCO BCSQR1 at 5, and HYSCO Rebuttal Brief at 18, which cites several HYSCO SVR exhibits that support its separate classification of these two types of local sales.

¹⁵² See HYSCO BCSQR1 at 3, and HYSCO SVR at 8. See also HYSCO’s submission dated May 22, 2015, which includes additional information about certain HYSCO customers and sale/shipment destinations with potential for domestic consumption and/or further processing prior to export.

¹⁵³ See HYSCO BCSQR1 at 5, and HYSCO SVR at 8. See also HYSCO Rebuttal Brief at 11.

¹⁵⁴ See HYSCO Rebuttal Brief at 12 (“To impute knowledge back to HYSCO based on information provided by its customer at the time of verification for sales transactions three steps down the line would be unreasonable. To require HYSCO to ascertain whether it could have obtained this information had it asked at the time of sale would again put an unreasonable burden on HYSCO. HYSCO would be required to research irrelevant matters at the time of each sale to determine the ultimate use of its product, solely for the purposes of participating in a potential U.S. antidumping proceeding. If anything, this documentation confirms the fact that HYSCO did not know at the time of sale how its products would be used, or whether they would be further processed or exported as is.”).

these levels of specificity. In this regard, we agree with HYSCO that such an analysis would normally place an unreasonably high burden on respondents.

Maverick contends that HYSCO's reporting of these local sales is inconsistent with its reporting in past cases, including CORE from Korea, and with that of the other respondent in this investigation. We disagree. In CORE from Korea, HYSCO explained:

In using the term "local export" sales in its April 23 response, HYSCO meant to differentiate these sales from the "local" sales described in its February 13 response. To clarify, the "local" sales described in the latter response are "local domestic" sales. Consistent with long-standing Department practice, HYSCO has included its local domestic sales as part of its reported home market sales.¹⁵⁵

The petitioners in CORE from Korea challenged HYSCO's classification of these sales for the final results, arguing that HYSCO "knew or should have known" that its products were destined for the United States. HYSCO defended its reporting of these sales as home market sales, explaining that "for the local sales in question, the customers either consumed the product and used the product to manufacture non-subject merchandise, or slit/sheared the product prior to resale." Under either scenario, HYSCO did not know the timing, destination, or specific product characteristics of further processed products resold to end users." The Department agreed with HYSCO:

HYSCO maintains that consistent with the Department's practice, the company included its local domestic sales as part of its reported home-market sales. For sales to customers that in turn slit or shear the product prior to resale, HYSCO states that it has no knowledge or control over the subsequent production as it transfers both possession and title to the customers and retains no rights to its product.We agree with the respondent that there is no evidence on the record to indicate that HYSCO knew or should have known, when it sold the subject merchandise, that its goods were destined for the United States. Petitioners provided no evidence that HYSCO misreported these sales. Accordingly, we will continue to accept HYSCO's treatment of these local sales as home-market sales.¹⁵⁶

HYSCO followed the same methodology for classifying its local sales in this investigation as it did in CORE from Korea, as discussed above. While merchandise that is further manufactured may be transformed into non-subject merchandise, the product in CORE from Korea was not transformed into non-subject merchandise by slitting or shearing prior to resale and thus remained in the scope. Nevertheless, the Department accepted HYSCO's treatment of these sales as home market sales in CORE from Korea. Similarly in this case, HYSCO sells welded line pipe to customers in Korea who may further process the product in a manner which may or may not transform the product into non-subject merchandise prior to export, may resell the pipe to another Korean customer before export, or may simply export the pipe "as is." We found no

¹⁵⁵ See HYSCO Supplemental Questionnaire Response in CORE from Korea, excerpt included in Maverick June 8 submission at Exhibit 4; see also HYSCO Rebuttal Brief at 17.

¹⁵⁶ See CORE from Korea at Comment 28.

evidence at verification, nor is there any other record evidence, to demonstrate that HYSCO had control over the merchandise after sale, or other knowledge sufficient to demonstrate that it knew or should have known that the pipe sold to its local domestic sales customers would be exported to specific foreign destinations without any further processing.¹⁵⁷

As HYSCO notes, the other mandatory respondent in this investigation, SeAH, followed the same methodology of relying on the preparation of export documentation as the determining factor in classifying local sales.¹⁵⁸ We agree that, at the verifications of both HYSCO and SeAH, we confirmed that the respondent's own preparation of the export documentation was a distinguishing characteristic in classifying local sales as "local sales – domestic," which were included in the home market sales database, or "local sales – export," which were either reported in the U.S. sales database or excluded from reporting as third-country export sales.¹⁵⁹

Maverick asserted that local sale shipment to a port is a sufficient basis to conclude that HYSCO knew or should have known that the merchandise would be exported without further manufacture. In PSF, however, the Department determined that a shipment to port was not sufficient in itself to impute a respondent's knowledge that the merchandise would be exported without further manufacture. As in the instant investigation, the respondent in PSF, Huvis, classified its local sales based on whether or not it prepared the export documentation:

Huvis contends that it explained that raw material local L/C sales (also known as domestic-local sales) indicate that the merchandise will be further processed prior to export. Huvis argues that the manufacturer does not typically know the final destination of the merchandise. Huvis asserts that it noted that finished goods local L/C sales (also known as export-local sales) occur when the merchandise is not further processed by the manufacturer's customers prior to export and Huvis did not report such sales as home market sales. Huvis reiterates that the manufacturer knows the ultimate destination for finished goods local L/C sales because it prepares and submits the export permit to Korean customs. ...Huvis contends that, for merchandise sent to Korean ports, it has stated that it knows the ultimate destination for export-local sales because it prepares and submits the export permit to Korean customs. Huvis argues that it has articulated that it knows that the merchandise of domestic-local sales is destined for exportation after further processing pursuant to the terms of the local L/C. Accordingly, Huvis maintains that, for reporting purposes, domestic-local sales are home market sales, while export-local sales are export sales.¹⁶⁰

The petitioners in PSF claimed that "the fact that certain of Huvis' home market sales were delivered to a Korean port in a shipping container indicates that Huvis had knowledge that these sales were export sales." The Department disagreed with the PSF petitioners:

¹⁵⁷ See HYSCO SVR at 7-9.

¹⁵⁸ See HYSCO Rebuttal Brief at 19, citing SeAH SVR at 11.

¹⁵⁹ See SeAH SVR at 11, and HYSCO SVR at 8.

¹⁶⁰ See PSF at Comment 2 (footnotes omitted).

We agree with Huvis that it properly reported its home market sales.... The sales in question fall into the category of domestic-local sales, regardless of whether the sales were made pursuant to a L/C or open account payment terms. Although these sales were shipped by container to Korean port cities, we agree with Huvis that this fact without any other corroborating evidence is not dispositive that the merchandise was not subject to further processing or that Huvis had knowledge of the ultimate destination. ...Huvis has demonstrated that its method of classifying sales is not flawed.¹⁶¹

We find HYSCO's reporting of its local sales to be analogous to Huvis' in PSF. As discussed above, HYSCO relied on the same type of methodology as Huvis in classifying local sales – the same method HYSCO used in CORE from Korea and that SeAH uses in the instant investigation.¹⁶² Many of HYSCO's home market sales are shipped to port destinations because many of HYSCO's customers, as well as other industrial facilities and warehouses, are located near water.¹⁶³ As in PSF, mere shipment of a local sale to a port destination does not demonstrate HYSCO's knowledge (actual or imputed) that the merchandise will be exported without any further processing.

Finally, Maverick questions the integrity of HYSCO's reporting of local sales on the basis that HYSCO failed to provide letters of credit, which Maverick contends are a necessary element for a local sale to qualify for VAT-free treatment under Korean law. However, we find no basis to conclude that HYSCO is concealing information due to the absence of letters of credit. At verification, we reviewed the relevant section of Korean law and reported "that the eligibility for a zero VAT rate can be established with either a local letter of credit or a written confirmation of purchase (i.e., the purchase agreement or purchase approval HYSCO supplied for the selected sales)."¹⁶⁴ Maverick notes that, according to this law excerpt, the written purchase confirmation is to be backed by a letter of credit.¹⁶⁵ However, HYSCO responds that the law allows the VAT exemption to be based on the purchase confirmation alone, HYSCO does not need a letter of credit to qualify for VAT exemption, and at any rate, the letter of credit is likely to be held by another party in the transaction chain.¹⁶⁶ Our verification found no basis to dispute HYSCO's reasoning.¹⁶⁷

After accounting for the revisions made to HYSCO's home market sales database affecting the date of sale and shipment, which results in the exclusion of a number of home market sales with pre-POI sale dates, we find that the volume of POI home market sales remains greater than five percent, by volume, of HYSCO's U.S. sales during the

¹⁶¹ Id.

¹⁶² In contrast, we note that the CIT referred to the respondent's faulty internal classification system as one reason it rejected YUSCO's arguments regarding its classification of its local sales. See Allegheny Ludlum at 1336.

¹⁶³ See HYSCO's submission dated May 22, 2015, and HYSCO Rebuttal Brief at 8. We also note the geographic fact that Korea is located on a peninsula, and as a result, much of its population and industry are situated at or near ports.

¹⁶⁴ See HYSCO SVR at 8-9, and SVE 31.

¹⁶⁵ See Maverick Case Brief at 21.

¹⁶⁶ See HYSCO Rebuttal Brief at 14.

¹⁶⁷ See, in particular, SVR at 8-9 and SVE 29-30.

POI, which is the threshold to determine viability of the home market under 19 CFR 351.404(b)(2).¹⁶⁸ Therefore, we continue to find HYSCO's home market to be viable for the purpose of calculating NV.

Comment 7: Sales of Non-Prime Merchandise

In the Preliminary Determination, the Department excluded home market sales of non-prime products from HYSCO's home market sales listing and its analysis of HYSCO's home market viability. HYSCO argues that the Department should reverse the preliminary determination because it believes it was premised on a faulty analysis of the scope of the investigation, and the Department's verification of this issue establishes that these sales should be retained in HYSCO's home market database.

HYSCO asserts that the Department's reliance on the phrase "of a kind used for oil or gas pipelines" to determine whether a product is covered by the scope of the investigation is incorrect because it ignores the plain language of the scope description which specifies that merchandise within the scope of the investigation need not meet API standards, but must simply meet the physical characteristics of line pipe. HYSCO maintains that the scope language in the initiation notice expressly states that all pipe meeting the physical descriptions of line pipe are covered by the scope language, even if it is non-graded pipe. HYSCO submits that the Department encountered a similar situation in OCTG Ukraine¹⁶⁹ where the Department found that "reject" merchandise (which HYSCO claims is similar to HYSCO's non-prime products) were within the scope of investigation.

In addition, HYSCO argues that the Department confuses the broader phrase "kind used for" standard with a much narrower "capable of use" standard. HYSCO maintains that even though it may not be warranted or ultimately used in line pipe applications, the non-prime pipe is still "of a kind used for" line pipe. Moreover, HYSCO believes that both the sales and cost verification reports support its contention that HYSCO's non-prime pipe is "of a kind used for" line pipe, and in many instances is "capable of use" in line pipe applications.¹⁷⁰ Furthermore, HYSCO claims that, although it does not issue mill test certificates for non-prime products, it confirmed that "these non-prime line pipes are typically stenciled as a prime quality pipe."¹⁷¹ According to HYSCO, the stenciling alone should mean that these products are covered by the scope of investigation because the scope focuses on the stenciling of particular pipes, as opposed to whether the pipe is warranted or sold with a mill test certificate. HYSCO adds that in a Customs context, the CIT found that the term "of a kind used for" is commonly used by Customs to

¹⁶⁸ See SVR at 21; see also HYSCO Final Sales Calculation Memo at Attachment 1 (SAS output of comparison market program indicates the total quantity of home market sales analyzed for the final determination).

¹⁶⁹ See Certain Oil Country Tubular Goods From Ukraine: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances, 79 FR 41969 (July 18, 2014), and accompanying Issues and Decision Memorandum at Issue 2 (OCTG Ukraine), where the Department noted that the "plain language of the scope of the investigation indicates that a failure to meet the requirements for OCTG applications does not render merchandise outside the scope, provided the merchandise meets the physical characteristics described in the scope."

¹⁷⁰ See HYSCO SVR at 9; and HYSCO Cost Verification Report at 7.

¹⁷¹ See SQR at 5.

signify the chief, or principle, use of a product, as opposed to its actual use.¹⁷² Accordingly, because some of HYSCO's non-prime line pipe is not defective and the pipes are typically stenciled as line pipe, HYSCO argues that the Department should determine that these non-prime products are subject to the investigation and, therefore, should be included in HYSCO's home market database and home market viability analysis. Alternatively, even if the Department determines that these products are not subject to the investigation, HYSCO asserts that the Department should nonetheless determine that non-prime line pipe, *i.e.*, pipe that is tracked in HYSCO's accounting system as line pipe, typically stenciled as line pipe, and in some cases not defective in any way, is foreign like product within the meaning of section 771(16) of the Act and therefore appropriately included in HYSCO's home market sales database. If, however, the Department continues to exclude non-prime sales from the home market database, HYSCO argues that the Department should also clarify that non-prime products are outside the scope of the investigation and, therefore, not subject to any antidumping duties in the event that an order is issued in this case.

The petitioners argue that the Department's Preliminary Determination to exclude HYSCO's non-prime sales from the viability analysis and home market sales listing was the correct decision, and was also consistent with its treatment of non-prime sales by all respondents in this and the companion antidumping duty investigation of welded line pipe from Turkey (Turkish investigation). The petitioners assert that there is nothing about HYSCO's non-prime sales that distinguishes them from non-prime sales made by SeAH or the two respondents in the Turkish investigation, and emphasize that HYSCO is the only respondent to include such sales in its home market sales database. The petitioners rationalize that if the Department agrees with HYSCO, it must apply the same treatment to all four respondents; a task which the petitioners claim would be impossible without the submission of new sales and cost databases.

Notwithstanding the practical difficulty of including non-prime sales in the viability and margin analysis for all four respondents, the petitioners submit that HYSCO's arguments lack merit because, regardless of nomenclature, the respondents have unanimously stated that the end use for such material is outside of oil and gas pipeline applications which are the subject of this investigation.¹⁷³ The petitioners maintain that, in the instant case, the subject pipe may meet the API 5L or foreign equivalent specification, or be non-graded, but even the non-graded pipe must still be capable of being used in an oil or gas pipeline. Maverick adds that, if the Department were to follow HYSCO's logic, it would require the collection of sales data on all sales of both standard and line pipe because pipe produced with API grade material can be dual stenciled and, therefore, used as line pipe or standard pipe. According to Maverick, the statement in HYSCO's questionnaire response that non-prime line pipes are typically stenciled as a prime quality pipe does not indicate that the pipe was stenciled as prime quality line pipe, only prime quality pipe. Finally, Maverick argues that nowhere does HYSCO make the claim that any of its non-prime pipe was actually used in oil or gas pipelines, only that some of it could have been. Maverick

¹⁷² See Group Italglass U.S.A. Inc. v. United States, Slip Op. 93-46 at 6 (CIT 1993) (Italglass) (stating that the use "of a kind used for" in HTS heading 7010 "simply buttresses the interpretative rule for use provisions that it is the use of the class or kind of goods imported that is controlling rather than the use to which the specific imports were put.")

¹⁷³ See Letter from the petitioners, "Welded Line Pipe From Turkey and Korea: Common Issues," dated May 4, 2015, at Attachment 1.

submits that even this very limited statement is false, arguing that customers do not accept or use non-prime pipe for oil and gas pipeline applications.

Furthermore, the petitioners argue that this case is distinguishable from OCTG Ukraine because in that case non-prime merchandise was specifically included within the scope. Maverick adds that, although that case covered OCTG, including oil well casing and tubing, it did not limit the scope only to oil well casing and tubing. In addition, the petitioners and Maverick maintain that the pivotal language in the scope, “of a kind used for oil or gas pipelines,” does not exist in the OCTG Ukraine scope.

Moreover, the petitioners contend that HYSCO’s cite to a Customs case before the CIT is without merit. The petitioners explain that in the Italglass case, the Court focused on the HTS classification of certain glass imports in interpreting the relevance of the phrase “of a kind used for” which is found in the HTSUS Additional U.S. Rules of Interpretation at 1.(a); whereas, in the instant case, the Department is focused on imposing duties pursuant to section 731 of the Act. Maverick adds that HYSCO’s interpretation of the phrase is contrary to the plain meaning of the terms, which is the Department’s standard on this issue, not Customs.

In addition, the petitioners maintain that HYSCO’s argument that the Department verified that its non-prime line pipe is “of a kind used for” line pipe, is incorrect. The petitioners allege that HYSCO does not quote the entire passage at issue in the verification report because it is merely an explanation by HYSCO, as opposed to a conclusion made by the verifiers.

In conclusion, all of the petitioners agree that non-prime pipe cannot be included in the home market viability analysis or margin calculation because it is not subject merchandise.

DOC Position:

We agree with the petitioners and continue to exclude HYSCO’s home market sales of non-prime products from the sales listing and the home market viability calculation. The Department’s practice is to provide ample deference to the petitioner with respect to the definition of the product(s) for which it seeks relief during the investigation phase of an antidumping or countervailing proceeding.¹⁷⁴ In this case, all of the petitioners agree that HYSCO’s sales of non-prime products should be excluded from our margin analysis.

As stated above, the scope of investigation is as follows:

The merchandise covered by this investigation is circular welded carbon and alloy steel (other than stainless steel) pipe *of a kind used for oil or gas pipelines* (welded line pipe), not more than 24 inches in nominal outside diameter, regardless of wall thickness, length, surface finish, end finish, or stenciling. Welded line pipe is normally produced to the American Petroleum Institute (API) specification 5L, but can be produced to comparable

¹⁷⁴ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers From the Republic of Korea, 77 FR 75988 (December 26, 2012), and accompanying Issues and Decision Memorandum at Comment 1; and Allegheny Bradford Com. v. United States, 342 F. Supp. 2d 1172, 1187-88 (CIT 2004) (explaining the deference given to the Department in determining the scope of AD and CVD orders).

foreign specifications, to proprietary grades, or can be non-graded material. All pipe meeting the physical description set forth above, including multiple-stenciled pipe with an API or comparable foreign specification line pipe stencil is covered by the scope of this investigation. (Emphasis added).

Each respondent in this investigation, as well as the companion Turkish investigation, stated how it treated sales of pipe that is not certified and sold as line pipe (*i.e.*, circular-welded carbon and alloy pipe of a kind used for oil or gas pipelines), describing the merchandise as either defective pipe, non-prime pipe, or second-quality pipe.¹⁷⁵ Moreover, all respondents agree that such merchandise is not of a kind used for oil and gas pipeline applications, which are the subject of this investigation.¹⁷⁶ Accordingly, because non-prime pipe is not of a kind used for oil and gas pipelines, it is clearly not subject merchandise based on the plain language of the scope. However, HYSCO was the only respondent to report sales of non-prime merchandise in its home market database; neither SeAH nor the respondents in the companion Turkish investigation reported such sales.¹⁷⁷ Nothing about HYSCO's non-prime sales distinguishes them from the non-prime sales of any of the other respondents.

With respect to HYSCO's reliance on OCTG Ukraine in support of its arguments, we find that the scope language in that case is structured differently from the scope language in the welded line pipe investigation. In OCTG Ukraine, non-prime OCTG was not excluded from the scope. The scope in the instant investigation contains the language "of a kind used for oil or gas pipelines," a functionality requirement not included in OCTG Ukraine. Only pipe which has qualified, or which otherwise would qualify for use in oil and gas pipelines, but has yet to be graded as such, is considered to be within the scope of this investigation. We also disagree with HYSCO's interpretation of Italglass because such interpretation would improperly expand the scope to include all standard pipe in this investigation because it can be dual stenciled and theoretically used in oil and gas pipeline applications.¹⁷⁸

Furthermore, although HYSCO claims that its non-prime pipe is suitable for line pipe applications, even though it may not be warranted or ultimately used in line pipe applications, it provided no evidence that, despite lacking a certification for line pipe use, it nonetheless could be used in line pipe applications. Therefore, we continue to exclude the HYSCO's non-prime pipe from our home market viability analysis as well as our margin calculations.

Finally, we find that there is no need to clarify the scope with respect to non-prime pipe products, as suggested by HYSCO, as the scope is already clear that with respect to product coverage as discussed above.

Comment 8: Revision of Certain Home Market Shipment and Sale Dates

¹⁷⁵ See Letter from the petitioners, "Welded Line Pipe From Turkey and Korea: Common Issues," dated May 4, 2015, at 2.

¹⁷⁶ Id.

¹⁷⁷ Id.

¹⁷⁸ See Italglass.

HYSCO reported the date of sale for its home market sales as the earlier of the date of shipment from HYSCO's factory or the date on which HYSCO issued its tax and commercial invoices. As we stated in the Preliminary Determination Memorandum, we relied on HYSCO's sale date reporting in the Preliminary Determination. In its July 15, 2015, submission of pre-verification revisions, HYSCO identified certain home market sales where HYSCO or its customer canceled an order after shipment, but the merchandise was subsequently re-invoiced as a sale to the same customer or another customer. This merchandise remained at the original shipment destination until the re-invoicing. HYSCO reported the re-invoicing date as the date of shipment and, thus, the date of sale, for these sales, rather than the date the merchandise was shipped from the factory. Pursuant to our instructions in our August 24, 2015, request to HYSCO to revise the sales databases to reflect certain reported and verified data revisions, HYSCO reported the factory shipment date of these sales as OSHIPDATH in its revised sales database submitted on August 31, 2015.

HYSCO refers to the statement in the HYSCO SVR that "{f}or these transactions, it may be more appropriate to consider the invoice date rather than the shipment date as the date of sale," and agrees with this approach. HYSCO explains that, as the original sale was canceled after factory shipment, the factory shipment date is no longer relevant for determining the date of sale. According to HYSCO, the invoice date (i.e., the re-invoicing date) is the appropriate date of sale for these sales because it reflects the transaction that was actually consummated.

The petitioners object to the use of the invoice date, rather than the factory shipment date, as the date of sale for these transactions, asserting that the Department's practice is to use a uniform date of sale methodology.¹⁷⁹ According to the petitioners, using the invoice date as the date of sale for some sales, and the factory shipment date for other sales reflects a "radical departure" from the Department's current practices that would lead to determining the date of sale on a sale-by-sale basis and taxing the Department's limited resources to conduct this level of analysis.

Maverick agrees with the petitioners that the Department should use the OSHIPDATH as the sale date for the transactions in question. In addition, Maverick challenges HYSCO's representation of these sales as canceled and then resold, contending that, based on Maverick's analysis of the verification report, the essential terms of sale upon re-invoicing were virtually unchanged from the original sale. Accordingly, Maverick asserts that any of these sales with the OSHIPDATH prior to the POI should be excluded from the home market database and not considered for purposes of determining whether HYSCO's home market is viable.

DOC Position:

We agree with HYSCO and used the invoice date as the date of sale for the home market transactions at issue. In our Preliminary Determination, we explained that we relied on HYSCO's reported date of sale, which was based on the earlier of factory shipment date or

¹⁷⁹ See Large Power Transformers From the Republic of Korea: Final Determination of Sales at Less Than Fair Value, 77 FR 40857 (July 11, 2012), and accompanying Issues and Decision Memorandum at Comment 1; Ferrosilicon From Venezuela: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 79 FR 13619 (March 11, 2014); and Antidumping Duties; Countervailing Duties: Final Rule, Preamble, 62 FR 27295, 27348-50 (May 19, 1997).

invoice date. This methodology is consistent with our normal practice of relying on the earlier of shipment date or invoice date.¹⁸⁰ However, in this case, we verified that in certain instances, after the merchandise was shipped from the factory, the initial sale was canceled.¹⁸¹ Subsequently, a new sale of the merchandise was completed and the merchandise was either re-sold to the original customer pursuant to new terms, or sold and shipped to another customer.¹⁸² Under these circumstances, the factory shipment date is not meaningful for establishing the date of sale for these particular transactions. Rather, the invoice date reflecting the new terms of sale is the appropriate date of sale. Consistent with this determination, we recalculated the imputed credit expense based on the reported date of shipment, and made an additional adjustment for inventory carrying expense to account for the period from the OSHIPDATH date to the reported shipment date.¹⁸³

Contrary to the petitioners' assertions, using the invoice date as the date of sale for these sales is consistent with our normal practice of relying on the earlier of shipment date or invoice date. As discussed above, the factory shipment date is not relevant for these re-invoiced transactions. Although we are not mixing date-of-sale methodologies in this instance, we note that in certain case-specific instances involving other products, we determined it is appropriate to use different date of sale methodologies for certain groups of sales.¹⁸⁴

Maverick suggests that the re-invoicing of the sales in question does not reflect a cancellation of the sale because it believes that the original transaction was not materially changed upon re-invoicing. However, as discussed above, we verified that, in fact, the original sales were canceled, and a number of the products were actually re-sold to other customers. As a result, there is no basis to consider OSHIPDATH as the date of sale, nor any basis to exclude as outside the POI those sales with OSHIPDATH dates prior to the POI.

Comment 9: Allocation of Full Costs to the Production of Non-Prime Products

HYSCO argues that for the final determination the Department should find that non-prime line pipe products are within the scope of this investigation and should allocate the full cost of production to these products. HYSCO states that in the Preliminary Determination the Department did not allocate full costs to non-prime line pipe products, but instead, allocated HYSCO's total line pipe manufacturing costs less the sales revenue of non-prime line pipe to

¹⁸⁰ See, e.g., Lightweight Thermal Paper From Germany: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 34719 (June 18, 2014), and accompanying Issues and Decision Memorandum at Comment 2, and Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52065 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 11.

¹⁸¹ See SVR at page 21 and SVE 8.

¹⁸² Id.

¹⁸³ See HYSCO Sales Calculation Memo for details of our calculation.

¹⁸⁴ See, e.g., Welded Line Pipe from the Republic of Turkey: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 80 FR 29617 (May 22, 2015), and accompanying Decision Memorandum at page 13 (“{W}e have used as the date of sale for non-tender sales the earlier of the invoice date or the shipment date... For tender sales, we examined the information on the record and preliminarily find that the material terms of sale did not change after the order date. Therefore, we have accepted the order date as the date of sale for tender sales for purposes of the preliminary determination.”); unchanged in the final determination to be published contemporaneously with the final determination in this investigation.

total prime line pipe products. HYSCO explains that the Department justified this allocation based on its assessment that non-prime line pipe products are not capable of being used for the same applications as prime line pipe products. HYSCO asserts that the use of the product and whether it is in scope or not has no bearing on the actual costs of producing the product. HYSCO contends that, as previously explained by the Department, it is appropriate to allocate costs equally to products that undergo identical production processes that involve an equal amount of material and fabrication expenses, and that the only difference in the resulting prime and non-prime product is that at the end of the manufacturing process, a quality inspection is performed during which some of the products are classified as non-prime.¹⁸⁵ HYSCO maintains that this method is fully consistent with Department's practice including nearly twenty years in the ongoing administrative reviews of standard pipe from Korea, in which HYSCO has participated.¹⁸⁶ HYSCO suggests that, at a minimum, the Department should assign full cost to the non-prime line pipe products that are "capable of use" as line pipe because these satisfy the Department's "capable of use" test imposed in this investigation.

Maverick states that the Department's standard for determining whether non-prime merchandise is a by-product or a co-product, is whether the non-prime product is used in the same applications as prime product.¹⁸⁷ Maverick points out that HYSCO has not claimed or provided evidence supporting that any of its non-prime line pipe products were used for oil and gas lines. Maverick refutes HYSCO's conclusion that the Department's long-standing policy is to treat non-prime and prime products as co-products. Maverick explains that although the Department has been inconsistent with its treatment of prime and non-prime products, research shows that the Department does not treat non-prime pipe as a co-product as a matter of policy. Maverick argues that after considering the facts on the record (*e.g.*, HYSCO does not issue mill test certifications for non-prime line pipe, did not provide evidence supporting that any of its non-prime line pipe products were used for oil and gas pipelines, *etc.*), for the final determination, the Department should continue to allocate the full costs of non-prime line pipe products to the costs of subject merchandise.

The petitioners agree with the Department's preliminary determination to exclude HYSCO's non-prime sales and adjust the cost of HYSCO's non-prime line pipe products. The petitioners argue that the Department should continue to do so for the final determination.

DOC Position:

¹⁸⁵ HYSCO cites to Polyethylene Terephthalate Film, Sheet and Strip from Korea: Final Results of Antidumping Duty Administrative Review, 65 FR 55003 (Sept. 12, 2000), and accompanying Issues and Decision Memorandum at Comment 1; and Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Taiwan, 65 FR 34658 (May 31, 2000), and accompanying Issues and Decision Memorandum at Comment 6.

¹⁸⁶ HYSCO cites to Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea, 57 FR 42942 (September 17, 1992), and accompanying Issues and Decision Memorandum at Comment 30.

¹⁸⁷ Maverick 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), and accompanying Issues & Decision Memorandum at Comment 18.

We disagree with HYSCO, in part, and adjusted HYSCO's reported costs to value the downgraded non-prime products that are not capable of being used as line pipe (*i.e.*, merchandise not considered within the scope merchandise), at their sales prices, while allocating the difference between the cost of production and the sales prices to good line pipe production. For the downgraded line pipe products that are capable of being used as line pipe, we allocated full cost to these products.

As an initial matter, in this case the discussion of co-products is not relevant. Joint products - a term which includes by-products and co-products - are multiple products generated simultaneously in a single production process. These products incur undifferentiated joint costs until a "split-off point," after which the joint products become separately identifiable.¹⁸⁸ Often, the joint products then undergo separate processing activities. In pipe making however, there is no "split-off" point during the production process. Rather, pipes are made sequentially on a production line and costs and production activities are generally identifiable to individual products.¹⁸⁹

The issue here is whether the non-prime products remain in the scope, and likewise can still be used in the same applications as the subject merchandise (*i.e.*, capable of use as line pipe). As the Department has stated in previous cases, the downgrading of a product from one grade to another will vary from case to case.¹⁹⁰ At times the downgrading is minor and the product remains within a product group (*i.e.*, remains scope merchandise), while at other times the downgraded product differs significantly, no longer remains subject merchandise, and is not capable of being used for the same applications. Consequently, if the product is not capable of being used for the same applications, the product's market value is usually significantly impaired, often to a point where its full cost cannot be recovered. Therefore, instead of attempting to judge the relative values and qualities between grades, the Department adopted the reasonable practice of looking at whether the downgraded product can still be used in the same general applications as its prime counterparts.¹⁹¹

¹⁸⁸ The Department has previously addressed whether it is relevant to discuss the production of different qualities/grades of pipe within a "by-product vs. co-product" framework." See, *e.g.*, Final Results of Antidumping Duty Administrative Review of Circular Carbon Steel Pipes and Tubes From Thailand, 77 FR 61738 (October 11, 2012) (Circular Welded Pipe from Thailand) (in which the Department noted that "{t}echnically, the issue of whether to include the production quantity of the down-graded B and C pipe in the total production quantity of subject merchandise is not a joint product issue"). See also OCTG from Korea and accompanying Issues and Decision Memorandum at Comment 18.

¹⁸⁹ The Department has previously addressed whether it is relevant to discuss the production of different qualities/grades of pipe within a "by-product vs. co-product" framework." See, *e.g.*, Final Results of Antidumping Duty Administrative Review of Circular Carbon Steel Pipes and Tubes From Thailand, 77 FR 61738 (October 11, 2012) (Circular Welded Pipe from Thailand) (in which the Department noted that "{t}echnically, the issue of whether to include the production quantity of the down-graded B and C pipe in the total production quantity of subject merchandise is not a joint product issue"). See also OCTG from Korea and accompanying Issues and Decision Memorandum at Comment 18.

¹⁹⁰ See Steel Concrete Reinforcing Bar From Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, 79 FR 54965 (September 15, 2014) (Rebar from Turkey), and accompanying Issues and Decision Memorandum at Comment 15.

¹⁹¹ See Rebar from Turkey and accompanying Issues and Decision Memorandum at Comment 15. See also OCTG from Korea and accompanying Issues and Decision Memorandum at Comment 18.

With this distinction in mind, we reviewed the information on the record of this investigation related to HYSCO's downgraded merchandise that is detected at the end of the production process. A portion of HYSCO's downgraded line pipe is line pipe that is capable of being used as line pipe because it meets the required API 5L specifications. It just did not meet the customer's ordered specifications. These products are sold at prices similar to that of "prime" line pipe because they are capable of being used as line pipe.¹⁹² Regarding the remaining downgraded merchandise, record evidence indicates that these products cannot be used in the same application as the scope merchandise.¹⁹³ These pipe products do not meet the technical requirements specified in the API 5L standards, therefore, they are unsuitable for use as line pipe products. In addition, the sales (i.e., market) price of these specific downgraded HYSCO pipes appear to be considerably less than the full costs that the company assigns to them in the normal course of business.¹⁹⁴ The difference between the costs assigned to these products and the sales revenue earned on these products is in large part due to the fact that these products are not certified API 5L products.¹⁹⁵ Consequently, assigning full costs to these products does not reasonably reflect the costs associated with the production and sale of the merchandise.

For the final determination, record evidence shows that a portion of the downgraded line pipe is capable of being used as line pipe, while the remaining portion is not.¹⁹⁶ Accordingly, we assigned the full cost from HYSCO normal books and records to the downgraded products capable of being used as line pipe, and we adjusted HYSCO's reported costs to value the downgraded non-prime products not capable of being used as line pipe at their net sales prices.¹⁹⁷

Comment 10: Alleged Errors Relating to the Major Input Adjustment

HYSCO states that in the Preliminary Determination the Department applied the major input rule to adjust the valuation of the hot-rolled coil (HRC) and hot-rolled plate (HRP) HYSCO sourced from Hyundai Steel. HYSCO alleges that the Department's analysis in the cost calculation memorandum contained methodological and clerical errors. HYSCO points out that the Department omitted Hyundai Steel's COP when it calculated the weighted-average COP for certain HRP grades which affected the comparison of COP to transfer and market prices. HYSCO adds that the Department also entered the incorrect COP amount for one of the HRP grades which overstated the COP for that grade. Finally, HYSCO asserts that the Department incorrectly calculated the proportion of hot-rolled substrate sourced from Hyundai Steel which double-counted Hyundai Steel's HRC and HRP adjustment and significantly overstated the adjustments. Specifically, HYSCO explains that the Department calculated a combined percentage of purchases from affiliates (i.e., HRC and HRP purchases), then applied this percentage to separate purchases of HRC and HRP to calculate the adjustment to substrate costs. HYSCO argues that for the final determination the Department should correct these errors and suggests a calculation for input-specific purchase factors in its case brief.¹⁹⁸

¹⁹² See HYSCO's home market sales database "hyshm07" dated August 31, 2015.

¹⁹³ See HYSCO Cost Verification Report at 7 and 18-19.

¹⁹⁴ See HYSCO Cost Verification Exhibit 13. See also HYSCO DSQR1 at Exhibit SD3.

¹⁹⁵ See HYSCO Cost Verification Exhibit 13.

¹⁹⁶ See HYSCO Cost Verification Report at 7, 16, 18-19. See also HYSCO Cost Verification Exhibit 12.

¹⁹⁷ See OCTG from Korea and accompanying Issues and Decision Memorandum at Comment 11.

¹⁹⁸ See HYSCO Case Brief at Exhibit 3A.

Maverick disputes HYSCO's allegation that the Department's major input analysis in the cost calculation memorandum contained methodological or clerical errors. First, Maverick explains that the Department did not include Hyundai Steel's COP for certain HRP grades due to a reason of a business proprietary nature. Maverick argues that, for the final determination, the Department should continue to calculate the weighted-average COP for these HRP grades consistent with the Preliminary Determination. Second, Maverick refutes HYSCO's assertion that the Department needs to apply input-specific major-input adjustment factors for HRC and HRP separately. Maverick explains that the Department calculated the affiliate's percentage of total purchases on an aggregate basis; only calculated an affiliated input adjustment for the grades that were used to make line pipe; and used the actual amount of HRC and HRP purchases to calculate the affiliate's selling price. Maverick argues that, for the final determination, if the Department was to make an adjustment then it should simple-average the grade-specific HRC adjustment and the grade-specific HRP adjustment together before applying the adjustment to the affiliate's percentage of purchases.

The petitioners argue that the major input adjustment the Department made in the Preliminary Determination, regardless of how it was calculated, was only a fraction of the adjustment the Department should have made to HYSCO's steel costs to reflect its reported yield loss. The petitioners agree with Maverick's argument, discussed at Comment 15 below, that HYSCO under-reported its steel costs due to under-reporting its yield losses.

DOC Position:

During the POI, HYSCO purchased HRC and HRP, inputs used to produce MUC, from Hyundai Steel.¹⁹⁹ Because Hyundai Steel is an affiliated party, in the Preliminary Determination, we analyzed these transactions in accordance with the major input rule.²⁰⁰ Where necessary, we adjusted HYSCO's reported direct material costs, by grade of finished line pipe, to reflect the higher of transfer, market price, or the affiliated supplier's COP.²⁰¹

HYSCO argues that the Department omitted Hyundai Steel's COP when it calculated the weighted-average COP for certain HRP grades and that, for the final determination, it should revise the analysis to correct this error. However, the Department's omission of Hyundai Steel's COPs for the specific grades of HRP (i.e., the grades are business proprietary information) was not an error. In performing the major input analysis for the Preliminary Determination, the grades in question were not necessary for the comparison because there was not a corresponding transfer price associated with those grades. Accordingly, the Department intentionally did not include Hyundai Steel's COPs for the specific grades of HRP in question as they were not needed for the analysis. Therefore, for the final determination, we did not revise the major input analysis to include Hyundai Steel's COPs for the grades of HRP in question. Because the

¹⁹⁹ See HYSCO Cost Verification Report at 24.

²⁰⁰ See section 773(f)(3) of the Act.

²⁰¹ See memo entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Hyundai HYSCO Co. Ltd." dated May 14, 2015 (HYSCO Preliminary Cost Calculation Memorandum), at 2 and Attachments 5, 6, 7, 8, and 9.

information relating to this decision is business proprietary in nature, please refer to the HYSCO Final Cost Calculation Memo for further discussion.²⁰²

HYSCO also argues that the Department used the incorrect COP amount for one of the HRP grades purchased from Hyundai Steel.²⁰³ We agree with HYSCO. As such, for the final determination, we revised the major input analysis by revising the COP for this grade of HRP in the calculation memorandum. However, we note that HYSCO's cost file does not include CONNUMs of this specific grade of finished pipe that was produced using this grade of HRP.²⁰⁴

Finally, HYSCO argues that in performing the major input analysis for the Preliminary Determination the Department incorrectly calculated the percentage of HRC and HRP purchased from Hyundai Steel. In the major input analysis we calculated a combined percentage that represented the purchases from Hyundai Steel for both HRC and HRP purchases. According to HYSCO, we then incorrectly applied this percentage to the separate purchases of HRC and HRP in order to calculate the major input adjustment to substrate costs (i.e., RAWMATERIALS field in the cost database).²⁰⁵ We agree with HYSCO that the methodology employed by the Department in the Preliminary Determination is inaccurate because we combined the percentage of HRC and HRP purchased from Hyundai Steel, but then applied the resulting combined percentage to the individual inputs. As such, for the final determination, we revised the major input analysis to include a separate percentage of purchases from Hyundai Steel for HRC and HRP in the calculation of the major input adjustment to substrate costs.

The petitioners' arguments concerning yield loss are addressed in the context of Comment 15, below.

Comment 11: Revision of G&A Expenses

The petitioners state that during verification the Department noted that the bad debt expense HYSCO excluded from the administrative expenses used in the calculation of the G&A expense rate was also included in the administrative expenses allocated between G&A and ISEs. The petitioners explain that in the cost verification report the Department suggested that it may be more appropriate to exclude the bad debt expense from the administrative expenses allocated between G&A and ISEs to avoid double counting. The petitioners and Maverick argue that for the final determination the Department should revise the G&A expenses as suggested in the cost verification report.

HYSCO notes that the regulations permit the Department to disregard insignificant adjustments.²⁰⁶ HYSCO asserts that, although accurate, this adjustment is miniscule. HYSCO argues that, for the final determination, the Department should not dedicate resources to review and perform adjustments of this small magnitude.

²⁰² See HYSCO Final Cost Calculation Memo at 3.

²⁰³ See HYSCO Preliminary Cost Calculation Memorandum at Attachments 4 and 9.

²⁰⁴ See HYSCO's cost database "hyscp02" included in HYSCO DSQR1.

²⁰⁵ See HYSCO Preliminary Cost Calculation Memorandum at Attachments 5, 6, 7, 8, and 9.

²⁰⁶ HYSCO cites to 19 CFR 351.413.

DOC Position:

While this adjustment may be small, we find that it should be made for the final determination. As the Department noted in the cost verification report, the bad debt expense excluded from the administrative expenses used in the calculation of the G&A expense rate was also included in the administrative expenses allocated between G&A and ISEs.²⁰⁷ As such, we excluded the bad debt expense from the administrative expenses allocated between G&A and ISEs to avoid double counting.

Comment 12: Financial Expense Ratio

The petitioners explain that because HYSCO revised the calculation of its G&A expense rate denominator to adjust the reported packing cost and include scrap revenue but not the financial expense rate denominator, for the Preliminary Determination, the Department revised HYSCO's calculation of the financial expense rate denominator to reflect these items. The petitioners argue that for the final determination the Department should revise HYSCO's financial expense rate consistent with the Preliminary Determination.

HYSCO notes that the regulations permit the Department to disregard insignificant adjustments.²⁰⁸ HYSCO asserts that, although accurate, this adjustment is miniscule. HYSCO argues that, for the final determination, the Department should not dedicate resources to review and perform adjustments of this small magnitude.

DOC Position:

While this adjustment may be small, we find that it should be made for the final determination. As the Department noted in the cost verification report, for the Preliminary Determination the Department revised HYSCO's calculation of the financial expense rate cost of sales (COS) denominator to reflect the adjusted packing cost from the G&A expense rate calculation and include the scrap revenue, in order to keep the calculation of the rate on the same basis as the COM to which it is applied.²⁰⁹ As such, we revised HYSCO's calculation of the financial expense rate denominator to reflect the correct packing cost and scrap revenue.

Comment 13: Constructed Value Profit

Maverick argues that because HYSCO does not have a viable home market and constructed value (CV) profit cannot be calculated using the preferred method per section 773(e)(2)(A) of the Act, the Department should rely on the average actual amounts incurred and realized by Husteel and SeAH to calculate HYSCO's CV selling expenses and profit. Maverick contends that the Department has often found that CV selling expenses and profit calculated based on other respondents' data as per section 773(e)(2)(B)(ii) of the Act (option ii) is preferable to the other

²⁰⁷ See HYSCO Cost Verification Report at 27.

²⁰⁸ HYSCO cites to 19 CFR 351.413.

²⁰⁹ See HYSCO Cost Verification Report at 29.

options set forth at section 773(e)(2)(B)(i) (option i) or section 773(e)(2)(B)(iii) (option iii) of the Act.²¹⁰

Maverick asserts that actual CV amounts incurred or realized on the sale of the MUC (option ii) are preferable to calculating the CV amounts based on the same general category of products afforded under option i. Maverick argues that relying on the public financial statements of HYSCO, Husteel, and SeAH, as suggested by HYSCO, to calculate the CV amounts under option i, would include all products and services produced and performed by these companies and includes oil country tubular goods (OCTG) which the Department found to be incomparable to standard and line pipe in the OCTG investigation. The financial statements also include costs and profits made on a significant amount of sales made to the United States. Maverick argues that similarly, HYSCO's profit calculations for other pipe products does not include subject merchandise and, as such, is not reflective of the MUC. Maverick contends that its proposed CV selling expense and profit calculation methodology is also preferable because it is based on sales of line pipe in the Korean market made by Korean producers as opposed to any of the third country options proposed by HYSCO (*i.e.*, Turkey through Borusan Mannesmann Boru Sanayi ve Ticaret A.S.'s (Borusan's) financial statements and non-viable third countries where HYSCO sells small amounts of line pipe).

Maverick concludes that the Department should use Maverick's proposed methodology for purposes of the final determination because the actual amounts incurred and realized by Husteel and SeAH are based upon sales of MUC in the home market, and these amounts provide the best alternative to value HYSCO's CV selling expenses and profit. Maverick notes that it does not believe that there are any business proprietary concerns with using SeAH and Husteel's data for purposes of calculating CV selling expenses and profit, as the Department has previously used two companies' data to calculate CV amounts in numerous instances.²¹¹ If the Department has concerns regarding the business proprietary nature of this data, the Department should request that Husteel and SeAH publicly range their data for use in the CV profit calculations.²¹² Because the Department's regulations require data to be ranged, Maverick argues that the Department's failure to insist that parties range the data is not an excuse for not calculating margins as accurately as possible.

Maverick proposes that if the Department determines it is inappropriate to calculate CV profit under option ii, the Department should calculate the CV profit rate under option iii. Maverick suggests that under option iii, the Department could either average the profit rates of home

²¹⁰ Maverick refers to Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review, 66 FR 13896, 13902 (March 8, 2001) (Mushrooms from India); Notice of Final Results of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile, 66 FR 42505 (August 13, 2001) (1998/1999 Salmon from Chile), and accompanying Issues and Decision Memorandum at Comment 1; and Notice of Final Results of Changed Circumstances Antidumping Duty Review: Fresh Atlantic Salmon From Chile, 65 FR 78472 (December 15, 2000) (CC Salmon from Chile), and accompanying Issues and Decision Memorandum at Comment 2.

²¹¹ Maverick cites to Mushrooms from India; CC Salmon from Chile, and accompanying Issues and Decision Memorandum at Comment 1; and 1998/1999 Salmon from Chile and accompanying Issues and Decision Memorandum at Comment 2.

²¹² Maverick alleges that such measures have been required by the CIT. See Maclean-Fogg v. United States, Slip Op. 15-85 at 30-31 (August 11, 2015).

market sales of MUC from SeAH, Husteel, and HYSCO (even though HYSCO's home market is not viable) or average the profit rates of SeAH's and HYSCO's home market sales of the MUC with the profit rate of HYSCO's home market sales of the same general category of products as the MUC. According to Maverick, relying on Husteel's and SeAH's home market sales of the MUC and HYSCO's home market sales of the same general category of merchandise (*i.e.*, pipe exclusive of OCTG), would permit the Department to capture HYSCO's profit rate of the same general category of products (option i) and Husteel's and SeAH's profit rates on sales of the MUC in the home market (option ii). Maverick clarifies that because the same general category of products under option i is a broader, basket category that covers all similar products as well as the MUC, this category should include HYSCO's home market sales of line pipe that passed the cost test that were not local sales that HYSCO should have known were not for consumption in the home market. Maverick emphasizes that the Department would not reach the profit cap called for under option iii using this methodology because only SeAH and Husteel's profit margins for line pipe are on the record and, as such, the average of these margins would be the profit cap.

Finally, Maverick argues that if the Department decides to select a profit rate outside of Korea, the Department should rely on the financial statements of Ratnamani Metals and Tubes Limited (Ratnamani). Maverick notes that Ratnamani is an Indian producer of the MUC.²¹³ Maverick holds that Borusan's financial statements, also on the record of this investigation, cannot be considered a reliable basis for the calculation of CV profit because Borusan refused to participate in the companion antidumping and countervailing duty investigations of welded line pipe from Turkey.²¹⁴

HYSCO counters that Maverick's proposed options for calculating CV selling expenses and profit fail to recognize that the record contains accurate and reliable data for HYSCO's own profit experience in selling: (1) line pipe in the home market; (2) other products in the same general category as line pipe in the home market; and (3) line pipe in third country markets. HYSCO asserts that the Department should rely on the preferred approach of calculating CV selling expenses and profit and, as such, rely on HYSCO's own home market line pipe sales and cost data for those sales that the Department determines are home market sales (*see* Comment 6 above). HYSCO contends that regardless of whether the Department considers HYSCO's home market to be a viable basis for price-to-price comparisons or the Department excludes some sales from HYSCO's home market database, those sales that remain satisfy the statutory requirements under the preferred approach for calculating CV selling expenses and profit. HYSCO recognizes that the Department has declined to follow this approach in other situations.²¹⁵ HYSCO argues that the Department's determination in Nails from Korea reads an additional requirement into the statute that is not there and unnecessarily adds an additional hurdle to using the preferred approach. Regardless, HYSCO points out that the facts of the instant case are readily distinguishable from Nails from Korea in that HYSCO's home market sales in this investigation

²¹³ Maverick cites to Letter from Wiley Rein LLP, Welded Line Pipe from South Korea: Submission of New Factual Information, dated April 14, 2015, at Exhibit 4.

²¹⁴ Maverick cites to Letter from Wiley Rein LLP, Welded Line Pipe from South Korea: Rebuttal CV Profit Information dated May 7, 2015, at Exhibit 5.

²¹⁵ HYSCO refers to Certain Steel Nails from the Republic of Korea: Final Determination of Sales at Less Than Fair Value, 80 FR 28955 (May 20, 2015) (Nails from Korea), and accompanying Issues and Decision Memorandum at Comment 4.

are not insignificant. HYSCO adds that even if the Department excludes certain sales as suggested by Maverick, HYSCO's remaining home market sales which were verified by the Department account for thousands of metric tons of line pipe sales worth millions of dollars.

If the Department declines to use HYSCO's remaining home market sales to calculate HYSCO's CV selling expenses and profit on the basis that these sales are insignificant in volume, HYSCO asserts that the Department should calculate HYSCO's CV profit on the basis of all line pipe sales reported in HYSCO's home market sales database. HYSCO argues that this methodology would comply with the preferred approach, and the significance of the volume of sales would no longer be a concern because the total volume of sales would cross the five percent threshold. HYSCO equates this methodology to instances where the Department solicits third country sales data from respondents and calculates CV selling expenses and profit when the Department's calculations do not yield price-to-price comparisons. HYSCO also asserts that this methodology would be consistent with the Department's determination in OCTG from Saudi Arabia.²¹⁶ HYSCO alleges that, similar to OCTG from Saudi Arabia, any sales the Department excludes from HYSCO's home market database for purposes of price-to-price comparisons would meet all the requirements for CV profit set out under the preferred method except for the fact that they were not sold in the foreign country.²¹⁷

HYSCO contends that if the Department determines that it cannot calculate HYSCO's CV selling expenses and profit using the preferred approach, the Department should resort to option iii for calculating CV selling expenses and profit. Under option iii, HYSCO suggests that the Department could either calculate CV profit using all of HYSCO's reported sales or the Department could combine all of HYSCO's reported sales with HYSCO's third country profit figures for sales to specific third country markets identified in HYSCO's supplemental questionnaire response.²¹⁸ HYSCO asserts that combining its home market and third country sales in this manner constitutes a significant volume of sales and that all of the products sold were produced by HYSCO in Korea. HYSCO concludes that, as such, the sales meet all of the requirements for CV selling expenses and profit set forth by the preferred approach with the exception they were not sold in the foreign country. HYSCO refutes Maverick's allegation that HYSCO's third country sales were made to non-viable third countries where HYSCO sells small amounts of line pipe. HYSCO alleges that Maverick's allegation fails to consider that the selling expense and profit figures for these markets are based on significant sales volumes particularly when combined with each other and/or HYSCO's home market sales.

HYSCO suggests that, as an alternative to its proposed CV selling expenses and profit calculation methodologies discussed above, the Department should rely on the sales, cost, and profit information for different steel pipe products in the same general category as the MUC submitted by HYSCO in its supplemental section D questionnaire response.²¹⁹ HYSCO asserts that this data provides the Department with actual amounts incurred and realized by HYSCO in

²¹⁶ HYSCO refers to Certain Oil Country Tubular Goods from Saudi Arabia: Final Determination of Sales at Less Than Fair Value, 79 FR 41986 (July 18, 2014) (OCTG from Saudi Arabia), and accompanying Issues and Decision Memorandum at Comment 4.

²¹⁷ Id.

²¹⁸ HYSCO refers to HYSCO BCSQR1 at Exhibit SQ-1 (including sales values, volumes, cost, and profit figures for HYSCO's three largest third country markets).

²¹⁹ HYSCO refers to HYSCO DSQR1 at Exhibit SD16.

connection with the production and sale in the home market of merchandise that is in the same general category of products as the MUC as required by option i. HYSCO emphasizes that this data closely mirrors the preferred approach as it is HYSCO's own data from the home market with the only distinguishing factor that it is not for the MUC but rather other steel pipe products in the same general category.

HYSCO acknowledges that the Department has in prior cases resorted to option ii and relied on other respondent's data as a surrogate for CV selling expenses and profit. HYSCO argues that it is unnecessary to resort to option ii in this case because the record of this proceeding contains sufficient data regarding HYSCO's own experience to calculate HYSCO's CV selling expenses and profit. HYSCO points out that Maverick's suggestion of using amounts derived from SeAH's and Husteel's reported data as a surrogate for HYSCO's CV selling expenses and profit not only fails to recognize or apply the Department's standard test when analyzing competing CV profit sources, but also neglects to address the distortions and unreasonable results such an approach would yield. HYSCO alleges that when analyzing competing CV selling expenses and profit sources, the Department typically looks to the following four factors: (1) the similarity of the potential surrogate companies' business operations and products to the respondent's business operations and products; (2) the extent to which the financial data of the surrogate company reflects sales in the home market and does not reflect sales to the United States; (3) the contemporaneity of the data to the POI; and (4) the extent to which the customer base of the surrogate and the respondent were similar (e.g., original equipment manufacturer vs retailers).²²⁰ With respect to these four factors, HYSCO asserts that its own data (1) reflects HYSCO's business operations and products; (2) includes sales in Korea and not to the United States; (3) are contemporaneous to the POI; and (4) reflect sales to HYSCO's own customers. HYSCO argues that in contrast, SeAH and Husteel's selling expense and profit data is derived from their unique business operations and sales to their own customer bases.

HYSCO contends that there are significant differences between HYSCO and SeAH and Husteel that render SeAH's and Husteel's profit experience an inappropriate surrogate for HYSCO's experience. HYSCO argues that the Department has recognized in its preamble to the regulations, that the sales used as the basis for CV profit should not lead to irrational or unrepresentative results.²²¹ HYSCO alleges that relying on SeAH's and Husteel's CV selling expenses and profit would lead to aberrational results. HYSCO notes that Maverick has not shown that reliance on HYSCO's own data would lead to such distortions. Instead, according to HYSCO, Maverick has only noted that HYSCO's various data options may not come from individually viable markets.

²²⁰ HYSCO points to Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel, 66 FR 49349 (September 27, 2001) (Magnesium from Israel), and accompanying Issues and Decision Memorandum at Comment 8; and to Notice of Final Determination of Sales at Not Less Than Fair Value: Color Television Receivers from Malaysia, 69 FR 20592 (April 26, 2004) (Receivers from Malaysia), and accompanying Issues and Decision Memorandum at Comment 26.

²²¹ HYSCO refers to Antidumping Duties; Countervailing Duties, 62 FR 27296, 27360 (May 19, 1997), and Thai I-Mei Frozen Foods Co. v. United States, 572 F. Supp. 2d 1353, 1368 (CIT 2008) ("An unreasonably high profit estimate will defeat the fundamental statutory purpose of achieving a fair comparison between normal value and export price."), *rev'd on other grounds*, 616 F.3d 1300 (Fed. Cir. 2010).

HYSCO points out that Maverick recognized in its arguments that the Department could use HYSCO's own home market line pipe profit information even if the Department determines that the home market is not viable. HYSCO contends that a more reasonable approach to Maverick's suggestion of averaging HYSCO's data with SeAH's and Husteel's data would be to use HYSCO's own home market line pipe data in conjunction with its export sales or its home market sales of other pipe products in the same general category as line pipe. HYSCO asserts that these approaches would satisfy any concerns over using a non-viable market without introducing any distortions into the calculations associated with using sales and profits from other respondents that are derived from different business operations and customer bases. Moreover, HYSCO argues that the Department has in prior cases confirmed the superiority of a respondent's own data in deriving CV selling expenses and profit.²²²

In regard to Maverick's suggestion that the Department use the financial statements of an Indian pipe producer as a surrogate for HYSCO's home market profit experience, HYSCO contends that the CIT has not yet ruled definitively on whether such an approach is permissive under the statute. Further, HYSCO claims that the CIT has found that in similar circumstances using the financial statements of a company that does not have sales or production in the country under consideration might not be appropriate.²²³ In these instances, the CIT stated that such data appears to be a relatively poor surrogate for the home market experience because it is not based on any sales or production in Korea.²²⁴ As such, HYSCO asserts that the Department should decline to use Ratnamani's financial statements as a surrogate for HYSCO's home market line pipe profit experience because this company is not a significant producer of line pipe, had no sales to Korea, and received countervailable subsidies.²²⁵ If the Department does look to sources outside of Korea, HYSCO contends that the Department should use the financial statements of Borusan or Jindal SAW, Ltd. that are on the record of this proceeding.²²⁶

DOC Position:

As noted in the Department's response to Comment 6 above, we continue to find HYSCO's home market viable for the purpose of calculating NV. Therefore, we calculated NV using HYSCO's home market sales that were made in the ordinary course of trade, and compared those sales to HYSCO's U.S. sales. Accordingly, because we were able to calculate HYSCO's CV selling expenses and profit using the preferred method per section 773(e)(2)(A) of the Act, the arguments concerning the best alternative to value HYSCO's CV selling expenses and profit are moot.

Comment 14: Affiliated Processors' Cost Data and Adjustment to Toll Processing Costs

Maverick argues that the Department should continue to use the preliminary COP amounts it calculated for the services provided by HYSCO's affiliates for purposes of the final

²²² HYSCO refers to OCTG from Saudi Arabia and accompany Issues and Decision Memorandum at Comment 4.

²²³ HYSCO cites to Husteel v. United States, Ct No. 14-215, CIT Slip. Op. 14-100 at 54 (CIT 2015) (Husteel v. United States).

²²⁴ HYSCO cites to Husteel v. United States.

²²⁵ HYSCO cites to Letter from Arnold & Porter LLP, Welded Line Pipe from Korea: CV Profit Rebuttal Information and Comments, dated May 7, 2015, at 3-8.

²²⁶ Id., at Exhibits 5 and 6.

determination. Maverick alleges that HYSCO uses affiliated processors for certain production processes and that these affiliates have no additional activities other than producing pipe for HYSCO. Maverick asserts that because HYSCO has stated on the record that these outsourced costs reflect one of the three primary inputs, the Department's responsibility is to determine whether HYSCO is shifting production costs off its books and on to its affiliates. Maverick asserts that HYSCO is in complete control over these tollers, as the tollers are completely dependent on HYSCO (i.e., the tollers do not have the ability to provide tolling services to other producers) and HYSCO controls the building, equipment, and pay. As such, Maverick concludes that the Department should have required HYSCO to report the tollers' COP information.

According to Maverick, prior to the Preliminary Determination HYSCO stated that it would not provide the affiliates' actual COP because HYSCO claimed the affiliates refused to provide the information in spite of the Department's specific request for it. Instead, HYSCO reported the affiliated tollers' COP derived from each affiliated company's fiscal year (FY) 2013 and 2014 financial statements. Maverick claims that after the Preliminary Determination, HYSCO substantially revised its affiliates' COP calculations and submitted those changes without any request for supplemental information by the Department related to those costs. Maverick alleges that HYSCO did not provide any justification for these changes nor did HYSCO explain how it was able to revise each affiliate's COP when each affiliate had refused to provide that information. Maverick contends that the Department cannot allow HYSCO to selectively supply information from its affiliated tollers while allowing it to hide behind the tollers' alleged non-cooperation.

Maverick claims that HYSCO asserted for the first time at verification that its affiliates' COP also included certain costs (i.e., electricity and other expenses) for which HYSCO paid and that those costs must be subtracted from the affiliates' COP. Maverick argues that if HYSCO was able to identify and value these costs, then HYSCO's affiliates were cooperating to the extent that HYSCO wanted them to cooperate. Maverick contends that HYSCO was selective in showing the Department these costs and that the supporting detail for these costs was declared off-limits by HYSCO and should not be considered verified. As such, Maverick argues that there is no basis for the Department to accept HYSCO's revised affiliates' COP amounts.

In regard to electricity, Maverick contends that HYSCO attempts to tie its own electricity figures into the alleged electricity amounts of its affiliated parties in order to demonstrate that a reduction to the affiliates' COP is warranted. Maverick argues that despite HYSCO's affiliates' refusal to cooperate, HYSCO was able to produce a chart that allegedly shows each of its affiliates' monthly electricity bills. Maverick stresses that HYSCO has not supplied any actual contemporaneous business documents to support these amounts. As such, Maverick argues that the chart of monthly electricity charges could have originated from HYSCO's records and been reverse engineered in an ill-conceived attempt to subtract production expenses from its affiliated tollers. Maverick contends that at verification HYSCO officials had no definitive explanation as to how HYSCO was able to ascertain the affiliates' electricity expenses. Maverick alleges that the extent of HYSCO's supporting documentation for the affiliates' monthly electricity expenses was HYSCO's electricity sub-ledger from January 2014. Maverick argues that the sub-ledger does not explain who is receiving the electricity bill, who actually pays it, how the electricity bill

was allocated between the different affiliates, whether the entries in the electricity sub-ledger were payments to HYSCO's affiliates or to the electrical company, or how the electrical charges were accounted for by HYSCO and its affiliates. Accordingly, Maverick concludes that there is no way to determine whether HYSCO is entitled to the claimed reduction to the affiliates' COP when so much information is absent from the record. Maverick also claims that HYSCO's electricity sub-ledger does not prove that the electricity expenses were included in the costs HYSCO reported to the Department. Moreover, these costs were not reconciled to HYSCO's reported costs, a step Maverick argues should be necessary for HYSCO to show that this adjustment is warranted. Maverick asserts that these electricity expenses could have been paid by HYSCO and then passed through to the affiliates' costs via the processing fees or removed from HYSCO's expenses through later reimbursement or reclassification.

In regard to the expenses other than electricity for which HYSCO claims an adjustment to its affiliates' COP is warranted, Maverick asserts that the evidence on the record does not substantiate HYSCO's claims. Maverick emphasizes that any justification submitted by HYSCO at this point in the proceeding would constitute new factual information.

Maverick asserts that HYSCO did not provide any factual basis to justify an adjustment to the affiliates' cost information which deviates from the affiliates' financial statements. Maverick argues that HYSCO has not met its burden to establish its entitlement to an adjustment. Maverick concludes, notwithstanding HYSCO's claims and unsupported assumptions, that the Department should consider the affiliates' COP information submitted by HYSCO after the Preliminary Determination as not verified and, as such, rely on the COP amounts the Department calculated in the Preliminary Determination for the services provided by HYSCO's affiliates.

The other petitioners support Maverick's arguments summarized above. The petitioners argue the Department should retain its preliminary adjustment to HYSCO's toll processing costs.

HYSCO states that, during the POI, it sourced toll processing services from affiliated service providers which accounted for a small portion of its manufacturing costs. HYSCO alleges that it was unable to provide arm's-length prices for these services because the relationship with the providers was mutually exclusive. HYSCO explains that because it was not able to obtain the affiliates' COP, it provided cost data derived from the affiliates' financial statements. HYSCO adds that in its initial submission of the affiliates' COP, HYSCO inadvertently omitted data for two of the providers originally identified in its section D questionnaire response. HYSCO states that, in the Preliminary Determination, the Department applied an adjustment to HYSCO's costs to account for the toll processing services sourced from the affiliated providers, which included a facts available adjustment for the services attributed to the two omitted providers.

HYSCO claims that after the Preliminary Determination, the Department issued a supplemental questionnaire in which it requested the missing data for the two processors. HYSCO explains that in the supplemental questionnaire response it clarified that the services sourced from one of the omitted providers were not related to MUC; and, that the relationship with the other omitted provider was not exclusive and provided transfer and market prices for the services. HYSCO asserts that in the same supplemental questionnaire response it also identified and corrected errors in the estimated COP originally submitted for the affiliated providers. HYSCO points out

that the Department subsequently verified HYSCO's submitted costs, including HYSCO's analysis of the affiliated suppliers' COP, and observed that it may be appropriate to revise the analysis of HYSCO's purchases of tolling services to reflect the per-unit amounts identified in the cost verification report. HYSCO argues it is appropriate for the Department to revise the analysis as suggested in the cost verification report. HYSCO adds that this methodology would be consistent with the Department's final determination in OCTG from Korea.²²⁷

HYSCO contends that nothing in the record supports Maverick's claims. HYSCO adds that mere affiliation is insufficient grounds to suggest HYSCO could force its affiliates' to comply with its requests for information, considering HYSCO only has a small equity ownership in these affiliates. HYSCO maintains that it never refused to provide the affiliates' cost data to the Department. HYSCO asserts that the Department has previously found that these circumstances do not form sufficient grounds to assume that HYSCO could have submitted the data or has otherwise refused to do so.²²⁸

HYSCO disputes Maverick's allegation that the affiliates were cooperating with HYSCO to the extent HYSCO wanted them to cooperate. HYSCO claims that because the affiliates' provided services only to HYSCO, HYSCO was able to compare the companies' sales revenues recorded in the affiliates' income statements to the total toll processing fees it had paid and determined that the revenue reported by the affiliates' exceeded what HYSCO had paid. HYSCO adds that from its own accounting records it was able to segregate and reconcile these amounts, and it reasonably assumed that the affiliates' were recording the expenses paid by HYSCO as both revenues and expenses. HYSCO asserts that in its supplemental questionnaire response it submitted data for each of the types of costs that it paid and assumed were treated as both revenues and expenses in the affiliates' income statements.²²⁹ HYSCO explains that at verification the Department reviewed the affiliates' COP submission and tested selected information.²³⁰ According to HYSCO, the Department does not need to test each and every item to conclude that the costs are accurately reported. HYSCO explains that the negative entries in the sub-ledger are common (e.g., when costs are initially incurred and charged to cost centers where they are subsequently allocated to product costs). HYSCO argues that Maverick's speculation that HYSCO reclassified these expenses as processing fees is ungrounded and must be rejected.

HYSCO disputes Maverick's assertion that HYSCO failed to substantiate the reported amounts. HYSCO argues that it has fully cooperated with the Department and the Department verified the accuracy of the estimated cost data HYSCO provided for the affiliates. As such, HYSCO concludes that the Department should reject Maverick's claims, and should revise the analysis of HYSCO's purchases of tolling services to reflect the per-unit amounts identified in the cost verification report.

²²⁷ HYSCO cites to OCTG from Korea and accompanying Issues and Decision Memorandum at Comment 10.

²²⁸ HYSCO cites to OCTG from Korea and accompanying Issues and Decision Memorandum at Comment 10 ("we find that HYSCO's small equity ownership in the affiliated service providers is not significant enough to reach a reasonable conclusion that HYSCO could compel it {sic} affiliates to provide the COP data. Further, there is no evidence on that record that HYSCO could force its affiliates to comply with its requests for information.").

²²⁹ HYSCO cites to HYSCO DSQR at Exhibit SD14.

²³⁰ HYSCO cites to HYSCO Cost Verification Report at 21-22, and HYSCO Cost Verification Exhibit 15.

DOC Position:

During the POI, HYSCO obtained certain processing services from affiliated providers.²³¹ HYSCO has a small equity ownership in each of these affiliated service providers.²³² We disagree with Maverick's assumptions that because the relationship between HYSCO and its affiliated providers is exclusive (*i.e.*, HYSCO only obtained these services from its affiliates and the affiliates only provided these services to HYSCO), that HYSCO controlled the affiliates such that it could compel them to provide their COP information. In a supplemental questionnaire the Department requested that HYSCO provide the COP data of its affiliated providers. In its response, HYSCO explained that the affiliates rejected HYSCO's request due to the confidential nature of the information.²³³ Based on the record of this case, we find that HYSCO's small equity ownership in the affiliated service providers is not significant enough to reasonably expect that HYSCO could compel its affiliates to provide the COP data.²³⁴ Equally important, there is no evidence on the record that HYSCO could force its affiliates to comply with its request for information.²³⁵ More importantly, HYSCO complied with the Department's information request by providing a reasonable approximation of the COP data for each affiliated service provider based on its respective FY 2014 financial statements and the quantities it had purchased from each affiliated service provider.²³⁶

In regard to Maverick's argument regarding the revision to the affiliates' COP information, we note that HYSCO provided this information in its response to a supplemental questionnaire in which the Department requested the market or COP data from two affiliated providers that appeared to have been inadvertently omitted from HYSCO's first supplemental questionnaire response.²³⁷ As such, we did not consider it unusual for HYSCO to revise the affiliates' COP data while reviewing said data in order to respond to the Department's request.

With respect to Maverick's argument that HYSCO offered information for the first time during the cost verification, we note that the explanation Maverick is referring to was associated with the COP data for each affiliated service provider based on its respective FY 2014 financial statements provided in HYSCO DSQR1 and revised in HYSCO DSQR2.²³⁸ Specifically, at verification HYSCO explained that it assumed that its affiliates were recording expenses paid by HYSCO as both revenues and expenses.²³⁹ While we acknowledge that the explanations for the COP data revisions were not on the record prior to verification, as part of the verification the

²³¹ See HYSCO Cost Verification Report at 5 and 21-22.

²³² See HYSCO Cost Verification Exhibit 2.

²³³ See HYSCO Cost Verification Report at 21, and Cost Verification Exhibit 15. See also HYSCO DSQR1 at 10.

²³⁴ See OCTG from Korea and accompanying Issues and Decision Memorandum at Comment 10. See also Certain Cut-To-Length Carbon Steel Plate from Brazil, 63 FR 12744 (March 16, 1998), where the Department reasoned that public data on the record of the proceeding indicated that a 15 percent stock ownership constituted a small portion of a company's total operations; therefore, the respondent could not compel its affiliate to supply cost of production information.

²³⁵ See OCTG from Korea and accompanying Issues and Decision Memorandum at Comment 10.

²³⁶ See HYSCO Cost Verification Report at 21. See also HYSCO Cost Verification Exhibit 15. See also HYSCO DSQR1 at SD12.

²³⁷ See HYSCO DSQR1 at 6-7 and Exhibit 14.

²³⁸ See first supplemental section D questionnaire response from HYSCO, dated April 29, 2015 (HYSCO DSQR1), at SD12; and HYSCO DSQR2 at Exhibit 14.

²³⁹ See HYSCO Cost Verification Report at 21-22.

Department requested an explanation for these revisions. Based on our request, HYSCO validated its assumption that the affiliates' were recording the expenses paid by HYSCO as both revenues and expenses using their own accounting records to segregate and reconcile these amounts.²⁴⁰ In addition, the Department also reviewed and tested previously-submitted documents and requested numerous other documents associated with the affiliated service providers including, but not limited to, the performance of tests and online inquiries within HYSCO's systems.²⁴¹ Thus, after considering all interested party comments, the Department determined that the explanation for the COP data revisions which the Department accepted at verification, coupled with the reconciliation and supporting documents, are reasonable. Accordingly, for the final determination, we revised the analysis of HYSCO's purchases of tolling services from affiliated parties to reflect the per-unit amounts identified in the cost verification report.

Comment 15: Adjustment to Steel Costs to Reflect Yield Loss

Maverick alleges that HYSCO under-reported its steel consumption and, therefore, an adjustment is required to bring the reported costs in line with the actual costs. Maverick contends that if you compare the average price of HRC purchased by HYSCO to the average price of substrate (*i.e.*, amount of steel used before scrap is subtracted) reported by HYSCO in its cost database, the resulting yield loss conflicts with HYSCO's stated yields, thereby showing that HYSCO under-reported its steel consumption. Maverick adds that when asked by the Department to explain this discrepancy HYSCO offered general excuses that would never fully account for the discrepancy (*i.e.*, differences between the cost of input materials consumed in production during the POI versus purchases during the POI, and differences between production yields of all steel products and subject merchandise). According to Maverick, the first reason given by HYSCO would actually work against HYSCO because the price of HRC was declining during the POI, and the second reason does not adequately answer the question because there is no record evidence to support the disparity between HYSCO's yield for all pipe, and the yield for line pipe and non-subject pipe derived by Maverick. Maverick contends that SeAH's data contradict HYSCO's claim of reported yield loss. Maverick argues that this unexplained discrepancy should be rectified and, for the final determination, the Department should make a cost adjustment to account for HYSCO's under-reported steel inputs.

The other petitioners agree with Maverick's argument that HYSCO under-reported its steel costs due to under-reporting its yield losses.

HYSCO states that the petitioners' request for the Department to increase HYSCO's reported steel costs is based on a ratio derived from the average cost of direct materials reported in the cost database (which does not include products manufactured but not sold in the home or U.S. markets) versus the overall average purchase price of HRC, compared to the overall yield loss provided by HYSCO in the section D response. HYSCO asserts that this calculation is fundamentally flawed because the yield factors used reflected yield losses by process for all products, not just subject merchandise. HYSCO notes that it had previously responded to the petitioners' allegations when they were originally presented in the pre-preliminary comments

²⁴⁰ *Id.* See also HYSCO Cost Verification Exhibit 15.

²⁴¹ See HYSCO Cost Verification Report at 21-24. See also HYSCO Cost Verification Exhibit 15.

submitted to the Department. HYSCO adds that the petitioners' attempt to address this issue by calculating an average yield for non-subject merchandise is also fundamentally flawed because the petitioners derived the yield rates using the total cost of manufacturing (COM) provided in the cost reconciliation, not production quantities.

HYSCO points out that while the verification report showed that the yield percentages for slitting line pipe were similar to the overall plant experience, it also confirmed that the forming yields of the three selected CONNUMs were all significantly higher. HYSCO alleges the petitioners disregarded the Department's additional testing that confirmed higher yields on line pipe products. HYSCO demonstrates that using the average yields of the products tested at verification in the petitioners' calculation validates that HYSCO's material costs are reasonable. HYSCO asserts that the cost analysis reports used to document the reported CONNUM-specific costs demonstrate how HYSCO has accounted for the yield loss associated with each production stage.²⁴² HYSCO stresses that allocating all accumulated costs incurred in production over finished production quantity fully accounts for the yield losses during the production process. HYSCO notes that the Department has never found that HYSCO's costs failed to properly account for yield losses. HYSCO maintains that it has properly reported its steel costs and, therefore, for the final determination, the Department should not adjust HYSCO's reported steel costs.

DOC Position:

We disagree with Maverick and the petitioners. Maverick's assumption that HYSCO's steel costs are under-reported is based on an analysis that uses HYSCO's overall slitting and forming production yields incurred on all products produced, not just the subject merchandise.²⁴³ Maverick's reliance on these yields is not appropriate because HYSCO not only produces welded line pipe, but also produces OCTG, standard pipe, welded line pipe with an outside diameter greater than 24 inches, and hot stamped, hydro-formed and tailor welded blank products for the automobile industry.²⁴⁴ Consequently, the mix of the types and sizes of products produced by HYSCO affects the overall company-wide yields. Therefore, it is not appropriate to compare a yield based on the overall company-wide production and apply the result to only line pipe products.

As noted at verification, HYSCO calculates production yields by process and these yields are reflected in the production costs on an individual product-code basis. HYSCO's cost accounting system captures the actual quantity of materials consumed at each stage of production, and the output from one stage becomes the input material for the next stage. The cost analysis reports used to document the reported CONNUM-specific costs demonstrate how HYSCO has fully accounted for the yield loss associated with each stage of production. The testing performed on yields at the cost verification did not show any discrepancies in HYSCO's reported yields.²⁴⁵

²⁴² HYSCO cites to HYSCO Cost Verification Report at 20; and HYSCO Cost Verification Exhibits 8, 9, 10, 11, and 14.

²⁴³ See section D questionnaire response from HYSCO, dated March 27, 2015, at 17-18. See also Welded Line Pipe from Korea: Supplemental Section D Questionnaire Response, dated May 8, 2015, at 10-11.

²⁴⁴ See HYSCO Cost Verification Report at 9.

²⁴⁵ See HYSCO Cost Verification Report at 20.

Maverick's reliance on SeAH's yield loss data is misplaced because SeAH has its own product mix, plants, production process, etc., that do not necessarily reflect HYSCO's own product mix, plants, production process, etc. As HYSCO stated above, HYSCO allocated all the accumulated costs incurred during production over finished production quantity which fully accounts for the yield loss during the production process. As such, we do not agree with and record evidence does not support Maverick's assumption that HYSCO's steel costs are under reported. Therefore, for the final determination, we did not adjust HYSCO's steel costs as they properly reflect its yield losses during the POI.

Comment 16: Unreconciled Cost Difference

Maverick argues that the Department should adjust HYSCO's TOTCOM to account for the unreconciled cost difference identified in the cost verification report. Maverick explains that it is the Department's practice to include such items in the calculation of COP and CV unless the respondent can identify and document why the amount does not relate to the merchandise under investigation.²⁴⁶ Maverick asserts that HYSCO did not identify or document a justification for this difference.

HYSCO notes that the regulations permit the Department to disregard insignificant adjustments.²⁴⁷ HYSCO explains that, due to rounding, small discrepancies between COM and the cost file are expected. HYSCO asserts that, although accurate, this adjustment is miniscule. Therefore, HYSCO argues that, for the final determination, the Department should not dedicate resources to review and perform adjustments of this small magnitude.

DOC Position:

We agree with Maverick's assertion that it is the Department's practice to include an unreconciled amount in the calculation of COP and CV unless the respondent can identify and document why the amount does not relate to the merchandise under investigation.²⁴⁸ However, in deciding whether to adjust the respondent's reported costs to include an unreconciled difference, the Department also considers whether the difference indicates a possible under-reporting of costs.²⁴⁹ In the instant case, we do not agree that an adjustment to the reported costs is warranted. We agree with HYSCO that insignificant differences between the COM of the MUC in a respondent's cost accounting system and the extended reported TOTCOM are expected due to rounding. As such, for the final determination we did not adjust HYSCO's reported costs to account for the insignificant difference between the POI COM of the MUC and the extended reported TOTCOM.

Comment 17: Adjustment for Certain Fees Paid to Affiliates

²⁴⁶ Maverick cites to Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Italy, 67 FR 3155 (January 23, 2002) (SSBar from Italy), and accompanying Issues and Decision Memorandum at Comment 50.

²⁴⁷ HYSCO cites to 19 CFR 351.413.

²⁴⁸ See SSBar from Italy and accompanying Issues and Decision Memorandum at Comment 50.

²⁴⁹ See Rebar From Turkey and accompanying Issues and Decision Memorandum at Comment 14.

Maverick states that in the Preliminary Determination the Department increased HYSCO's TOTCOM to adjust for certain fees paid to affiliated parties. Maverick explains that, to properly account for VAT, the Department corrected the amount of the adjustment in the cost verification report. Maverick argues that for the final determination the Department should increase TOTCOM to reflect the revised adjustment amount.

HYSCO notes that the regulations permit the Department to disregard insignificant adjustments.²⁵⁰ HYSCO asserts that, although accurate, this adjustment is miniscule. Therefore, HYSCO argues that, for the final determination, the Department should not dedicate resources to review and perform adjustments of this small magnitude.

DOC Position:

While this adjustment may be small, we find that it should be made for the final determination. As the Department noted in the Preliminary Determination, we compared the transfer price for certain fees paid by HYSCO to its affiliate's costs, and increased HYSCO's reported TOTCOM accordingly.²⁵¹ For the final determination, consistent with the Preliminary Determination, we increased HYSCO's reported TOTCOM to adjust for the fees paid to affiliated parties, as revised in the HYSCO Cost Verification Report.

SeAH

Comment 18: Domestic Inland Freight

In the Preliminary Determination, we found that the freight services provided by SeAH's affiliate, SeAH L&S, were not provided at arm's length and that SeAH paid above-market rates for those services. Accordingly, we adjusted downward the reported inland freight to customer and inland freight to warehouse expenses for home market sales (INLFTCH and INLFTWH, respectively) and domestic inland freight to port expenses for U.S. sales (DINLFTPU).

The petitioners argue that SeAH is not paying equivalent rates for freight services provided by its affiliate for home market and U.S. sales, and that the Department should increase the reported DINLFTPU. The petitioners note that SeAH paid a higher rate per metric ton (MT) for freight related to its home market sales than for freight related to its U.S. sales, and allege that the Department did not fully explore SeAH's freight expenses at the sales verification in Seoul. The petitioners state that "freight charges should be similar and proportional to the distance traveled, but there is no way of knowing without examining the actual distances to the customer."²⁵² The petitioners argue that the Department should increase DINLFTPU to equal the amount charged for shipments of home market sales or by some alternate method to ensure this expense reflects an arm's-length transaction.

²⁵⁰ HYSCO cites to 19 CFR 351.413.

²⁵¹ See HYSCO Preliminary Cost Calculation Memorandum at 2-3.

²⁵² See Maverick case brief at 46.

In its rebuttal, SeAH states that the Department verified the reported freight expenses, and that any differences found between DINLFTPU and INLFTCH/INLFTWH are attributable to distance and quantity shipped. SeAH argues that because export shipments to the port are usually larger than domestic shipments to its Korean customers, it is expected that per-unit costs for such shipments will be lower. SeAH also notes that two of the sales used by the petitioners to calculate an average amount for INLFTCH included two sales that contained small quantities of line pipe. SeAH notes that by removing those two shipments from that calculation, the average INLFTCH amount would be significantly closer to the average foreign inland freight expense (DINLFTPU) reported for U.S. sales. SeAH states that the distance between its Pohang plant and the export port is two kilometers, while shipments of domestic sales travel various distances. SeAH further contends that because this is a market- economy proceeding, it was under no obligation to report the distances of shipments of merchandise to its home market customers.

DOC Position:

We disagree with the petitioners. Contrary to the petitioners' suggestion, we fully examined SeAH's reported Korean inland freight expenses during our sales verification in Seoul, and found no evidence that the freight prices reported by SeAH are inconsistent with the distances traveled. We confirmed at verification that the merchandise destined for the United States travels approximately two kilometers from the company's Pohang plant to the nearby port. A review of SVE-27, contained in the SeAH verification report,²⁵³ clearly illustrates that SeAH's customers can be located anywhere in the Pohang area and, therefore, shipments would travel considerably farther from SeAH's Pohang plant than to the nearby port. Additionally, because shipments to the Pohang port are normally larger than shipments made to individual customers, it is reasonable to assume that per-unit freight costs would be lower.²⁵⁴ While we continue to find that freight services provided by SeAH L&S were not made at arm's length, we find no basis to make further adjustments to those made in the Preliminary Determination.

Comment 19: U.S. Credit Expenses

SeAH reported imputed credit expense (CREDITU) incurred on its "back-to-back," or direct shipment, CEP sales based on the time period from the date its U.S. affiliate, Pusan Pipe America (PPA), invoiced the U.S. customer to the date it received the payment. In the preliminary determination, we recalculated CREDITU for back-to-back sales based on the time period between factory or warehouse shipment from Korea, and payment by the U.S. customer.

SeAH argues that, for these back-to-back sales of line pipe, the Department should accept SeAH's CREDITU calculation based on the length of time between PPA's invoice date and customer payment date. SeAH asserts that its methodology is supported by the Uniform Commercial Code, as SeAH and PPA retain ownership of the merchandise until it clears U.S. customs and is loaded for delivery to the customer. As a result, SeAH maintains that SeAH and PPA had the "legal right to divert it to some other customer or location if another customer

²⁵³ See SeAH SVR at SVE-27.

²⁵⁴ See SeAH Case Brief at 19.

offered a better price or if the original customer became uncreditworthy.”²⁵⁵ According to SeAH, title to the merchandise is transferred to PPA when it enters the United States, and PPA does not invoice the customer until the merchandise clears customs. Thus, SeAH reasons that the merchandise was in SeAH’s or PPA’s inventory until U.S. customs clearance, just as if it were stored at PPA’s U.S. facilities before the sale. Therefore, SeAH claims that it is improper to impute an expense for financing SeAH’s accounts receivable for this period.

SeAH further argues that the Department cannot deduct imputed interest costs for the period between shipment from Korea and title transfer in the United States for these CEP sales, because CEP adjustments must be limited to expenses associated with economic activity in the United States. In support of its position, SeAH cites to Butt-Weld Pipe Fittings from Taiwan, where the Department concluded that “[i]n-transit inventory carrying costs are indirect selling expenses relating to the sale to the affiliate and, consequently, are not associated with U.S. economic activity or related to the resale of the merchandise.”²⁵⁶

Finally, citing AK Steel, SeAH contends that using the Korean factory or warehouse shipment date as the beginning of the CREDITU calculation period for its CEP sales would lead to inconsistent imputed credit expense calculations for U.S. sales depending solely on whether or not the merchandise was held in the physical inventory of the U.S. sales affiliate.²⁵⁷

The petitioners argue that, for SeAH’s back-to-back CEP sales, there is an instantaneous transfer of title from SeAH to PPA to the customer that renders SeAH’s arguments moot. The petitioners assert that PPA’s practice of invoicing the U.S. customer after merchandise clears customs should have no bearing on the calculation of SeAH’s imputed opportunity cost for those sales. According to the petitioners, the title transfer takes place when merchandise is loaded on the ship at the Korean port, and as PPA is an entity located in the United States, the imputed credit costs are therefore associated with economic activity in the United States.

DOC Position:

We disagree with SeAH. The Department’s practice is to calculate credit expenses based upon the period from the date the merchandise was shipped to the unaffiliated customer to the date on which the customer paid for the merchandise.²⁵⁸ As we explained in Wire Rod from Trinidad and Tobago 2005, “Credit expense is the interest expense incurred (or interest revenue forgone) between shipment of merchandise to the customer and receipt of payment from the customer.”²⁵⁹ In Wire Rod from Trinidad and Tobago 2005, we further stated that it is our intention, in CEP

²⁵⁵ Id.

²⁵⁶ See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review, 68 FR 69996 (December 16, 2003) (Butt-Weld Pipe Fittings from Taiwan), and accompanying Issues and Decision Memorandum at Comment 10, quoted in SeAH Case Brief at 10.

²⁵⁷ See AK Steel Corp. V. United States, 226 F.3d 1361 (CAFC. 2000) (AK Steel), cited in SeAH’s Case Brief at 2.

²⁵⁸ See, e.g., Certain Hot-Rolled Carbon Steel Products from India: Notice of Final Results of Antidumping Duty Administrative Review, 73 FR 31961 (June 5, 2008) and accompanying Issues and Decision Memorandum at Comment 3.

²⁵⁹ See Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago, 70 FR 12648 (March 15, 2005) (Wire Rod from Trinidad and Tobago 2005), and accompanying Issues and Decision Memorandum at Comment 6.

cases, where the merchandise does not enter the inventory of a U.S. affiliate in the United States, to calculate the credit period from the time the merchandise leaves the port in the foreign country to the date of payment.²⁶⁰ SeAH's U.S. sales are not made from PPA's inventory. Rather, SeAH produced the merchandise to order and shipped it directly from Korea to the U.S. customer. As such, the credit expenses SeAH incurred related to sales destined to specific, unaffiliated U.S. customers. Under these circumstances, our normal practice is to calculate credit expenses from the date the merchandise is first shipped to the unaffiliated customer to the date of payment by that customer.²⁶¹

SeAH's reliance on Butt-Weld Pipe Fittings from Taiwan in support of its argument that the Department cannot deduct imputed interest expenses for the period between shipment from Korea and title transfer in the United States for direct shipment CEP sales, because CEP adjustments must be limited to expenses associated with economic activity in the United States, is misplaced. In its argument, SeAH conflates inventory carrying costs with imputed credit expenses. Unlike imputed credit expenses, described above, inventory carrying costs are the interest expenses incurred (or interest revenue forgone) between the time the merchandise leaves the production line at the factory to the time the goods are shipped to the first unaffiliated customer. In Butt-Weld Pipe Fittings from Taiwan, the Department addressed whether inventory carrying costs associated with sales to a U.S. affiliate should be deducted from U.S. price. In that case, the U.S. affiliate took physical possession of the merchandise and later sold that merchandise to the U.S. customer. The facts in this case are different. As stated above, PPA does not take physical possession of the merchandise. Rather, the merchandise is shipped from Korea directly to the U.S. customer. Accordingly, in the preliminary determination of this investigation, we recalculated inventory carrying costs for direct shipment CEP sales based on the inventory period from factory production to shipment to the U.S. customer. We continued to employ the same methodology in the final determination.

Furthermore, SeAH's argument that imputing credit expense for CEP sales shipped directly from Korea contravenes the CAFC's findings in AK Steel is also not applicable to this issue, because AK Steel does not address the issue of U.S. imputed credit expenses. AK Steel addresses the issue of whether the sales transactions made in the United States between a respondent's U.S. sales affiliate and unaffiliated U.S. customers constitute CEP sales even when the shipment of subject merchandise was made directly from the respondent to the unaffiliated U.S. customers.²⁶²

²⁶⁰ Id.

²⁶¹ See Wire Rod from Trinidad and Tobago 2005 and accompanying Issues and Decision Memorandum at Comment 6; and Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review, 72 FR 18204 (April 11, 2007), and accompanying Issues and Decision Memorandum at Comment 3. An exception to this practice can occur where the material terms of sale are not set until after date of shipment. For example, in Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review, 74 FR 10722 (March 12, 2009), and accompanying Issues and Decision Memorandum, Methodology for Calculating Imputed Expenses for CEP Sales, we calculated credit expense from date of invoice, rather than date of shipment, because the material terms of sale were not set until date of invoice, which was after shipment in that case. See also Mittal Steel Point Lisas Ltd. v. United States, 502 F. Supp. 2d 1345 (CIT 2007); and Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of the Antidumping Duty Administrative Review, 77 FR 34344 at 34345 (June 11, 2012), and accompanying Issues and Decision Memorandum at Comment 4. However, in the instant investigation, we determined that the material terms of sale are set by the shipment date.

²⁶² See AK Steel at 1374.

Thus, the CAFC's decision in AK Steel does not conflict with our use of the difference between the date of payment and the date of shipment in the calculation of U.S. imputed credit expenses.

Comment 20: U.S. Indirect Selling Expenses

The petitioners disagree with the Department's stated intention in the SeAH Preliminary Cost Calculation Memo²⁶³ to segregate the selling, general and administrative (SG&A) expenses of SeAH's affiliated U.S. importer PPA into selling and G&A expenses and to apply the separately-calculated indirect selling expenses (ISE) and G&A expenses ratios to sales and to further manufacturing costs, respectively, for the final determination. According to the petitioners, it is the Department's practice to treat all SG&A expenses incurred by an affiliated U.S. importer as U.S. indirect selling expenses.²⁶⁴ The petitioners claim that PPA itself does not engage in further manufacturing activities; instead, PPA is purely a selling entity, and U.S. processing is performed by an unaffiliated third party which bills PPA for its services. The petitioners claim that there are no G&A functions at PPA that are distinguishable from the selling functions as one might find in a traditional manufacturing company. Thus, the petitioners contend, the request for the separate G&A expense information outlined in Section E of the Department's questionnaire does not apply to PPA's situation.

With regard to the specific application of the ISE and G&A ratios, the petitioners note that while they have not seen how the Department intends to implement these segregated ratios for the final determination, such application would lead to incorrect results. The petitioners discuss several possibilities of how these ratios may be used by the Department, and argue that any such calculation would result in either double-counting of costs, or G&A costs not being allocated to all products. Therefore, the petitioners suggest, for the final determination the Department should calculate U.S. indirect selling expenses based upon the entire pool of SG&A expenses.

The petitioners further argue that SeAH incorrectly reported the total SG&A expenses for PPA. The petitioners identify several expense categories that they claim SeAH improperly excluded from the pool of SG&A expenses, and which they contend should be included in this pool for the final determination.²⁶⁵

SeAH responds that the petitioners' argument regarding the separation of the U.S. ISE and G&A expenses is contrary to the Department's practice. SeAH agrees with the petitioners that when considering a U.S. company that is engaged only in selling activities, it is the Department's practice to treat the U.S. company's G&A expenses as selling expenses. However, SeAH argues, the Department has consistently held that the administrative expenses of a company that performs both selling and further manufacturing activities must be classified as G&A expenses.²⁶⁶ SeAH contends that in this case, PPA's administrative personnel were responsible

²⁶³ See Memorandum entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – SeAH Steel Corporation," dated May 14, 2015 (SeAH Preliminary Cost Calculation Memo).

²⁶⁴ See Notice of Final Results of Antidumping Duty Administrative Review: Citric Acid and Certain Citrate Salts From Canada, 79 FR 37286 (July 1, 2014), and accompanying Issues and Decision Memorandum at Comment 3.

²⁶⁵ See the petitioners' Case Brief at 32-33, which discusses business proprietary information.

²⁶⁶ See Notice of Final Determination of Sales at Less Than Fair Value: Calcium Aluminate Cement, Cement Clinker, and Flux from France, 59 FR 14136, 14146-47 (March 25, 1994), and Notice of Final Results of

for overseeing both sales and further manufacturing activities, consequently, PPA's G&A expenses should be properly classified as G&A and not as indirect selling expenses.

With regard to the petitioners' objection to SeAH's corrections and modifications to the PPA's G&A and indirect selling expenses over the course of SeAH's submissions, SeAH notes that it is too late for the company to provide additional explanations on issues that were not raised previously. SeAH contends that PPA's G&A and indirect selling expense calculations were submitted to the Department at the start of verification as a minor correction and were verified by the Department to be accurate.

SeAH further notes that the petitioners have identified a methodological mistake in the submitted PPA indirect selling and G&A expense calculations. According to SeAH, the record shows that the commission expenses incurred by PPA relate to sales of non-subject merchandise, therefore, they are properly classified as a direct selling expense for non-subject merchandise, and not as an indirect selling or G&A expense. Thus, SeAH concludes, it would not object if the Department were to modify the calculations to exclude commission expenses from the ratios.

DOC Position:

We disagree with the petitioners. Pursuant to section 772(d)(2) of the Act, the Department is required to deduct the cost of any further manufacture or assembly from the price used to establish the CEP. It is the Department's practice to include all G&A expenses related to further manufacturing in the calculation of the further manufacturing costs.²⁶⁷ In OCTG from Korea 04/05 AR, also involving SeAH and its U.S. affiliated importer PPA, the Department was faced with a similar situation. The petitioners in that case argued that the Department should revise SeAH's reported U.S. further manufacturing cost to include PPA's G&A expenses as part of the COP rather than treating all G&A expenses as ISE. The Department agreed with petitioners, noting that "While we acknowledge that PPA's primary function is as a selling agent and that it does not perform any further processing in house, it is required to coordinate the further processing performed by its outside contractors, including providing couplings and arranging transportation."²⁶⁸

The facts in this case are similar, as PPA's employees are also responsible for overseeing and coordinating both sales and further manufacturing activities related to subject products.²⁶⁹ Therefore, in accordance with section 772(d)(2) of the Act, for the final determination we calculated separate ISE and G&A ratios for PPA. Because PPA's G&A activities support the

Antidumping Duty Administrative Review: Certain Activated Carbon from the People's Republic of China, 74 FR 57995 (November 10, 2009), and accompanying Issues and Decision Memorandum at Comment 5(b).

²⁶⁷ See Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany, 61 FR 38166, 38188 (July 23, 1996); see also Notice of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Bar from France, 70 FR 17411, 17413 (April 6, 2005), unchanged in Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review, 70 FR 46482 (August 10, 2005).

²⁶⁸ See Notice of Final Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods, Other Than Drill Pipe, from Korea, 72 FR 9924 (March 6, 2007), and accompanying Issues and Decision Memorandum at Comment 7 (OCTG from Korea 04/05 AR).

²⁶⁹ See section E questionnaire response from SeAH, dated May 4, 2015.

general activities of the company as a whole, including its sales and further manufacturing functions, we applied the G&A ratio to the total cost of further manufactured products (including the cost of producing the pipe), as well as to the cost of all non-further manufactured products. We recognize that under this method there is a theoretical difference between how the G&A expense ratio is calculated (i.e., based on PPA's cost of goods sold that represents SeAH's transfer price for the pipe), and how it is applied (i.e., to the cost of producing the pipe). However, we consider such approach reasonable, as it avoids the double counting of costs, allocates all of the company's G&A expenses and, given the size of the G&A expense ratio, any difference resulting from the theoretical difference noted above is negligible.

Finally, with respect to the petitioners' objection to SeAH's modifications to PPA's indirect selling expenses over the course of the investigation, we agree with SeAH's claim that the corrections it presented at the start of verification were verified by the Department to be accurate. Although we do not disagree with SeAH that it may be appropriate to modify the calculations to exclude commission expenses from the ratios, doing so would not affect the resultant ratio. Accordingly, we made no additional changes to PPA's indirect selling expenses.

Comment 21: Affiliated Party Purchases

SeAH purchased hot-rolled coil and steel plate from an affiliated trading company SeAH Japan, which in turn sourced the raw materials from an unaffiliated Japanese supplier. Maverick notes that at verification the Department found that SeAH Japan sold raw materials to SeAH for more than its acquisition cost. Nevertheless, Maverick argues, just because SeAH purchased raw materials for more than its affiliate's acquisition price, does not mean the purchase was made at fair market value. Maverick contends that the Department should still adjust SeAH's affiliated party purchases to comply with the major input rule of section 773(f)(3) of the Act, which directs the Department to value affiliated inputs at the higher of (1) the respondent's purchase price, (2) the affiliate's COP, or (3) the fair market value. Therefore, Maverick concludes, the Department should compare SeAH's affiliated purchases with its purchases of raw materials from unaffiliated suppliers.

SeAH claims that Maverick's argument ignores the fact that, because the price that SeAH paid to SeAH Japan was above the arm's-length price that SeAH Japan paid to unaffiliated suppliers, that price was necessarily above the actual market value of the steel products. SeAH points out that at verification the Department confirmed that SeAH Japan's average mark-up on its sales to SeAH exceeds SeAH Japan's operating costs.

In addition, SeAH notes, the record shows that the average prices that SeAH paid to SeAH Japan were also higher than the average prices it paid to unaffiliated suppliers. In support, SeAH provides a table summarizing its total purchases from SeAH Japan and from unaffiliated suppliers which, according to SeAH, demonstrates that the average prices SeAH paid to SeAH Japan exceeded the average prices paid to unaffiliated suppliers.

DOC Position:

We note that contrary to Maverick’s claim, the “major input” analysis under section 773(f)(3) of the Act is not applicable here, because SeAH Japan is not a producer of the raw materials but a trading company. Therefore, we analyzed SeAH’s purchases under the “transactions disregarded” rule under section 773(f)(2) of the Act to ensure that the affiliated prices “fairly reflect the amount usually reflected in sales of merchandise under consideration...”

We also disagree with Maverick’s assertion that SeAH’s purchases of raw materials from SeAH Japan were not made at fair market value. The record shows that SeAH Japan, a trading company, purchased raw materials from unaffiliated producers (*i.e.*, at market prices), and resold the materials to SeAH at a price that fully recovered both SeAH Japan’s cost of acquiring the materials and its operating costs. In this regard, we consider the above analysis sufficient for establishing the arm’s-length nature of the transactions between SeAH and SeAH Japan, and as such we did not resort to other sources of market price for HRC and HRP in our analysis.

Comment 22: G&A Expenses

SeAH states in its case brief that in the Preliminary Determination the Department disallowed the offset to the G&A expenses for the portion of the total miscellaneous gains recorded on its financial statements for which no explanation was provided to support the inclusion of such gains. However, SeAH argues that at verification the Department examined the nature of all miscellaneous gains and the final record of this investigation no longer supports this adjustment.

Further, according to SeAH, during the sales verification the Department requested that SeAH present an alternative version of the home market indirect selling expense ratio (INDIRSH) that re-assigned advertising expenses from G&A to indirect selling expenses. At the same time, SeAH presented an alternative G&A expense ratio calculation that shows the deduction of the advertising expenses from the G&A expenses. SeAH suggests that if the Department uses the revised INDIRSH expenses for the final determination, then it should also use the revised G&A expenses where advertising expenses are removed from the ratio.

Maverick in its case brief argues that the Department should not allow an offset to SeAH’s G&A expenses for miscellaneous gains related to the prepaid penalty return because, contrary to SeAH’s claim, the corresponding expense (*i.e.*, the penalty) was not included in the reported G&A expenses. According to Maverick, none of the categories of the G&A expenses which are larger than the amount of the penalty are called “Other operating expenses” - the category in which SeAH claimed the penalty expense was reported.

The petitioners in their rebuttal brief argue that the Department should not allow the offset for miscellaneous gains from sales of “Other scrap” which represents sales of certain assets, the nature of which SeAH treats as business proprietary information. According to the petitioners, the Department draws a distinction between routine and non-routine dispositions of fixed assets, and does not include the latter in the calculation of G&A expenses because it does not relate to the general operations of the company. The petitioners cite to OCTG from Korea where the Department did not include the offset for sales of tangible assets from the closing of a plant. The petitioners argue that SeAH did not provide sufficient information to allow the Department to

determine whether the sale of these assets were routine or non-routine, and the Department should continue to exclude gains from “Other Scrap” from the calculation of the G&A expenses.

SeAH in its rebuttal brief argues that Maverick’s contention to exclude the prepaid penalty return income is without merit. SeAH claims that the Department examined this item in detail at verification and found that the prepaid penalty return relates to refunds of payments that were recorded as miscellaneous losses in SeAH’s accounting records and which were included in the reported G&A expenses.

DOC Position:

We agree with SeAH that no adjustment to its G&A expenses for miscellaneous gains is appropriate. At verification the Department examined all items included in the “miscellaneous gains” category, and based on our analysis of these items, for the final determination we included the total miscellaneous gains in the calculation of SeAH’s G&A expense ratio.²⁷⁰ We also adjusted the G&A expense ratio pursuant to the findings at the sales verification as noted in SeAH’s case brief.

We disagree with Maverick that we should disallow the offset for the miscellaneous gain related to the prepaid penalty return because the corresponding penalty expense was not included in the G&A expenses. SeAH’s Cost Verification Report at page 23 describes our testing of this item, where the Department specifically noted that the penalty “was recorded in account 5502403 - Other operating expenses and was included in the reported G&A expenses.” Also, Cost Verification Exhibit (CVE) 22 at page 11 shows the details of a specified account that includes the payment of the penalty. Furthermore, Maverick’s argument that there are no relevant categories of the G&A expenses which are larger than the amount of the penalty overlooks the fact that the penalty was included in the total “Other expenses” in the numerator of the G&A expense ratio calculation, as shown on page 1 of CVE 22.

We also disagree with the petitioners that we should not allow the offset for miscellaneous gains from sales of “Other scrap.” It is the Department’s normal practice to treat routine and non-routine dispositions of fixed assets differently, where gains or losses from non-routine dispositions of fixed assets, such as a sale or shutdown of an entire plant or facility, is not normally included in the calculation of the G&A expense rate because it is not related to the general operations of the company.²⁷¹ We note, however, that the petitioners’ cite to OCTG from Korea is misplaced, as it refers to sales of tangible assets from the closing of an entire plant.²⁷² In this case, there is no information on the record to indicate that the income from “Other scrap” sales relates to the sale of assets associated with the permanent shutdown or closure of an entire plant or facility. In fact, in its response to the Department’s questionnaire SeAH stated that “SeAH Steel did not incur any plant closures, shut-downs or restructuring costs during the investigation period.”²⁷³

²⁷⁰ See SeAH’s Cost Verification Report at 23.

²⁷¹ See OCTG from Korea.

²⁷² Id.

²⁷³ See section D questionnaire response from SeAH, dated March 27, 2015, at 18.

Comment 23: Production Costs of the Pohang Plant

Maverick states that at verification the Department found that because the JCOE production line at SeAH's Pohang plant was "unstable" during the POI, most products requiring the JCOE production process were produced at the Suncheon plant. Maverick argues that this finding indicates that SeAH only reported costs for the JCOE production from the Suncheon plant, omitting the costs of the JCOE production that took place at the Pohang plant. Therefore, Maverick suggests, the Department should request that SeAH revise its reported cost file to include the JCOE production costs of the Pohang plant.

SeAH rebuts that the Department verified and the record shows that the reported costs include the costs of JCOE production incurred at the Pohang plant. SeAH contends that Maverick's argument is based on a misunderstanding of an item in the cost verification report, and that a statement that production was "unstable" does not mean that the costs were not reported.

DOC Position:

We disagree with Maverick that SeAH did not report the cost of the JCOE production line at its Pohang plant. As SeAH pointed out, the record shows that such costs were included in the calculation of the cost for products reviewed by the Department at verification. Moreover, the total cost reconciliation reviewed by the Department does not show any relevant Pohang plant costs (including the JCOE production line cost) that were excluded from the reported costs.²⁷⁴ Therefore, we find no grounds to revise SeAH's reported costs with regard to the Pohang plant's JCOE production line for the final determination.

Comment 24: Financial Expenses

SeAH notes that in the Preliminary Determination the Department revised SeAH's reported financial expense ratio by including two financial expense items which were excluded from the ratio with no explanation or support for their exclusion. SeAH maintains that at verification the company demonstrated that these items relate to SeAH's investment activities, and it is the Department's practice to exclude gains and losses from investment activity from the financial expense ratio calculation.²⁷⁵ Therefore, SeAH concludes, for the final determination these items should be excluded from the financial expense ratio calculation.

The petitioners did not comment on this issue.

²⁷⁴ See CVE 9 (cost reconciliation), and CVE 10 at 16-17, showing costs for the Pohang plant's JCOE line, designated as "CP."

²⁷⁵ See Notice of Final Results of the Fifteenth Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 75 FR 13490 (March 22, 2010), and accompanying Issues and Decision Memorandum at Comment 12.

DOC Position:

We agree with SeAH that the financial expenses at issue relate to SeAH's investment activity,²⁷⁶ and as such should be excluded from the calculation of the financial expenses ratio for the final determination.²⁷⁷

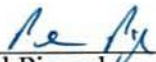
Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination in the investigation and the final weighted-average dumping margins in the Federal Register.



Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

5 OCTOBER 2015

(Date)

²⁷⁶ See SeAH Cost Verification Report at 23-24.

²⁷⁷ Id.