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Investigation
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DATE: May 24, 2016

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 Antidumping Duty Investigation of Certain
Corrosion-Resistant Steel Products from the Republic of Korea

I. SUMMARY

We analyzed the comments of the interested parties in the antidumping duty investigation of certain corrosion-resistant steel products (CORE) 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 Steel Company (Hyundai) and Dongkuk Steel Mill Co., Ltd./ Union Steel Manufacturing Co., Ltd. (Dongkuk), 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 less than fair value (LTFV) investigation for which we received comments from interested parties:

General Comments

1. Critical Circumstances for Hyundai and for POSCO, as part of “all other producers/exporters”

Company-Specific Comments

Hyundai

2. Whether the Department Should Exclude Hyundai’s Sales of TWBs and Auto Parts Pursuant to Section 772(e) of the Act
3. Whether the Department Erred in Applying Facts Otherwise Available and Surreptitiously Used an Adverse Inference With Respect to its Sales of TWBs and Auto Parts in the Preliminary Determination
4. Whether the FMG Data Submitted by Hyundai for its Sales of TWBs, Auto Parts, Sheet, Skelp and Blanks Should Be Used in the Final Determination

5. Whether the Department Should Apply Adverse Facts Available to Calculate the Final Dumping Margin for Hyundai
6. Whether the Department Should Adjust Hyundai's G&A Expenses for Subject Merchandise
7. Whether the Department Should Adjust Hyundai's Costs to Account for Non-Prime Merchandise
8. Whether the Department Should Adjust Ocean Freight Expenses to Reflect Arm's Length
9. The Department Should Disallow Certain Billing Adjustments for Home Market and U.S. Sales
10. Whether the Department's Adjustment to Marine Insurance is Unwarranted
11. Whether the Department Should Adjust HSA's Indirect selling Expense Ratio
12. Whether the Department Failed to Deduct Further Manufacturing Resulting in Overstating CEP Profit
13. Use of the Average-to-Transaction Method With Zeroing

Dongkuk

14. Whether the Major Input Rule Analysis Should Be Conducted
15. Whether Application of AFA Is Warranted With Regard to Home Market Sales and Production Cost of Processed CORE
16. Whether to Recalculate Home Market Credit Expense
17. Whether to Adjust Inland Freight in Korea for U.S. Sales
18. Whether to Adjust Inland Freight in Korea for Home Market Sales
19. Whether Application of AFA Is Warranted With Regard to U.S. Warranty Expenses
20. Whether the Application of AFA Is Warranted for Dongkuk's Failure to Report Home Market Sales by an Affiliate
21. Application of the Average-to-Transaction Method to all U.S. Sales

II. BACKGROUND

On January 4, 2016, the Department of Commerce (the Department) published the Preliminary Determination of sales at LTFV of CORE from Korea.¹ The period of investigation (POI) is April 1, 2014, through March 31, 2015. During the period January through March 2016, the Department conducted sales and cost verifications at the offices of Hyundai and Dongkuk/Union Steel, in accordance with section 782(i) of the Tariff Act of 1930, as amended (Act).

We invited parties to comment on the Preliminary Determination. On April 22, 2016, the petitioners,² Hyundai, POSCO, and Thomas Steel Strip Corporation And Apollo Metals Ltd. (Thomas Steel) submitted case briefs. On April 28, 2016, the petitioners, Hyundai, Dongkuk/Union Steel, and Thomas Steel filed rebuttal briefs. The public hearing in this case was held on May 3, 2016. Based on our analysis of the comments received, as well as our findings at verification, we recalculated the weighted-average dumping margins for Hyundai and Dongkuk from the Preliminary Determination, which in turn resulted in a recalculation of the estimated all-others rate.

¹ See Preliminary Determination.

² The petitioners include United States Steel Corporation, Nucor Corporation, Steel Dynamics Inc., California Steel Industries, ArcelorMittal USA LLC and AK Steel Corporation (collectively, the petitioners).

Subsequent to the *Preliminary Determination*, the Department received comments regarding the scope of the investigation. On February 9, 2016, Baoshan Iron & Steel Co., Ltd and Baosteel America, Inc. (collectively “Baosteel”) submitted scope comments on the Department’s preliminary scope determination regarding its prior requested scope exclusion for certain hot dipped galvanized steel products.³ On February 16, 2016, Petitioners submitted their scope rebuttal in support of the Department’s preliminary scope decision.⁴ On March 29, 2016, the Department rejected an improper filing of scope exclusion request by a Wisconsin-based importer, AmeriLux International Co., Ltd. (“AmeriLux International”) and filed our rejection letter and e-mail correspondence memo on the record of this investigation.⁵ Based on the reasons provided in the rejection letter, the Department is not considering AmeriLux International’s comments for the final determination. For a summary of the product coverage comments and rebuttal responses submitted to the record of this final determination, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum, which is incorporated by and hereby adopted by this final determination.⁶

III. PERIOD OF INVESTIGATION

The period of investigation (POI) is April 1, 2014, through March 31, 2015.

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved

³ See Letter from Baosteel, “Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Post Preliminary Comments on Scope,” dated February 9, 2016. *See also Scope Correction Notice*.

⁴ See Letter from Petitioners, entitled, “Corrosion-Resistant Steel Products from the People’s Republic of China, India, Italy, the Republic of Korea, and Taiwan: Petitioners’ Scope Rebuttal Brief,” dated February 16, 2016 (“Petitioners’ Scope Rebuttal”).

⁵ See Letter to AmeriLux International, “Antidumping and Countervailing Duty Investigations of Certain Corrosion-Resistant Steel Products from the People’s Republic of China, India, Italy, the Republic of Korea and Taiwan: Rejection of AmeriLux International’s November 30, 2015, Scope Exclusion Request,” dated March 29, 2016. *See also* Memorandum to the File, “Email Correspondence Regarding Scope Exclusion,” filed concurrently with the rejection letter.

⁶ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Scope Comments Decision Memorandum for the Final Determinations,” dated concurrently with this notice (“Final Scope Decision Memorandum”).

subsequent to the rolling process, i.e., products which have been “worked after rolling” (e.g., products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

- (1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and
- (2) where the width and thickness vary for a specific product (e.g., the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (“IF”)) steels and high strength low alloy (“HSLA”) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (“AHSS”) and Ultra High Strength Steels (“UHSS”), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (“terne plate”), or both chromium and chromium oxides (“tin free steel”), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

V. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on our review and analysis of the comments received from parties, minor corrections presented at verifications, and various errors identified during verifications, we made certain changes to the margin calculations for both respondents’ margin calculations. Specifically:

Hyundai

1. We have applied AFA to Hyundai's sales of sheet, skelp, blanks, TWBs, and auto parts.
2. We made corrections to the credit period for certain customers in the home market and recalculated the imputed credit expenses based on pre-verification minor corrections.
3. We inserted programming language in the home market program for certain sales for which the customer relationship was miscoded.
4. We included previously omitted home market warranties in our comparison market calculations
5. We revised the financial expense ratio and recalculated cost of production (COP) and constructed value (CV)
6. We made a verification correction for Hyundai Corporation USA (HCUSA) for marine insurance and inventory carrying costs.
7. We revised the reported duty for one invoice based on minor corrections to the CEP verification.
8. We corrected of indirect selling expense ratio based on the Department's finding at CEP verification.
9. We calculated Hyundai's margin calculation using the average-to-average methodology.
10. We re-calculated international freight to adjust for transactions not at arm's length.

Dongkuk

1. We added sales of processed CORE to the Comparison Market program.
2. We adjusted cost of production (COP).
3. We recalculated home market credit expense.
4. We recalculated U.S. warranty expense.

VI. SUCCESSOR-IN-INTEREST

In the Preliminary Determination, we found Dongkuk to be the successor-in-interest to Union because the information on the record indicated that Dongkuk continued to operate as essentially the same entity with respect to the production and sale of the subject merchandise after the January 1, 2015 merger.⁷ In reaching that determination, we considered changes in Union's operations after the merger with respect to management, production facilities, supplier relationships, and customer base. During the verification, we found no discrepancies with the information on the record with respect to this issue. Further, no party submitted comments with respect to our preliminary finding that found Dongkuk is the successor-in-interest to Union. As the record contains no other information or evidence that calls into question our preliminary finding, the Department adopts the reasoning and findings of fact outlined in the Preliminary Determination with respect to this issue. Therefore, we continue to find that Dongkuk is the successor-in-interest to Union for the purpose of determining antidumping duty liabilities in the final determination.

⁷ See Preliminary Determination, PDM at 7.

VII. USE OF ADVERSE FACTS AVAILABLE

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

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

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.⁸

Hyundai

A. Use of Facts Available

In the Preliminary Determination the Department applied facts available to Hyundai’s further manufactured sales of tailor welded blanks (“TWBs”)⁹ and after service auto parts (“auto parts”) because the Department’s analysis of Hyundai’s most recently submitted sales and cost datasets for those further manufactured sales at the time¹⁰ indicated that significant issues continued to exist in how Hyundai reported its sales of further manufactured products in those databases and that these issues potentially affected all of Hyundai’s sales of further manufactured merchandise. In particular, in the Preliminary Determination, the Department had identified issues with Hyundai’s basis for certain adjustments made to the prices of these sales which the Department determined affected the Department’s margin analysis.¹¹

The Department issued its initial questionnaire on July 27, 2015. On August 13, 2015, Hyundai submitted its quantity and value (Q&V) response to section A of the Department’s initial

⁸ See 19 CFR 351.308(c).

⁹ TWBs are welded from different sheets of corrosion-resistant steel in the butt joint configuration for use in automobile doors.

¹⁰ See Hyundai SQR1-E.

¹¹ See Preliminary Determination, PDM at 10-14.

questionnaire.¹² On August 17, 2015, Hyundai filed an exclusion request asking that the Department exclude Hyundai from reporting sales of further processed products and apply the alternate calculation method to these sales, in accordance with section 772(e) of the Act¹³ and 19 CFR 351.402(c)(2).¹⁴

In this request, Hyundai reported that it shipped “essentially all” of its CORE to Hyundai Steel America (“HSA”), Hyundai’s affiliate in the United States, and that HSA and various chains of affiliated and unaffiliated processors then used this CORE to produce and sell further manufactured products which were ultimately consumed in the production of automobiles by its affiliates, Hyundai Motor Company of Georgia or KIA Motors Corporation of Alabama.¹⁵ Hyundai’s exclusion request was not explicit, in that it requested that the Department excuse it from reporting, sales which were substantially further processed prior to being sold to unaffiliated parties¹⁶ and suggested that “the Department should limit its analysis to HSA’s sales of CORE to unaffiliated vendors in coil form.”¹⁷ Hyundai also suggested, as an alternative, that the Department could include HSA’s sales of skelp, blanks, and sheet to unaffiliated customers (*i.e.*, exclude only sales of automobiles, TWBs, and auto parts to unaffiliated customers).¹⁸

We note that Hyundai’s exclusion request and its initial section A, Q&V, response of August 13, 2015 indicated that, in addition to automobiles, Hyundai or its affiliates sold other further manufactured products such as TWBs and after-service auto parts to unaffiliated parties, as well as skelp, blanks and sheets. These products were then further processed and sold to Hyundai’s affiliated automobile producers.

However, in its request, Hyundai did not clearly outline the exact quantities of CORE coil shipped to each of its affiliated and unaffiliated customers, nor did it detail any quantities it sought to exclude at each of the different stages of the further manufacturing process. Hyundai also failed to state upfront, what quantities of the intermediate further processed product which incorporates subject CORE (such as skelp or TWBs) were sold at what stage to the first unaffiliated customer/processor, before being re-sold to ultimately be consumed in the manufacture of an automobile. This lack of information made it impossible for the Department to discern how much of its total quantity of subject CORE Hyundai sought to have excluded from reporting, and how much of Hyundai’s shipments of CORE to the United States during the POI Hyundai ultimately intended to report for the Department’s analysis.

¹² See IQR-A, Q&V.

¹³ Section 772(e) of the Act states that when the respondent sells the subject merchandise through an affiliated importer, and the value added by that affiliate substantially exceeds the value of the subject merchandise, the Department will use an alternative calculation method for constructed export price. The alternative calculation method is to base constructed export price for the sales to affiliates on the respondent’s sales to unaffiliated purchasers, or, if there are insufficient sales to unaffiliated purchasers, to use some other reasonable basis.

¹⁴ 19 CFR 351.402(c)(2) sets the threshold for value added at 65% and states that we will normally “estimate the value added based on the difference between the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the price paid for subject merchandise by the affiliated person.”

¹⁵ See Hyundai Exclusion Request August 17 at 2-3.

¹⁶ *Id.* at 5.

¹⁷ *Id.* at 16.

¹⁸ *Id.* at 17-18 and FN 12.

Further, as support for its claim that its sales of further manufactured products met the 65% threshold stipulated in 19 CFR 351.402(c)(2), Hyundai submitted one calculation, which, Hyundai stated, was based on the lowest starting price of a 2015 Hyundai Sonata. Hyundai calculated the difference between the sales price for that automobile (i.e., the merchandise as sold to an unaffiliated party in the United States) and the average price paid for imported corrosion-resistant steel by HSA.¹⁹

On September 11, 2015, the Department notified Hyundai that its initial request was unclear with respect to which further manufactured sales it wanted to be excluded.²⁰ In particular, the Department noted that Hyundai in its August 17, 2015 submission and September 8, 2015 full section A response reported that HSA and Hyundai's other U.S. affiliates have CEP sales of subject merchandise further manufactured into other merchandise (e.g., coil, skelp, sheet and TWBs) to unaffiliated parties in the United States. In addition, the Department advised that if Hyundai believed that the sales of subject merchandise further manufactured into other types of merchandise sold by any of Hyundai's U.S. affiliates to unaffiliated parties in the United States might qualify for the special exemption under section 772(e) of the Act, Hyundai would need to demonstrate this claim for each product type at the appropriate stage in the sales chain (i.e., by affiliated reseller) and provide complete supporting documentation. In the same letter, the Department instructed Hyundai to revise its August 13, 2015 quantity and value chart to identify all sales made by Hyundai, HSA or any other U.S. affiliate to the first unaffiliated customer in the United States.²¹ The Department also excused Hyundai from reporting further manufactured sales when the first sale of corrosion-resistant steel to an unaffiliated party is a completed automobile.²²

On September 25, 2015, Hyundai responded to the Department's letter and provided multiple value added calculations covering TWBs and auto parts.²³ On October 15, 2015, the Department determined that all of Hyundai's calculations for TWBs and auto parts were flawed. As noted above, Hyundai's TWBs consist of two subject merchandise CORE inputs. Yet, Hyundai's value added calculations for TWBs treated one imported CORE component as part of the value added in the United States to the other imported CORE component, and then doubled the purchase price for the further manufactured product as part of the calculation of the value added. Instead of allocating the value added in the United States to each subject CORE component of the TWB (two subject CONNUMs), Hyundai added the value of one subject CONNUM to the other as value added, e.g., thereby inflating the value added through further manufacturing to approach the 65 percent threshold. Thus, the Department instructed Hyundai to report its sales of these two products to unaffiliated parties along with the revised U.S. sales and further manufacturing cost databases.²⁴

¹⁹ Id.

²⁰ See Initial Request for Information to Substantiate Exclusions Request September 11.

²¹ Id.

²² See Id.; see also DOC Response to Additional Guidance Request to Substantiate September 16.

²³ See Hyundai's Response to Department's Request for Additional Information September 25.

²⁴ See DOC letter to Hyundai Re Exclusion Request October 15, 2015.

On November 2, 2015, Hyundai submitted its first Section E further manufactured sales response. Our analysis indicated that the response was deficient and that the databases were unusable. In accordance with section 782(d) of the Act, we identified multiple deficiencies with Hyundai's further manufactured sales databases and instructed Hyundai to submit revised, usable databases.²⁵ The Department noted that Hyundai failed to provide a description of each data field included in the further manufacturing dataset, the formula demonstrating how the reported amounts in those fields were derived, and supporting documentation. The reported transactions were not reported by subject CONNUM, the unit measure was missing to convert pieces into metric tons as subject CORE is reported, and there were overlapping databases, etc.²⁶ In other words, the response did not fully explain or support the data, and the database was not useable for the Department to run its margin analysis program. On November 19, 2015, the Department issued its first supplemental questionnaire to section E, highlighting the issues with Hyundai's response and data.

On November 30, 2015 and December 2, 2015 Hyundai submitted its revised cost and sales databases in response to the Department's supplemental questionnaires.²⁷ As we noted in the Preliminary Determination, which the Department issued on December 21, 2015,²⁸ our initial analysis of Hyundai's November 30, 2015 response indicated that the response had significant issues in Hyundai's further manufactured sales response and databases had significant issues that potentially affected all of Hyundai's sales of further manufactured merchandise.²⁹

The Department also noted in the Preliminary Determination that, in its initial further manufactured sales response dated November 2, 2015, Hyundai stated that the CORE used in the production of TWBs undergoes slitting, shearing, blanking, and welding, and reported a fully processed cost for TWB in its initial section E response. However, in its November 30, 2015 submission, Hyundai revised its reported further manufacturing cost of manufacturing (FURCOM) for TWBs downward without any explanation in its narrative response, indicating that the aforementioned processing steps may have been dropped in part or altogether from Hyundai's FURCOM.³⁰

Therefore, the Department preliminarily determined to apply facts available pursuant to sections 776(a)(1) and (2)(C) of the Act because we found that necessary information was not available on the record of the investigation and that Hyundai, because of the issues affecting its further manufactured sales responses, had significantly impeded the proceeding. As facts available, the Department applied the A-T comparison methodology to all of Hyundai's sales used in calculating a weighted-average dumping margin for Hyundai in the Preliminary Determination.³¹ In addition, the Department applied, as facts available, the weighted-average of positive margins derived from Hyundai's non-further manufactured sales to Hyundai's further

²⁵ See DOC 2nd supplemental sections B&C and 1st supplemental section E.

²⁶ Id. at pages 1-2.

²⁷ See Hyundai SQR2-B&C and revised datasets submission, dated December 2, 2015.

²⁸ This supplemental questionnaire addressed some of the issues with Hyundai's further manufacturing responses discussed in the PDM issued six days later.

²⁹ See PDM at 12-14.

³⁰ Id.

³¹ Id.

manufactured sales.³² The Department further noted that, given that Hyundai did not provide revised data until shortly before the Preliminary Determination, it was not practicable for the Department to provide Hyundai with another opportunity to remedy its further manufactured sales responses prior to the preliminary determination, and that it intended to provide Hyundai with such an opportunity in the weeks that followed.³³

On December 15, 2015,³⁴ the Department issued another supplemental section E-cost questionnaire, seeking explanation and clarification about Hyundai's unexplained changes in the cost of manufacturing of TWBs in its November 30, 2015 filing as compared to its November 2, 2015 section E submission. In the meantime, on December 21, 2015, the Department issued the Preliminary Determination, again addressing the particular deficiencies in the reported FURCOM and FURMANQTYU.

On December 29, 2015, Hyundai submitted its second supplemental response to section E-cost. Our analysis of Hyundai's December 29, 2015 supplemental section E cost response and databases indicated that the response was inconsistent with Hyundai's prior reporting of FURCOM in its November 2, 2015 and November 30, 2015 submissions. Moreover, our analysis indicated that Hyundai again made unexplained and unsolicited changes to its further manufacturing database, as well as to its home market and U.S. sales databases.³⁵ Specifically, while the Department's December 15, 2015 supplemental questionnaire asked about Hyundai's previously unexplained and unsolicited differences in the cost of manufacturing of TWBs in its November 30, 2015 database, Hyundai compounded its deficient further manufacturing costs reporting by making additional unexplained and unsolicited changes to the further manufacturing cost for TWBs in its December 29, 2015 section E response.

Furthermore, when comparing the reported further manufacturing cost reported for TWBs in the December 29, 2015 database to the narrative explanation and worksheets in Hyundai's December 29, 2015 submission, the Department observed that data showed different values. Moreover, Hyundai submitted an unsolicited, revised U.S. sales database that contained significant changes to the further manufacturing expense (FURMANU) that Hyundai reported for its sales of skelp, sheet, and blanks.³⁶ These unexplained changes were not related to the questions asked in Department's December 15, 2015 supplemental questionnaire. As noted above, the unit cumulative costs calculated in the narrative response do not match the costs reported in the further manufacturing cost file. In addition, the cumulative effect of the weighted average cost of the various processing steps performed does not appear to be reported in the further manufacturing database. In addition, shearing costs were left out despite the fact that a substantial portion of the CORE used the shearing line.³⁷

³² See Hyundai Preliminary Margin Calculation Memorandum.

³³ See PDM at 13.

³⁴ See DOC 2nd supplemental section E.

³⁵ See DOC Letter Cancelling Verification of Further Manufactured Sales.

³⁶ Id.

³⁷ Id.

On February 5, 2016, the Department issued its third supplemental questionnaire to section E,³⁸ providing Hyundai with another opportunity to correct deficiencies in its submissions. On February 10, 2016, Hyundai responded to our questionnaire. Our analysis of this response indicates that Hyundai again failed to explain and document the difference in the quantities reported in QTY2U and FURMANQTYU, citing undocumented yield losses and the inclusion of non-subject control numbers (CONNUMs) in the further manufactured product as the cause of any discrepancies. In addition, Hyundai's allocation methodology for deriving the actual quantity of subject merchandise CONNUMs used in the finished non-subject further manufactured product is mathematically incorrect.³⁹

The Department provided Hyundai with an opportunity to remedy the numerous deficiencies that were identified in its responses and its cost and further manufactured sales databases of November 30, 2015 and December 2, 2015. We note that Hyundai filed its response to the Department's second section E cost supplemental questionnaire⁴⁰ on December 29, 2015,⁴¹ eight days after issuance of the Preliminary Determination. Therefore, in accordance with section 782(d) of the Act, the Department provided Hyundai with an opportunity to address and remedy the issues and concerns the Department identified in the December 15, 2015 supplemental section E-cost questionnaire and discussed in the Preliminary Determination.

Where the Department determines that a response does not comply with its request, section 782(d) of the Act requires that, to the extent practicable, the Department provides parties with an opportunity to correct deficient responses. As noted above, the response and databases for sales of further manufactured sales submitted by Hyundai as part of its November 2, 2015 response⁴² were deficient and unusable. We subsequently identified numerous deficiencies with Hyundai's November 2, 2015 further manufactured sales and cost response and instructed Hyundai to submit revised, usable databases with complete explanations.⁴³ Hyundai submitted revised responses and databases on November 30, 2015 (costs) and December 2, 2015 (sales). Our analysis of the data and the responses identified grave deficiencies and unsolicited information. Furthermore, our analysis of these responses has been hindered by the fact that the narrative portion of Hyundai's responses does not adequately explain many of the revisions. Therefore, we determine the responses and databases to be inaccurate and unreliable.

Because of these numerous deficiencies across Hyundai's further manufacturing data and responses, the Department cancelled the CEP verification of Hyundai's further manufactured sales.⁴⁴ Accordingly, the Department cannot and will not rely on Hyundai's further manufactured sales responses to calculate a weighted-average dumping margin for Hyundai in this final determination. Given that Hyundai's sales of further manufactured products comprise a substantial portion of its U.S. sales that the Department is unable to examine for its final

³⁸ See DOC 3rd supplemental section E.

³⁹ See DOC Letter Cancelling Verification of Further Manufactured Sales.

⁴⁰ This supplemental questionnaire was issued on December 15, 2015 and it addressed some of the issues with Hyundai's further manufacturing responses discussed in the PDM at 12-14 issued six days later.

⁴¹ See Hyundai SQR2-E.

⁴² See Hyundai IQR-E and HYSC201.

⁴³ See DOC 2nd supplemental sections B&C and 1st supplemental section E at pages 1-2.

⁴⁴ See DOC Letter Cancelling Verification of Further Manufactured Sales.

determination, the Department has to resort to “facts otherwise available” to calculate a dumping margin for Hyundai’s further manufactured sales in the United States.

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

The record shows that Hyundai has continuously argued that the Department should exclude its sales of further manufactured products including automobiles, TWBs and after service auto parts and apply the alternate calculation method, in accordance with section 772(e) of the Act to those sales. The Department rejected Hyundai’s initial claim because it contained a single calculation of the value added by its U.S. affiliates using the difference between the average sales price for an automobile and the average price paid for imported corrosion-resistant steel by HSA. On September 11, 2015, we noted that Hyundai or its affiliates sold some further manufactured products such as TWBs and after-service auto parts to unaffiliated parties. As such, the Department instructed Hyundai to clarify its exclusion request and to demonstrate its value added claim for each product type at the appropriate stage in the sales chain.⁴⁵

In addition, as noted in the PDM, Hyundai provided two additional value added calculations for TWBs and after-service auto parts on September 25, 2015.⁴⁶ On October 15, 2015, the Department determined that Hyundai’s calculations for TWBs and after-service auto parts were flawed and instructed Hyundai to report its sales of these two products to unaffiliated parties along with the appropriate databases and instructed Hyundai to provide revised sales reporting and U.S. sales databases to include sales of TWBs and after-service auto parts.⁴⁷

On November 2, 2015, more than three months after the Department issued its initial questionnaire, Hyundai submitted its first section E response, accompanied by further manufactured sales and cost databases that were deficient and unusable for the Department’s standard margin calculation programs. Given the opportunity by the Department to revise its reporting through supplemental questionnaires and to meet the Department’s requirements for response databases, Hyundai submitted responses and databases that showed significant deficiencies again, in addition to unexplained changes to the FURCOM, which translated into

⁴⁵ The Department also excused Hyundai from reporting further manufactured sales when the first sale of corrosion-resistant steel to an unaffiliated party is a completed automobile. See Initial Request for Information to Substantiate Exclusions Request September 11; see also Letter from DOC Response to Hyundai: “Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products (CORE) from the Republic of Korea (Korea): Additional Guidance on information required to substantiate Hyundai Steel Corporation’s Request to Substantiate Alternative Calculation Method,” dated September 16, 2015.

⁴⁶ See Certain Corrosion-Resistant Steel Products From Korea: Response to the Department’s Request for Additional Information dated September 25, 2015.

⁴⁷ See Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products (CORE) from the Republic of Korea (Korea): Hyundai Steel Company’s Exclusion Request dated October 15, 2015.

reliability problems with the reported further manufacturing sales adjustment, FURMANU, so that the Department determined the data to be unusable for the preliminary determination.

As stated above, the Department gave Hyundai three opportunities to correct those deficiencies, two of them prior to filing its December 29, 2015 response databases. Hyundai reduced the FURCOM for TWBs reported in the November 30, 2015 first supplemental response as compared to its November 2, 2015 initial section E response. In its December 29, 2015 response, Hyundai compounded its reporting problems by again reducing the FURCOM for TWBs, which also showed differences between the cost reported in the narrative response and the database submitted. Nowhere did it address the problems pointed out in the Department's second supplemental questionnaire to section E-cost, nor did it address the problems pointed out in the preliminary determination. Nevertheless, with its response to the Department's second supplemental section E-cost questionnaire on December 29, 2015, Hyundai submitted four new databases, three of which were unsolicited, containing unsolicited changes: home market sales, U.S. sales, further manufactured U.S. sales, and the new FURCOM database with the deficiencies discussed above.

Thus, five months after the Department issued the initial questionnaire, after the preliminary determination, and two weeks before the scheduled verification, the Department still did not have useable databases. The FURCOM issues identified in the November 2, the November 30, December 2, and December 29, 2015 responses, and the lack in diligence by Hyundai to correct those deficiencies and inconsistencies, make it impossible for the Department to conduct its margin analysis of Hyundai's further manufactured sales. Therefore, the Department determines to apply facts available pursuant to sections 776(a)(1), (a)(2)(B) and (a)(2)(C) of the Act. We find that necessary information pertaining to further manufacturing is not available on the record of the investigation within the meaning of section 776(a)(1) of the Act. Further, because Hyundai's December 29, 2015 response contained unsolicited new factual information for which the deadlines were established in earlier questionnaires before the preliminary determination, we find that Hyundai failed to provide requested information by the deadlines for submission of that information within the meaning of section 776(a)(2)(B) of the Act. Finally, we find that Hyundai significantly impeded the proceeding through the delays it caused in reporting its further manufactured information and because it consistently provided unusable information.

B. *Application of Facts Available with an Adverse Inference*

Section 776(b) of the Act provides that, if the Department finds an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available.⁴⁸ In addition, the SAA explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to

⁴⁸ See e.g., Frozen Raspberries from Chile.

cooperate than if it had cooperated fully.”⁴⁹ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.⁵⁰

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 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.⁵¹ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.⁵²

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.

As discussed above, from the onset of this proceeding Hyundai’s efforts to limit its reporting of its sales of further manufactured goods have delayed the process of this proceeding. The Department’s initial questionnaire is clear in that it asks respondents to report their further manufactured sales: “For sales of merchandise further manufactured or consumed by affiliates in the United States, report the quantity and value (based on the prices you charge to your U.S. affiliate) of the product as imported into the United States, and not as the further processed product.”⁵³ In other words, if the quantity and value response in the section A indicates further manufactured U.S. sales of subject CORE by respondent’s affiliates, the respondent, is expected to report those sales, and Hyundai was fully aware of that. However, Hyundai sought to exclude those sales and filed its deficient and unclear exclusion request of August 17, 2015, as discussed above.

We note that Hyundai is the only party to the proceeding that has access to its records and knowledge how those records are organized. In ex parte meetings, a teleconference⁵⁴ and multiple submissions, Hyundai claimed that it was impossible for it to trace those further

⁴⁹ See SAA at 870; Polyester Staple Fiber from Korea, 72 FR 69663, 69664; see also Steel Threaded Rod from Thailand Preliminary Determination, IDM at page 4, unchanged in Steel Threaded Rod from Thailand Final Determination.

⁵⁰ See Preamble, 62 FR at 27340.

⁵¹ See 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 ITC. See Applicability Notice.

⁵² Id., 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

⁵³ See DOC initial questionnaire at A-2-3.

⁵⁴ See Hyundai Ex Parte meetings.

manufactured sales back to the subject coil. Hyundai first stated that the necessary data would not be available from its affiliates, or if so, difficult to report. When the Department instructed Hyundai to report all of its sales of TWBs and auto parts to unaffiliated processors Hyundai consistently asked the Department how it should collect and present its further manufactured data. Hyundai also pointed to the fact that it was participating in other Department proceedings, which occupy a lot of time.⁵⁵ Hyundai then demonstrated that it could report some information in its first supplemental response to section E, and then more in its second response. As noted above, each of these responses was severely deficient. In its third response, Hyundai provided more information that was riddled with inconsistencies and effectively made unsolicited changes to its reporting in its further manufactured cost and in its sales databases.

In light of the Department clearly outlining which sales to report, and the Department's initial questionnaire containing detailed instructions on what the Department expects with respect to the data, in order to perform its margin calculations in its standard programs, Hyundai was and remains the entity best suited to discern, how best to follow the Department's reporting requirements. And as a matter of fact, it demonstrated with its submissions, that it in fact was able to access information it previously insisted would not be able to, such as tying TWBs to specific coils..⁵⁶ Further, it is not within the purview of the Department to tell Hyundai how its accounting system and overall management system works, and it lies clearly with Hyundai how best to report its further manufactured sales within the Department's required format. Clearly, Hyundai did not demonstrate best effort and withheld information requested by the Department with respect to its further manufactured sales, so that, at the time of the preliminary determination, more than three-and-one half months after the issuance of the initial questionnaire, the Department did not have the information on the record, in terms of consistency, accuracy and format, that it needed to include Hyundai's further manufactured sales in its margin analysis.

The Department issued two supplemental questionnaires to Hyundai concerning its further manufactured sales, and two supplemental questionnaires on its reporting of FURCOM, yet Hyundai did not address the Department's concerns with respect to Hyundai's responses and databases. The record shows that Hyundai has submitted a series of inaccurate value added calculations and discredited claims of difficulty in gathering data and Section E responses that were unusable, unreliable, and unverifiable. Moreover, as described above and below in comments 2-5, the issues with Hyundai's reporting of FURCOM extend to the further manufacturing expenses reported for its sales of sheet, skelp and blanks. Regardless of its intent, the record shows that Hyundai has failed to cooperate to the best of its ability with respect to its FMG responses.

Accordingly, for this final determination, we find that Hyundai, with respect to its further manufactured U.S. sales of TWBs, auto parts, skelp, blanks, and sheets, failed to cooperate by not acting to the best of its ability to comply with requests for information in this investigation, within

⁵⁵ See Hyundai Extension Request November 23 at 4, e.g., Hyundai citing responses due in other proceedings; see also, e.g., Hyundai Extension Request October 1 at 3 and Hyundai Extension Request October 7, at 3.

⁵⁶ See SQR1-E and SQR2-E.

the meaning of section 776(b) of the Act. Therefore, we find that an adverse inference is warranted in selecting from the facts otherwise available with respect to Hyundai.⁵⁷

C. *Selection and Corroboration of Adverse Facts Available (AFA) Rate*

Where the Department uses AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record.⁵⁸ Under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party. In selecting a rate based on adverse facts available, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁵⁹ The Department’s practice is to select, as an AFA rate, the higher of: (1) the highest dumping margin alleged in the petition, or (2) the highest calculated dumping margin of any respondent in the investigation.⁶⁰ As AFA, we assign Hyundai’s further manufactured sales to the United States a rate of 86.34 percent, which is the highest rate alleged in the petition, as noted in the initiation of the investigation.⁶¹

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.⁶² Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁶³ To corroborate means that the Department will satisfy itself that the secondary information to be used has probative value.⁶⁴ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used, although under the TPEA, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.⁶⁵ Thus, because the 86.34 percent AFA rate applied to Hyundai’s further manufactured sales to the United States is derived

⁵⁷ See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382-83.

⁵⁸ See SAA at 868-870; 19 CFR 351.308(c)(1) & (2).

⁵⁹ See SAA at 870.

⁶⁰ See, e.g., Welded Stainless Pressure Pipe from Thailand, IDM at Comment 3.

⁶¹ See Initiation Checklist.

⁶² See also 19 CFR 351.308(d).

⁶³ Id.

⁶⁴ Id.

⁶⁵ See, e.g., Prelim Tapered Roller Bearings Japan, 61 FR 57391, 57392, unchanged in Final Tapered Roller Bearings Japan.

from the petition and, consequently, is based upon secondary information, the Department must corroborate it to the extent practicable.

The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.⁶⁶ The SAA and the Department’s regulations explain that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.⁶⁷ Thus, we determined that the petition margin of 86.34 percent is reliable, to the extent appropriate information was available, by reviewing the adequacy and accuracy of the information in the petition during our pre-initiation analysis and for purposes of this final determination.⁶⁸

We examined evidence supporting the calculations in the petition to determine the probative value of the margins alleged in the petition for use as AFA for purposes of this final determination.⁶⁹ During our pre-initiation analysis, we examined the key elements of the EP and NV calculations used in the petition to derive an estimated margin.⁷⁰ During our pre-initiation analysis, we also examined information (to the extent that such information was reasonably available) from various independent sources provided either in the petition or, on our request, in the supplements to the petition that corroborates some of the elements of the EP, NV and constructed value (CV) calculations used in the petition to derive the estimated margin.⁷¹

Based on our examination of the information, as discussed in detail in the Initiation Checklist,⁷² we consider the petitioners’ EP, NV, and CV calculations to be reliable. We obtained no other information that would make us question the validity of the sources of information or the validity of the information supporting the U.S. price or NV or CV calculations provided in the petition. Because we confirmed the accuracy and validity of the information underlying the derivation of the margins in the petition by examining source documents and affidavits, as well as publicly available information, we determine that the margins in the petition are reliable for purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. In this particular case, because the petition rates are derived from the CORE steel industry and are based on information related to aggregate data involving the CORE steel industry, we determine that the petition rates are relevant. More specifically, the information contained in the petition is relevant to the respondents because the U.S. price in the petition was based on price quotes/offers for sales of corrosion-resistant steel produced in, and exported from, Korea. Petitioners made deductions from U.S. price for movement expenses consistent with the delivery terms. Petitioners calculated COM based on Petitioners’ experience

⁶⁶ See SAA at 870; see also 19 CFR 351.308(d).

⁶⁷ Id.

⁶⁸ See Initiation Checklist.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Id.

⁷² See Initiation Checklist at 6-12.

and adjusted for known differences between their industry in the United States and the industry of Korea during the proposed POI. Using publicly available data to account for price differences, petitioners multiplied their usage quantities by the submitted values of the inputs used to manufacture corrosion-resistant steel in Korea. To determine factory overhead (FOH), selling, general and administrative (SG&A), and financial expense rates, petitioners relied on financial statements of producers of comparable merchandise operating in Korea. Petitioners calculated NV based on CV. Petitioners calculated CV using the same average COM, SG&A, and financial expenses it used to calculate COP. Petitioners relied on the financial statements of the same producers that they used for calculating manufacturing overhead, SG&A, and financial expenses to calculate the profit rate.⁷³ Moreover, we analyzed Hyundai's margin program output and found product-specific margins for coil at or above the petition rate in our margin calculation for Hyundai's EP and CEP sales of coils and, as a consequence, we find that the rate alleged in the petition, as noted in the Initiation Notice, is within the range of Hyundai's product-specific margins.⁷⁴ There is no information on the record that calls into question the relevance of the petition rate, and Hyundai provided company-specific POI sales information for its EP and CEP sales of coil, which confirms the relevance of the rate from the petition. Because we confirmed the accuracy and validity of the information by examining source data, *i.e.*, we analyzed the margins calculated based on Hyundai's own data for its U.S. sales of coils, we determine that the margins in the petition are reliable for purposes of this investigation.

In sum, the Department corroborated the AFA rate of 86.34 percent to the extent practicable within the meaning of section 776(c) of the Act because the rate: 1) was determined to be reliable in the pre-initiation stage of this investigation (and we have no information indicating otherwise); and 2) is relevant to the uncooperative respondent.⁷⁵ As the 86.34 percent rate is both reliable and relevant, we determine that it has probative value and, thus, it has been corroborated to the extent practicable, pursuant to section 776(c) of the Act. Thus, we assigned this AFA rate to further manufactured U.S. sales of TWBs, auto parts, skelp, sheet and blanks from Hyundai.

VIII. COMPARISON TO FAIR VALUE

As explained in the Preliminary Determination, pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Hyundai's or Dongkuk's sales of the subject merchandise from Korea to the United States were made at less than normal value, the Department compared the export price or constructed export price to the normal value as described in the Preliminary Decision Memorandum.

A. Determination of the Comparison Method

In the Preliminary Determination, because Hyundai had not provided reliable data for its sales of further manufactured merchandise, the Department applied facts otherwise available to those sales, in accordance with section 776(a)(1) and (2)(2) and section 782(d) of the Act. As facts

⁷³ See Initiation Checklist.

⁷⁴ See Hyundai Final Calculation Memorandum output.

⁷⁵ See section 776(c) of the Act; 19 CFR 351.308(c) and (d); see also Light-Walled Rectangular Pipe and Tube from the PRC, IDM at Comment 1.

available, the Department applied the A-to-T method to all of Hyundai's U.S. sales of coils, skelp, blanks, and sheet.

For this final determination, the Department has determined that it has sufficient information to perform a differential pricing analysis for Hyundai's U.S. sales of CORE coils. The purpose of a differential pricing analysis is to determine whether the average-to-average method is the appropriate comparison methodology, pursuant to section 777A(d)(1)(A)-(B) of the Act and 19 CFR 351.414(c)(1), and this analysis was described in the Department's Preliminary Decision Memorandum.⁷⁶

For Dongkuk, the Department continues to apply a differential pricing analysis to determine whether the average-to-average method is appropriate for this final determination.

B. Results of the Differential Pricing Analysis

For Hyundai's U.S. sales of CORE coils, based on the results of the differential pricing analysis, the Department finds that 75.74 percent of the value of these U.S. sales confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method for Hyundai's U.S. sales of CORE coils and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to these same U.S. sales. Thus, for this final determination, the Department is applying the average-to-average method to calculate the weighted-average dumping margin for Hyundai U.S. sales of CORE coils. These results of these calculations will be combined with the results for Hyundai's other U.S. sales of CORE which have been assigned dumping margins based on FA or AFA to derive Hyundai's overall estimated weighted-average dumping margin.

For Dongkuk, based on the results of the differential pricing analysis, the Department finds that 65.24 percent of the value of U.S. sales pass the Cohen's *d* test, and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for this final determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Dongkuk.

IX. DISCUSSION OF ISSUES

General Issues

Comment 1: Critical Circumstances for Hyundai and for POSCO, as Part of "All Other

⁷⁶ See Preliminary Decision Memorandum at 8-10.

Producers/Exporters”

Hyundai Argues:

- To determine whether critical circumstances exist, in accordance with section 735(a)(3) of the Act, the Department considers whether an antidumping duty order exists in the United States or elsewhere, and imputes importer knowledge if a respondent’s weighted-average dumping margin is 25 percent or more for EP sales and 15 percent or more for CEP sales. It further must determine that massive imports of subject merchandise have entered over a relatively short period.
- The Department’s preliminary determination that critical circumstances existed for Hyundai was in error because it was based on the margins alleged in the petition and the monthly shipment data available as of the Department’s preliminary determination of critical circumstances. This should be reversed in the final determination.
- For the final determination, the Department should re-evaluate its findings on the likelihood of importer knowledge of dumping based on the calculated actual margins for Hyundai. For its “massive surge” analysis, the Department should consider the additional data it has collected up through October 2015.
- Including this additional shipment data demonstrates that Hyundai’s change in shipment volume, as a percent, between August 2014 and February 2015, and March 2015 through October 2015, is far below the Department’s threshold of 15 percent when evaluating whether there has been a “massive surge” in import volumes.⁷⁷

POSCO Argues:

- The Department should reverse its initial critical circumstances decision in the final determination with respect to POSCO. In particular, the Department should take into account POSCO’s own shipment data.
- There is no need for the Department to resort to using Global Trade Atlas (GTA) estimates for POSCO’s shipment volume, as POSCO has reported its actual shipment volumes to the Department. The best (and only) record evidence concerning whether POSCO’s shipments have undergone a “massive surge” within the meaning of 19 CFR § 351.206(h)(2) is POSCO’s own shipment data.
- Because the monthly quantity and value data submitted by POSCO clearly demonstrate that the requirements for finding critical circumstances did not exist, the Department should reverse its preliminary critical circumstances determination with respect to POSCO.⁷⁸

Petitioners Argue:

- The Department should continue to find the critical circumstances exist with respect to Hyundai because all statutory requirements for critical circumstances are met.
- In the preliminary determination, the Department found that section 733(e)(1)(A)(i) and (ii) of the Act were met; however, pursuant to the statute, only one of these findings is necessary to determine critical circumstances. Hyundai wants the Department to re-

⁷⁷ Hyundai Case Brief at 42-45.

⁷⁸ See POSCO’s Case Brief at 1-3.

evaluate one condition of the statute, the likelihood of its importers' knowledge of dumping based on the margins that are calculated in the final determination.

- Hyundai further disputes that there is a basis to conclude that there has been a massive surge in imports in the final determination, and suggests that the Department should increase the window for the comparison period to include data for October 2015, which the Department should reject.
- To examine if there is a surge in imports of subject merchandise, 19 CFR 351.206(i) provides for a base and comparison period of at least three months, but the Department generally uses six-month periods. The Department already used a seven-month period for its analysis.
- Expanding an already lengthy period would be contrary to the plain language of the statute, which at section 733(e)(1)(B) of the Act instructs the Department to examine whether there was a surge in imports "over a relatively short period."⁷⁹
- POSCO's proposed methodology is at odds with the Department's normal practice with respect to critical circumstances. When examining uninvestigated companies such as POSCO, the Department relies on aggregate import data that have been adjusted to exclude the imports attributable to investigated respondents.
- Altering the Department's methodology to account for data selectively provided by POSCO for itself and three other companies would undermine the agency's decision to limit the number of respondents examined. Furthermore, accepting such information would encourage uninvestigated producers and exporters to burden the record with data that suit their purposes, thus rendering the Department's respondent selection process meaningless.
- The data provided by POSCO covers four distinct entities for which the Department has not made collapsing or affiliation determinations in this investigation.
- The Department should reject POSCO's claim and continue to find that critical circumstances exist with respect to imports of CORE from Hyundai Steel and all other Korean producers and exporters, including POSCO, DWI, PP&S, and PC&C.⁸⁰

Department Position: Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist in AD investigations if: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 19 CFR 351.206 provides that imports must increase by at least 15 percent during the "relatively short period" to be considered "massive" and defines a "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later.⁸¹ The regulations also provide, however, that, if the Department finds that importers, or exporters or producers, had reason to believe, at some time

⁷⁹ See Petitioners' Rebuttal Brief Hyundai at 36-39.

⁸⁰ See Petitioners' Rebuttal Brief POSCO at 1-3.

⁸¹ See 19 CFR 351.206(i).

prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.⁸²

Consistent with our practice, we have incorporated shipment data for September, October, and November 2015 into our critical circumstances analysis for this final determination.⁸³ We also note that in determining whether critical circumstances exist for “all others” companies, it is the Department’s normal practice to use aggregate import data that have been adjusted to exclude the imports of mandatory respondent companies.⁸⁴ Furthermore, we have continued to rely on GTA data used for the “all others” critical circumstances determination as such provides the most accurate means to analyze shipment volumes for all non-selected companies. Accordingly, we find that there was a massive surge with respect to the “all others” companies but not with respect to Dongkuk and Hyundai.⁸⁵

The Department has already found that there is a history of dumping and material injury pursuant to section 735(a)(3)(A)(i) of the Act, as there was a previous AD order on subject merchandise from Korea based on nearly identical HTS categories.⁸⁶

Accordingly, we continue to find that critical circumstances exist with respect to the “all others” companies (including POSCO) in accordance with section 735(a)(3) of the Act. We also find that critical circumstances do not exist with respect to Hyundai and Dongkuk.⁸⁷

⁸² Id.

⁸³ See, e.g., Passenger Tires from China.

⁸⁴ See, e.g., Orange Juice from Brazil, IDM at Comment 4.

⁸⁵ See Final Critical Circumstances Memorandum.

⁸⁶ See Final Determination Critical Circumstances Cut-to-Length Plate 2000.

⁸⁷ See Critical Circumstances Memorandum.

Company-Specific Comments

Hyundai:

Comment 2: Whether the Department Should Exclude Hyundai's Sales of TWBs and Auto Parts Pursuant to Section 772(e) of the Act

Hyundai Argues:

- Pursuant to section 772(e) of the Act⁸⁸ and 19 CFR 351.402(c)(2),⁸⁹ the Department should have excluded sales of the tailor welded blanks (TWBs)⁹⁰ and auto parts at issue because each had value added by affiliated parties in the United States that ranged from 83 to 90 percent.⁹¹
- Hyundai based its value added calculations for TWB on the value of imported CORE components and total price of each TWB. This calculation was reasonable in that it compared the sales price of the further manufactured product to the value of the imported product.⁹²
- The Department did not disclose its analysis for evaluating the products in question under the “special rule,” leaving Hyundai to guess as to what aspect of its value added calculations troubled the Department.⁹³
- The quantity of the TWB and auto part sales at issue is not significant.⁹⁴ These products use multiple subject and non-subject inputs merged together to create complex non-subject products. It is unlikely that the Department has ever attempted to use these types of products in its margin calculations.⁹⁵
- In such situations, the “special rule” provides that the Department “shall” use alternate calculation methodologies if three conditions are met. These conditions are: (1) the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise; (2) a sufficient quantity of other usable transactions remains; and (3) the Department determines the use of an alternative calculation method is appropriate.⁹⁶
- In its Final Rule the Department itself stressed that the purpose of the “special rule” is to reduce the administrative burden on the Department in analyzing complex further

⁸⁸ Section 772(e) of the Act states that when the respondent sells the subject merchandise through an affiliated importer, and the value added by that affiliate substantially exceeds the value of the subject merchandise, the Department will use an alternative calculation method for constructed export price. The alternative calculation method is to base constructed export price for the sales to affiliates on the respondent's sales to unaffiliated purchasers, or, if there are insufficient sales to unaffiliated purchasers, to use some other reasonable basis.

⁸⁹ Section 351.402(c)(2) sets the threshold for value added at 65% and states that we will normally “estimate the value added based on the difference between the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the price paid for subject merchandise by the affiliated person.”

⁹⁰ TWBs are made by welding different sheets of corrosion-resistant steel in the butt joint configuration for use in automobile doors.

⁹¹ See Hyundai Case Brief at 8-10.

⁹² Id. at 8-12.

⁹³ Id. at 10.

⁹⁴ Id. at 15-17.

⁹⁵ Id. at 6-8.

⁹⁶ Id. at 6-7.

- manufacturing scenarios, such as in the instant case with TWBs and auto parts.⁹⁷
- The inclusion of this data in the Department’s analysis has added unnecessary complications and has proven to be unduly burdensome to both Hyundai and the Department, considering the small volume of sales of these particular goods.⁹⁸
 - Excluding sales of TWBs and auto parts under the “special rule” would be consistent with the Department’s approach in proceedings, such as Certain Hot-Rolled Steel Flat Products from the Netherlands where respondents faced similar constraints of co-mingled products, etc. and PET Film from Thailand, where the Department was transparent in its analysis and application of the “special rule.”⁹⁹
 - The Department’s questionnaire is not structured to handle further manufactured products that result from combining different imported goods containing more than one control number (CONNUM). In DRAMs from Korea, the Department analyzed the sales of modules assembled from imported components by comparing them to a constructed value calculated by summing the cost of production for each DRAM included in the module.¹⁰⁰ Hyundai immediately raised these issues with the Department and sought guidance on how to report its sales. However, the Department did not provide any such feedback.¹⁰¹
 - Absent any guidance by the Department in this investigation, Hyundai’s reporting in its December 29, 2015 responses followed precedent from Mexican Galvanized Wire and complied with the Department’s vague and undefined requirements.¹⁰²

Petitioners Argue:

- Hyundai originally sought to exclude the vast majority of its sales of subject merchandise under the special rule because it claimed that they involved further manufacturing with more than 65 percent value added in the United States.¹⁰³ The Department eventually excused Hyundai from reporting a majority of its sales of CORE under the special rule.
- Contrary to Hyundai’s claim, sales of TWBs and auto parts account for almost ten percent of the total quantity of U.S. sales it reported to the Department. It is important for the Department to analyze Hyundai’s sales of TWBs and auto parts because they are most similar to the further manufactured sales that the Department excluded under the “special rule.”¹⁰⁴
- The Department correctly required Hyundai to report its sales of TWBs and auto parts since Hyundai failed to demonstrate how either product had value added of more than 65 percent.
- The Department rejected Hyundai’s calculations that showed value added ranging from 83-88 percent because the methodology that Hyundai used was inherently distortive and severely flawed.¹⁰⁵

⁹⁷ Id. at 11-12.

⁹⁸ Id. at 14-15.

⁹⁹ Id. at 17.

¹⁰⁰ See DRAMs from Korea.

¹⁰¹ Id. at 15.

¹⁰² Id. at 35.

¹⁰³ See Hyundai Exclusion Request August 17.

¹⁰⁴ See Petitioner’s Case Brief Hyundai at 11.

¹⁰⁵ See Petitioner’s Rebuttal Brief Hyundai at 1-7.

- Hyundai produces its TWBs by welding together two components of subject CORE. In its value added calculations, Hyundai erroneously counted the value of the second component of subject CORE as part of the “value added” by affiliates in the United States instead of part of the CORE to which value is being added through the further manufacturing process.¹⁰⁶
- Using a methodology that first compares the total value of the two CORE components used to produce the TWB with the price charged to the first unaffiliated purchaser for the TWB shows that the value added in the further manufacturing process of the TWBs remains well below the 65 percent threshold required under the Department’s regulations.¹⁰⁷
- Based on a methodology that compares the total value of the imported CORE used to produce the auto part and the price of that auto part charged to the first unaffiliated customer shows that the value added through the further manufacturing stays below the 65 percent threshold.¹⁰⁸
- The Department should not rely on Hyundai’s questionnaire responses to estimate the value added because that data is wholly unreliable.¹⁰⁹
- Hyundai’s claims about the Department’s purported lack of guidance and of complexity and burden to report those sales have no merit. Although past precedent shows possible approaches to reporting these sales, the record shows that Hyundai did not report reliable or usable data for these sales.
- Unlike Hyundai, the respondent in PET film from Thailand could not identify the component parts of each product while the respondent in Certain Hot Rolled Steel Flat Products from the Netherlands demonstrated that its value added substantially exceeded the value of subject merchandise.¹¹⁰

Department Position: We continue to find that Hyundai’s sales of TWBs and auto parts do not qualify for exclusion under the “special rule” as defined by section 772(e) of the Act and 19 CFR 351.402(c)(2).¹¹¹ As Hyundai’s value added calculations for these sales did not demonstrate that they met the 65% threshold discussed in 19 CFR 351.402(c)(2), we have not excluded Hyundai’s sales of these products in the final determination.

The record still shows that the TWBs at issue have two subject merchandise CORE components and that Hyundai does not mix steel types or suppliers. Thus, pursuant to 19 CFR 351.402(c)(2), the appropriate value added calculation for further manufacturing compares: (i) the total value of the Hyundai-produced CORE used to produce the TWB (or auto part); and (ii) the price charged to the first unaffiliated purchaser for the TWB (or auto part). Our analysis of value added calculations for TWBs indicates that the value added by Hyundai’s affiliates in the United States

¹⁰⁶ Id. at 3-5.

¹⁰⁷ Id. at 2-7.

¹⁰⁸ Id.

¹⁰⁹ Id. at 6-7.

¹¹⁰ Id. at 9-10.

¹¹¹ As noted above and the PDM, the Department has excused Hyundai from reporting further manufactured sales when the first sale of corrosion-resistant steel to an unaffiliated party is a completed automobile pursuant to the “special rule” as defined by section 772(e) of the Act and 19 CFR 351.402(c)(2).

falls well below the 65 percent threshold stipulated in 19 CFR 351.402(c)(2) and do not qualify for exclusion under the “special rule.”¹¹² Our analysis of Hyundai’s sales of auto parts similarly indicates that the value added by Hyundai’s affiliates in the United States falls well below the 65 percent threshold stipulated in 19 CFR 351.402(c)(2) and do not qualify for exclusion under the “special rule.”¹¹³

Hyundai’s arguments that its sales of TWBs and auto parts met the 65 percent threshold are unsupported by the record. As noted in our preliminary determinations, the value added calculation submitted by Hyundai for TWBs on September 25, 2015 erroneously included the value of the second Hyundai Steel-produced CORE component as part of the value added by Hyundai affiliates in the United States to the first CORE component. This flawed methodology significantly overstated the value added by affiliates in the United States. When counting only the actual value added to the subject CORE by affiliates in the United States, Hyundai’s sales of TWBs do not meet the 65 percent threshold set forth in 19 CFR 351.402(c)(2). Moreover, Hyundai’s own value added calculation for auto parts did not show that the products met the 65 percent threshold set forth in 19 CFR 351.402(c)(2).¹¹⁴

Hyundai’s reliance on PET Film from Thailand is misplaced because the record shows that Hyundai could identify the source of the component parts of the product at issue.¹¹⁵ With respect to Certain Hot-Rolled Steel Flat Products from the Netherlands, in contrast to this case, the respondent at issue there demonstrated that its value added substantially exceeded the value of the subject merchandise.¹¹⁶

Moreover, while Hyundai is correct that the purpose of the “special rule” is to reduce the administrative burden on the Department in analyzing complex further manufacturing scenarios, 19 CFR 351.402(c)(2) makes clear that further manufactured goods to be excluded under the “special rule” must meet the 65 percent value added threshold. Hyundai’s sales of TWBs and auto parts did not meet that threshold. As such, Hyundai’s position that the inclusion of this data in the Department’s analysis has added unnecessary complications is misplaced.

Regarding Hyundai’s reliance on DRAMs from Korea, we note that DRAMs from Korea is inapposite as it happened prior to enactment “special rule” in section 772(e) of the Act and 19 CFR 351.402(c)(2). Moreover, Borusan and SKF USA Inc. v. United States are not applicable as the record of this investigation shows that the Department issued a series of deficiency questionnaires related to Hyundai’s further manufacturing responses. Moreover, the record also shows that the Department met with Hyundai to discuss issues related to its further manufacturing responses, including possible approaches to reporting these sales, twice prior to the preliminary determination.¹¹⁷

¹¹² See Hyundai Final Calculation Memorandum.

¹¹³ *Id.*

¹¹⁴ See Hyundai Response to Department’s Request for Additional Information September 25.

¹¹⁵ See Petitioners’ Rebuttal Brief Hyundai at 10. See Also Hyundai Steel’s November 30, 2015 Supplemental Section E Further Manufacturing Data Response at S-5 (Hyundai Supp Section E).

¹¹⁶ See Certain Hot-Rolled Steel Flat Products from the Netherlands.

¹¹⁷ See Hyundai Ex Parte meetings August 21, September 14, October 27, and November 27.

Comment 3: Whether The Department Erred in Applying Facts Otherwise Available And Surreptitiously Used an Adverse Inference With Respect to its Sales of TWBs and Auto Parts in the Preliminary Determination

Hyundai Argues:

- The Department had no basis to apply facts available with adverse inferences in the preliminary determination. Rather than withhold information or impede the investigation, Hyundai provided usable data with respect to its further manufactured sales of TWBs and auto parts.¹¹⁸
- The Department's determination to apply adverse facts available under the guise of "facts otherwise available" was arbitrary and unsupported by the record. Specifically, the Department used adverse inferences by applying the A-T methodology to Hyundai's examined sales, calculating a weighted-average margin with positive margins, and using value rather than quantity of its sales of TWBs and auto parts in its preliminary weighted-average margin.¹¹⁹
- At the time of the preliminary determination, the record showed that Hyundai had acted to the best of its ability to comply with the Department's requests.¹²⁰ The courts have repeatedly made it clear that the Department must state its reasons for finding that a party failed to act to the best of its ability in the investigation. Hyundai maintains that that the Department offered no explanation as to why it applied AFA in the preliminary determination.¹²¹

Petitioners Argue:

- The Department's use of facts available in the preliminary determination was warranted because the record at time showed that Hyundai had withheld information and impeded the investigation with respect to its further manufactured sales.¹²²
- The Department should have applied AFA to Hyundai in the preliminary determination. Instead, the Department applied a neutral facts available plug based on Hyundai's data to Hyundai's sales of TWBs and auto parts.¹²³

Department Position: This issue is moot in light of events since the preliminary determination. See comment 5, below.

Comment 4: Whether the Further Manufacturing Data Submitted by Hyundai for its Sales of TWBs, Auto Parts, Sheet, Skelp, and Blanks Should Be Used in the Final Determination

Hyundai Argues:

- If the Department does not exclude its sales of TWBs and auto parts, the Department should use the usable and verifiable sales and cost data provided for these further

¹¹⁸ See Hyundai Case Brief at 18 and 24.

¹¹⁹ *Id.* at 24-25.

¹²⁰ *Id.* at 18-21 and 25-28.

¹²¹ *Id.* at 5, 18-19 and 26.

¹²² See Petitioner's Rebuttal Brief at ii.

¹²³ *Id.* at 17.

manufactured products in the final determination.¹²⁴

- The Department accepted Hyundai's further processing costs for skelp, sheet, and blanks in the preliminary determination. Moreover, it has not identified any major deficiency with this data. Therefore, the Department should also use its data for sales of sheet, skelp, and blanks for the final determination.¹²⁵
- The further processing costs reported for skelp, sheet and blanks by Hyundai have been fully consistent, *i.e.*, identical since its initial section C response. Hyundai only modified the unit processing costs for products other than skelp and by calculating the further manufacturing general and administrative (G&A) and interest expense components.¹²⁶
- The issue is not whether data is missing from the record. Rather, the issue is which data set should be used in the calculations. The Department has the obligation to calculate a margin as accurately as possible, and is thus required, to use the further manufacturing data as explained in the calculation worksheet of its December 29, 2015 response.¹²⁷
- In its initial Section E response, Hyundai conservatively included shearing and all processing steps in its FURCOM. In reviewing the processing steps in its cumulative costs, Hyundai omitted shearing costs for TWBs in its December 2, 2015 submission. Hyundai reincorporated those shearing costs in its December 29, 2015 response.¹²⁸
- When canceling verification, the Department focused, in part, on its mistaken belief that Hyundai had not reported its full shearing costs. In fact, the calculations show how the costs for each step in the production process carry through to the next, including shearing costs.¹²⁹
- The only aspect of Hyundai's U.S. sales reporting on December 29, 2015 that changed was its calculation of further manufacturing costs. These changes were made because the Department directed Hyundai to examine particular TWB processing costs, explain the change and update the FURCOM file, and sought reconciliations for HSA's and other affiliated processors' calculated GNA and interest expense ratios.¹³⁰
- Hyundai identified revisions to the CONNUM coding for a few products reported on the home market sales file, and revised its G&A expense calculation as a result of the Department's questions in the companion cold-rolled investigation.¹³¹
- Hyundai claims that the changes to the cost and home market sales databases were: (1) truly minor; (2) explained in the response, (3) accepted and retained for the record in its questionnaire response; and (4) fully verified by the Department at both the home market sales and cost verification.¹³²
- The only real issue with Hyundai's December 29, 2015 Section E response was that it made an inadvertent error in incorporating the data in Exhibit SE-5 by carrying the unit further manufacturing costs of the respective production lines into the further

¹²⁴ See Hyundai Case Brief at 1-5.

¹²⁵ *Id.* at 36-40.

¹²⁶ *Id.*

¹²⁷ *Id.* at 23.

¹²⁸ *Id.* at 11-13.

¹²⁹ *Id.*

¹³⁰ *Id.* at 29-31.

¹³¹ *Id.* at 31.

¹³² *Id.*

manufacturing cost database, rather than the bottom-line cumulated product-specific production costs. The FURCOM for skelp, which constitutes most of the further processed sales, did not change at all.¹³³

- The clerical error could be remedied by simply inserting the correct figures from the exhibit into the FURCOM field in the cost data and recalculating the unit general and administrative (GNA) and interest expense (INTEX) costs to arrive at the correct total further manufacturing (TOTFMG) amounts.¹³⁴
- If the Department had concerns regarding the revisions in the December 29, 2015 response, it should have issued an additional supplemental seeking clarification or examined the reporting through its in-depth verification procedures rather than resort to facts available to replace record data on which the Department relied in the preliminary determination.¹³⁵

Petitioners Argue:

- Contrary to Hyundai's claims, it has not provided reliable or verifiable information for its further manufactured sales of sheet, skelp, blanks, TWBs, and auto parts.
- In fact, on March 8, 2016, the Department specifically found that the data provided by Hyundai for the further manufacturing costs and sales of sheet, skelp, blanks, TWBs, and auto parts are unverifiable and deficient. This information cannot be used to calculate a dumping margin for those sales.¹³⁶
- Specifically, the Department found a myriad of problems with Hyundai's further manufactured sales and cost databases. The problems included: 1) unexplained, insufficiently explained and unsolicited changes to the further manufacturing costs; 2) inconsistencies between Hyundai's narrative responses and databases; 3) missing elements in the calculation of the further manufacturing costs; and 4) a methodology for reporting the sales quantity of further manufactured merchandise that was "mathematically incorrect."¹³⁷
- Second, the narrative of the response provided for a different unit cumulative cost than the further manufacturing cost file, and used a new and unexplained calculation methodology to derive a FURCOM, which was reported lower in the database for TWBs, sheet, and blanks.¹³⁸
- Third, in the post-preliminary supplemental response to section E, Hyundai left out shearing costs in the cumulative FURCOM although a large portion of the further manufactured merchandise used the shearing line.¹³⁹
- Fourth, Hyundai did not properly report the sales quantity of subject merchandise that was incorporated into the further manufactured products. According to Hyundai, the variable FURMANQTYU includes the quantity of each CONNUM of CORE used to produce a single further manufactured product, and this value represents the metric ton

¹³³ *Id.* at 31-35.

¹³⁴ *Id.* at 36-41.

¹³⁵ *Id.* at 9-11.

¹³⁶ See Petitioner's Case Brief Hyundai at 1.

¹³⁷ *Id.* at 3 and 6.

¹³⁸ *Id.* at 4.

¹³⁹ *Id.* at 5.

(MT) sales quantity of the specific CONNUMU, as reported in QTY2U of the sales database.¹⁴⁰

- Accordingly, FURMANQTYU and QTY2U should be the same, but they are not for some observations (OBS) with the same linking variable, undermining the accuracy and reliability of Hyundai's reported data. Hyundai failed to explain and document the difference in the quantities reported, and its applied allocation methodology is mathematically incorrect.¹⁴¹
- In addition to the four problem issues discussed above, Hyundai's further manufacturing data also has problems with:
 - (1) its calculations of general and administrative expenses (G&A) of HSA;
 - (2) accounting for, and incorporating the cost of coating materials and pickling, costs Hyundai asserted to be negligible;
 - (3) not accounting for packing from one further processing affiliate to another;
 - (4) for further manufactured merchandise sold through a chain of affiliates, combining the indirect selling expenses of those affiliates and dividing the sum by sales value of the largest company, which significantly understates the other affiliates' indirect selling expense ratio; and
 - (5) failing to provide the list of customers of some affiliate sales, to determine whether any should be consolidated, which makes it impossible to accurately analyze the differential pricing based on customer for those sales; and
 - (6) some data is facially absurd when comparing the gross-unit price (GRSUPR2U) relative to FURMANU, or individual elements of FURMANU (FURMAN1U) appear erroneous.¹⁴² Under these circumstances, the only appropriate result is to apply AFA to deter such conduct in the future.¹⁴³
- The Department did not need to verify the data to arrive at the determination that the indicated deficiencies of the data – Hyundai changed the data for the FURCOM of TWBs four times, e.g., – made data unverifiable. This has been confirmed in JTEKT Corp. v. United States.¹⁴⁴
- The Department correctly did not ask deficiency questions on Hyundai's December 29, 2015 supplemental questionnaire response, as that response was Hyundai's third opportunity to remedy problems with its further manufacturing responses. Asking deficiency questions would have merely afforded Hyundai a fourth opportunity to make additional unsolicited and unexplained changes to further decrease its reported FURCOM.¹⁴⁵

Department Position: We will not use the sales or cost information on the record, including the information contained in Hyundai's December 29, 2015 response, for Hyundai's further manufactured sales of sheet, skelp, blanks, TWBs, and auto parts in this final determination. The December 29, 2015 response contains unsolicited and untimely information and is further

¹⁴⁰ Id. at 6.

¹⁴¹ See Petitioner Case Brief Hyundai at 5-6 and 23-24.

¹⁴² Id. at 16-18.

¹⁴³ See Fujian Lianfu Forestry Co., Ltd. v. United States, 33 CIT 1056, 1066-67 (2009).

¹⁴⁴ See Petitioners' Rebuttal Brief Hyundai at 11-13 and 18-20.

¹⁴⁵ Id. at 24.

evidence that Hyundai has significantly impeded this investigation. The information in this response is not reliable.

In the preliminary determination, we noted serious issues with the two further manufacturing responses submitted by Hyundai on the record. In particular, we noted that Hyundai's November 30, 2015 response had significant issues with how it reported its sales of further manufactured products and those issues potentially affected all of Hyundai's sales of further manufactured merchandise. Hyundai had the opportunity to remedy its deficient November 30, 2015 response after the preliminary determination.¹⁴⁶

On December 29, 2015, Hyundai submitted its response to the Department's December 15, 2015, supplemental questionnaire that identified issues with its November 30, 2015 section E response. Specifically, we had asked Hyundai why its reported further manufacturing costs for TWBs changed significantly without explanation in its November 30, 2015 database when compared to what it originally reported in its November 2, 2015 database. Hyundai responded that it had assumed that all of the CORE steel incorporated in the TWBs passed through all of the processes in the plant, i.e., slitting, shearing, blanking and welding, but then subsequently determined that only a tiny portion of the TWB components actually passed through the shearing line. Hyundai Steel also stated that it had examined the production routing and has therefore adjusted its calculations to reflect the weighted-average cost of the various processing steps performed on the inputs used for TWBs. Hyundai Steel has similarly adjusted the cumulated yield losses occurring at the various production stages.¹⁴⁷

Contrary to Hyundai's claims, the significant issues with its December 29, 2015 Section E response were not limited to purported errors in incorporating the appropriate data in Exhibit SE-5 into its further manufacturing cost database. Rather, our analysis of the December 29, 2015 response and databases shows that Hyundai made unsolicited changes to its further manufacturing database. Specifically, it reduced the total U.S. further manufacturing costs (compared to the November 2 database). The vast majority of this reduction was not related to the Department's December 15, 2015 supplemental questionnaire and was not explained. Changes made by Hyundai in its December 29, 2015 database that were not requested by the December 15, 2015 supplemental questionnaire included significant downward adjustments in the further manufacturing costs for sheet, blanks, TWBs, and a downward adjustment to yield loss in various production stages. Moreover, Hyundai reduced the further manufacturing expenses it reported for all of its sales of skelp, sheet, blanks, and auto parts without explanation.

Moreover, our overall analysis indicates that several items in the December 29, 2015, narrative, exhibits and databases were not consistent. Specifically, the unit cumulative costs calculated in the narrative response do not match the costs reported in the further manufacturing cost file. In addition, the weighted average cost of the various processing steps performed has been incorrectly reported in the further manufacturing database, and the shearing costs were left out completely despite the fact that a substantial portion of CORE used the shearing line.

¹⁴⁶ See Preliminary Determination, PDM at 12.

¹⁴⁷ Id. at 5.

In addition, we reject Hyundai's argument that section 782(d) of the Act required that the Department issued an additional supplemental seeking clarification of its third full section E response. The record shows that we had already complied with 782(d) of the Act by affording Hyundai multiple opportunities to remedy its deficient responses. The Department issued a deficiency questionnaire on Hyundai's unusable November 2, 2015 section E response, to which Hyundai responded on November 30, 2015. On December 15, 2015, the Department issued a deficiency supplemental questionnaire regarding Hyundai's November 30, 2015 response, to which it responded on December 29, 2015. As it did with Hyundai's two Section E responses, the Department has identified serious issues with Hyundai's third section E response that render that response unreliable.

Finally, section 782(i) of the Act requires that the Department verify all information relied upon in a final determination. As noted above, we are not relying on Hyundai's further manufactured sales of sheet, skelp, blanks, TWBs, and auto parts in this final determination because this information is not reliable. In this situation, attempting to conduct an in-depth verification of Hyundai's December 29, 2015 response or its two previous responses would have been futile since these responses were not factually correct or internally consistent. Moreover, verification is not the appropriate venue for Hyundai to perfect information already submitted or submit additional information onto the record.

Comment 5: Whether The Department Should Apply Adverse Facts Available to Calculate the Final Dumping Margin for Hyundai

Petitioners Argue:

- The Department should apply total AFA to Hyundai in the final determination.¹⁴⁸ If the Department does not apply total AFA, then it should apply partial AFA to Hyundai's sales of sheet, skelp, blanks, TWBs, and auto parts.¹⁴⁹
- The record shows that, pursuant to section 776(a) of the Act, the Department should apply facts available to Hyundai because necessary information is not on the record and because Hyundai has: withheld information that has been requested; significantly impeded the proceeding; and submitted information that cannot be verified.¹⁵⁰
- Moreover, an adverse inference is warranted under 776(b) of the Act because Hyundai did not cooperate to the best of its ability in providing information on its further manufactured sales. Rather than putting forth its best effort to submit usable and reliable information, Hyundai made numerous false statements and engaged in delay tactics to avoid providing such information. Ultimately, Hyundai failed to provide verifiable information the Department could use to calculate a dumping margin for its further manufactured sales of sheet, skelp, blanks, TWBs, and auto parts.¹⁵¹
- Contrary to Hyundai's claims, the Department has repeatedly informed Hyundai of the deficiencies in its further manufactured sales responses and instructed Hyundai to remedy these deficiencies. In fact, the record shows that after Hyundai made its initial section E

¹⁴⁸ See Petitioners' Case Brief at Hyundai 1-2.

¹⁴⁹ *Id.* at 22-26.

¹⁵⁰ *Id.* at 2-7.

¹⁵¹ *Id.* at 1-7.

response that was unusable, the Department issued three supplemental questionnaires and that Hyundai has submitted three supplemental responses.¹⁵²

- In particular, Hyundai had the opportunity to remedy the problem with the FURCOM in its November 30, 2015 response that the Department had determined to have significant issues in the preliminary determination. However, Hyundai's December 29, 2015 response again failed to remedy the deficiencies. The Department's analysis of this post-preliminary supplemental response indicated that Hyundai again made numerous additional unsolicited and unexplained changes to further decrease its reported FURCOM.¹⁵³
- From the onset of this investigation, Hyundai consistently tried to report the fewest amount of its U.S. sales possible. Hyundai initially sought to limit its reporting to sales of coil because it claimed that all of its other sales involved further manufactured merchandise with more than 65 percent value added in the United States. Then, Hyundai sought to exclude a smaller portion of its sales of subject merchandise under the "special rule." Ultimately, the Department instructed Hyundai to report what amounted to less than half of its total sales of CORE.¹⁵⁴
- The Department and the courts have recognized that, where a respondent is selective in providing information to the Department, it is appropriate to reject all of the respondent's submitted data (instead of simply a portion of the data) and apply total AFA to calculate the respondent's dumping margin.¹⁵⁵
- Hyundai made affirmative efforts to avoid producing information by making false statements to make it appear that the information requested by the Department on the further manufactured sales would be too complex and burdensome to report and analyze.¹⁵⁶
- The Department and the courts have recognized that the application of AFA is appropriate when a respondent makes affirmative efforts, including making false statements, to avoid producing information sought by the Department because such behavior demonstrates that the respondent has failed to cooperate to the best of its ability with the Department.¹⁵⁷
- Only after extensive efforts by the Department did Hyundai concede that it could report its further manufactured sales of TWBs and auto parts.¹⁵⁸
- When Hyundai initially reported the data at issue, the response was wholly deficient and the database was unusable.

¹⁵² Id. at 13-16.

¹⁵³ See Preliminary Determination, PDM at 12.

¹⁵⁴ See Petitioner's Case Brief Hyundai at 20.

¹⁵⁵ See Steel Auth. of India v. United States, 149 F. Supp. 2d 921, 928; Papierfabrik August Koehler S.E. v. United States, 7 F. Supp. 3d 1304, 1314 (Ct. Int'l Trade 2014).

¹⁵⁶ For itemized detail of Petitioner's claim, see Petitioner's Case Brief Hyundai at 7-10.

¹⁵⁷ See Qingdao Taifa Group Co. v. United States, 637 F. Supp. 2d 1231, 1239 (Ct. Int'l Trade 2009) (finding that a respondent's "efforts to avoid producing the requested documents demonstrates that {the respondent} failed to put forth maximum efforts to investigate and obtain the documents"); Gerber Food (Yunnan) Co. v. United States, 491 F. Supp. 2d 1326, 1337 (Ct. Int'l Trade 2007) ("{A} party's unresponsiveness and failure to cooperate prior to providing the needed and verifiable information might significantly and unnecessarily impede the proceeding and waste the Department's resources.").

¹⁵⁸ Id. at 20.

- Hyundai's pattern of obstruction and obfuscation was intended to lead the Department to abandon efforts to obtain the information. Even if unintentional, its subsequent ability to provide the additional data on the further manufactured sales demonstrates that it held back its best efforts to cooperate with the Department. As such, regardless of intent, the Department and the courts have recognized that a respondent's failure to cooperate to the best of its ability under the circumstances like these warrants the application of AFA.¹⁵⁹
- Hyundai's claims about impractical deadlines for submitting the information at issue should be disregarded. Hyundai consistently delayed this proceeding and misused time provided by the Department to submit reliable and usable responses. Instead of fully cooperating with the Department's requests, Hyundai submitted an unusable database on November 2, 2015; some 98 days after the Department issued its initial questionnaire. Hyundai appears to have used most of this time to find excuses for not having to report this data instead of using the time given to gather and report the information requested for its further manufactured sales in a usable form.¹⁶⁰
- On November 19, 2015, the Department issued a supplemental questionnaire that identified numerous deficiencies in Hyundai's unusable November 2, 2015 response. The Department granted Hyundai a total of 11 days to respond to its supplemental questionnaire. However, the deficiencies in that response were so serious that the Department issued a supplemental questionnaire on December 15, 2015. Moreover, the November 2, 2015 response and databases had such widespread and serious deficiencies that the Department relied on facts available for those sales in the preliminary determination.¹⁶¹
- Hyundai submitted its third further manufacturing response on December 29, 2015. The record shows that Hyundai misused the opportunity to remedy its second further manufacturing response by making additional unsolicited and unexplained significant downward revisions to its reported FURCOM and to submit unsolicited U.S. sales responses.¹⁶²
- These extensive and unsolicited changes to its third further manufacturing response demonstrate that Hyundai's further manufactured data was constantly changing, which not only delayed the Department's efforts to analyze the data, but also ultimately rendered it unusable and unverifiable. The Department has applied AFA in similar cases.
- By cancelling the verification of Hyundai's further manufactured sales of sheet, skelp, blanks, TWBs and auto parts, the Department has determined that Hyundai had been unable to submit reliable further manufactured sales and cost responses some 155 days after it issued its questionnaire. The third response and database contained serious errors and other fundamental problems that make them unusable to calculate a dumping margin for Hyundai.¹⁶³
- Although only one criterion needs to be met in order to disregard Hyundai's further

¹⁵⁹ Citing *Nippon Steel v. United States* 2003, petitioners state, it is insufficient to submit any information to the Department, and the information provided by respondent must represent the maximum it is able to do, and must be complete and accurate.

¹⁶⁰ See Petitioners' Case Brief Hyundai at 12.

¹⁶¹ See *Preliminary Determination*, PDM at 13-14.

¹⁶² See Petitioners' Case Brief Hyundai at 12.

¹⁶³ *Id.* at 11-16.

manufacturing responses under 782 of the Act, all four criteria with respect to Hyundai's further manufactured data, as discussed above, are met. Specifically, Hyundai: (1) submitted information that cannot be used; (2) did not act to the best of its ability; (3) provided information that cannot be used without undue difficulties; and (4) provided information is unverifiable. Therefore, the Department should apply AFA in calculating the dumping margin or Hyundai.¹⁶⁴

- The Department and the courts have recognized, where a respondent provides selective information, the Department should reject all the submitted data and apply total AFA to calculate the dumping margin. Were the Department forced to use partial information submitted by respondents, parties would be able to manipulate the process by submitting only beneficial information, thereby controlling which information would be used for the margin calculation, and a direct contradiction to the policy for the use of facts available.¹⁶⁵
- Moreover, the FA margin applied to Hyundai's sales of TWBs and auto parts in the preliminary determination was not high enough to induce Hyundai to cooperate to the best of its abilities. After the preliminary determination, Hyundai submitted further manufactured sales data on December 29, 2015 that failed to fix fundamental problems identified in in the Department's supplemental questionnaire and in the preliminary determination.¹⁶⁶
- Given the pervasiveness of the problems with the data for the further manufactured sales, the Department should apply total AFA to determine Hyundai's dumping margin. As total AFA, the Department should apply the highest petition rate to all of Hyundai's sales of subject merchandise.¹⁶⁷
- According to a recent amendment to the statute, the Department is not required to adjust the weighted average dumping margin based on any assumptions about information the interested party could have provided had it complied with the request for information. The Department has its discretion under the statute to apply total AFA by assigning the highest petition rate to all of Hyundai's U.S. sales.¹⁶⁸
- If the Department does not apply total AFA, it should apply partial AFA to all of Hyundai's sales of sheet, skelp, blanks, TWBs, and auto parts.¹⁶⁹ As partial AFA, the Department should find that it is not possible to assess whether Hyundai's sales of sheet, skelp, blanks, TWBs, and auto parts contribute to a pattern of differential pricing and should thus be cumulated with the other sales that pass the Cohen's *d* test. Excluding those sales would reward Hyundai by assuming they would not pass the Cohen's *d* test. The Department should then apply the highest transaction specific margin or the highest petition rate to Hyundai's sales of sheet, skelp, blanks, TWBs, and auto parts.¹⁷⁰

¹⁶⁴ Id. at 16-19.

¹⁶⁵ Id. at 20.

¹⁶⁶ Id. at ii.

¹⁶⁷ Id. at 21-22.

¹⁶⁸ Id. at 19-22.

¹⁶⁹ Id. at 22-26

¹⁷⁰ Id. at 26-29.

Hyundai Argues:

- There is no basis for applying total AFA to its sales in the final determination. The record shows that the Department verified Hyundai's home market sales, U.S. sales of coils and cost of production data without issue. In fact, the Department has raised concerns with only limited aspects of Hyundai's reported data, specifically further manufacturing costs and sales data pertaining to TWBs and auto parts.¹⁷¹
- Moreover, there is no basis for the Department to apply AFA to Hyundai's sales of sheet, skelp, and blanks. Neither the Department nor petitioners have identified a single reporting issue with respect to the sales data for these products. The only issue identified is the calculation of the further manufacturing costs associated with these products.¹⁷²
- Hyundai timely provided this information despite the impractically short deadlines from the Department that violated its WTO obligations that dictate respondents have a minimum of 37 days in which to report sales and cost data.¹⁷³
- Contrary to petitioners' claim, Hyundai did not say in that letter that the particular reporting is impossible and did not suggest foregoing all reporting of further manufactured products, and proposed an option of including skelp.¹⁷⁴
- Hyundai also timely provided this information despite the complexity and inherent difficulties in its further manufacturing and distribution process and in the absence of any guidance from the Department as how to provide data in a format usable in its standard programs. In Nippon Steel Corp. v. United States, the U.S. Court of Appeals for the Federal Circuit ("CAFC") clarified that the "best of its ability" standard of section 776(b) of the Act means to put forth maximum effort to provide full and complete answers to all inquiries and that mistakes do occur. Thus, any "best of ability" determination by the Department in the final determination must address Hyundai's claims of the difficulties in gathering and submitting the information requested.¹⁷⁵
- Moreover, the Department failed to provide adequate guidance to Hyundai as to how to report the data at issue. As the Court of International Trade ("CIT") explained in Borusan and SKF USA Inc. v. United States where the reporting requirements are complex or unclear, the Department is obligated to ensure a respondent knows what information it seeks and in which form.¹⁷⁶
- The Department must also explain why the absence of requested information is important to the investigation.¹⁷⁷
- The Department conducted a successful CEP verification of Hyundai's sales of coil, and if it believed that Hyundai's further manufactured sales and cost data were unverifiable, it would have been a simple exercise, then, to test its assumption to ascertain whether the

¹⁷¹ See Hyundai's Case Brief at 5.

¹⁷² Hyundai also takes issue with Petitioner's suggestion that the Department apply the A-T method to its sales as partial AFA. First, the Department's own practice requires a finding of "differential pricing" before resorting to the A-to-T method and applying zeroing. Second, had the Department believed Hyundai's customer codes for auto parts were insufficient; the Department was obligated to inquire further and provide Hyundai an opportunity to revise this aspect of its reporting, if necessary, which it did not. *Id.* at 37-38.

¹⁷³ *Id.* at 18.

¹⁷⁴ See Hyundai Rebuttal Brief at 25.

¹⁷⁵ See Nippon Steel Corp. v. United States 2003, 337 F.3d 1373, 1382.

¹⁷⁶ See Hyundai Rebuttal Brief at 16-19.

¹⁷⁷ See China Steel Corporation v. United States, 27 CIT 715 (2003).

data actually was unverifiable.¹⁷⁸

- The Department's decision not to verify Hyundai's sales of sheet, skelp, blanks, TWBs and auto parts should not lead to the application of AFA to those sales in the final determination. Rather, cancelling verification of those sales ignored the statutory mandate to do so under section 782(i) of the Act. Moreover, as shown in Micron Technology v. United States, the courts have consistently held that the statutory obligation to verify "all" information does not require the Department to literally verify all information upon which it relies. Moreover, if the Department elects not to specifically examine information at verification, it typically accepts that information "on its face."¹⁷⁹
- The Department typically applies AFA when parties deliberately conceal information,¹⁸⁰ submit fraudulent data¹⁸¹ or cease participation.¹⁸² There is no evidence on the record indicating that Hyundai deliberately concealed information, submitted fraudulent data, or ceased to participate in this investigation.
- Petitioner's reliance on Qingdao Taifa Group Co. v. United States and Gerber Food (Yunnan) Co. v. United States is misplaced. In those cases, the Department found that the respondent withheld information at verification and refused to provide documentation, and provided false statements concerning a shipping arrangement designed to circumvent antidumping duties, respectively. The issues were similar for Fujian Lianfu and Koehler that petitioners cite in this context.¹⁸³

Department Position: The Department has used partial AFA for Hyundai's further manufactured sales of sheet, skelp, blanks, TWBs, and auto parts in this final determination. The record of this investigation shows that, pursuant to section 776(a) of the Act, the Department must use facts available for these sales because necessary information is not on the record, Hyundai failed to submit information by the established deadlines, and Hyundai has significantly impeded the proceeding. Moreover, an adverse inference is warranted under 776(b) of the Act because the record shows that Hyundai did not cooperate to the best of its ability in providing information on these further manufactured sales. Hyundai did not put forth its best effort to submit the reliable and verifiable information necessary to calculate a dumping margin for its further manufactured sales of sheet, skelp, blanks, TWBs, and auto parts. Instead, the record shows that Hyundai submitted a series of inaccurate value added calculations, made inaccurate claims of difficulty in gathering data, and then submitted three Section E responses and databases that were unusable and unreliable.

Hyundai is correct in that, consistent with Micron Technology v. United States, the statutory obligation to verify "all" information does not require the Department to literally verify all information upon which it relies. However, its reliance on Certain Oil Country Tubular Goods From Ukraine to support its argument that information that the Department does not examine at

¹⁷⁸ See Hyundai Rebuttal Brief at 19-21.

¹⁷⁹ *Id.* at 20 citing the IDM for Certain Oil Country Tubular Goods From Ukraine at Comment 9.

¹⁸⁰ See Lightweight Thermal Paper from Germany.

¹⁸¹ See Pure Magnesium from the People's Republic of China.

¹⁸² See Welded Stainless Pressure Pipe from Thailand.

¹⁸³ See Hyundai Rebuttal Brief at 23-27, and 32.

verification is typically accepted as reported is misplaced. As an initial matter, Certain Oil Country Tubular Goods From Ukraine does not stand for the proposition that the Department will use information that was not verified “on its face.” Moreover, in this case, the Department found that the information at issue was “unverifiable and deficient” when it cancelled the CEP verification of Hyundai’s further manufactured sales. Thus, it would be inappropriate to now accept this information “on its face” for the final determination.

As discussed below, the record shows that many of the initial claims made by Hyundai to support its argument that these sales should be excluded pursuant to 772(e) of the Act have been inaccurate. On August 17, 2015, Hyundai notified the Department of difficulty in responding to the questionnaire and requested that the Department apply the “Alternate Calculation Method,” in accordance with section 772(e) of the Act and 19 CFR 351.402(c)(2) with respect to certain further manufactured U.S. sales (*i.e.*, automobiles, tailor welded blanks and certain auto parts).¹⁸⁴ Its request sought to limit the Department’s “analysis of dumping to only non-further manufactured sales, that is, its “sales of merchandise to unaffiliated vendors in coil form.”¹⁸⁵ To support its request, Hyundai submitted one calculation of the value added by its U.S. affiliates using the difference between the average sales price for an automobile (*i.e.*, the merchandise as sold to an affiliated party in the United States) and the average price paid for imported corrosion-resistant steel by HSA.¹⁸⁶

On September 11, 2015, the Department notified Hyundai that its analysis of Hyundai’s submissions indicated that, in addition to automobiles, sheet, skelp, and blanks, Hyundai or its affiliates sold other further manufactured products, such as TWBs and after-service auto parts to unaffiliated parties. As such, the Department instructed Hyundai to clarify its exclusion request and to demonstrate its value added claim for each product type at the appropriate stage in the sales chain.¹⁸⁷

Hyundai then provided two additional value added calculations for TWBs and after-service auto parts on September 25, 2015.¹⁸⁸ On October 15, 2015, the Department determined that Hyundai’s calculations for TWBs and after-service auto parts were flawed¹⁸⁹ and instructed

¹⁸⁴ See Hyundai Exclusion Request August 17. As an alternative, Hyundai suggested that the Department should limit its analysis of CEP transactions to include sales of coil, sheet, skelp, and blanks to unaffiliated vendors. See footnote 12.

¹⁸⁵ *Id.* at 16.

¹⁸⁶ *Id.* at 9.

¹⁸⁷ The Department also excused Hyundai from reporting further manufactured sales when the first sale of corrosion-resistant steel to an unaffiliated party is a completed automobile. See Initial Request for Information to Substantiate Exclusions Request September 11; see also DOC Response to Additional Guidance Request to Substantiate September 16.

¹⁸⁸ See Hyundai Response to Department’s Request for Additional Information September 25.

¹⁸⁹ The TWBs at issue have two subject merchandise CORE components. (Hyundai has reported that it does not mix steel types or suppliers. Thus if Hyundai Steel-produced CORE is used as the first component of a TWB, the second CORE component has also been produced by Hyundai Steel. The value added calculation submitted by Hyundai for TWBs on September 25, 2015 erroneously included the value of the second Hyundai Steel-produced CORE component as part of the value added by Hyundai affiliates in the United States to the first CORE component. This flawed methodology significantly overstated the value added by affiliates in the United States. When counting only the actual value added to the subject CORE by affiliates in the United States, Hyundai’s sales of TWBs do not meet

Hyundai to report its sales of these two products to unaffiliated parties along with the appropriate databases and instructed Hyundai to provide revised sales reporting and U.S. sales databases to include sales of TWBs and after-service auto parts.¹⁹⁰

Initially, Hyundai claimed that neither HSA nor its processor customers track the manufacturer of the CORE to the final product. Hyundai went on to state that its sole requirement in selecting the CORE used in the components is that it meets the technical specifications and that the components “may have been manufactured from corrosion-resistant steel sourced from multiple manufacturers.”¹⁹¹ Hyundai subsequently reported that with respect to the CORE used to manufacture TWBs, HSA does not mix different steel types or suppliers in individual production runs. If HSA uses Hyundai steel manufactured CORE coil in a given production run for the first component, it also used Hyundai Steel manufactured CORE coil for the second component.¹⁹²

Hyundai first claimed that it would be too complicated to report its further manufactured sales of TWBS and auto parts because there was no electronic means to gather the information it needed to report its sales of TWBs and that it would have manually review each production record to collect the necessary data.¹⁹³ Hyundai then reported that it had been able to identify through electronic means the second source of coil used in the production of most, but not all, TWB products during the POI.¹⁹⁴

The Department’s October 15, 2015 supplemental questionnaire put Hyundai on notice that it was required to report its sales of TWBs and auto parts. In its Section E Further Manufacturing data response, Hyundai claimed that “because of the magnitude and overall burden” involved, it was “unable to report the CONNUM” of many sales.¹⁹⁵ On November 30, 2015, Hyundai reported that it was able to identify the CONNUM for the vast majority of sales by “reviewing data from affiliated parties for the purposes of this submission, including reviewing bills of materials for particular parts.”¹⁹⁶

Hyundai originally claimed that it could not provide the unit weight per piece (MTPERPCU) for a substantial portion of its sales due to data limitations.¹⁹⁷ On November 30, 2015, Hyundai reported the MTPERPCU by calculating the weight of input materials, weighing the products, or using weights associated with similar parts.¹⁹⁸

the 65 percent threshold set forth in 19 CFR 351.402(c)(2). Finally, Hyundai’s own value added calculation for auto parts did not show that the products met the 65 percent threshold set forth in 19 CFR 351.402(c)(2).

¹⁹⁰ See DOC Letter to Hyundai Re Exclusion Request October 15.

¹⁹¹ See Hyundai Exclusion Request August 17 at 11.

¹⁹² See Hyundai Response to Department’s Request for Additional Information September 25 at footnote 6.

¹⁹³ See Hyundai IQR-A at 43.

¹⁹⁴ See Hyundai Response to Department’s Request for Additional Information September 25 at 4.

¹⁹⁵ See Hyundai IQR-E at 3.

¹⁹⁶ See Hyundai SQR1-E at S-5.

¹⁹⁷ See Hyundai IQR-E at 7.

¹⁹⁸ See Hyundai SQR1-E at 9-10.

Hyundai claimed that it was unable to eliminate those products that did not contain Hyundai Steel-manufactured subject merchandise from its sales database.¹⁹⁹ It subsequently stated that it was able to identify further manufactured products that did not contain CORE produced by Hyundai Steel.²⁰⁰

Hyundai also argued that whether or not its sales of TWBs and auto parts “satisfy the 65% test, the Department should nonetheless disregard all of these sales, as permitted by well-established practice.”²⁰¹ This statement makes clear that Hyundai was aware that the Department might not find its value added calculations for TWBs and auto parts to be compliant with 19 CFR 351.402(c) and pointed to alternative avenues for not reporting those sales. As noted above, October 15, 2015 is the last day on which Hyundai could plausibly claim to believe that it was not required to report its further manufacturing costs and sales. The Department’s October 15, 2015 supplemental questionnaire instructed Hyundai to report all of its sales of TWBs and auto parts. As described in the preliminary determination at 11-13 and in comment 4 above, Hyundai’s FMG response on Nov 2 was unusable. Moreover, Hyundai’s first supplemental FMG response submitted on November 30, 2015 had significant deficiencies. In its December 11, 2015 comments, Hyundai claimed that the problems with its first two responses were limited to one percent of its reported sales.²⁰² In fact, Hyundai’s sales of TWBs and auto parts account for 10 percent of its total reported sales. Hyundai then submitted its Second Supplemental FMG response on December 29, 2015 that also had serious deficiencies (see comment 4 above). After reviewing Hyundai’s Second Supplemental FMG response, the Department determined that the information was unreliable.

Thus, the record shows that Hyundai submitted inaccurate value added calculations to support its claim that its sales of further manufactured products should be excluded under the special rule and a series of inaccurate statements with respect to its ability to provide requested information for its further manufactured sales and costs. The record also shows that Hyundai submitted a series of unusable, unreliable, and internally inconsistent Section E responses and databases. Notwithstanding its claims about impractical deadlines, Hyundai submitted the last of these some 84 days after the Department’s October 15, 2015 questionnaire.

The record demonstrates that Hyundai has: submitted a series of inaccurate value added calculations with respect to the sales at issue; made claims of difficulty in gathering data which were inaccurate; and submitted Section E responses that were unusable, unreliable, and unverifiable. Moreover, as described above in comment 4, the issues with Hyundai’s reporting of further manufacturing costs extend to the further manufacturing expenses reported for its sales of sheet, skelp and blanks. Regardless of its intent, the record shows that Hyundai has failed to cooperate to the best of its ability with respect to its FMG responses. Therefore, pursuant to 776(b) of the Act, we have applied partial AFA to Hyundai’s further manufactured sales of sheet, skelp, blanks, TWBs, and auto parts.

¹⁹⁹ See Hyundai IQR-E at 6.

²⁰⁰ See Hyundai SQR1-E at 5.

²⁰¹ See Hyundai Response to Department’s Request for Additional Information September 25 at 8.

²⁰² See Hyundai Pre-Prelim Comments December 11 at 17.

Comment 6: The Department Should Adjust Hyundai's G&A Expenses for Subject Merchandise

*Petitioners Argue:*²⁰³

- Hyundai excluded from the calculation of its G&A expenses losses on sales of memberships.
- These expenses are clearly related to the general operations of the company and should be included in the calculation of the company's G&A expenses.
- The club memberships are an entertainment expense that should be included as a G&A expense, as shown in SSSS from France where the Department included donation and football expenses in G&A expenses.

*Hyundai Argues:*²⁰⁴

- Hyundai explained that this one-time disposal loss is readily distinguishable from the facts of SSSS from France, where the expenses were ongoing and recurring expenses associated with donating to charities and operating a football team.
- The gain or loss on the disposal of this asset was clearly exceptional.
- The Department should not adjust Hyundai's reported G&A expense ratio.

Department Position: At the cost verification, Hyundai demonstrated that the loss on sale of the membership is included in its G&A expense ratio calculation, which was used in reporting G&A expenses in the cost of production data file. We note that the petitioner appears to be referring to the cost database from the first supplemental D, which was used in the preliminary determination on January 4, 2016. In this cost database, the membership costs were not included in the G&A expense calculation. However, the membership costs were included in the reported G&A expenses in Hyundai's December 29, 2015 supplemental response and also in the cost file at cost verification exhibit A1 and the G&A expense rate calculation worksheet at cost verification exhibit E1. As described in our cost verification report, we verified the G&A expense rate calculation worksheet and found that the loss on sale of membership was properly included.

We do not agree with Hyundai that these are extraordinary expenses that should be excluded from the company's general expenses. The Department in some instances will exclude extraordinary costs, if they are both unusual in nature and infrequent in occurrence.²⁰⁵ An event is "unusual in nature" if it is highly abnormal, and unrelated or incidentally related to the ordinary and typical activities of the company, in light of the company's operational environment. An event is "infrequent in occurrence" if it is not reasonably expected to recur in the foreseeable future.²⁰⁶ It is not uncommon in the business world to have a membership like this for entertaining employees, which are usually included in G&A expenses. Moreover, although Hyundai asserts that it may not sell such memberships frequently, the expense itself is not unusual. Therefore, we consider the sale of this membership to be a general expense to

²⁰³ See Petitioners Case Brief Hyundai at 35-37.

²⁰⁴ See Hyundai Rebuttal Brief at 39-40.

²⁰⁵ See SSSS from Japan at 64 FR 30574, 30591.

²⁰⁶ See Softwood Lumber from Canada, IDM at Comment 33.

Hyundai during the year and have thus relied on the verified cost file that includes such costs for our final determination.

Comment 7: Whether the Department Should Adjust Hyundai's Costs to Account for Non-Prime Merchandise

*Petitioners Argue:*²⁰⁷

- The Department should treat Hyundai's non-prime merchandise as a by-product, valuing it not at its cost of production but at its net realizable sales value.
- Non-prime merchandise is clearly small relative to prime merchandise, both in terms of the sales price and the quantity produced.
- In addition to the factors traditionally examined by the Department, the fact that Hyundai sells non-prime merchandise for less than prime merchandise also shows that it is properly treated as a by-product.
- Accordingly, for the final determination, the Department should allocate to prime products the manufacturing cost of the non-prime products, less the sales revenue for non-prime merchandise.

Hyundai Argues:

- Hyundai occasionally produces coils that do not meet the customer's specification, which can be used to fulfill another customer's order or be slightly defective.
- None of Hyundai's non-prime sales were defective enough to be scrapped in their entirety.
- Hyundai sells the non-prime products at a discount, although they are perfectly capable of being used in the same applications as "prime" products.
- Many of Hyundai's customers purchased both prime and "non-prime" products during the POI.
- Petitioner's reliance on the Department's discussion of its treatment of co-products versus by-products is misplaced.
- The Department must reject Petitioner's requested adjustment.

Department Position: We agree with Hyundai, and have not adjusted Hyundai's reported costs for non-prime products. We have continued to allocate the full cost to the non-prime CORE products. The discussion of co-products is not relevant, as co-products are when two different products are produced simultaneously from the same process. Such products incur undifferentiated joint costs until a "split-off point," after which the joint products become separately identifiable. Often, the joint products then undergo separate processing activities. In CORE production, however, there is no "split-off" point during the production process. Rather, CORE is made sequentially on a production line, and costs and production activities are generally identifiable to individual products.²⁰⁸

²⁰⁷ See Petitioners Case Brief at 40-43.

²⁰⁸ 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., Circular Welded Pipe from Thailand, in which the Department noted that "[t]echnically, the issue of whether to include the production quantity

The issue here is whether the non-prime products can still be used in the same applications as the subject merchandise (*i.e.*, capable of use as CORE). As the Department has stated in previous cases, the downgrading of a product from one grade to another will vary case to case.²⁰⁹ 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 solely 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.²¹⁰

With this distinction in mind, we have reviewed the information on the record of this investigation related to Hyundai's downgraded merchandise that is detected at the end of the production process. Hyundai's CORE is capable of being used as CORE because it meets the required product specifications. Hyundai classifies products as "2" when they did not meet the original customer's ordered specifications but can be sold as CORE to another customer. Hyundai reported the full cost of producing these products, as it does in its normal books and records. Finally, we note that the downgraded products are included in the sales files, and are classified as CORE products.²¹¹ Accordingly, we have not adjusted the reported costs of non-prime products, which were in accordance with Hyundai's normal books and records.²¹²

Comment 8: Whether the Department Should Adjust Ocean Freight Expenses to Reflect Arm's Length

Petitioners Argue:

- Record evidence shows that Hyundai's affiliate provider of ocean freight charged rates for its services that do not reflect arm's length prices and, therefore, should be adjusted in the final determination to reflect arm's length prices.
- Hyundai uses its affiliate for many of its transportation and brokerage service needs, and in the past, has been investigated by Korean authorities.
- The Department already determined in the preliminary determination that Hyundai was unable to establish for many of its affiliated transportation services that the transactions performed by the affiliate were at arm's length.
- A comparison of service contracts on the record between Hyundai and its affiliate and between the affiliate and an unaffiliated party further establishes that the affiliate is not charging Hyundai the rates for its service that it charges to an unaffiliated party.

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, IDM at Comment 18.

²⁰⁹ See Rebar from Turkey, IDM at Comment 15.

²¹⁰ Id.; see also OCTG from Korea, IDM at Comment 18, and Welded Line Pipe From Korea, IDM at Comment 9.

²¹¹ See Hyundai's home market database titled "HYSHM02," submitted December 2, 2015.

²¹² See Hyundai Steel Cost Verification Report at 7, 16, 18-19; see also Hyundai Steel Cost Verification Exhibit 12.

- In the preliminary determination, the Department applied that percent difference in the price for that transaction between Hyundai and its affiliate, and its affiliate and the unaffiliated party to all movement expenses provided by the affiliate for which Hyundai was unable to demonstrate that the transactions were made at arm's length.²¹³
- Hyundai attempted to demonstrate that its purchases of ocean freight services from its affiliate were at arm's length by submitting ocean freight contracts between Hyundai and its affiliate, as well as the ocean freight contract between the affiliate and its unaffiliated service provider.
- A comparison of those contracts shows that the affiliate charged Hyundai a mark-up during the POI that was less than its own cost plus its selling, general, and administrative expenses and interest expenses (SG&A) and interest expense ratio. Thus, under the transactions disregarded rule, Hyundai's transactions with its affiliate were not at arm's length.
- Based on findings at the home market sales verification, Hyundai was not always able to tie the international freight to the sale, and thus applied the POI average to those sales instead of the actual international freight charge. Further, the affiliated provider would not always invoice Hyundai at all for the service.
- Record evidence demonstrates that Hyundai's transactions for ocean freight with its affiliate do not reflect arm's length prices and are not reflective of market prices, or at times free of charge. Therefore, the Department should move the international freight upward by the same ratio as the other movement expenses.²¹⁴

Hyundai Argues:

- The Department correctly found that no adjustment to ocean freight was necessary.
- Petitioners argue that their calculations with respect to the provider's mark-up on its costs of obtaining the services from third parties are based on an analysis of the company's financial statements.
- On that basis, petitioners suggest that the Department should apply the same percentage adjustment as the Department applied to Hyundai's reported inland freight expenses. However, those freight services are non-comparable.
- Petitioners' analysis that Hyundai's affiliated service provider is not marking up the service enough to cover operating expenses is flawed because it includes amounts that the Department excludes as either direct selling expenses (inland freight) or as investment-related (commodity futures/options).
- Removing these amounts demonstrates that the markup does cover Hyundai's affiliate's operating costs.²¹⁵

Department Position: Pursuant to section 773(f)(2) of the Act (i.e., the "transactions-disregarded rule"), we have determined that Hyundai's transactions with its affiliate were not made at arm's length. The Department's established practice when the respondent purchases inputs or services from an affiliated reseller is to value the input at the higher of the transfer price or the adjusted

²¹³ See Petitioners' Case Brief Hyundai at 29-32.

²¹⁴ *Id.* at 33-35.

²¹⁵ See Hyundai's Rebuttal Brief at 38-39.

market price for that input or service (*i.e.*, the affiliate’s average acquisition cost plus the affiliate’s SG&A costs), for purposes of section 773(f)(2) of the Act.²¹⁶ The Department has also explained that, in instances where the affiliated supplier functions as a middleman between the respondent and the unaffiliated producer, the Department uses the affiliate’s company-wide G&A-expense rate as a component in its calculations rather than the G&A rate of the division responsible for such transactions.²¹⁷ Here, Hyundai stated that it only uses an affiliated company for international freight services, and to establish that these transactions were provided on an arm’s length basis, it provided the contract price between the affiliated provider and its unaffiliated sub-contract service provider. Therefore, Hyundai was unable to provide documentation showing prices between Hyundai and unaffiliated freight providers, or between the affiliated freight provider and unaffiliated customers. In the Preliminary Determination, the Department did not test whether the transfer price between Hyundai and its affiliate reflects a market price or if it covers the full cost of that affiliate because the transfer price between Hyundai and the affiliated service provider was higher than the contract price between the affiliated freight service provider and the unaffiliated freight company. However, the full cost of the affiliated freight service provider in this case is the sum of the contract price and the affiliated freight service provider’s SG&A and interest. Accordingly, we tested the transfer price against the full cost of Hyundai’s affiliate and determined that it is lower than the full cost. Therefore, for this final determination, we have followed the Department’s standard practice and conducted a comparative analysis of the transfer price and Hyundai’s affiliate’s acquisition cost plus the affiliate’s SG&A costs. In accordance with the transactions-disregarded rule, we calculated an adjustment to Hyundai’s transfer price based on the full cost of the affiliate.²¹⁸

Comment 9: Whether the Department Should Disallow Certain Billing Adjustments for Home Market and U.S. Sales

Petitioners Argue:

- The statute defines normal value and export price as the price at which foreign like product and subject merchandise, respectively, are first sold.
- The regulations define “price adjustment” to mean “any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates, and post-sale price adjustments that are reflected in the purchaser’s net outlay.”
- It is the Department’s practice to allow adjustments to a price claimed by a respondent only when the terms and conditions of the adjustment are known to the customer at the time of sale.²¹⁹
- The Department should deny Hyundai’s claimed billing adjustments in the home market because both were *ad hoc* post-sale price adjustments that were not reflected in any of the sales documentation exchanged between Hyundai and its home market customers and were not known to the customer at the time of sale.
- For its U.S. sales, Hyundai reported “positive billing adjustments,” which it stated were due to a change in price, and the customer was not notified until after the initial time of

²¹⁶ See OCTG From Korea, IDM at Comment 9.

²¹⁷ See Large Residential Washers from Korea, IDM at Comment 1.

²¹⁸ See Hyundai Final Calculation Memorandum.

²¹⁹ See Petitioners’ Case Brief Hyundai at 37, citing Pineapple from Thailand.

sale, *i.e.*, the adjustment was not contemplated at the time of sale and, thus, should be denied by the Department in the final determination.²²⁰

Hyundai Argues:

- Petitioners try to create a requirement that the Department has previously not applied to billing adjustments, pointing to the Department's recent modifications to its price adjustment regulations.
- The Department's own questionnaire contemplates billing adjustments that would not and could not be known or anticipated by the buyer and seller at the time of sale, and instructs respondents to report "any price adjustments made for reasons other than discounts or rebates." The adjustments to be reported are "corrections to invoicing errors" and "post-invoicing price adjustments" not known at the time of sale.
- Petitioners' reference to the regulations and Department practice is misstated in this context. The Department's regulations and practice are related to the respondent's obligation to demonstrate the accuracy of price adjustments reported in their databases. The prior knowledge reporting requirement refers to price adjustments like rebates.
- Clearly, this requirement cannot apply to correcting invoicing errors or to adjusting prices after invoicing.
- Should the Department determine an adjustment to Hyundai's reported billing adjustments, it must apply the same logic to all, home market sales and U.S. sales, negative adjustments as well as positive adjustments.²²¹

Department Position: We have continued to allow the billing adjustments claimed by Hyundai for its home market and U.S. sales. 19 CFR 351.102(b)(38) states that "'[p]rice adjustment' means any change in the price charged for subject merchandise or the foreign like products, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay." While the Department's regulations allow for post-sale price adjustments that are reasonably attributable to the subject merchandise, the Preamble to the regulations indicates that exporters or producers should not be allowed "to eliminate dumping margins by providing price adjustments 'after the fact.'"²²²

Further, the Department's regulations provide that "[t]he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of the particular adjustment. . ." 19 CFR § 351.401(b)(1). Particularly, when the adjustment confers a benefit, a respondent must justify such an adjustment.

In this case, Hyundai demonstrated, and the Department verified, that the two home market billing adjustments at issue were made based on the reasons stated by Hyundai, *i.e.*, customer dissatisfaction with a new product and an anticipated freight increase that caused Hyundai to proactively increase its sales prices (but that never materialized). With respect to Hyundai's post-sale price adjustments to certain U.S. sales, Hyundai established, and the Department

²²⁰ See Petitioners' Case Brief Hyundai at 37-39.

²²¹ See Hyundai's Rebuttal Brief at 40-42.

²²² See Final Rule, 62 FR 27296, 27344, see also Pineapple from Thailand, IDM at Comment 1.

verified, that it was entitled to such billing adjustments, tied to those specific sales.²²³ Furthermore, at verification the Department confirmed that Hyundai credited its customers as reported (positively or negatively, depending on adjustment), and was able to reconcile its billing adjustments.²²⁴ Accordingly, at verification, Hyundai demonstrated and documented that it is entitled to the reported billing adjustment, in accordance with 19 CFR 351.401(c).²²⁵ Hence, Hyundai established that those post-sale price adjustments, also called billing adjustments in the Department's initial questionnaire, other than discounts and rebates, were bona fide and otherwise made in the ordinary course of trade.²²⁶

We agree with petitioners that, as in Pineapple from Thailand,²²⁷ where a price adjustment made after the fact lowers a respondent's dumping margin, the Department will closely examine the circumstances surrounding the adjustment to determine whether it was a bona fide adjustment made in the ordinary course of business. In the instant case, the Department established that those adjustments Hyundai made were bona fide and did not serve to influence the Department's price-to-price analysis, as in Pineapple from Thailand. Therefore, we continue to grant Hyundai all reported billing adjustments.

Comment 10: Whether the Department's Adjustment to Marine Insurance Is Unwarranted

Hyundai Argues:

- Hyundai's questionnaire response explained that it obtained marine insurance from an affiliated provider that operates at a profit.
- In the Preliminary Determination, the Department increased Hyundai's marine insurance expense twenty-fold, relying on information submitted by petitioners.
- There is no evidence that the marine insurance rates provided by petitioners are representative of the rates obtained by large multinational firms covering hundreds of millions of dollars of annual shipments. The Department should eliminate this adjustment in the final determination.²²⁸

Petitioners Argue:

- The Department should continue to find that Hyundai's marine insurance services provided by its affiliate were not at arm's length, and to make the adjustment to the expense using a publicly available rate published by P.A.F Shipping Insurance.
- The fact that the affiliated provider operates at an overall profit on an individual transaction, does not mean the rates reflect market rates and are at arm's length. Further, where the record includes neither the price charged by an unaffiliated party to the

²²³ See Hyundai Verification Report at 12-13 and HSA CEP Verification Report at 8.

²²⁴ Id.

²²⁵ We note that the recent modification of our regulations regarding post-sale price adjustments does not apply to this investigation. The modified rule applies to all proceedings initiated on or after April 25, 2016. Modification of Regulations, 81 FR 15641, 15641 (March 24, 2016).

²²⁶ See SSSS From Mexico at Comment 1 (accepting post-sale price adjustments which the Department found to be for legitimate commercial purposes).

²²⁷ See Pineapple from Thailand, IDM at Comment 1.

²²⁸ See Hyundai's Case Brief at 41-42.

respondent, nor a price charged by the affiliated provider to an unaffiliated party, the Department uses alternative methods, such as an independent market price from third sources.

- Hyundai argues that the prices charged by P.A.F. Shipping Insurance are not representative of what Hyundai's affiliated provider would charge an unaffiliated customer. However, there is likewise no evidence on the record that these prices are unrepresentative. These prices are the best information available, and the Department should continue to rely on those prices.²²⁹

Department Position: Pursuant to section 773(f)(2) of the Act (i.e., the “transactions-disregarded rule”), we have determined that Hyundai's transactions with its affiliate were made not at arm's length. The Department's established practice when the respondent purchases inputs or services from an affiliated reseller is to value the input at the higher of the transfer price or the adjusted market price for that input or service (i.e., the affiliate's average acquisition cost plus the affiliate's SG&A costs), for purposes of section 773(f)(2) of the Act (the transactions-disregarded rule).²³⁰

Hyundai stated that it only uses an affiliated company for marine insurance, and therefore, was unable to provide any invoice from an unaffiliated supplier for that same service. Hyundai further reported that it requested, but was denied, documentation on insurance rates charged to other parties by its affiliate.²³¹ In determining whether to use transactions between affiliated parties, our practice is to compare the transfer price either to prices charged to other unaffiliated parties who contract for the same service or to prices for the same service paid by the respondent to unaffiliated parties.²³²

We examined the information on the record and find that Hyundai, contracting only with this one affiliated supplier of the service, was unable to provide any documentary evidence in the form of invoices for the same services provided by an unaffiliated provider to Hyundai. Nor did Hyundai provide any invoices from the affiliated provider of the service to an unaffiliated party. Thus, there is no evidence on the record of this investigation for the Department to analyze, and to establish whether the service provided to Hyundai by the affiliate was provided at arm's length basis. Hyundai also did not provide any evidence that this service provided by the affiliate was above cost. Therefore, we were unable to compare the price charged by Hyundai's affiliate to a market price or the affiliate's full cost, to establish whether the transactions were made at arm's length. In the Preliminary Determination, to arrive at an arm's length price for marine insurance expenses, we had to rely on publicly available information on the record of this review, and recalculated Hyundai's marine insurance expenses based on publicly available information.²³³

²²⁹ See Petitioners' Rebuttal Brief Hyundai at 34-36.

²³⁰ See OCTG From Korea, IDM at Comment 9; see also Structural Beams from Italy, IDM at Comment 7.

²³¹ See IQR-B&C at 30, and SQR1-B&C at 24.

²³² See Structural Beams from Italy, IDM at Comment 7.

²³³ See Letter from Petitioner to DOC, dated October 16, 2015, at Exhibit 7, page 3: P A E Shipping Insurance: Basic Coverage Insurance Rates for International Shipments (outside US & Canada); <http://www.grw-products.com/omnlinerates.htm>.

There is no new information on the record that would warrant re-consideration. Therefore, we continue to find that Hyundai's marine insurance services provided by its affiliate were not at arm's length.

Further, we agree with petitioners that the fact that a company operates at an overall profit, or makes a profit on an individual transaction with an affiliate, does not establish that the transactions between Hyundai and its affiliate were at an arm's length basis.²³⁴ Specifically, the mere fact that a business operates at a profit is not indicative of an arm's length transaction between affiliates. The affiliate supplier/provider of a service may forgo its profit margin with one customer, while keeping it high for another customer, for whatever reason, or making a profit on providing one particular service, but not on another, thus balancing the current profit margin among its customers and services. Further, in the instant case, in the absence of any market price or cost plus SG&A on part of the affiliated service provider, we have no way of testing whether the transfer price is at arm's length.

Therefore, in accordance with our practice and section 773(f)(2) of the Act, to arrive at an arm's length price for Hyundai's marine insurance expenses, we continue to rely on publicly available information on the record of this review with respect to marine insurance.²³⁵

Comment 11: Whether The Department Should Adjust HSA's Indirect Selling Expense Ratio

Hyundai Argues:

- The Department's CEP verification report notes that Hyundai allocated HSA's indirect selling expenses ("ISE") on the basis of the number of permanent employees dedicated to each function, and implies that non-permanent employees also engage in selling activities.
- Its allocation methodology would be reasonable, however, were the Department to adjust HSA's calculation to include all sales employees (permanent and non-permanent).
- If these non-permanent employees were included, then the ratio should be the total sales staff (permanent and non-permanent) divided by the total number of employees in the denominator.²³⁶

Petitioners Argue:

- At verification, the Department found that Hyundai had allocated HSA's ISE on the basis of a certain number of permanent staff devoted to sales; however, there were an additional number of non-permanent employees devoted to sales.
- Hyundai now seeks to revise its reporting methodology by including the extra non-permanent sales staff in the numerator for sales and divide that number by a denominator

²³⁴ See Certain Polyester Staple Fiber from the PRC, IDM at Comment 21.

²³⁵ See Letter from Petitioner to DOC, dated October 16, 2015, at Exhibit 7, page 3: P A E Shipping Insurance: Basic Coverage Insurance Rates for International Shipments (outside US & Canada); <http://www.grw-products.com/omnlinerates.htm>.

²³⁶ See Hyundai's Case Brief at 46.

consisting of all of HSA's employees. This proposed and revised methodology has not been verified by the Department and should be rejected in the final determination.²³⁷

Department Position: Based on our findings at the CEP verification of HSA, we have included the additional non-permanent personnel assigned to sales in our calculations for the allocation of indirect selling expenses (ISE). We disagree with Hyundai's proposed new allocation methodology, which is methodologically incorrect and would de facto decrease HSA's ISE despite the allocation of more staff, i.e., more expenses to sales.²³⁸

Specifically, for its allocation of the ISE, HSA segregated the SG&A expenses into direct and indirect expenses. The ISE were then allocated by the ratio of the number of sales personnel to the number of personnel attributed to HSA's total general and administrative expenses. HSA then divided the total allocated indirect selling expense (ISE) amount derived with this ratio by the total sales value to arrive at the ISE ratio applied to the sales. At verification, we requested a list of all the employees with their names and division they work in, and asked company officials to point out all staff involved in sales. Based on that chart, HSA identified an additional number of non-permanent employees working in sales full time during the POI.²³⁹ Because those additional employees are fully assigned to sales during the POI, those personnel have to be included in the allocation of HSA's general and administrative expenses. Therefore, for this final determination, we have included the non-permanent personnel assigned to sales in the allocation ratio of personnel involved in sales to the sum of personnel attributed to HSA's general and administrative expenses, to arrive at the allocated ISE.

Comment 12: Whether the Department's Failure to Deduct Further Manufacturing Resulted in Overstated CEP Profit

Hyundai Argues:

- In the preliminary determination, the Department excluded the variable FURMANU from its CEP profit calculation, which understated expenses and overstated the CEP profit rate. The Department should correct this error in its calculations for the final determination.²⁴⁰

Petitioners Argue:

- This alleged error is irrelevant because the Department should apply total AFA to Hyundai, or, at a minimum, partial AFA to its further manufactured sales.
- In addition, Hyundai's claim does not address the full scope of the ministerial error it alleges, as the FURMANU expenses have not had the CEP profit applied to them, thus understating the total deduction from U.S. price.
- Hyundai's proposed correction only addresses the calculation of the CEP profit percentage, not the application of that percentage to the CEP sales expenses, as reflected in the calculation of the field CEPPROFIT.

²³⁷ See Petitioners' Rebuttal Brief Hyundai at 41.

²³⁸ See Hyundai Final Calculation Memorandum for a more detailed discussion of the Department's calculations.

²³⁹ See HSA CEP Verification Report at 9.

²⁴⁰ See Hyundai's Case Brief at 45.

- Petitioners propose the relevant programming language, were the Department to fix that error.²⁴¹

Department Position: The Department has determined that Hyundai's information and datasets concerning sales of further manufactured products (TWBs, auto parts, skelp, blanks, and sheet) are unusable for the Department's dumping margin calculations for Hyundai and applied AFA to those sales. See Comments 2 to 4, above. Therefore, this issue is moot.

Comment 13: Use of the Average-to-Transaction Method With Zeroing

Hyundai Argues:

- Hyundai disagrees with the Department in its application of the A-to-T method with zeroing, to calculate its weighted-average dumping margin, because Hyundai provided data that can be used to conduct a differential pricing analysis.
- Article 2.4.2 of the WTO Antidumping Agreement ("AD Agreement"), which the United States implemented with section 777A of the Act, compels the conclusion that the Department can apply the average-to transaction method only to those U.S. sales that it finds to have been "targeted."
- If the Department applied the average-to-transaction method to all transactions reported by Hyundai in the final determination, and not just the transactions that displayed differential pricing, it would act inconsistently with the Appellate Body's interpretation of the second sentence of Article 2.4.2.²⁴²
- The Department's policy of zeroing when applying the average-to-transaction method is equally inconsistent with the AD Agreement.
- Even if the Department can employ the A-to-T method to all transactions in an investigation, it may not employ zeroing in conjunction with this comparison method, as the WTO confirmed in U.S. – Softwood Lumber V (Article 21.5.-Canada).²⁴³
- The Appellate Body's rationale for finding that zeroing may not be used under either option described in the first sentence of Article 2.4.2 applies with equal force to the second sentence of this Article.
- Thus, should the Department resort to the average-to-transaction method in the final determination, it would be inconsistent with Article 2.4.2 for the Department to zero non-dumped sales when computing Hyundai's weighted average dumping margin.²⁴⁴

Petitioners Argue:

- Because Hyundai failed to provide reliable data for its further manufactured sales, it is not possible to assess whether those sales contribute to a pattern of prices that differ significantly, and should thus be cumulated with the other sales that pass the Cohen's *d* test. Excluding those sales would reward Hyundai by assuming these sales would not pass the Cohen's *d* test.²⁴⁵

²⁴¹ See Petitioners' Rebuttal Brief Hyundai at 40-41.

²⁴² Hyundai's Case Brief at 47-51.

²⁴³ Id. at 51.

²⁴⁴ Id. at 51-53.

²⁴⁵ See Petitioners' Case Brief Hyundai at 26-29.

- For the reasons and data deficiencies with respect to Hyundai's further manufactured sales identified in the Preliminary Determination, the Department should apply the A-to-T method with zeroing to all of Hyundai's sales. Further, Hyundai's failure to identify its customer codes and consolidated customer codes for its auto parts sales prevents the Department from grouping sales to consolidated purchasers as part of its differential pricing analysis.²⁴⁶
- Hyundai's argument that the Department cannot use zeroing as part of its A-to-T method based on decisions issued by the WTO is irrelevant. These decisions have no bearing because the Federal Circuit made clear that any changes to the Department's practice which have been found to be inconsistent with U.S. obligations before the WTO must take place through the statutory scheme mandated by Congress, and not based on the basis of international decisions.
- There has been no change in U.S. law and no implementation of WTO decisions with respect to the use of the zeroing when using an alternative comparison method to address masked dumping.²⁴⁷

Department Position: The Department agrees with Hyundai, in part, that it has sufficient information for this final determination to use a differential pricing analysis to determine whether the average-to-average method is appropriate.²⁴⁸ As discussed above, for this final determination, the Department has used the A-to-A method to calculate the dumping margins for Hyundai's U.S. sales of CORE coils, and applied either AFA or FA to Hyundai's other U.S. sales. Accordingly, Hyundai's other claims regarding the Department's use of the average-to-transaction method are moot.

Dongkuk:

Comment 14: Whether the Major Input Rule Analysis Should Be Conducted

Petitioners Argue:

- The Department must conduct a major input rule analysis to comply with the statute, the regulations, agency practice, and decisions by the courts.
 - The Statement of Administrative Action accompanying the Uruguay Round Agreements Act is explicit on the need for and purpose of the major input rule analysis. The Department's regulations require the application of the statute, and the Department's practice is to conduct a major input analysis wherever a respondent procured a major input from its affiliate.
 - There are reasonable grounds to believe or suspect that Dongkuk procured a major input (*i.e.*, hot-rolled coil) from its affiliates at prices below the cost of production.
- The Department should use affiliated suppliers' publicly available financial information as facts available for the major input rule analysis.
 - Dongkuk reported its transfer price and market prices but not its affiliates' costs of production. The statute and the Department's own practice require the Department to

²⁴⁶ Id.

²⁴⁷ Id. at 42-44.

²⁴⁸ See section 777A(d)(1) of the Act and 19 CFR 351.414(c)(1).

- rely on the facts available for the affiliates' costs of production.
 - Dongkuk itself initially proposed relying on the affiliates' published financial statements as a proxy for the missing cost of production information. Petitioners disagree with Dongkuk's proposed calculation but agree with the premise that this information best represents those affiliates' costs of production.
- The Department should reject Dongkuk's contentions regarding the major input rule analysis.
 - Dongkuk originally argued for using affiliates' published financial information as an appropriate source for facts available, but its proposed methodology assumes that transfer price exceeds the affiliated costs of production.
 - Using affiliates' published financial information to estimate their cost of production is filling a gap in the record, which is not equivalent to application of AFA as Dongkuk claimed.
 - The published financial information is the best and most accurate information available on the record.
- The Department should not include the purchases of HRC from non-market economies in the calculation of the market price used in the major input analysis.

Dongkuk Argues:

- The statute and the Department's regulations do not require comparisons with the affiliated supplier's COP in cases where COP information is not available.
 - Petitioners selectively omitted a crucial section of the statute that grants the Department the discretion to determine the value of the major input on the basis the affiliated supplier's COP, but there is no requirement for the Department to do so. Further, the statute recognizes that there are instances where use of the affiliated supplier's COP is not appropriate.
 - The Department's regulation contemplates that there are situations in which use of the affiliated supplier's COP is not appropriate by stating that the Department normally will determine the value of a major input purchased from an affiliated person based on the higher of the transfer price, market price, or the affiliate's COP.
- When the affiliated supplier's COP is not available, the Department will consider whether it is reasonable to calculate the suppliers' COP using other information.
 - The Department's consistent practice has been to use only transfer price and the value that is available (either market price or COP) in applying the major input test when either the market price or COP is unavailable.
 - It is not the Department's practice to use any available evidence to replace the actual market prices or the affiliated supplier's COP, regardless of the comparability to the major input at issue or quality of such evidence.
 - In the CTL from Korea, the Department refused to use the financial statement of the respondent's affiliated supplier after finding the information in the financial statement was not comparable to the major input at issue.
- Petitioners propose the use of distorted and unreliable constructed estimates for Dongkuk's affiliated suppliers' HRC COP
 - Regarding one affiliated supplier's financial statement, Petitioners overlook record evidence indicating that crude steel refers to all steel products produced, and demonstrating that the proposed constructed cost of "crude steel" includes the costs of finished steel products.

- Regarding another affiliated supplier's financial statement, Petitioners' calculation based on crude steel without confirmation of the definition has no probative value; the limited data do not include any usable cost of goods sold or cost of manufacturing information that is specific to crude steel; no record evidence to determine what costs are included in the calculation.
- It is entirely reasonable, due to the lack of COP data on the record, for the Department to rely only on a comparison of transfer and market prices when applying the major input test.
- There is no basis to apply adverse facts available to Dongkuk
 - The constructed COP estimated using affiliated suppliers' financial statements is distorted and unreliable. Use of such distorted data would be tantamount to the application of AFA.
 - Dongkuk was not in a position to compel the affiliated suppliers to provide their COP, as it holds a minor share of one supplier and was no longer affiliated with another one while preparing the questionnaire response.
- Petitioners' request that the Department should not include all purchases of HRC from unaffiliated customers in the major input test is contrary to the statute.
 - The statute directs the Department to use the Dongkuk's costs as they are maintained in accordance with Korean generally-accepted accounting principles, unless there has been a demonstration that Dongkuk's costs do not reasonably reflect the costs associated with the production and sales of CORE in Korea.
 - Petitioners have not pointed to any cases in which the Department did not include all purchases of the major input from unaffiliated suppliers, and no evidence that Dongkuk's costs do not reflect the costs for the production and sales of CORE in Korea. Absent such evidence, there is no basis not to include all of the HRC acquired from unaffiliated suppliers without adjustment.

Department's Position: For the final determination, pursuant to section 773(f)(3) of the Act (i.e., the "major input rule")²⁴⁹ and as facts available, we have used information contained in the petition to calculate the COP for hot-rolled coil.²⁵⁰ We compared the calculated COP to the affiliated suppliers' transfer prices and the average market price (i.e., the average purchase price from all unaffiliated suppliers of hot-rolled coil). As the calculated COP based on the Petition information was greater than both the transfer and market prices, we adjusted the reported transfer prices to reflect the affiliated suppliers' estimated COP for the final determination.²⁵¹

On September 21, 2015, Dongkuk responded to the Department's section D questionnaire.²⁵² Dongkuk provided the market price, as well as the transfer price paid to its two affiliated hot-

²⁴⁹ Section 773(f)(3) of the Act states that "If, in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the merchandise, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under paragraph (2)."

²⁵⁰ See the June 3, 2015 Petition at attachment B1, and the Final Cost Calculation Memorandum.

²⁵¹ See the Final Cost Calculation Memorandum.

²⁵² See Dongkuk IQR-D.

rolled coil suppliers,²⁵³ but did not provide its affiliated suppliers' COP, claiming that it does not have access to their COP information.²⁵⁴ Dongkuk further claimed that it was "affiliated with these suppliers based only on a minority equity interest and both companies are competitors of Dongkuk/Union." Dongkuk instead provided the "estimated cost of production for these companies by subtracting the companies' average profit rates, which were calculated based on the same respective financial statements as Petitioners used, from the average purchase price from these companies."²⁵⁵

On October 7, 2015, the Department issued a supplemental D questionnaire, in which it asked Dongkuk again to provide its affiliated suppliers' "cost of producing the hot-rolled coil sold to Dongkuk/Union or to explain why and to what lengths it went to in order to obtain their COP if they could not."²⁵⁶ In its first supplemental Section D response, submitted on October 28, 2015, Dongkuk stated that it requested the COP information from its affiliated suppliers but they refused to respond to its request.²⁵⁷ Furthermore, Dongkuk claimed that it has no means to compel the companies to cooperate.²⁵⁸ On December 7, 2015, Petitioners submitted comments and recommendations for the Department to consider in reaching its preliminary determination regarding the major input analysis. In that submission, Petitioners provided calculations of what they claim should be used as facts available to calculate the affiliated suppliers' COP.

Pursuant to section 773(f)(3) of the Act, we may value major inputs purchased from affiliated parties at the higher of the market value, transfer price, or the affiliated supplier's COP. We will normally determine the value of the major input purchased from an affiliated person based on the higher of: 1) the price paid by the exporter or producer to the affiliated person for the major input; 2) the amount usually reflected in sales of the major input in the market under consideration between unaffiliated parties; and 3) the cost to the affiliated person of producing the major input.²⁵⁹

However, in instances where either a market price or the supplier's COP is not available, the Department has used its discretion in performing the major input analysis. In the Final Results of Redetermination pursuant to Remand, United States Steel Corp. v. United States, Court No. 09-00156 Slip Op. 11-19 (Ct. Int'l Trade Feb. 15, 2011), the Department determined that the respondent could not compel its affiliated suppliers to provide their COP and "decided not to make an adverse inference against Union for not reporting the information." In that Remand, the Department explained that "our practice of not requiring the COP data for an input when the respondent is unable to compel the affiliated is consistent with other cases where the application of the major input was complicated by a low level of affiliation." The Court of International Trade affirmed the Departments remand determination.²⁶⁰

²⁵³ Id. at Exhibit D-6.

²⁵⁴ Id. at 11.

²⁵⁵ Id.

²⁵⁶ See Dongkuk SQR1-D-Oct.7 at 3.

²⁵⁷ See Dongkuk SQR1-D-Oct.28 at 4.

²⁵⁸ Id.

²⁵⁹ See 19 CFR 351.407(b).

²⁶⁰ See United States Steel Corporation, v. United States.

Given the fact that the affiliates in question owned only a small percentage of Dongkuk's shares, we consider Dongkuk's claim that it could not compel its suppliers to provide their COP reasonable.²⁶¹ The facts in the case are similar to those in CTL Plate from Korea,²⁶² in which when there was no COP data on the record and no indication that the affiliated supplier's COP was higher than the transfer or market price, and we performed the major input analysis using the higher of the transfer price or the market price as facts available.²⁶³ In CTL from Korea, we rejected Petitioners proposed company-wide financial statement average cost methodology to calculate the COP of the affiliated suppliers, and we continue to do so in this case for the same reasons. In conducting our analysis of the petition and the initiation stage, we found this amount to be reasonable, and we have no grounds now to question its reliability or relevance.

For the final determination, we have reviewed the record of this proceeding and note that the Petition filed for this case contains detailed COP information for hot-rolled coil.²⁶⁴ Specifically, in the petition, the COP was calculated based on the input factors of production from a surrogate U.S. producer of hot-rolled steel flat products, adjusted for known differences between the Korean and U.S. hot-rolled steel markets during the POI. The input factors of production were valued using publicly available data on costs specific to Korea. As the COP contained in the petition reflects costs specific to the input in question and specific to the Korean market, we consider it a reasonable, non-adverse gap filler for COP in performing the major input analysis. We have thus used the COP amount as facts available for the affiliated suppliers' cost in our major input analysis.²⁶⁵ In conducting our analysis of the petition and the initiation stage, we found this amount to be reasonable, and we have no grounds now to question its reliability or relevance.

We disagree with Petitioners that it would be appropriate to use the financial statements of the affiliated producer, or the affiliated parent's consolidated financial statements, to calculate the affiliated producer's COP for hot-rolled coil. The financial statements and segment information relied on by Petitioners would be inappropriate to use as an estimate of the cost of hot-rolled coil because they are not limited to the production of hot-rolled-rolled coil. Instead, they include an average cost for the many different steel products produced by the company. We disagree with Dongkuk that using the profit rate from these same financial statements relied upon by Petitioners and deducting the profit from the transfer price results in an accurate COP. This approach assumes that the same profit margin applies to all of the many different steel products produced by these suppliers. Therefore, other than the COP calculation of hot-rolled coil contained in the Petition, no reasonable information exists on the record to calculate the COP for the hot-rolled coil purchased from the affiliated producers.

Finally, with regard to the Petitioners' argument that the Department should exclude hot-rolled coil purchased from unaffiliated non-market suppliers in the calculation of the market price used

²⁶¹ See Dongkuk Cost Verification Report at 3.

²⁶² See Cut-To-Length Plate from Korea 2015, IDM at Comment 3.

²⁶³ See, e.g., Cut-To-Length Plate from Korea 2014, 79 FR 54264, 54265, and IDM at Comment 6.

²⁶⁴ See Petition and Attachment B(1), Volume IV-B.

²⁶⁵ See the Final Cost Calculation Memorandum.

in the major input rule analysis, this point is moot. Regardless of whether we include or exclude the non-market economy purchases from the market price calculation, the COP is higher.

Comment 15: Whether Application of AFA Is Warranted With Regard to Home Market Sales and Production Cost of Processed CORE

Petitioners Argue:

- Dongkuk failed to timely report home market sales and production cost of processed CORE.
 - In its responses to initial and supplemental questionnaires, Dongkuk did not report sales of processed CORE that it produced.
 - Dongkuk has impeded the investigation by failing to incorporate the cost of the processing into its reported cost of production for the effected CONNUMs. Dongkuk only reported a VCOM consisting of its acquisition cost for the merchandise in question and then only provided that in a sales database. It never provided the cost in the cost database.
 - Dongkuk provided information that was not verifiable. The Department found at verification that the VCOM did not include G&A or interest expense. Thus, there is no question here that Dongkuk's cost of production database is missing a significant cost associated with processing the merchandise in question and that the cost for the effected CONNUMs is under-stated as a result.
- The application of AFA to Dongkuk's production and sales of processed CORE is warranted.
 - Dongkuk failed to act to the best of its ability in reporting the details of the sales and in reporting the cost. Dongkuk obscured and obfuscated the facts here and misled the Department as to the nature of those sales, the sales process, the actual producer of the coil sold, and the role of the processors. Given Dongkuk's decision to knowingly withhold that critical information, the Department is more than justified in applying AFA.
 - Even if Dongkuk's lack of cooperation here was unintentional, its behavior constitutes a failure to do the maximum it is able to do, which warrants the application of AFA.
 - The Department should use the highest gross unit price of processed CORE as the gross unit price for each such sale, and the highest TOTCOM for any CONNUM in the home market sales database as TOTCOM for the processed CORE to the customer.

Dongkuk Argues:

- All the necessary information for the sales of processed CORE is on the record and was verified.
 - Processed CORE accounts for a very small percentage of total home market sales transactions. The Department verified those sales in detail and reported no indication of any error in reported sales information.
 - Petitioners' complaint of some unreported "cost of processing" is without merit. There is nothing on the record to suggest that Dongkuk incurred any separate "cost of procession" that is not already included in the acquisition cost reported as VCOM. Petitioners misunderstood the structure of the sales transaction, which is back-to-back-to-back, not through a tolling arrangement or by subcontract. Thus, using acquisition cost as VCOM was reasonable. In addition, the record indicates the VCOM is based on the acquisition costs and is inclusive of the processing.

- Petitioners overlooked the cost verification that demonstrated that the Department was able to verify the actual cost of the processing on a CONNUM-specific basis.
- Petitioners' complaint that the VCOM does not include G&A and interest expense can be remedied by applying G&A and financial expense ratios reported and verified to the acquisition cost. Although Dongkuk does not agree such adjustment is appropriate, the Department has all necessary information if it chooses to do so.
- Petitioners' complaint that missing fixed overhead prevents the Department from calculating DIFMER is based on a misunderstanding of the adjustment, as fixed overhead is not relevant to such adjustment.
- The application of AFA is not warranted.
 - Petitioners' complaint of incomplete and belated reporting overlooks the Department's verifications. Petitioner apparently forgets that it commented on those sales before the preliminary determination and verifications. As the Department addressed those comments at the verifications, Petitioners' complaint that meaningful examination was prevented is incorrect.
 - The precedents cited by Petitioners do not support their request to the Department for applying AFA. In those cases, respondents engaged in fraudulent activities to avoid dumping duties.

Department's Position: We have found no basis to apply AFA to the small number of home market sales at issue.

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

Moreover, section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.²⁶⁶

The record of this investigation shows that section 776(a) is not applicable as Dongkuk submitted the relevant sales information three weeks before the preliminary determination. The Department verified the sales and found no discrepancies. As such, the necessary information is available on the record, Dongkuk did not withhold information, Dongkuk did not fail to provide the information in a timely manner, Dongkuk did not significantly impede the proceeding, and we were able to verify the information. There is also no basis to conclude that Dongkuk failed to cooperate by not acting to the best of its ability with respect to this information.

²⁶⁶ See also 19 CFR 351.308(c).

We disagree with Petitioners that Dongkuk's acquisition prices of processed CORE from unaffiliated processors do not reflect the cost associated with those products that were cut by the unaffiliated processors.

During the POI, Dongkuk sold a very small amount of CORE to unaffiliated processors, who specialize in cutting coil into specified sheets, and subsequently repurchased them after this further processing. After the processors cut the CORE, Dongkuk repurchased the cut sheets from the processors and sold them to unaffiliated customers. Dongkuk reported its acquisition cost from the unaffiliated processors as the VCOMH for these sales. We disagree with Petitioners that the VCOMs reported in the sales database for these further processed sales do not reflect the conversion costs of the processors. We analyzed the cost of the underlying CONNUMs that were sold to the processors, the selling price to the processors and the repurchase price from the processors,²⁶⁷ and found that the amount used for VCOM reasonably reflects the TOTCOM of the CONNUM sold to the processors and the value added by the processor (*i.e.*, the repurchase price from the processors less the sales price to the processor). As such, we consider it reasonable to rely on Dongkuk's reported cost methodology for the further processed products. However, we agree with the Petitioners that there should be a fixed component to the reported costs for the further processed products. For the final determination we have determined the fixed cost of manufacturing for the further processed products based on the reported FOH (*i.e.*, the fixed overhead costs) of the most similar CONNUM from the cost database.

Lastly, we agree with the petitioners that the further processed products should include G&A and interest expenses incurred by Dongkuk. We therefore added G&A and interest expenses to the calculated total COP for the further processed products for the final determination.

Comment 16: Whether to Recalculate Home Market Credit Expense

Petitioners Argue:

- Dongkuk erroneously calculated its home market short-term interest rates for the pre-merger and post-merger portions of the POI by dividing its daily interest expenses by monthly loan balances and then annualizing the interest rates twice in succession. This methodology inflated its home market short-term interest rate and resulted in an improperly increased home market credit expense.
- Dongkuk's home market short-term interest rate methodology is inconsistent with its U.S. short-term interest rate methodology.

Dongkuk Argues:

- Petitioners did not calculate an annualized rate for the pre-merger period and failed to annualize the quarterly rate in January to March 2015, *i.e.*, the post-merger period. Moreover, Petitioner's calculation does not correctly account for the split periods due to the merger.

²⁶⁷ See the Cost Verification Report at Exhibit 2.

Department's Position: We recalculated Dongkuk's home market credit expense for the final determination by using the same methodology Dongkuk used to calculate its U.S. short-term interest rate. Specifically, we divided total interest expenses by average monthly ending balance of short-term borrowings to derive a weighted average short-term interest rate, from which to calculate home market credit expense.²⁶⁸

We have not used either of the calculation methodologies advocated by Petitioners or Dongkuk because neither complies with the Department's questionnaire. Specifically, neither complies with the Department's instructions to calculate an "average short-term interest rate" for the POI,²⁶⁹ as each methodology instead calculated a weighted-average of annualized of two sub-periods of average short-term interest rates.

Comment 17: Whether to Adjust Inland Freight in Korea for U.S. Sales

Petitioners Argue:

- Dongkuk's control over its affiliated sole freight provider is the reason why its contract rate for export shipments is lower than the rate for its domestic shipments.
 - Dongkuk did not substantiate its claim that it routes the majority of its subject merchandise exports through a few ports. Even if that claim is true, a portion of its export sales was routed through inland locations before arriving at a port.
 - Dongkuk's claim that there is an insignificant difference between rates does not fully address the divergence between the arm's length and non-arm's length pricing.
- The reported rate of Dongkuk's DINLFTPU is, on average, lower than not only the contract rate for export shipments, but also the average reported rate of home market sales.
 - The alternative pricing agreements suggested by Dongkuk were substantiated for only two sales observations and thus do not explain the overall pattern of non-arm's length freight expenses across its U.S. sales nor does it explain the very real and significant difference between the established contract rates and reported rate of U.S. sales.
 - The reported rates for U.S. sales are completely unreliable because they do not represent arm's length prices for freight services. As Dongkuk can control the execution or termination of the contract, it is able to force prices based on type of sales.
 - Dongkuk did not substantiate its claim that export shipments have shorter distance, higher delivery efficiencies, larger quantities, and potential business on returning trip. . To the contrary, additional business is more likely to be obtained on return trips for domestic shipments than for export shipments.
- The situation warrants the application of the statute's transactions disregarded rule. The Department should reject the reported rate for DINLFTPU and apply facts available by using either the reported rate of home market sales or contract rate for export shipment.

Dongkuk Argues:

- The difference between contract rates for export and domestic shipments that Petitioners calculated is based on a port that is not used to export subject merchandise.

²⁶⁸ See Dongkuk Final Calculation Memorandum.

²⁶⁹ See Department's July 27, 2015 Letter.

- Nearly all of its subject merchandise is exported through a few ports. The difference in freight charges for these ports is within the two-percent threshold of the Department's arm's length test.
- Even if the Petitioners' argument was on point, such difference would meet the Department's definition of "insignificant adjustment."
- Petitioners have no record evidence to support the claim that Dongkuk's export sales were routed through inland locations before arriving at a port.
- The lower contract rate for export shipment can be explained by the shorter distance, higher delivery efficiencies, and larger quantities of export shipments and the possibility of gaining revenue on return trip.
- Prior to September 2014, the freight contract did not include a particular schedule for export shipment.
- Payment arrangement is the reason for the difference between reported rate of U.S. sales and the contract rate for export shipment. The freight contracts establish the rate but do not specify the entity that pays for the services.

Department's Position: We have found no basis to make an adjustment to Dongkuk's DINLFTPU for the final determination.

Under section 773(f)(2) of the Act (*i.e.*, the "transactions-disregarded rule"), the Department may disregard a respondent's transaction with an affiliate where the Department determines that the transaction was made not on an arm's length basis. The record shows that Dongkuk contracted inland freight services for export shipments only from an affiliated party who does not provide similar inland freight services to an unaffiliated customer. Our analysis indicates that any difference between the reported per-metric-ton export (*i.e.*, DINLFTPU) and domestic rates is likely caused by smaller quantities of domestic shipments. Specifically, the contract rate for export shipments changes only by destination, whereas the contract rate for domestic shipments changes based upon destination and quantity shipped.²⁷⁰

Our analysis of twelve sales supported Dongkuk's claim that it exported most of its subject merchandise through a few ports,²⁷¹ and indicates that the difference between reported rate and contract rate is likely caused by the payment arrangement that is specific to a port that is most frequently used.²⁷² Finally, Petitioners' argument that export sales were routed through inland locations to other ports is not supported by the record. Since we are not making an adjustment, Dongkuk's argument that Department need not make an "insignificant adjustment" is moot.

²⁷⁰ See Dongkuk's October 22, 2015 and November 16, 2015 responses at Appendices SA-5 and SB-10.

²⁷¹ See Dongkuk's February 5, 2016 sales verification exhibits at SV#15-1 through SV#15-7 and March 3, 2016 CEP verification exhibits at CEP VE 14-1 through CEP VE 14-8; *see also*, Dongkuk's September 21, 2015 response at Appendix C-6; *see also*, Dongkuk's November 25, 2015 response at Appendix 2SA-9.

²⁷² See Dongkuk's November 25, 2015 response at 7 and Appendix 2SA-9; *see also* Dongkuk's U.S. sales database.

Comment 18 Whether to Adjust Inland Freight in Korea for Home Market Sales

Petitioners Argue:

- Dongkuk paid above-market rates to its affiliated freight provider. Consistent with Welded Line Pipe from Korea, the Department should adjust downward the reported inland freight in Korea for home market sales to ensure this expense reflects an arm's-length transaction.

Dongkuk Argues:

- The affiliated provider's rates for Dongkuk and unaffiliated parties are not comparable because the size of shipment, number of destinations, requirements, payment terms, and goods covered are different. In addition, in welded line pipe, the information relied upon to make an adjustment reflected rates from affiliated and unaffiliated freight vendors for identical goods.
- Petitioners used a wrong origin shipping point in the comparison. Had they used the correct origin shipping point, the analysis would demonstrate that Dongkuk's rates were arm's-length rate.

Department's Position: We have found no basis to adjust Dongkuk's reported domestic inland freight for home market sales.

Under section 773(f)(2) of the Act, we may disregard a respondent's transaction with an affiliate where the Department determines that the transaction was not made on an arm's length basis. The record shows that Dongkuk purchased inland freight services for domestic shipments only from an affiliated party who provided inland freight services to an unaffiliated customer. However, the type of inland services the affiliate provides to Dongkuk is different from the truckload delivery service it offers to the unaffiliated party.

Our analysis of this issue indicates that the per-metric-ton freight rates charged by the affiliated provider to Dongkuk and the unaffiliated party are not comparable. Specifically, the affiliated provider's contract with Dongkuk provides per-metric-ton rates that vary depending on the total size of the shipment. The contract shows that the per-metric-ton rate is higher when the total size of the shipment is smaller. In contrast, the affiliated provider's contract with an unaffiliated party has one per-metric-ton rate based on a truckload. Thus, the per-metric-ton rate is lower. The differences in total quantity are the reason for the differences in per-metric-ton rates identified in the petitioners' analysis.

Petitioners' reliance on the antidumping duty investigation of welded line pipe is misplaced. In that case, the Department compared the freight services provided by an affiliate to the provider's price for the similar freight services and determined that they were not provided at arm's length. As a result, we adjusted downward the reported inland freight in Korea for home market sales and U.S. sales.²⁷³ In this case, while the same affiliate provided freight services for both home market sales and U.S. sales, Petitioners argued that the Department should make upward

²⁷³ See Welded Line Pipe from Korea, IDM at Comment 18.

adjustment to freight for U.S. sales (DINLFTPU) in the above comment, and downward adjustment to freight for home market sales (INLFTCH and INLFTWH).

Comment 19: Whether Application of AFA Is Warranted With Regard to U.S. Warranty Expenses

Petitioners Argue:

- The Department was unable to assess whether Dongkuk's reported POI warranty expense is consistent with historical experience because Dongkuk reported the former based on quantity and the latter based on value.
- At the CEP verification, the team determined that Dongkuk had the appropriate data to calculate Dongkuk's historical warranty expenses on a quantity basis.
- AFA is warranted as Dongkuk refused to timely report such information. If the Department does not apply AFA, it must follow its normal practice and assign a warranty expense to Dongkuk's U.S. sales based on its quantity-based historical experience.

Dongkuk Argues:

- Petitioners' argument is predicated on a distorted reading of the instructions in the Department's initial questionnaire, *i.e.*, "calculated a cost per unit for each year." The other respondent in this case calculated historical warranty experience by value.
- What Petitioners have characterized as a "textbook situation for the application of AFA" follows the calculation methodology explained in the Department's own Antidumping Manual.
- Historical warranty expense rate calculated on a quantity basis would not provide a meaningful basis for assessing the company's historical expense, given the wide range of per-unit prices, which according to basic commercial logic would result in a wide range of warranty cost. The three-year rate by value schedule demonstrates that the historic expenses remain consistently at a low level, and there was no deviation from this historic level during the POI.

Department's Position: We have used warranty expense derived from a three-year average based on value for the final determination.

While we were unable to assess whether the POI expense was consistent with historical experience because they were reported using different units of measure, we were able to calculate a POI expense based on the same unit of measure as historical experience using information timely reported in U.S. sales database. As the necessary information is available on the record and verified, we found no basis to apply facts available. Moreover, using historical experience calculated on a value basis is consistent with the Department's practice.²⁷⁴

²⁷⁴ See Honey from Argentina, IDM at 4; see also, CORE from Korea 2008 at 23; see also, Steel Nails from Malaysia, at 24.

Comment 20: Whether the Application of AFA Is Warranted for Dongkuk's Failure to Report Home Market Sales by an Affiliate

Petitioners Argue:

- Dongkuk is affiliated with a home market customer based on close supplier relationship. Dongkuk can exercise control over the customer as the customer's promotion materials demonstrated that the customer has been reliant on Dongkuk as a supplier for long time. Further, Dongkuk's and the customer's operations are intertwined as two companies provided services to each other and appear to do business with affiliates in the home market and overseas. All of factors taken together show that Dongkuk is in a unique position to control the customer.
- AFA is warranted as Dongkuk withheld affiliation information, failed to provide the affiliation information in a timely manner, and significantly impeded the proceeding. If Dongkuk had reported the affiliation, its total sales to affiliates would be more than five percent of home market sales. In such circumstances, normal value for these sales would be calculated based on the downstream sales of the affiliated customer.

Dongkuk Argues:

- Petitioners' argument rests on the premise that Dongkuk must be affiliated to this customer through a close supplier relationship because Dongkuk has sold to it for a long time. However, the facts cited by Petitioners are not sufficient indicia of legal or operational control over the customer. Thus, Petitioners appears to pin their argument on the erroneous claim that Dongkuk is operationally able to control the customer.
- Without citing any affirmative evidence of an exclusive relationship, Petitioners have not pointed to any evidence that the customer cannot obtain CORE from any other producer of CORE.
- By citing to the customer's business activity with another company, Petitioners have undermined their claim that the customer deals exclusively with Dongkuk for CORE.
- Petitioners offered no explanation on how the oversee operation demonstrates control by Dongkuk over the customer, and fabricated the claim of dependence. There is no evidence that Dongkuk is the customer the only source to operate in another country.
- Petitioners' intended point for noting the customer's importance to Dongkuk does not support its assertion that Dongkuk controls the customer. Dongkuk has demonstrated that its sales to the customer account a very small portion of total POI sales.
- The services that the two companies provided to each other are insignificant, e.g., less than one percent of total value.
- Petitioners neglects to acknowledge that the Department applies a three-step process before finding the existence of operation control. There is no evidence that Dongkuk has exercised restraint or direction over the customer and no evidence that Dongkuk has affected the customer's decisions concerning its pricing of CORE in the home market.

Department's Position: We found no basis to determine that Dongkuk is affiliated with the home market customer at issue.

Section 771(33)(G) of the Act provides for a finding of affiliation of persons based on control, "if the person is legally or operationally in a position to exercise restraint or direction over the

other person.” Furthermore, under 19 CFR 351.102(b)(3), the Department will not find affiliation on the basis of a close supplier relationship, among other factors, “unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.” We typically analyze, as a threshold matter, whether the buyer or seller has in fact become reliant on the other, and analyze whether one of the parties is in a position to exercise restraint or direction over the other only after that threshold is met.²⁷⁵ Here, Dongkuk reported that there was no supply agreement between it and the customer, and that all sales were negotiated on a transaction-by-transaction basis.²⁷⁶ Furthermore, Petitioners has not pointed to any limitation that prohibits the customer from purchasing CORE from any other producer. The lone fact that the customer purchased most of its CORE is an insufficient basis to find that Dongkuk and the customer rely on each other, much less, whether one is in a position to exercise restraint or direction over the other. Even if a supplier sells 100 percent of its merchandise to a customer, if it is free to sell to other customers and there is no record evidence of restraint or direction, affiliation based on a close supplier relationship does not exist.²⁷⁷ Accordingly, we determine that Dongkuk and the customer were not affiliated during the period of investigation.

Petitioners’ argument regarding application of AFA on this issue is incorrect. As Dongkuk and the customer are not affiliated, there is no basis to require that Dongkuk submit the downstream sale of the customer at issue. Therefore, the use of facts available with adverse inferences is not warranted in this situation.

Comment 21: Application of the Average-to-Transaction Method to all U.S. Sales

Petitioners Argue:

- The Department should apply the average-to-transaction method to all of Dongkuk’s U.S. sales to calculate its weighted-average dumping margin for the following reasons:
 - The destination zip code for many sales reflected in the supporting documentation differ from the ones reported in U.S. sales data. This indicates that the reported delivery locations are incorrect for at least some U.S. sales and may be wrong with respect to other U.S. sales as well. Including sales with incorrect delivery locations in the Cohen’s *d* test would prevent the Department from fully analyzing whether Dongkuk’s U.S. sales display a pattern of prices that differ significantly among regions.
 - The Department limited application of the average-to-transaction method to only those sales which pass the Cohen’s *d* test violates the statutory requirement that the alternative comparison method be applied to all U.S. sales in order to unmask dumping.
 - The Department should not include the value of U.S. sales that were not subjected to the Cohen’s *d* test in the denominator of the ratio used to measure the extent of the prices that differ significantly by Dongkuk’s U.S. pricing behavior.

²⁷⁵ See GOES from the Czech Republic, IDM at 7-8.

²⁷⁶ See The Department’s April 8, 2016 sales verification reports at 5.

²⁷⁷ See OCTG Korea, IDM at 79; see also, GOES from the Czech Republic, IDM at 8 (citing TIJID, Inc. v. United States, 29 C.I.T. 307, 320 (2005)).

Dongkuk Argues:

- Petitioners overlook the fact that Dongkuk also reported destinations by state for which there was no evidence suggesting any instances of an error. A simple change from zip code to state in the Department's analysis will address Petitioners' complaint. The zip codes reported are from customers' shipping instructions stored in the accounting system.
- The Department's limited application of the A-to-T method complied with its practice and understanding of the law.
- The exclusion of sales that were not subjected to the Cohen's *d* test in the denominator of the ratio in question would distort the results of the Department's differential pricing analysis.

Department's Position: The Department disagrees with the Petitioners. Petitioners' arguments for the Department to reconsider its limited application of the average-to-transaction method as an alternative to the standard average-to-transaction method are unavailing.

First, Petitioners point to the fact that there are several instances in which the zip code reported in the DESTU field differs from that in Dongkuk's documentation for certain U.S. sales. However, there is no evidence that the state where the subject merchandise was delivered was erroneously reported. Since the regions, as established by the U.S. Census Bureau, are defined by either zip code or state, each region encompasses many states and a multitude of zip codes. Because each region is defined by a set list of either zip codes or states, the fact that none of Dongkuk's reported state codes (STATEU) have been identified as being inconsistent demonstrates that, even where some of Dongkuk's zip codes may have been reported inconsistently, the resulting identification of regions in the Department's Cohen's *d* test is unaffected.

Second, Petitioners assert that the statute requires the Department to apply the alternative average-to-transaction method to all U.S. sales in order to unmask "targeted" dumping. The Department disagrees. The statute is silent on the application of the average-to-transaction method:

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...²⁷⁸

Accordingly, given the statutory silence, the Department has the discretion to determine whether and how it *may* apply the average-to-transaction method as an alternative to one of the standard comparison methodologies provided for under section 777A(d)(1)(A) of the Act. The court has found that the Department tiered approach based on the three bands created by the 33 percent and 66 percent thresholds is reasonable.²⁷⁹ Petitioners have offered no persuasive reason why we should deviate from this approach here.

²⁷⁸ Section 777A(d)(1)(B) of the Act.

²⁷⁹ See Tri Union Frozen Products v. United States, 2016 Ct. Intl. Trade LEXIS 37; Slip. Op. 16-33.

Lastly, Petitioners argue that the Department should not include the value of U.S. sales in the ratio test (i.e., in the denominator of the ratio) where the Department did not test whether the prices of these sales differed significantly from the prices of comparable merchandise. In other words, the Department did not calculate a Cohen's *d* coefficient for these sales.²⁷⁹ The Department disagrees. The purpose of the differential pricing analysis is to examine whether the average-to-average method is appropriate where this comparison methodology is applied to all U.S. sales. Therefore, the consideration of whether there exists a pattern of prices that differ significantly must also involve all U.S. sales to which the average-to-average method is applied to calculate a respondent's weighted-average dumping margin. Accordingly, the Department identifies affirmative evidence of prices that differ significantly and then measures the extent of these price differences, as measured by sales value, relative to all U.S. sales, the same sales to which the average-to-average method is normally applied. Thus, Petitioners' recommendation either to limit the U.S. sales where the Department looks for prices that differ significantly or to ignore U.S. sales where it did not find prices that differ significantly would not represent a complete examination of the respondent's pricing behavior in the U.S. market.

X. 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

24 MAY 2016

(Date)

²⁷⁹ See Preliminary Decision Memorandum at 9.

Table of Authorities

Department Memoranda and Interested Party Submissions

Preliminary Determination Margin Calculation for Hyundai Steel Company dated December 21, 2015 (**Hyundai Preliminary Margin Calculation Memorandum**)

Final Determination Margin Calculation for Hyundai Steel Company, dated May 24, 2016 (**Hyundai Final Calculation Memorandum**)

Memorandum to File from Elfi Blum: Verification of the Sales Response of Hyundai Steel Company in the Antidumping Investigation of Certain Corrosion-Resistant Steel Products (CORE) from the Republic of Korea (Korea), dated April 5, 2016 (**Hyundai Verification Report**)

Memorandum to File from Elfi Blum: Verification of the Sales Response of Hyundai Steel America in the Antidumping Investigation of Certain Corrosion-Resistant Steel Products (CORE) from the Republic of Korea (Korea), dated April 14, 2016 (**HSA CEP Verification Report**)

See Memorandum to The File, “Monthly Shipment Quantity and Value Analysis for Critical Circumstances Final Determination,” May 24, 2016 (**Final Critical Circumstance Memorandum**).

Memoranda to File from Elfi Blum, Ex Parte Meeting with Hyundai, dated August 21, 2015; September 14, 2015 (teleconference); October 27, 2015; and November 27, 2015 (**Hyundai Ex Parte meetings August 21, September 14, October 27, and November 27**).

Letter from Hyundai to DOC: “Corrosion-Resistant Steel Products from Korea: Notice of Difficulty in Responding to Questionnaire and Request for Alternate Calculation Method,” dated August 17, 2015 (Alternative Calculation Method Request), dated August 17, 2015 (**Hyundai Exclusion Request August 17**)

Letter from DOC to Hyundai: “Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products (CORE) from the Republic of Korea (Korea): Extension to respond to Sections B through D of the Initial Questionnaire,” dated September 11, 2015 (**Initial Request for Information to Substantiate Exclusions Request September 11**).

Letter from DOC to Hyundai: “Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products (CORE) from the Republic of Korea (Korea): Additional Guidance on information required to substantiate Hyundai Steel Corporation’s Request for Alternative Calculation Method,” dated September 16, 2015 (**DOC Response to Additional Guidance Request to Substantiate September 16**).

Certain Corrosion-Resistant Steel Products From Korea: Response to the Department's Request for Additional Information, dated September 25, 2015 (**Hyundai Response to Department's Request for Additional Information September 25**)

Letter from Petitioners to DOC: Certain Corrosion-Resistant Steel Products from the Republic of Korea, dated October 2, 2015 (**Petitioners Comment Re Exclusion Threshold**)

Antidumping Duty Investigation of Certain Corrosion-Resistant Steel Products (CORE) from the Republic of Korea (Korea): Hyundai Steel Company's Exclusion Request dated October 15, 2015 (**DOC Letter to Hyundai Re Exclusion Request October 15**)

Department's initial questionnaire, dated July 27, 2015 (**DOC initial questionnaire**)

Hyundai's initial questionnaire response to section E, dated November 2, 2015 (**Hyundai IRE-E**)

Department's second supplemental questionnaire to sections B and C, and first supplemental questionnaire to section E, dated November 19, 2015 (**DOC 2nd supplemental sections BSC and 1st supplemental section E**)

Department's third supplemental questionnaire to section E, dated February 5, 2016 (**DOC 3rd supplemental section E**)

Hyundai's second supplemental response to sections B and C, dated December 2, 2015 (**Hyundai SQR2-B&C**)

Letter from Hyundai to the Department: Certain Corrosion-Resistant Steel Products from Korea: Pre-Preliminary Comments, dated December 11, 2015 (**Hyundai Pre-Preliminary Comments**)

Letter from the Department to Hyundai: Antidumping Duty Less Than Fair Value Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea, dated December 15, 2015 DOC (**DOC 2nd supplemental section E**).

Hyundai's initial questionnaire response to section A, Q&V, dated August 13, 2015 (**Hyundai IRE-A, Q&V**)

Hyundai's initial questionnaire response to section A, dated September 8, 2015 (**Hyundai IRE-A**)

Hyundai's second supplemental questionnaire response to section E (December 29, 2015) (**Hyundai SQR2-E-cost**)

Hyundai's second supplemental response to section E-sales, dated February 10, 2016 (**Hyundai SQR2-E-sales**)

Hyundai's Extension Request to supplemental questionnaire, section A, dated October 1, 2015 (**Hyundai Extension Request October 1, 2015**)

Hyundai's Extension Request to supplemental questionnaire, section A, dated October 7, 2015 (**Hyundai Extension Request October 7, 2015**)

Hyundai's Extension Request to first supplemental questionnaire, sections B and C, dated November 23, 2015 (**Hyundai Extension Request November 23, 2015**)

Letter from Hyundai to the Department: Certain Corrosion-Resistant Steel Products From Korea: Pre-Preliminary Comments, dated December 11, 2015 (**Hyundai Pre-Prelim Comments December 11**).

Petitioners' Case Brief, dated April 22, 2016 (**Petitioners' Case Brief Hyundai**)

Hyundai Steel Company Case Brief, dated April 22, 2016 (**Hyundai Case Brief**)

POSCO's Case Brief, dated April 22, 2016 (**POSCO's Case Brief**)

Petitioners' Rebuttal Brief Hyundai, dated April 28, 2016 (**Petitioners' Rebuttal Brief Hyundai**)

Petitioners' Rebuttal Brief POSCO, dated April 28, 2016 (**Petitioners' Rebuttal Brief POSCO**)

Hyundai's Rebuttal Brief, dated April 28, 2016 (**Hyundai's Rebuttal Brief**)

Letter from the Department to Hyundai: Cancellation of Hyundai Steel Company's Constructed Export Price (CEP) Verification of Further Manufactured Sales, dated March 8, 2016 (**DOC Letter Cancelling Verification of Further Manufactured Sales March 8**)

June 3, 2015 Petition on Corrosion-Resistant Steel Products-Korea (**The Petition**)

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