A-580-809
Administrative Review
POR 11/01/13-10/31/14
Public Document
Office I: Team

June 10, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: 2013-2014

I. SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the administrative review of the antidumping duty (AD) order on circular welded non-alloy steel pipe (CWP or subject merchandise) from the Republic of Korea (Korea). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments and rebuttal comments from parties.

II. BACKGROUND

On December 8, 2015, the Department published the *Preliminary Results* of the administrative review of the AD order on CWP from Korea, covering the period of review (POR) November 1, 2013, through October 31, 2014.[1] This administrative review covers three producers/exporters of the subject merchandise to the United States: Husteel Co., Ltd. (Husteel), Hyundai HYSCO (HYSCO)[2], and SeAH Steel Corporation (SeAH).

[1] *See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 76267 (December 8, 2015) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

[2] In the context of an ongoing changed circumstances review, the Department preliminarily determined that Hyundai Steel is the successor-in-interest to Hyundai HYSCO. *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 81 FR 29840 (May 13, 2016) (CCR Preliminary results). However, pending the final results in the changed circumstances review, the final results of this administrative review will apply to Hyundai HYSCO.

Following the *Preliminary Results*, the Department issued a supplemental questionnaire to SeAH Steel Corporation (SeAH)[3] and received a timely response.[4] On January 20, 2016, the Department extended the briefing schedule.[5] On January 27, 2016, the Department exercised its discretion to toll all administrative deadlines due to a closure of the Federal Government.[6] On April 5, 2016, the Department extended the deadline of the final results to June 10, 2016.[7] All parties submitted case briefs[8] and HYSCO, SeAH, and Allied Tube & Conduit and JMC Steel Group (the petitioners) submitted rebuttal briefs.[9]

CHANGES SINCE THE *PRELIMINARY RESULTS*

As a result of our analysis, we have made certain changes for SeAH since the *Preliminary Results*. Specifically, SeAH has identified certain home market sales as consignment sales.[10] According to the Department's practice and as reported by SeAH, we have used the date the customer withdrew the merchandise from consignment inventory as the appropriate date of sale for these sales.[11] For all remaining sales, we continue to follow our practice as described in the *Preliminary Results*. Additionally, we have recalculated inventory carrying costs for direct shipment CEP sales based on the inventory period from factory production to shipment to the U.S. customer.[12] Finally, in the comparison market program for HYSCO, we have revised the

[3] *See* Letter to SeAH, "Antidumping Duty Administrative Review of Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Supplemental Questionnaire" (December 18, 2015) (SeAH SQ2).
[4] *See* Letter to the Department, "Administrative Review of the Antidumping Order on Circular Welded Non-Alloy Steel Pipe from Korea for the 2013-14 Review Period – Response to December 18 Supplemental Questionnaire" (December 28, 2015)(SeAH SQR2).
[5] *See* Memorandum to the File, "Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Extension of the Briefing Schedule" (January 4, 2016), and Memorandum to the File, "Antidumping Duty Administrative Review: Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea" (January 20, 2016).
[6] *See* Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas" (January 27, 2016).
[7] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Extension of Time Limit for Final Results of Antidumping Administrative Review" (April 5, 2016).
[8] *See* Letter from the petitioners, "Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Case Brief" (February 3, 2016) (Petitioners CB); *see* Letter from HYSCO, "Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Case Brief" (February 3, 2016)(HYSCO CB); *see* Letter from SeAH, "Administrative Review of the Antidumping Order on Circular Welded Non-Alloy Steel Pipe from Korea for the 2013-14 Review Period- Case Brief" (February 3, 2016)(SeAH CB); *see* Letter from Husteel, "Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, Case No. A-580-809: Case Brief" (February 3, 2016)(Husteel CB).
[9] *See* Letter from the petitioners, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Rebuttal Brief" (February 12, 2014)(Petitioner RB); *see* Letter from HYSCO, "Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Rebuttal Brief" (February 12, 2016)(HYSCO RB); *see* Letter from SeAH, "Administrative Review of the Antidumping Order on Circular Welded Non-Alloy Steel Pipe from Korea for the 2013-14 Review Period – Rebuttal Brief" (February 12, 2016)(SeAH RB).
[10] *See* SeAH SQ2.
[11] *See, e.g., Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 33482 (June 12, 2015), and accompanying Issues and Decisions Memorandum at Comment 1.
[12] *See infra* Comment 7 and Memorandum to the File, from Lana Nigro, International Trade Analyst, "Preliminary Results Calculation Memordandum for SeAH Steel Corporation (SeAH)," (SeAH's Final Determination Calculation Memorandum), dated concurrently with this decision memorandum.

end date of the home market sales in order to include all POR home market sales in our analysis.[13]

III. LIST OF COMMENTS

Comment 1: Whether the *Cohen's d* Test Measures "Targeted" or Masked Dumping
Comment 2: Whether the Ratio Test is Arbitrary
Comment 3: Whether Consideration of an Alternative Comparison Method is Permitted in Administrative Reviews
Comment 4: Whether the Mixed Methodology Leads to Zeroing
Comment 5: The Appropriate Universe of HYSCO's Home Market Sales
Comment 6: Whether Certain HYSCO Sales Are Outside the Ordinary Course of Trade
Comment 7: SeAH's Reported Credit Expense for Back-to-Back U.S. Sales
Comment 8: Whether to use SeAH's Reported Nominal Outside Diameter
Comment 9: Husteel's Cost Reallocation
Comment 10: HYSCO's Cost Reallocation
Comment 11: SeAH's Cost Reallocation
Comment 12: Whether to Assign HYSCO's Cash Deposit Rate to Hyundai Steel

IV. SCOPE OF ORDER

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

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of the order except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit.[14]

[13] *See* Memorandum to the File, from Joseph Shuler, International Trade Analyst, "Preliminary Results Calculation Memordandum for Hyundai HYSCO (HYSCO)," (HYSCO's Final Determination Calculation Memorandum) at page 2.

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

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

V. DISCUSSION OF THE ISSUES

Comment 1: Whether the *Cohen's d* Test Measures "Targeted" or Masked Dumping

Husteel

Husteel argues that the *Cohen's d* test is an inappropriate statistical test to use in the differential pricing analysis.[15] Husteel claims that the *Cohen's d* test does not find "targeted dumping" as described in the statute and legislative history, does not distinguish between positive and negative deviations, and does not measure causal links or statistical significance. Husteel also claims that the *Cohen's d* test cannot differentiate between market driven price fluctuations and actual "targeted dumping."

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

Husteel further argues that the *Cohen's d* test does not distinguish between positive and negative deviations (*i.e.*, lower-priced U.S. sales and higher-priced U.S. sales). Husteel claims that the *Cohen's d* test treats prices of the test group that are high in the same manner as those that are low, and therefore fails to distinguish between sales prices that are above and sales prices that are below the sales prices in the comparison group. For these reasons, Husteel also argues that if the Department continues to apply the differential pricing analysis, it should consider only the low-priced U.S. sales.

Husteel also argues that the *Cohen's d* test is an inappropriate "statistical test" because it does not measure causal links or statistical significance, and cannot differentiate between market driven price fluctuations and actual "targeted dumping." Husteel argues that the *Cohen's d* test only measures the extent of the difference between the mean of a test group and the mean of a comparison group. Husteel further argues that the *Cohen's d* test does not address "relative magnitude," which allows sales with tiny price differences to have "passing" *Cohen's d* values. Also, Husteel argues that market factors, such as differences in producers' costs or differences in material costs, and "targeted dumping" cannot be distinguished by the *Cohen's d* test because a

[15] *See* Husteel CB at 3-5.

"strong positive result" can occur under circumstances where variations in price are insignificant to the market but exceed the standard deviation between the two sets of values.

The Petitioners

The petitioners dispute Husteel's argument, and state that the U.S. Court of International Trade (CIT) recently affirmed the Department's differential pricing analysis in *Apex*.[16] The petitioners also reject Husteel's arguments that the Department's differential pricing analysis is a test for identifying "targeted dumping." Referring again to *Apex*, the petitioners note that the CIT confirmed the propriety of using the Department's differential pricing analysis to consider all sales to uncover significant differences in sale prices and to assess whether those differences are significant.[17] The petitioners further argue that neither the statute nor the differential pricing analysis has any requirement concerning "targeting dumping."[18] The petitioners also note that Husteel relies on an earlier CIT decision, which remanded for additional explanation the Department's meaningful difference assessment, and that the CIT in *Apex* found the Department's explanation for why the A-A method cannot account for the pattern of prices that differ significantly to be adequate.

Department's Position

We disagree with Husteel and continue to find that the differential pricing analysis, and specifically the Cohen's *d* test, reasonably fills a statutory gap to determine whether the A-A method is appropriate[19] or whether the A-T method may be considered as an alternative comparison method. Section 777A(d)(1)(B) of the Act provides two requirements for less-than-fair-value investigations which must be met in order for the Department to consider the application of the A-T method as an alternative comparison method – (1) establishing a pattern of prices that differ significantly among purchasers, regions, or time periods, and (2) explaining why the A-to-A and T-to-T methods cannot account for such differences. Neither the statute, the regulations, nor the Statement of Administrative Action (SAA) provide further guidance on how to address these two statutory requirements. Thus, how to fulfill these requirements has been left to the Department's discretion.[20]

The use of the A-A method as a standard comparison method and the A-T method as an alternative comparison method stems from the enactment of the Uruguay Round Agreements Act (URAA) in the context of less-than-fair-value investigations. This framework was extended to administrative reviews with the *Final Modification for Reviews*.[21] In discussing the change enacted with the URAA, the SAA states:

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[16] *See* Petitioner RB at 8-12. *See Apex Frozen Foods Private Ltd. v. United States*, No. 14-00226, Slip Op. 16-9(CIT 2016)(*Apex*)
[17] *See* Petitioner RB at 9.
[18] *Id*. at 10.
[19] *See* 19 CFR 351.414(c)(1).
[20] *See Apex* at 13, 16-18.
[21] *Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

> Although current U.S. law permits the use of averages on both sides of the dumping equation {*i.e.*, for normal value and U.S. price}, Commerce's preferred practice has been to compare an average normal value to individual export prices in investigations and reviews. In part, the reluctance to use an average-to-average methodology has been based on a concern that such a methodology could conceal "targeted dumping." In such situations, an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions.[22]

The SAA further recognizes that the statute:

> provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an average-to-average or transaction-to-transaction methodology cannot account for a pattern of prices that differ significantly among purchasers, regions, or time periods, *i.e*., where targeted dumping may be occurring.[23]

The SAA's reference to where "targeted dumping" may be occurring reflects the concern regarding the use of the A-A method and the possible concealment of "targeted dumping."[24] Thus, the SAA recognizes that targeted dumping may be occurring where there is a pattern of prices that differ significantly among purchasers, regions, or time periods; however, it neither limits the definition of "targeted dumping" to those sales which comprise a pattern of prices that differ significantly nor limits the application of the alternative A-T method to such sales. In our view, the purpose of section 777A(d)(1)(B) of the Act is to evaluate whether the A-A method (or the T-T method) is the appropriate tool to measure whether, and if so to what extent, a given respondent is dumping the merchandise at issue.[25] While targeting may be occurring with respect to such sales, identifying "targeted dumping" is neither a requirement nor a precondition for a determination that use of the A-T method is warranted.

As noted, we use the A-A method unless we determine that another method is appropriate.[26] The purpose of considering the application of an alternative comparison method is to determine whether the application of the A-A method is appropriate pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act. The A-A method compares "the weighted average of the normal values with the weighted average of the export prices (or constructed export prices) for comparable merchandise."[27] Consideration of an alternative comparison method consistent with section 777A(d)(1)(B) of the Act involves examination of whether there exists a pattern of prices that differ significantly among purchasers, regions, or time periods. Neither the statute nor the regulations specify how the Department should examine whether there exists a pattern of prices that differ significantly. Nonetheless, there is nothing in the statute which even suggests that the purpose of the "pattern requirement" is to identify "targeted dumping." Therefore, Husteel's claim that the Department's analysis, *i.e.*, the Cohen's *d* test,

[22] *See* SAA at 842.
[23] *Id.* at 843 (emphasis added).
[24] *Id*. at 842.
[25] *See* 19 CFR 351.414(c)(1)(2012).
[26] *Id.*
[27] *See* section 777A(d)(1)(A)(i) of the Act and 19 CFR 351.414(b)(1).

cannot find "targeted dumping" is inapposite. The purpose of the Cohen's *d* test is to establish a pattern of prices that differ significantly between U.S. sales to a specific purchaser, region, or time period (*i.e.*, sales in the test group) and U.S. sales to all other purchasers, regions, or time periods (*i.e.*, sales in the comparison group). The ratio test then quantifies the extent of the respondent's prices in the U.S. market which differ significantly in order to determine whether, and to what extent, the use of an alternative comparison method may be appropriate.

In the context of administrative reviews, the statute is silent on when and how the Department may determine whether the A-A method is appropriate or whether an alternative comparison method should be applied.[28] The Department has filled this statutory gap by looking to section 777A(d)(1)(B) of the Act to determine whether the A-A method is an appropriate tool with which to measure the extent of a respondent's dumping in a given situation. Section 777A(d)(1)(B)(i) of the Act requires that there exists "a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time." The statute leaves to the Department's discretion how to determine the existence of such a pattern under section 77A(d)(1)(B)(i) of the Act and does not provide specific direction on how to make such a determination. The statute simply requires that the Department find the existence of a pattern of prices that differ significantly. In this administrative review, we reasonably demonstrated that such a pattern exists.

With respect to the Cohen's *d* test, the Cohen's *d* coefficient is a statistical measure which gauges the extent (or "effect size") of the difference between the means of two groups (*i.e.*, the difference in the weighted-average U.S. prices in the test and comparison groups). In the final determination for *Xanthan Gum from the PRC*,[29] the Department stated "{e}ffect size is a simple way of quantifying the difference between two groups and has many advantages over the use of tests of statistical significance alone."[30] In addressing Deosen's comment in *Xanthan Gum from the PRC*, the Department continued:

> Effect size is the measurement that is derived from the Cohen's *d* test. Although Deosen argues that effect size is a statistic that is "widely used in meta-analysis," we note that the article also states that "{e}ffect size quantifies the size of the difference between two groups, and may therefore be said to be a *true measure of the significance of the difference*." The article points out the precise purpose for which the Department relies on Cohen's *d* test to satisfy the statutory language, to measure whether a difference is significant.[31]

The concept behind "effect size" and the Cohen's *d* coefficient is based on the difference between the means of the test and the comparison groups relative to the variances within the two groups, *i.e.*, the pooled standard deviation. The difference in the weighted-average sales prices between the test group and the comparison group is measured relative to the pooled standard

[28] *See* section 777A(d)(2)of the Act.
[29] *See Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013)(*Xanthan Gum from the PRC*) and the accompanying Issues and Decision Memorandum at Comment 3.
[30] *See Xanthan Gum from the PRC* at Comment 3.
[31] *Id*.

deviation, and the outcome is expressed in standardized units (*i.e.*, the Cohen's *d* coefficient) based on the variances of the individual U.S. sales prices within each group. When U.S. sales prices exhibit a large variation, a large difference in the weighted-average U.S. sales prices between the test and comparison groups must exist to find that these prices differ significantly. Similarly, when U.S. sales prices exhibit little variation, a smaller difference in the weighted-average U.S. sales prices is necessary to find that these prices differ significantly. Therefore, the Department finds Husteel's argument misplaced that the Department's analysis has ignored the "relative magnitude" of the price differences in the U.S. market. The Department's approach measures the differences in U.S. prices between the test and comparison groups relative to the magnitude of the variations in the individual U.S. sales prices.

Husteel appears to imply that the Department has ignored the "absolute magnitude" of the differences in U.S. prices where small differences may be found to be "significant" but are "insignificant in the market." The SAA states that "Commerce will proceed on a case-by-case basis, because small differences may be significant for one industry or one type of product, but not for another."[32] This concern is addressed in the Department's analysis when it considers whether the A-A method can account for a pattern of significant price differences (*i.e.*, conditions which may lead to "targeted" or masked dumping). To address this question, the Department examines whether there is a meaningful difference in the weighted-aveage dumping margins calculated using the A-A method and the alternative comparison method (if any). A meaningful difference exists when (1) there is an above *de minimis* amount of dumping and (2) there is a meaningful amount of offsets (*i.e.*, non-dumped sales) which mask this dumping. Both the amount of dumping and offsets are measured relative to the absolute price level in the U.S. market, and thus the differences exhibited by the individual U.S. sales prices are gauged not only by the variations in individual U.S. sales prices, but also by the absolute price level in the U.S. market for the subject merchandise. Therefore, the Department's analysis reasonably accounts for both the relative and absolute magnitude of the differences in U.S. sales prices, whether they be small or large.

The Department disagrees with Husteel's argument that it is required to test for statistical significance.[33] Within the Cohen's *d* test, the Cohen's d coefficient is calculated based on the means and variances of the test group and the comparison group. The test and comparison groups include all of the U.S. sales of comparable merchandise reported by the respondent. As such, the means and variances calculated for these two groups are the actual values for these measures and they are based on the universe of sales (*i.e.*, the entire population of data). Accordingly, because the Department's analysis relies on the complete population of the respondent's sale price data in the U.S. market, there is no sampling error, or noise, in the results which must be taken into account through a measure of the statistical significance of the results.

Statistical significance is used to evaluate whether the results of an analysis rise above sampling error (*i.e.*, noise) present in the analysis. This arises in analyses which are based on sampled data from a larger population of data where the calculated measures (*e.g.*, mean and standard

[32] *See* SAA at 843.

[33] *See, e.g., Drawn Stainless Steel Sinks From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2014*, 80 FR 69644 (Nov. 3, 2015) and accompanying Issues and Decision Memorandum at Comment 6.

deviation) are estimates of the actual values of the entire population of data. The Department's application of the Cohen's *d* test is based on the mean and variance calculated using the entire population of the respondent's sales in the U.S. market, and, therefore, these values contain no sampling error. Accordingly, statistical significance is not a relevant consideration in this context.

Further, even assuming that "significance" could imply "statistical significance" and "statistical significance" would be relevant to the Department's analysis, the Department notes that, if Congress had intended to require a particular result to ensure the "statistical significance" of price differences that mask dumping as a condition for applying an alternative comparison method, Congress presumably would have used language more precise than "differ significantly." The Department, tasked with implementing the antidumping law, resolving statutory ambiguities, and filling gaps in the statute, does not agree that the term "significantly" in the statute can mean only "statistically significant." The Act includes no such directive. The analysis employed by the Department, including the use of the Cohen's d test, fills the statutory gap as to how to determine whether a pattern of prices "differ significantly." Furthermore, the Department's use of the Cohen's *d* test is based on the entire population of U.S. sales by each respondent, and, therefore, there are no estimates involved in the results and accordingly "statistical significance" is not a relevant consideration.

We disagree with Husteel's interpretation that a pattern of prices that differ significantly necessarily involves only lower priced sales, and that these sales can be the only sales which are "targeted." As discussed above, the statute is silent on how the Department address the "pattern requirement" when considering whether the A-A method is appropriate (*i.e.*, whether "targeted" or masked dumping is a concern).[34] Further, in recognizing the concerns of concealed "targeted dumping," the SAA states that "{i}n such situations, an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions."[35] Thus, the SAA recognizes that "targeted dumping" may involve both higher- and lower-priced U.S. sales. Contrary to Husteel's claim, it is reasonable for us to consider both lower-priced and higher-priced sales when identifying prices that differ significantly. Both higher-priced U.S. sales and lower-priced sales are equally capable of creating a pattern of prices that differ significantly, which may indicate the presence of "targeted" or masked dumping.

Further, the statute states that we may apply the A-T method if "there is a *pattern of export prices*…for comparable merchandise that *differ* significantly among purchasers, regions, or periods of time," and we explain "*why such differences* cannot be taken into account" using the A-A method.[36] The statute directs us to consider whether a pattern of significantly different prices exists. The statutory language references prices that "differ" and does not specify whether the prices differ by being lower or higher than the prices for comparable merchandise to other purchasers, regions, or time periods. The statute does not provide that we consider only higher-

[34] *See U.S. Steel Corp. v. United States*, 621 F.3d 1351 (CAFC, 2010) at 1363 ("Congress gave Commerce a tool for combating targeted or masked dumping by allowing Commerce to compare weighted average normal value to individual transaction values when there is a pattern of prices that differs significantly among purchasers, regions, or periods of time").
[35] *See* SAA at 842.
[36] *See* section 777A(d)(1)(B) of the Act (emphasis added).

priced or only lower-priced sales when conducting the analysis, nor does the statute specify whether the difference must be the result of certain sales being priced higher or lower than other sales. Higher-priced sales and lower-priced sales do not operate independently; all sales are relevant to the analysis.[37]

Furthermore, contrary to Husteel's argument, "dumping" is not part of the "pattern requirement." Whether U.S. sales prices are higher or lower than their comparable normal value is not part of determining whether there exists a pattern of prices that differ significantly. Section 777A(d)(1)(B)(i) of the Act refers to a "pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time." Such a pattern is strictly between the sales prices in the U.S. market, and has no relationship with comparable normal values. Accordingly, consideration of whether these U.S. sales are dumped is not part of making this determination. Indeed, lower-priced U.S. sales could be below their normal value, higher-priced U.S. sales could also be below their normal value, and no U.S. sales could be below their normal value. The statute does not require that these circumstances be taken into account when determining the existence of a pattern of prices that differ significantly. Therefore, neither the "pattern requirement" nor the Cohen's *d* test is required to identify "targeted dumping" or "dumped" sales, as asserted by Husteel.

With respect to Husteel's arguments that the Department must account for some kind of causality for any observed price differences, we disagree. Congress did not speak to the intent of the producers or exporters in setting prices that exhibit prices that differ signficantly. Consistent with the Act and the SAA, the Department determined whether a pattern of significant price differences exists, and neither the Act, nor the SAA, requires the Department to conduct an additional analysis as argued by Husteel to account for potential reasons that the observed price differences exist. This position has been affirmed by the CIT.[38]

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

[37] *See Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013) and the accompanying Issues and Decision Memorandum at Comment 5.

[38] *See JBF RAK LLC v. United States*, 790 F.3d 1358 (CAFC, 2015) at 1368 ("the CIT did not err in finding there is no intent requirement in the statute, and we agree with the CIT that requiring Commerce to determine the intent of a targeted dumping respondent 'would create a tremendous burden on Commerce that is not required or suggested by the statute'").

Comment 2: Whether the Ratio Test is Arbitrary and Whether The "Meaningful Difference Requirement" was Satisfied

Husteel

Husteel argues that the Department arbitrarily determined the 33 percent and 66 percent cutoffs used in the differential pricing analysis.[39] Husteel also argues that the Department has not explained why price differences cannot be taken into account using the A-A method, as required by section 777A(d)(1)(B) of the Act, or whether the price differences indicate the occurrence of "targeted dumping."[40]

Husteel states that the Department considers using the A-T method for all U.S. sales if 66 percent or more of the total value of U.S. sales pass the Cohen's *d* test, and if between 33 to 66 percent of the total value of U.S. sales pass the *Cohen's d* test, then the Department applies the A-T method to those sales which passed the Cohen's *d* test.[41] Husteel claims that these cutoffs are arbitrary and have never been explained, rendering them unlawful.[42]

Husteel further argues that the Department's current approach to determine when to use the A-T method does not comply with section 777A(d)(1)(B)(ii) of the Act, because it does not consider whether the pattern of prices that differ significantly indicates "targeted dumping".[43] Husteel claims that the Department needs to consider the basis for the prices that differ significantly, and not rely solely on the finding that two different comparison methods yield different weighted-average dumping margins as the basis for using the A-T method. Husteel claims that this explanation is required by the statutory scheme, which contemplates that departures from the A-A method must be well-justified.

Husteel notes that the Department's examination of whether the results of the two comparison methods yield a meaningful difference in the weighted-average dumping margins is the closest to an explanation by the Department as to whether the use of the A-T method is appropriate.[44] Husteel notes that this "mechanical approach" fails to satisfy the statutory requirement that the pricing patterns identified by the Department reflect targeted dumping. Additionally, Husteel cites to *Beijing Tianhai* for the proposition that the "conclusory assertion that using the A-T methodology generates higher dumping margins…is not sufficient to explain why the price differences measured by the Cohen s d test cannot be taken into account using the A-A methodology."[45] Specifically, Husteel claims that the generation of a higher weighted-average dumping margin through use of the A-T method is insufficient to explain why the price differences measured by the *Cohen's d* test cannot be taken into account using the A-A method. Such a finding, according to Husteel, is inconsistent with the Department's ultimate obligation to determine margins as accurately as possible.

[39] *See* Husteel's CB at 5.
[40] *Id.* at 5-8.
[41] *Id.* at 5.
[42] *Id.*
[43] *Id.* at 5-8.
[44] *Id.* at 6-7.
[45] *Id.* at 7-8, *see Beijing Tianhai Indus. Co. Ltd. v. United States*, 7 F. Supp. 3d 1318, 1332 (CIT 2014) (*Beijing Tianhai*).

The Petitioners

The petitioners disagree with Husteel's claim that the Department never explained its reasoning for the 33 percent and 66 percent cutoffs and that these cutoffs seem arbitrary. Such explanation, according to the petitioners, can be found in *OCTG from India*.[46]

Department's Position

The Department disagrees with Husteel's claim that the thresholds provided for in its differential pricing analysis as part of the ratio test are arbitrary or unlawful. Neither the statute nor the SAA provides any guidance for determining how to apply the A-T method once the requirements of section 777A(d)(1)(B)(i) and (ii) have been satisfied. Accordingly, the Department has reasonably created a framework to determine how the A-T method may be considered as an alternative to the standard A-A method based on the extent of the pattern of prices that differ significantly as identified with the Cohen's *d* test. In the differential pricing analysis, the Department reasonably established a 33 percent threshold to consider whether and how to apply the A-T method.

As stated in the *Preliminary Results*, the purpose of the Cohen's *d* and ratio tests are to evaluate the extent to which the prices to a particular purchaser, region, or time period differ significantly from the prices of all other sales of comparable merchandise."[47] Under the ratio test, there are three potential outcomes. If the value of U.S. sales passing the Cohen's *d* Test accounts for 66 percent or more of the value of total United States sales, Commerce will consider whether to apply the A-to-T method to all U.S. sales. If the value of U.S. sales passing the Cohen's *d* Test accounts for more than 33 percent, but less than 66 percent of the value of total United States sales, Commerce will consider whether to apply a "mixed" comparison methodology (using the A-to-T method for those U.S. sales that passed the Cohen's *d* Test and the A-to-A method for those that did not). If the value of U.S. sales passing the Cohen's *d* Test accounts for 33 percent or less of the value of total United States sales, Commerce will not consider the application of the A-to-T method for any United States sales.

The Department fulfilled the statutory requirement that it explain why the A-A method cannot account for the pattern of significant price differences it identified. As explained in the *Preliminary Results*, if the difference in the weighted-average dumping margins calculated using the A-A method and an appropriate alternative comparison method is meaningful, then this demonstrates that the A-A method cannot account for price differences and, therefore, an alternative comparison method would be appropriate.[48] A difference in the weighted-average

[46] *See* Petitioner RB at 10, which includes a reference to *Certain Oil Country Tubular Goods from India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 79 FR 41981 (July 18, 2014)(*OCTG from India*).
[47] *See Preliminary Results* and the accompanying Preliminary Decision Memorandum at 6.
[48] *Id.* at 5-7. *See also, e.g., Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 11160 (March 2, 2015), and the accompanying I&D Memo at Comment 3, and *Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 10051 (February 25, 2015) (*PET Film Taiwan*), and the accompanying I&D Memo at Comment 2.

dumping margins is considered meaningful if: 1) there is a 25 percent relative change in the weighted-average dumping margin between the A-A method and the appropriate alternative method when both margins are above the *de minimis* threshold; or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.[49] For these final results, we find that the resulting weighted-average dumping margin moves across the *de minimis* threshold for Husteel. As a result, we continue to find that there is a meaningful difference in the weighted-average dumping margins for Husteel. Accordingly, the A-A comparison method is not appropriate for use in determining Husteel's dumping margin. The CIT has upheld Commerce's explanation.[50] Furthermore, litigation in *BTIC* is currently ongoing and therefore does not control the Department's practice.[51]

Comment 3: Whether Consideration of an Alternative Comparison Method is Permitted in Administrative Reviews

HYSCO

HYSCO argues that the Department has no statutory authority, under 777A(d)(1)(B) of the Act, to consider the application of an alternative comparison method in administrative reviews, and that this is only permitted in investigations.[52]

According to HYSCO, the statutory authority on which the Department relies is "solely and exclusively" contained in paragraph (d)(1)(B) of section 777A of the Act, and therefore, it falls under the "exception" to the general rule (which is delineated under paragraph (d)(1)(A)) and is intended only for investigations. As such, the statute limits the Department's authority to consider an alternative comparison method as an exception to the general rule to investigations.[53]

HYSCO notes that where Congress has specifically acted to include or exclude particular language in one section of a statute, it is understood to be intentional.[54] HYSCO argues that the alternative comparison method does not appear elsewhere in the statute and that its omission from section 777A(d)(2) of the Act (which covers reviews) is salient here; there is no reference to differential pricing or an alternative comparison method in this provision, and this omission undermines the Department's authority for the use of an alternative comparison method in administrative reviews.

The statute's structure is basic evidence of Congress's intent; the lack of mention of an alternative comparison method under section 777A(d)(2) of the Act demonstrates that Congress acted intentionally and that the Department has no basis for considering an alternative comparison method or employing a differential pricing analysis in this administrative review because Congress did not confer upon it the authority to do so.[55]

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[49] *Id.*
[50] *See Apex.*
[51] *See Beijing Tianhai*.
[52] *See* HYSCO's CB at 6-7.
[53] *Id.* at 7.
[54] *Id.* referencing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987).
[55] *Id.* at 8, citing to *FAG Italia S.p.A. v. United States*, 291 F.3d 806, 816 (Fed. Cir. 2002) (quoting *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986)).

Based on the disparate statutory language between investigations and administrative reviews, the Department holds no authority to consider an alternative comparison method or to conduct a differential pricing analysis in administrative reviews. Instead, the Department should continue to use the A-A method, to calculate HYSCO's weighted-average dumping margin for the final results. Failing to do so would undermine the Department's own *Final Modification for Reviews* and contradict many World Trade Organization (WTO) Appellate Body decisions.[56]

The Petitioners

The petitioners contend that the arguments advanced by HYSCO have already been addressed by recent court decisions. In *Apex*, the court affirmed the Department's differential pricing analysis against arguments made in the underlying administrative review.[57] Further, *Apex* held that the Department "has the authority to engage in its differential pricing analysis" within an administrative review and that the Department is not bound by the WTO Appellate Body.[58]

Department's Position

The Department disagrees with HYSCO's claim that it does not have the authority to consider an alternative comparison method in administrative reviews.

HYSCO argues that the Department has no statutory authority to consider the application of an alternative comparison method in administrative reviews. HYSCO also states that Congress made no provision for the Department to apply an alternative comparison method in an administrative review under section 777A(d) of the Act. Indeed, section 777A(d)(1) of the Act applies to "Investigations" and section 777A(d)(2) of the Act applies to "Reviews." Section 777A(d)(1) of the Act discusses, for investigations, the standard comparison methods (*i.e.*, A-A or T-T), and then provides for an alternative comparison method (*i.e.*, the A-T method) that may be applied as an exception to the standard methods when certain criteria have been met. Section 777A(d)(2) of the Act discusses, for administrative reviews, the maximum period of time over which the Department may calculate weighted-average NVs when using the A-T method. Section 777A(d)(2) is silent with regard to the comparison method to be employed in administrative reviews.

To fill the gap in the statute, the Department promulgated regulations to specify how comparisons between NV and EP or CEP would be made in administrative reviews. With the implementation of the Uruguay Round Agreements Act (URAA), the Department promulgated 19 CFR 351.414(c)(2) (1997), which stated that the Department would normally use the A-T comparison method in administrative reviews. In 2010, the Department published its *Proposed Modification for Reviews,*[59] pursuant to section 123(g)(1) of the URAA. This proposal was in

[56] *See* HYSCO's CB at 8; *see Final Modification for Reviews*.
[57] *See* the petitioners RB at 8. Citing to *Apex*.
[58] *Id*.
[59] *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings: Proposed Rule; Proposed Modification; Request for Comment,* 75 FR 81533 (December 28, 2010) (*Proposed Modification for Reviews*).

reaction to several WTO Dispute Settlement Body panel reports which had found that the denial of offsets for non-dumped sales in administrative reviews to be inconsistent with the WTO obligations of the United States. When considering the proposed revisions to 19 CFR 351.414, the Department gave proper notice and opportunity to comment to all interested parties.

Pursuant to section 123(g)(1)(D) of the URAA, in September 2011, the U.S. Trade Representative (USTR) submitted a report to the House Ways and Means and Senate Finance Committees which described the proposed modifications, the reasons for the modifications, and a summary of the advice which the USTR had sought and obtained from relevant private sector advisory committees pursuant to section 123(g)(1)(B) of the URAA. Also in September 2011, pursuant to section 123(g)(1)(E) of the URAA, the USTR, working with the Department, began consultations with both congressional committees concerning the proposed contents of the final rule and the final modification. As a result of this process, the Department published the *Final Modification for Reviews*.[60] These revisions were effective for all preliminary results of review issued after April 16, 2012, and thus apply to this administrative review. As a result, the Department determined to use the A-A method as the default comparison method in reviews, and that it could use any of the alternative comparison methods when deemed appropriate.[61]

The methods by which NV may be compared to EP or CEP in less-than-fair-value investigations and administrative reviews (*i.e.*, A-A, T-T, and A-T) are described in 19 CFR 351.414(b). These comparison methods are distinct from each other. When using T-T or A-T comparisons, a comparison is made for each export transaction to the United States. When using A-A comparisons, a comparison is made for each group of comparable export transactions for which the EPs, or CEPs, have been averaged together (*i.e.*, for an averaging group).[62] The Department does not interpret the Act or the SAA to prohibit the use of the A-T comparison method in administrative reviews, nor does the Act or the SAA mandate the use of the A-A comparison method in administrative reviews. The regulations, at 19 CFR 351.414(c)(1) (2012), fill the gap in the statute concerning the choice of a comparison method in the context of administrative reviews. In particular, the Department determined that in both less-than-fair-value investigations and administrative reviews, the A-A method will be used "unless the Secretary determines another method is appropriate in a particular case."[63]

The Act, the SAA, and the Department's regulations do not address the circumstances that could lead the Department to select a particular comparison method in an administrative review. Indeed, whereas the statute addresses this issue specifically with regard to investigations, the statute leaves a gap to fill on this same question with regard to administrative reviews.[64] In light of the statute's silence on this issue, the Department indicated that it would use the A-A method as the default method in administrative reviews but would consider whether to use an alternative comparison method on a case-by-case basis.[65] At that time, the Department also indicated that it

[60] *See Final Modification for Reviews*.
[61] *Id*., 77 FR at 8107
[62] *See* 19 CFR 351.414(d)(2).
[63] *See* 19 CFR 351.414(c)(1).
[64] *See* section 777A(d)(1)(B) of the Act; SAA, H.R. Doc 103-316, vol. 1 (1994), at 842-43; and 19 CFR 351.414.
[65] *See Final Modification for Reviews*, 77 FR at 8107.

would look to practices employed by the Department in less-than-fair-value investigations for guidance on this issue.[66]

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

> The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if:
>
> > (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and
> > (ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).[67]

Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of an administrative review, the Department nevertheless finds the issue arising under 19 CFR 351.414(c)(1) in an administrative review to be analogous to the issue in less-than-fair-value investigations. Accordingly, the Department finds the analysis that has been used in less-than-fair-value investigations instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. In less-than-fair-value investigations, the Department considers an alternative comparison method to unmask dumping consistent with section 777A(d)(1)(B) of the Act.[68] Similarly, the Department considers an alternative comparison method to unmask dumping under 19 CFR 351.414(c)(1).[69] For this administrative review, the Department continues to find the consideration of an alternative comparison method to be reasonable where the statute is otherwise silent.

The SAA does not demonstrate that the Department may consider the application of an alternative comparison method in investigations only. The SAA does discuss section 777A(d)(1)(A)(i) of the Act, concerning the types of comparison methods that the Department may use in investigations. That provision, however, is silent on the question of choosing a comparison method in administrative reviews. Section 777A(d)(1)(A) of the Act does not

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[66] *Id*. at 8102.
[67] *See* section 777A(d)(1)(B) of the Act.
[68] *See, e.g., Polyethylene Retail Carrier Bags From Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 16431 (April 1, 2010); *Certain Stilbenic Optical Brightening Agents From Taiwan: Final Determination of Sales at Less Than Fair Value*, 77 FR 17027 (March 23, 2012); and *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) (*Xanthan Gum from the PRC*) and accompanying IDM at 5.
[69] *See, e.g., Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping DutyAdministrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012); *Stainless Steel Plate in Coils From Belgium: Antidumping Duty Administrative Review, 2010-2011*, 77 FR 73013 (December 7, 2012*); Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 65272 (October 31, 2013).

require or prohibit the Department from adopting a similar or a different framework for choosing a comparison method in administrative reviews as compared to the framework required by the statute in investigations. The SAA states that "section 777A(d)(1)(B) provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an A-A or T-T methodology cannot account for a pattern of prices that differ significantly among purchasers, regions or time periods."[70] Like the statute, the SAA does not limit the Department to undertake such an examination in investigations only.[71]

The silence of the statute with regard to the application of an alternative comparison method in administrative reviews does not preclude the Department from applying such a practice in this situation. Indeed, the CAFC stated that the "court must, as we do, defer to Commerce's reasonable construction of its governing statute where Congress leaves a gap in the construction of the statute that the administrative agency is explicitly authorized to fill or implicitly delegates legislative authority, as evidenced by the agency's generally conferred authority and other statutory circumstances."[72] Further, the CIT, quoting the CAFC, stated that this "silence has been interpreted as 'an invitation' for an agency administering unfair trade law to 'perform its duties in the way it believes most suitable' and courts will uphold these decisions '{s}o long as the {agency}'s analysis does not violate any statute and is not otherwise arbitrary and capricious."[73] The Department filled a gap in the statute with a logical, reasonable, and deliberative comparison method for administrative reviews.

Notably, the CIT recently recognized that section 777A(d)(2) of the Act is "completely silent as to how Commerce should conduct its determination of less than fair value in reviews, leaving Commerce substantial discretion as to the methodologies it wishes to employ."[74] The Court reasoned that "{i}n the light of this broad discretion, Commerce acted reasonably and did not abuse its discretion by basing its practice in reviews on its practice in investigations, which includes the use of the targeted dumping analysis."[75] Although *Timken* was decided in the context of upholding the Department's ability to apply an alternative comparison method based on a targeted dumping analysis pursuant to section 777A(d)(1)(B) of the Act in the context of an administrative review by looking to its practice in investigations, the Court's rationale applies equally to consideration of an alternative comparison method based on a differential pricing analysis, as in this administrative review, which derives from the same statutory provision. The CIT's holding in *Timken* has been echoed in other recent CIT cases.[76]

[70] *See* SAA, at 843.
[71] *Id.*
[72] *See United States Steel Corp. v. United States*, 621 F.3d 1351, 1357 (Fed. Cir.2010).
[73] *See Mid Continent Nail Corp. v. United States*, 712 F. Supp. 2d 1370, 1376-77 (CIT 2010) (quoting *U.S. Steel Group v. United States*, 96 F.3d 1352, 1362 (Fed. Cir.1996)).
[74] *See Timken Co. v. United States*, 968 F. Supp. 2d 1279, 1286 n.7 (CIT 2014).
[75] *Id.*
[76] *See Apex*, 37 F. Supp. 3d at 1293; *DuPont Teijin Films China Ltd. v. United States*, 7 F. Supp. 3d 1338, 1355-56 (CIT 2014); *JBF RAK*, 991 F. Supp. 2d at 1347-49; *CP Kelco Oy v. United States*, 978 F. Supp. 2d 1315, 1321-24 (CIT 2014).

Comment 4: Whether the Mixed Methodology Leads to Zeroing

HYSCO

HYSCO contends that if the Department continues to use an alternative comparison method, such as the A-T comparison method, it remains unlawful to use the zeroing when making such comparisons.[77] HYSCO contends that the WTO's Dispute Settlement Body has held that the Department's zeroing practice in administrative reviews is inconsistent with Articles 2.4 and 9.3 of the WTO Antidumping Agreement and Article VI:2 of the General Agreement on Tariffs and Trade 1994.[78] Responding to the WTO decisions, the Department modified its methodology in administrative reviews by adopting a preference for the A-A comparison method, without zeroing, in the *Final Modification for Reviews*.

HYSCO argues that the Department's mixed method, which examines whether a "meaningful difference" exists in the different margins calculated between the A-A method and the A-T method, is flawed because the differences that arise are attributable to zeroing.[79] HYSCO argues that the Department determined, in the *Preliminary Results*, to use the mixed method in order to raise HYSCO's margin.[80] Under the mixed method, the Department applies zeroing to the transactions for which it applied the A-T method.

Department's Position

As an initial matter, the CAFC and the CIT both have sustained the Department's use of zeroing in connection with the A-to-T method. In *Union Steel*, the CAFC held that the statute permits the Department to use zeroing when applying the A-to-T method in the context of reviewing whether it was reasonable for the Department to apply zeroing in administrative reviews that employ the A-to-T method, but not in investigations using A-to-A comparisons.[81] Answering that question in the affirmative, the Court made clear that zeroing is a natural product of the A-to-T comparison method that the Department employs.[82] Specifically, the Court held that "Commerce's decision to use or not use the zeroing methodology reasonably reflects unique goals in differing comparison methodologies."[83] Moreover, the Court determined that not applying zeroing in the context of A-to-A comparisons makes sense because that methodology relies on averaging groups of sales, and so inherently allows higher-priced sales to offset lower-priced ones.[84]

Similarly, the CAFC explained in *U.S. Steel Corp.* that the Department's intention to continue zeroing in the context of A -T comparisons performed under section 777A(d)(1)(B) of the Act

[77] *See* HYSCO's CB at 8.
[78] *See, e.g., United States-Continued Existence and Application of Zeroing Methodology*, Report of the Appellate Body, WT/DS350/AB/R (February 4, 2009).
[79] *See* HYSCO's CB at 9-10.
[80] *Id.* at 10.
[81] *See Union Steel v. United States*, 713 F.3d 1101, 1108-09 (Fed. Cir. 2013).
[82] *Id*.
[83] *Id*., at 1109.
[84] *Id*.

ensured that the domestic industry would continue to have an adequate remedy to address masked dumping:

> {T}he exception contained in § 1677f-1(d)(1)(B) indicates that Congress gave Commerce a tool for combatting targeted or masked dumping by allowing Commerce to compare weighted average normal value to individual transaction values when there is a pattern of prices that differs significantly among purchasers, regions, or periods of time. Commerce has indicated that it likely intends to continue its zeroing methodology in those situations, thus alleviating concerns of targeted or masked dumping. . . . By enacting legislation that specifically addresses such situations, Congress may just as likely have been signaling to Commerce that it need not continue its zeroing methodology in situations where such significant price differences among the export prices do not exist.[85]

Moreover, in *Apex*, the CIT held that "{i}t was reasonable, as a legal matter, for Commerce to compare a zeroed A-T rate to a non-zeroed A-A rate to decide whether A-A could account for Apex's targeting."[86]

Regarding HYSCO's claim that it remains unlawful to use zeroing when making such comparisons under an alternative comparison method, as the Department explained in *Washers from Korea*, when A-T comparisons "are used in situations of targeted dumping, the results of not applying {a} zeroing methodology when aggregating those comparisons results as well as when aggregating average-to-average comparison results would be the same" in every case.[87] Thus, the Department explained that the "provision for different comparison methods under section 777A(d) of the Act would be meaningless" if the Department did not apply zeroing in the context of the A-T method because the results of the A-T method and A-A method would always be mathematically equivalent, obstructing any benefit derived from having an alternative comparison method in the statute.[88]

Such a meaningless application of the A- T method would be inconsistent with the canon of statutory construction that a statutory provision must be interpreted in a manner that is consistent with the statute as a whole. This is because it would be illogical for Congress to enact into law an alternative comparison method to the standard methods that, when implemented in every situation, made no difference in the ultimate result of the calculations.[89] In other words, it is unreasonable to believe that once the Department determines that the A-to-A method cannot "account for" price differences, Congress intended for the Department to use an alternative method that nonetheless always resulted in the exact same outcome as the A-to-A method.

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[85] *See U.S. Steel Corp. v. United States*, 621 F.3d 1351, 1361 (Fed. Cir. 2010).
[86] *See* Apex, 37 F. Supp.3d at 1295.
[87] *See Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers From the Republic of Korea*, 77 FR 75988 (December 26, 2012), and accompanying Issues and Decision Memorandum at Comment 4.
[88] *Id*.
[89] *See United Savings Ass'n of Texas v. Timbers of Inwood Forest Assocs*., 484 U.S. 365, 371 (1988) (explaining that statutory construction is a "holistic endeavor" and that proper interpretation is one that is "compatible with the rest of the law").

Therefore, consistent with the Department's normal practice, we properly applied the A-to-T method to the respondents' sales.

Comment 5: The Appropriate Universe of HYSCO's Home Market Sales

HYSCO

HYSCO argues that it reported U.S. sales on the basis of entry date, and the corresponding window period of three months prior to the POR and two months after. HYSCO argues that the Department's decision in the *Preliminary Results* to "disregard certain home market sales from October 2014" is incorrect and that the Department should retain these October 2014 home market sales for analysis in the final results. HYSCO argues that the Department's comparison market program performs a number of tests separate from the margin program, such as whether sales to affiliates are made on an arm's-length basis, the calculation of constructed value selling expense and profit ratios, and importantly, whether or not a respondent's sales are made at less than the cost of production.[90] Therefore, while it is not necessary to include these sales in the margin program, it is important to retain them in the comparison market program. HYSCO further contends that the Department disregards sales that are made below the cost of production when they meet the following conditions: they were made within an extended period of time (generally, one year but not less than 6 months) in substantial quantities and they were at prices that do not permit recovery of all costs within a reasonable period of time.[91]

HYSCO argues that, because it reported its COP on a POR basis, the Department should use all of the reported POR sales in its analysis in order to determine if any home market sales should be disregarded pursuant to 19 CFR 351.406(a). However, according to HYSCO, the Department prematurely determined that certain sales were made below cost in substantial quantities by excluding these sales.[92] By eliminating these sales, the Department cannot determine whether costs associated with selling products slightly below cost could have been recovered within a reasonable time period; where prices and costs may change during the POR, it is reasonable to compare full POR costs to prices that also span the full POR.[93] Therefore, these excluded sales should be incorporated in the final results.

HYSCO argues that the exclusion of these sales is contrary to the Department's cost test calculations. For example, if the respondent reports sales of a certain CONNUM for only a very small portion of the POR, the Department would continue to analyze sales of that CONNUM for the entire POR plus the window period, even if these sales were not used as price-to-price matches. HYSCO argues that, therefore, the Department should not use CONNUMs that might be used only for price-to-price matches, and reintegrate the excluded sales.

[90] *See* HYSCO's CB at 3, citing to 19 CFR 351.406.
[91] *Id.*
[92] *Id.*
[93] *Id.*

The Petitioners

The petitioners counter that the Department properly, and according to longstanding practice, excluded certain of HYSCO's home market sales that did not correspond with sales on the U.S. side. Citing to *LNPP from Japan*, the petitioners argue that the Department's practice is to set the universe of home market sales as those that sold at a time that could reasonably correspond with sales on the U.S. side.[94] Further, HYSCO has not provided any basis for the Department to redefine the universe of sales in a manner contrary to statute and agency practice.

Department's Position

The home market sales that HYSCO reported for October 2014 are not used for purposes of price-to-price comparisons. However, it is the Department's practice to conduct the cost test on the basis of HM sales over the entirely of the POR. Thus, we recognize that it is not appropriate to exclude such sales from our analysis. We have revised the programming to ensure that we have included HYSCO's HM sales over the entirety of the POR in all aspects the analysis for these final results. Further, we note that the petitioners' reliance on *LNPP from Japan* is inapposite. In that case, the Department based NV on CV because the unique, custom-built nature of each LNPP sold did not permit a price-to-price comparison, even though Japan's home market was viable. The issue there was the universe of sales to use for determining CV profit. Due to the long lag time between sale and installation of an LNPP at a customer's site, the Department used home market sales of the foreign like product that corresponded to each respondent's U.S. sale. This required the use of HM sales made a year earlier than the POR. That is not the situation here. We have adequate sales of foreign like product in the POR as a basis for NV and we need not adjust it as was done in *LNPP from Japan*.[95]

Comment 6: Whether Certain HYSCO Sales Are Outside the Ordinary Course of Trade

The Petitioners

The petitioners argue that the Department should exclude certain home market sales HYSCO made to a company that HYSCO acquired subsequent to the POR. The petitioners argue that these sales are outside the ordinary course of trade because there may have been affiliation between HYSCO and this company during the POR. Because HYSCO acquired ownership, in part, of the entity to which it made these sales, the terms of the sales negotiation were not fulfilled as originally intended. According to the petitioners, this could have resulted in an unusual and favorable financial outcome for HYSCO, that otherwise would not have resulted had the original terms of the sale been honored. Therefore these sales are outside the ordinary course of trade, and the statute, under section 771(15), and the regulations, at 19 CFR 351.102(35), exclude these types of transactions. Indeed, if the Department were conducting a verification of these sales, it would require demonstration of proof of payment. In this situation, HYSCO would

[94] *See* the petitioners' RB at 3-4, citing to *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Antidumping Duty Administrative Review*, 66 FR 11555 (Feb. 26, 2001), (*LNPP from Japan*) and accompanying Issues and Decision Memorandum at Comment 1.
[95] *Id*.

not be able to provide payment documentation for these sales transactions and the Department should exclude them from the calculation of normal value.

HYSCO

HYSCO counters the petitioners' argument that these sales are outside the ordinary course of trade. HYSCO notes that the petitioners' argument rests on events subsequent to the POR and HYSCO's failure to secure payment from its customer. The Department's obligation is to follow the statutory definition of the "ordinary course of trade" (*i.e.*, "the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind….").[96] As such, the Department's authority to disregard sales as outside the ordinary course of trade is limited to sales that are truly extraordinary.[97] These sales do not rise to a level that would lead the Department to consider them to be extraordinary.[98] Further, the petitioners have failed to enumerate any unusual circumstances pertaining to the sale *at the time the sale was made* (emphasis in original). HYSCO also disputes the petitioners' characterization that HYSCO's acquisition of its former customer occurred after a transaction following HYSCO's inability to collect payment for certain sales. Indeed, HYSCO asserts that its relationship with this client during the POR was one of a creditor and debtor, neither uncommon nor indicative of any affiliation between the parties.[99] HYSCO also argues that the petitioners' argument that it may have received a benefit from the acquisition of its former client is unfounded and unsupported.[100] Additionally, HYSCO asserts that the Department regularly retains in its analysis sales for which payment has not been received.[101] Finally, the petitioners have erroneously focused on the circumstances of payment rather than the circumstances of sale, and the Department should continue to include these sales observations for the final results.

Department's Position

Under 19 CFR 351.102(35), the Department considers sales to be outside the ordinary course of trade if, "based on an evaluation of all of the circumstances particular to the sales in question, that such sales or transactions have characteristics that are extraordinary for the market in question." We have examined all of the characteristics of the sales in question, including price, quantity, delivery terms, and payment terms, and find that the sales at issue do not exhibit "extraordinary" characteristics for the market in question. Record information demonstrates that HYSCO conducted these sales in the same manner and on the same terms as it had conducted sales to other customers, both affiliated and non-affiliated. The record also does not demonstrate that, at the time the sales were made, HYSCO had an indication that its customer would be unable to fulfill the terms of sale. That is, these sales are within the normal course of business.

[96] *See* HYSCO's RB at 13-14, citing to 19 CFR 351.102(35).
[97] *Id.* at 14.
[98] *Id.* at 14 for the factors under which the Department considers "extraordinary" sales and may exclude them. *See also, e.g., Certain Cold-Rolled Steel Flat Products From Taiwan*, 67 FR 64104 (Oct. 3, 2002).
[99] *See* HYSCO's RB at 15-16.
[100] *Id.* at 16.
[101] *Id.* and citing to *Welded Line Pipe from the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 80 FR 29620 (May 22, 2015) and accompanying Decision Memorandum at 19.

The petitioners' focus on the circumstances of payment is misplaced. HYSCO reported payment dates for these sales, and there is no basis for the Department to question the validity of this information. The Department would not exclude sales observations for minor abnormalities in the timing of the payment unless it can be shown, and demonstrated by record evidence, that the unusual timing of the payment demonstrates that these sales are outside the ordinary course of trade. In this case, there is no such evidence on the record.

The petitioners' contention that the post-POR affiliation of HYSCO with this customer is indicative of such an affiliation during the POR is unsubstantiated by record information. Moreover, the post- POR affiliation, by itself, does not render the sales during the POR outside the ordinary course of trade.

The petitioners argue that the circumstances regarding the payment for these sales following the POR suggest a link between HYSCO and this customer. We disagree that the circumstances of payment warrant disregarding these sales in the calculation of NV.

Comment 7: SeAH's Reported Credit Expense for Back-to-Back U.S. Sales

SeAH

SeAH contends that the credit expense (CREDITU) calculated for SeAH's "back-to-back," or direct shipment, CEP sales is contrary to basic contract law, as well as to the statutory provisions concerning the permissible adjustments to CEP, because it involves the deduction of an expense incurred outside the United States. SeAH also argues that the methodology used for the *Preliminary Results* would lead to inconsistent calculations for U.S. sales based on whether the merchandise was held in the physical inventory of the U.S. sales affiliate, contrary to the holding of the Court of Appeals for the Federal Circuit (CAFC) in *AK Steel*.[102]

In its initial questionnaire response, SeAH reported CREDITU for its back-to-back U.S. sales based on the time between the date of its U.S. affiliate Pusan Pipe America's (PPA) invoice to the customer and the date of the customer's payment to PPA. SeAH argues that it reported its credit expense this way based on the retained ownership by SeAH and PPA, noting that both parties have the legal right to divert the merchandise to another customer or location if a better price was offered or if the original customer suddenly became uncreditworthy. However, for the *Preliminary Results*, the Department used a credit expense that was based on the time period between factory or warehouse shipment from Korea and payment by the U.S. customer. This revised credit expense was reported at the Department's request in SeAH's supplemental questionnaire response.[103] SeAH states that the Department was wrong to use this information in the *Preliminary Results*.

SeAH cites to the Uniform Commercial Code for the premise that PPA was not entitled to payment from the customer until title was transferred and, thus, the credit period did not begin

[102] *See* AK Steel Corp. v. United States, 226 F.3d 1361 (CAFC 2000) (AK Steel).
[103] *See* Letter to SeAH, "Antidumping Duty Administrative Review of Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Supplemental Questionnaire" (September 8, 2015).

until PPA issued its invoice to the customer. Although the merchandise was shipped directly from Korea to the U.S. port of entry, where the unaffiliated customer took possession, SeAH argues that the sale was not the same as a direct sale from SeAH to the customer. Title first transferred to PPA when the goods reached the United States and then later to the customer after customs clearance, when PPA issued an invoice. Because SeAH's customer was not obligated to pay under contract rules until the invoice was issued, such back-to-back sales through PPA, SeAH argues, are really the same as if the merchandise had been stored in PPA's facilities in the United States prior to sale. Therefore, SeAH claims that it is improper to impute an expense for financing SeAH's accounts receivable for this period.

SeAH further argues that adjustments to CEP are limited to expenses associated with economic activities in the United States. In support of its claim, SeAH points to the Department's commentary on the implementation of the Uruguay Round amendments that "the SAA makes clear that only those expenses associated with the economic activities in the United States should be deducted from CEP."[104] SeAH also cites to *Butt-Weld Pipe Fittings from Taiwan* for the assertion that the period of time when the merchandise is "on the water" cannot be used to calculate an expense to be deducted from CEP. In that case the Department stated "{i}n-transit inventory carrying costs are indirect selling expenses relating to the sale to the affiliate and, consequently, are not associated with U.S. economic activity or related to the resale of the merchandise."[105] SeAH also attempted to distinguish *HRS from India* and other cases where the Department outlined that its practice is to calculate credit expenses based upon the period from the date the merchandise was shipped to the unaffiliated customer to the date on which the customer paid for the merchandise.[106] SeAH argues that this practice ignores the legal nature of the transaction, *i.e.*, the merchandise is not shipped to the customer until the affiliated U.S. importer issues its invoice and title is transferred to the customer.[107] SeAH maintains that the absence of U.S. warehousing should not change the legal nature of the transaction.

Lastly, SeAH argues that using the date that the merchandise left the Korean factory or warehouse for shipment as the beginning of the CREDITU calculation for its CEP sales runs contrary to the holding in *AK Steel*, as this methodology would not depend on whether the sale was classified as "export price" or "CEP," but rather on whether the merchandise was physically stored in the United States before delivery to the U.S. customer.[108]

The Petitioners

The petitioners maintain that SeAH's credit expense was properly calculated for the *Preliminary Results*. The petitioners note that the Department rejected a similar argument made by SeAH in

[104] *See Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27351 (May 19, 1997).
[105] *See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review*, 68 FR 69996 (December 16, 2003) (*Butt-Wed Pipe Fittings from Taiwan*), and accompanying Issues and Decision Memorandum at Comment 10, quoted in SeAH CB at 7.
[106] *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Final Results of Antidumping Duty Administrative Review*, 73 FR 31961 (June 5, 2008) (*HRS from India*), and accompanying Issues and Decision Memorandum at Comment 3.
[107] SeAH CB at 8 citing the Uniform Commercial Code at Section 2-504.
[108] *Id.* at 11.

Line Pipe from Korea.[109] Furthermore, the petitioners also note that the Department properly distinguished the applicability of *AK Steel* in *Line Pipe from Korea*. For the foregoing reasons, the petitioners argue that the Department should continue to follow the methodology used in the *Preliminary Results* and *Line Pipe from Korea*.

Department's Position

The Department's practice is to calculate CREDITU based upon the number of days between the date the merchandise was shipped to the unaffiliated customer and the date on which the customer paid for the merchandise.[110] In *Wire Rod from Trinidad and Tobago 2005*, we explained, "{c}redit expense is the interest expense incurred (or interest revenue forgone) between shipment of merchandise to the customer and receipt of payment from the customer.[111] Furthermore, we stated that it is the Department's intention, in CEP cases, where the merchandise does not enter the inventory of a U.S. affiliate in the United States, to calculate the credit period from the time the merchandise leaves the port in the foreign country to the date of payment.[112]

As SeAH admits, its U.S. sales are not sold from PPA's warehouse or inventory.[113] Although SeAH argues that the merchandise may temporarily enter PPA's inventory on paper while PPA is clearing the merchandise through customs, it is important to note that PPA does not maintain any subject merchandise inventory available for sale in the United States.[114] In fact, on the contrary, SeAH produces the subject merchandise to order and ships it directly from Korea to its U.S. customer. Therefore, an important distinction is that even if, as SeAH argues, the merchandise is passing through PPA's inventory for customs purposes, it does so only on the premise that such merchandise is destined for specific unaffiliated U.S. customers. As such, the credit expenses SeAH incurred are related to sales destined to specific, unaffiliated U.S. customers. Under these circumstances, and following our normal practice, we have calculated credit expenses from the date the merchandise is first shipped to the unaffiliated customer to the date of payment by that customer.[115]

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[109] *See Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*Line Pipe from Korea*) and accompanying Issues and Decision Memorandum at Comment 19.

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

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

[112] *Id*.

[113] SeAH Section C at 74, "SeAH Steel and PPA did not store the subject merchandise at a warehouse or other intermediate location in the United States."

[114] *Id*.; *see also* SeAH Section A at 29, "the sales involved direct shipments from SeAH Steel's plant in Korea to the unaffiliated customer. The merchandise was produced to order..."

[115] *See Wire Rod from Trinidad and Tobago 2005* and accompanying Issues and Decision Memorandum at Comment 6 and *Certain-Hot Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review*, 72 FR 18204 (April 11, 2007) and accompanying Issues and Decision Memorandum at Comment 3. An exception to this practice can occur where the material terms of sale are not set until after date of shipment. For example, in *Carbon and Certain Allow Steel Wire Rod from Trinidad and Tobago; Amended Final*

SeAH's reliance on *Butt-Weld Pipe Fittings from Taiwan* in support of its argument that the Department cannot deduct imputed interest expenses for the period between shipment from Korea and title transfer in the United States for direct shipment CEP sales because CEP adjustments must be limited to expenses associated with economic activity in the United States, is misplaced. In its argument, SeAH conflates inventory carrying costs with imputed credit expenses. Unlike imputed credit expenses, described above, inventory carrying costs are the interest expenses incurred (or interest revenue forgone) between the time the merchandise leaves the production line at the factory to the time the goods are shipped to the first unaffiliated customer.[116] In *Butt-Weld Pipe Fittings from Taiwan*, the Department addressed whether inventory carrying costs associated with sales to a U.S. affiliate should be deducted from U.S. price. In that case, the U.S. affiliate took physical possession of the merchandise and later sold that merchandise to the U.S. customer. The facts in this case are different. As stated above, PPA does not take physical possession of the merchandise. Rather, the merchandise is shipped from Korea directly to the U.S. customer. In fact, because SeAH's U.S. sales were made through direct shipments of the merchandise form Korea to the unaffiliated U.S. customer, SeAH reported that neither it nor PPA incurred any inventory carrying costs in the United States for sales during the POR.[117]

SeAH, however, did include domestic inventory carrying costs (DINVCARU) for inventory carrying costs incurred prior to arrival of subject merchandise in the United States. SeAH included the time between shipment from Korea and invoice to the final U.S. customer in the domestic inventory carrying costs for its U.S. sales. In order to avoid double-counting this amount, we have recalculated inventory carrying costs for direct shipment CEP sales based on the inventory period from factory production to the date of shipment to the U.S. customer.

Finally, we do not find that *AK Steel* is applicable to this issue because it does not address the issue of U.S. imputed credit expenses. Rather, *AK Steel* addresses the issue of whether the sales transactions made in the United States between a respondent's U.S. sales affiliate and unaffiliated U.S. customers constitute CEP sales even when the shipment of subject merchandise was made directly from the respondent to the unaffiliated U.S. customers.[118] The CAFC's decision in *AK Steel* does not challenge in any way our use of the difference between the date of payment and the date of shipment in the calculation of U.S. imputed credit expenses.

Results Pursuant to a Court Decision, 74 FR 10238 (March 10, 2009), we calculated credit expense from date of invoice, rather than date of shipment, because the material terms of sale were not set until date of invoice, which was after shipment in that case. *See also Mittal Steel Point Lisas Ltd. v. United States*, 502 F. Supp 2d 1345 (CIT 2007). However, in this administrative review, we determined that the material terms of sale are set by the shipment date.

[116] *See Wire Rod from Trinidad and Tobago* at Comment 6. SeAH acknowledges that past decisions have distinguished imputed inventory carrying costs from imputed credit costs, citing *e.g.*, *Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Final Results of Antidumping Duty Administrative Reivew*, 73 FR 31961 (June 5, 2008), and accompanying Issues and Decision Memorandum at Comment 3. SeAH CB at 7.

[117] SeAH Section C at 88.

[118] *See AK Steel* at 1374.

Comment 8: Whether to Use SeAH's Reported Nominal Outside Diameter

The Petitioners

The petitioners note that despite being instructed to report pipe diameter as a nominal size, SeAH initially reported the size of CWP sold in Korea using the actual outside pipe diameter. SeAH augmented its reporting in a supplemental questionnaire response by providing the Department with a "worksheet showing the identification of the closest nominal size for each actual size."[119] The petitioners argue that using actual size instead of nominal outside diameter creates minute product characteristics that differ for the same CWP sold in different markets. Furthermore, the petitioners contend, that although SeAH has emphasized that it sells CWP in Korea using actual outside diameter, this does not change the fact that it constitutes merchandise identical to that sold in the United States using nominal outside diameter. The petitioners claim that the use of actual outside diameter prevents the Department from comparing identical merchandise which is, according to the petitioner, the preferred comparison under the Act.[120] According to the petitioners, CWP is only identical when comparing nominal outside pipe diameters regardless of where sold; a comparison made based on actual diameter size results only in similar matches.[121] The petitioners argue that the Department should use SeAH's reported nominal outside diameter in the final results to "advance the statutory preference of comparing identical merchandise."[122] To continue to use the actual outside diameter size, despite having obtained the nominal sizes through multiple questionnaire responses would, according to the petitioners, frustrate the statutory objective and constitute arbitrary agency action by severing the requisite "rational connection between the agency's fact findings and its ultimate action."[123] Not using the nominal size diameters would be an abuse of discretion by the Department and contrary to the statutory instruction governing the comparison of merchandise.

SeAH

SeAH rebukes the petitioners' argument that the Department should ignore the actual diameters reported by SeAH and instead use constructed nominal diameters for product matching. SeAH notes that its normal sales and accounting records are based on the actual outside diameter because "many of the KS standards used for sales to customers in the Korean market do not establish a 'nominal' pipe size…SeAH Steel normally records the actual outside diameter of the pipe sold for all of its home-market and U.S. sales."[124] SeAH argues that there was no inconsistency and that it initially reported actual diameter size consistent with its practice in past reviews. SeAH contends that the petitioners' arguments that products that have different actual diameters should be treated as a single product for comparison purposes and that grouping different products with different diameters is necessary to ensure that identical products are compared are illogical. SeAH points to section 771 of the Act, which directs the Department to compare identical products and does not allow the Department to compare "similar" products

[119] *See* SeAH Sept 8 Supplemental at 22, Appendix SB-4.
[120] Trade Act Section 771(16)(a).
[121] *See* Petitioner CB at 12.
[122] *Id.* at 13.
[123] *Id.*; see also *Consol. Fibers, Inc. v. United States*, 535 F. Supp. 2d 1345, 1354 (CIT 2008).
[124] *See* SeAH RB at 4 quoting SeAH's Sections B, C, and D Questionnaire Response of February 23, 2015 at 9.

when "identical" matches are available.[125] Finally, SeAH notes that the petitioners have not shown that using the identical matches as required by the Act would lead to distortions. This lack of evidence further supports SeAH's notion that the Department should continue to use the actual diameter sizes.

Department's Position

In the *Preliminary Results*, the Department used the nominal pipe sizes as reported by SeAH in its questionnaire response. Although SeAH had labelled this field as "actual" pipe size, upon our further questioning and examination, we find that the data reported in this field represented the nominal pipe size. In the Department's February 23, 2015 questionnaire,[126] SeAH was asked, as were all respondents in this review, to report both SIZEH (the size of the product sold in the home market) and SIZEU (the size of the product sold in the United States) according to nominal pipe size. The Department provided further clarification asking parties to "{r}eport the nominal outsi{d}e pipe diameter…."[127] SeAH initially reported what it labeled as actual pipe size. According to SeAH, many of the KS standards used for sales to customers in the Korean market did not establish a "nominal" pipe size, and thus SeAH explained that it normally records the actual pipe size for all pipe sold in both the home and U.S. markets.[128] As a result of SeAH reporting what it determined to be actual pipe size, the Department asked SeAH in a supplemental questionnaire to provide the nominal pipe sizes as originally requested.[129] SeAH, in addition to again reporting its "actual" pipe sizes also provided "nominal" pipe sizes for all pipe based on the ASTM A53 standards.

In the Department's supplemental questionnaire to SeAH, the Department asked for sales documentation for several home market and U.S. sales, as well as copies of all industry standards and specifications for all subject merchandise sold in both markets. Upon further review of SeAH's sales documentation it became evident that SeAH's sales in both markets are ordered according to either a NPS Designator or a nominal outside pipe diameter according to the applicable pipe standard and specifications. SeAH originally reported the nominal outside pipe diameter linked to each NPS Designator according to the specific standard and specifications. Therefore, although in its initial questionnaire response SeAH labeled its reported sizes "actual" we were able to ascertain that the reported pipe sizes represented "nominal" outside diameters. Husteel and HYSCO also reported their home market sales in a similar fashion. As a result, in the *Preliminary Results*, the Department used the "nominal" size as SeAH originally reported and we continue to use these nominal sizes for these final results.

[125] *See* SeAH RB at 5 and section 771(16).
[126] *See* letter from the Department to SeAH, "Request for Information: Antidumping Administrative Review, Circular Welded Non-Alloy Steel Pipe," dated February 23, 2015.
[127] *Id.* at B-11 and C-9.
[128] *See* letter from SeAH, "Administrative Review of the Antidumping Duty Order on Circular Welded Non-Alloy Steel Pipe from Korea for the 2013-14 Review Period – Response to Sections B, C, and D of February 23 Questionnaire," dated April 22, 2015 at 9-10 and 52-53.
[129] *See* letter from the Department to SeAH, "Antidumping Duty Administrative Review of Circular Welded Non-Alloy Steel Pipe from the Republic of Korea (November 1, 2013-October 31, 2014), dated September 8, 2015.

Comment 9: Husteel's Cost Reallocation

The Petitioners

The petitioners state that the Department correctly reallocated Husteel's hot-rolled direct material costs among products with common grades and Husteel's fabrication costs among products with common thickness, surface finish, and end finish in the preliminary results. The petitioners also state that these reallocations are needed for the data to reasonably reflect the costs associated with the production and sale of merchandise per 19 CFR 351.411(b).

Department's Position

As we did in the *Preliminary Results*, we continue to find that Husteel's cost reallocation is warranted for the final results, to mitigate cost differences that are unrelated to the reported products' physical characteristics.

When the Department evaluates a respondent's submitted costs, section 773(f)(1)(A) of the Act advises that "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise."

Accordingly, the Department is instructed to rely on a company's normal books and records if two conditions are met: 1) the books are kept in accordance with the home country's GAAP; and 2) the books reasonably reflect the cost to produce and sell the merchandise. In the instant case, the unadjusted per-unit costs are derived from Husteel's normal books and those books are kept in accordance with Korean GAAP. Hence, the question facing the Department is whether the per-unit costs from Husteel's normal books reasonably reflect the cost to produce and sell the merchandise under consideration.

At the outset of a case, the Department identifies the physical characteristics that are the most significant in differentiating products. These are the physical characteristics that define unique products, *i.e.*, the CONNUMs, for sales comparison purposes. The level of detail within each physical characteristic (*e.g.*, the multiple different grades or sizes of a product) reflects the importance, with price-to-price comparisons, that the Department places on establishing normal values based on comparison market sales of identical, or the most similar, foreign like product. Thus, under sections 773(f)(1)(A) and 773(a)(6)(c)(ii) and (iii) of the Act, a respondent's reported product costs should reflect meaningful cost differences attributable to these different physical characteristics. This ensures that the product-specific costs we use for the sales-below-cost test, CEP profit, CV, and the DIFMER adjustment, accurately reflect the distinct physical characteristics of the products whose sales prices are used in the Department's dumping calculations.

The physical characteristics identified in this case are pipe grade, nominal pipe size, pipe wall thickness, surface finish, and end finish.[130] Based on an analysis of Husteel's reported cost data,

[130] *See, e.g.*, the Department's April 17, 2014 section B questionnaire at B-8 through B-11.

the Department continues to find that the differences in costs between CONNUMs are not explained by the differences in the physical characteristics of those CONNUMs.[131] Thus, for purposes of these final results, it remains appropriate for the Department to reallocate Husteel's costs so that they accurately represent the costs of producing and selling the subject merchandise .

Comment 10: HYSCO's Cost Reallocation

The Petitioners

The petitioners argue that the Department should have reallocated HYSCO's raw material costs for the preliminary results, consistent with the prior administrative review. The petitioner cites examples of alleged raw material cost distortions found in HYSCO's data, and contends that these anomalies cannot be explained by minor differences in the physical characteristics of the subject merchandise.[132] The petitioners report that the Department determined to reallocate costs reported by HYSCO in the antidumping investigation of *Line Pipe from Korea*.[133] The remedy, according to the petitioners, is to reallocate the raw material costs among products of the same pipe grade, size, finish, and end finish and to reallocate fabrication costs according to thickness, surface finish, and end finish. The petitioners highlight that certain of HYSCO's CONNUM pairs include CONNUMs where nearly all physical characteristics between the products are nearly identical and yet there are significant cost differences.[134] For these reasons, the petitioners argue, HYSCO has not demonstrated that these anomalies can be explained by differences in the physical characteristics of the subject merchandise. The Department should, therefore, reallocate HYSCO's reported costs.

HYSCO

HYSCO contends that the petitioners' assertion that these cost differences are not due to product characteristics is wholly unsupported by record evidence, and that the cost differences are consistent with the product characteristics of the subject merchandise.[135] HYSCO argues that it reported its costs in accordance with GAAP, based on its books and records, consistent with the Department's practice.[136]

HYSCO argues that the petitioners are requesting that HYSCO build product costs by weight-averaging the relevant constituent element, such as materials, labor, etc., based on the CONNUM, but HYSCO argues that that practice is not permitted. HYSCO maintains that its CONNUM-specific costs are the result of weight-averaging actual product-specific costs of manufacturing incurred during the POR.

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[131] *See* the Petitioners'CB at 7-8.
[132] *See* letter from the petitioners to the Department, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Case Brief" February 3, 2016 (the petitioners' CB) at 6.
[133] *See* the petitioners CB at 4; *see also Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (Oct. 13, 2015) and accompanying Decision Memorandum at 38-40.
[134] *See* the petitioners' CB at 5 (see third CONNUM pair).
[135] *See* letter from HYSCO to the Department, "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Rebuttal Brief" February 3, 2016 (HYSCO's RB) at 2-3.
[136] *See* HYSCO's RB at 4, and *Certain Oil Country Tubular Goods from Taiwan*, 79 FR 41979 (July 18, 2014) and accompanying Decision Memorandum at Comment 5.

HYSCO argues that the Department evaluates each proceeding on its own merit and does not rely only on prior determinations as determinative for successive reviews.[137] HYSCO notes that the immediately preceding administrative review (for the POR 2013-2014) was the only review in which the Department determined that HYSCO's reported costs warranted reallocation, and that the Department declined to reallocate HYSCO's reported costs in the two administrative reviews prior to that review, even when the Department found it appropriate to reallocate the costs for another respondent in the same administrative review.[138] However, the Department did examine HYSCO's reported costs in the instant review and preliminarily determined that no adjustment was necessary.

HYSCO also argues that the circumstances in the *Line Pipe from Korea* investigation are not similar to the instant review. There, the Department declined to adjust HYSCO's reported material costs, finding it necessary to reallocate only the fabrication costs based on one product characteristic.[139]

The Department, HYSCO continues, performs an extensive analysis to determine if it is necessary to adjust a respondent's reported cost data, and these adjustments are exceptional, are limited to the current review, and are not evidence that such adjustments will be made in future reviews.[140] HSYCO argues that none of the petitioners' previously submitted comments addressed HYSCO's reported cost data. The Department issued supplemental questions to HYSCO regarding certain paired CONNUMs that appeared distortive,[141] in response to which HYSCO reported that these differences were actually data input errors, and provided substantiating documentation supporting its response.[142] The Department explored this issue in a supplemental questionnaire, HYSCO provided revised responses and explanations, and the Department relied on HYSCO's reported costs for the *Preliminary Results*.

It is, according to HYSCO, the petitioners' analysis of the paired CONNUMs that is flawed. According to HYSCO, the differences between the CONNUMs cited by the petitioners are reasonable as they relate to the physical characteristics of the product; HYSCO argues that the different direct material costs in the CONNUM pairs cited by the petitioners are perfectly rational because the products have different thickness. Therefore, the difference in direct material costs is to be expected because each product consumes a different amount of raw materials.[143] HYSCO questions the petitioners' confusion for the difference in CONNUMs as attributed to higher consumption, or higher volume, of raw materials, when, in fact, the petitioners should have attributed this difference to whether or not the price was higher for

[137] *See* HYSCO's RB at 4 and citation to *Antifriction Bearing (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Singapore, Sweden, and the United Kingdom*, 61 FR 66472 (Dec. 17, 1996).
[138] *See* HYSCO's RB at 6-7.
[139] *Id.* at 8-9.
[140] *Id.* at 9.
[141] *See* letter from the Department to HYSCO, "Antidumping Duty Administrative Review of Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: First A-D Supplemental Questionnaire," dated October 9, 2015 at 5-6.
[142] *See* letter from HYSCO to the Department, "Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Supplemental Sections A-D Questionnaire Response," dated November 4, 2015 at 17-18.
[143] *See* HYSCO's RB at 11.

certain hot-rolled inputs than for others. HYSCO continues that the thinner inputs require additional processing which results in higher costs.[144] In sum, HYSCO argues that the petitioners' analysis is fundamentally flawed and that there is no record evidence to support the petitioners' claims.[145]

Department's Position

We agree with HYSCO that a cost reallocation is not warranted in this administrative review. We requested an explanation for differences in material costs for several sets of CONNUM pairs in a supplemental questionnaire,[146] and HYSCO provided an explanation, with supporting documentation, that the differences were either related to data input errors, which HYSCO corrected and submitted to the record, or were related to the differing physical characteristics of the merchandise. Therefore, we do not consider that the differences in cost are unrelated to differences in the physical characteristics of the products such that a cost reallocation, which represents a departure from reliance on the company's normal books and records, would be warranted. Thus, in the absence of large cost CONNUM distortions, and with cost differences that are related to differences in the physical characteristics of the subject merchandise, we have not reallocated HYSCO's costs for purposes of these final results of review.

Comment 11: SeAH's Cost Reallocation

The Petitioners

The petitioners argue that SeAH's reported costs warrant a reallocation because there are variations within the submitted datasets that cannot be explained on the basis of physical characteristics alone. To substantiate its claim, the petitioners cite to *Line Pipe from Korea*, where according to the petitioners, the Department "re-allocated ….SeAH's conversion (*i.e.*, fabrication) costs among products with common outside diameters."[147] In that case, the petitioners note that the Department found SeAH's fluctuation in costs between CONNUMS could not be fully explained by the differences in the physical characteristics of similar control numbers. The petitioners recall that in *Line Pipe from Korea*, even though SeAH's costs were determined to be based on records maintained in accordance with Korean GAAP, they did not reasonably reflect the costs associated with the production and sale of merchandise. The petitioners maintain that in this administrative review, the Department should similarly reallocate SeAH's fabrication costs among products with common outside diameter, and additionally urges the Department to reallocate SeAH's raw material fabrication costs and further reallocate fabrication costs for multiple physical characteristics.

[144] *See* HYSCO's RB at 11.
[145] *Id.* at 13.
[146] *See* HYSCO's November 4, 2015 Sections A-D SQR at 17-18 and Exhibits S-30 to S-35.
[147] *See Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2005) (*Line Pipe from Korea*) and accompanying IDM at 38.

SeAH

SeAH refutes the petitioners' claim that its reported costs should be reallocated. SeAH notes that the company's reported costs were based on the costs recorded for each pipe production order in SeAH's normal cost accounting system.[148] SeAH criticizes the petitioners for first raising this issue in its case brief, noting that no prior claim relating to SeAH's reported costs was made previously. As a result, SeAH argues it can only address the issue in general terms. SeAH maintains that the petitioners "cherry-picked a few small quantity outliers." The petitioners made a comparison of the costs for only six pairs of CONNUMS out of a total of 408 CONNUMS.[149] Upon further examination, according to SeAH, it is apparent that the pairs chosen by the petitioners are outliers with small production quantities. Therefore, according to SeAH, it is not surprising that such small production lots will have costs that differ from larger lots. For further evidence that such CONNUMS are outliers, SeAH points out that three of the four CONNUMS with production of less than five tons were split between two plants.[150] SeAH additionally argues that differences in cost may occur due to the timing of production, because per-unit materials, labor, and overhead costs vary from month to month.[151] SeAH also contends that differences in cost may result from the different production lines SeAH operates within each plant. Finally, SeAH notes that because all product pairs identified by the petitioners differ in either diameter, wall thickness, or surface finish, some variance in cost between them is to be expected.[152]

Department's Position

For these final results, we have continued to rely on SeAH's material and conversion costs as reported in their normal books and records.

As discussed in more detail in Comment 9, above, under section 773(f)(1)(A), the Department will usually rely on a company's normal books and records if two conditions are met: 1) the books are kept in accordance with the home country's GAAP; and 2) the books reasonably reflect the cost to produce and sell the merchandise. Here, the record demonstrates that the reported costs are derived from SeAH's normal books and that those books are in accordance with Korean GAAP. Hence, the question facing the Department is whether the per-unit costs from SeAH's normal books reasonably reflect the cost to produce and sell the merchandise under consideration.

In past cases, the Department has revised reported CONNUM-specific costs that were based on normal books and records, because the reported large cost differences among products were unrelated to differences in the physical characteristics of the products. In deciding whether to adjust for unusual cost differences between similar products, we consider the magnitude of the cost differences and the number of CONNUMS affected.[153] In this case, as the petitioners

[148] *See* SeAH RB at 1.
[149] *Id*. at 2.
[150] *Id*. at 3.
[151] *Id*.
[152] *Id*.
[153] *See CWP from Korea; Notice of Final Determination of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel, Standard, Line and Pressure Pipe From Brazil*, 60 FR 31960, 31968 (June 19,

pointed out in their brief, and as SeAH's reported cost database shows, there are some differences in material and fabrication costs for products with nearly identical physical characteristics.[154] In analyzing the reported CONNUM-specific material and conversion costs, it appears that the differences in costs among products are not unreasonable. Specifically, in comparing the reported material costs for the different CONNUMs within the same grade characteristic, we found that the reported direct material costs were reasonably consistent. Although there were still cost differences between products within a given grade characteristic, we consider this normal considering that there are differences in other physical characteristics of the steel consumed, such as thickness. While there are some outliers (*i.e.*, reported material costs are unusually high for certain CONNUMs), these outliers are insignificant in relation to the totality of the reported production information.[155] Therefore, we consider it reasonable to rely on SeAH's reported product-specific material costs as recorded in its normal books and records. An analysis of SeAH's reported CONNUM-specific conversion costs shows that the fluctuation in costs between CONNUMs appears to be consistent between products having specific physical characteristics. That is, those products that underwent additional production processes reported consistently higher conversion costs than those products that underwent fewer processes. As such, we do not consider it appropriate to adjust SeAH's reported CONNUM-specific conversion costs for the final results.

Comment 12: Whether to Assign HYSCO's Cash Deposit Rate to Hyundai Steel

HYSCO

HYSCO argues that the Department should assign any final cash deposit rate calculated for Hyundai HYSCO to the newly formed merged company, Hyundai Steel. HYSCO continues that in the recently completed investigation of *Welded Line Pipe from Korea*, the Department referenced HYSCO as Hyundai Steel Company and noted that the merger came into effect on July 1, 2015. Therefore, the Department should assign any final margin and cash deposit rate to Hyundai Steel Company.

The Petitioners

The petitioners argue that the merger of Hyundai HYSCO and Hyundai Steel occurred after the POR, and that Hyundai Steel was not named when the Department initiated this administrative review. HYSCO should not attempt to circumvent a changed circumstances review (CCR) by requesting the Department assign to Hyundai Steel HYSCO's cash deposit rate.[156]

1995); and *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from the United Kingdom*, 72 FR 43598 (August 6, 2007) and accompanying Issues and Decision Memorandum at Comment 1.
[154] *See* SeAH's November 8, 2015 submission at Appendix SD-1 (cost database entitled COP02).
[155] *See* SeAH's Final Determination Calculation Memorandum.
[156] *See* the petitioners RB at 6-7.

Department's Position

As we noted above, Hyundai Steel requested a changed circumstances review to determine that it is the successor-in-interest to Hyundai HYSCO.[157] Although the Department has released the *Initiation and Preliminary Results*, the final results have not yet been published.[158] The Department will issue the final results of the CCR within the deadline established under 19 CFR 351.216(e), and will ensure the appropriate application of the final results of the CCR when they are issued.

X. RECOMMENDATION

We recommend applying the above methodology for these final results.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

10 JUNE 2016
(Date)

[157] *See* letter from Hyundai Steel to the Department, "Certain Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Request for Changed Circumstances Review (CCR Request), dated February 24, 2016.
[158] *See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 81 FR 29840 (May 13, 2016) (*Initiation and Preliminary Results*).