




A-580-881  
Investigation  
Public Document  
E&C/Office VII:SB&VC

July 20, 2016

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Affirmative  
Determination in the Antidumping Duty Investigation of Certain  
Cold-Rolled Steel Products from the Republic of Korea

---

## I. SUMMARY

We analyzed the comments of the interested parties in the antidumping duty investigation of certain cold-rolled steel products (cold-rolled steel) from the Republic of Korea (Korea). As a result of our analysis, and based on our findings at verification, we made changes to the margin calculations for Hyundai Steel Company (Hyundai) and POSCO/Daewoo International Corporation (POSCO), the two mandatory respondents in this case.<sup>1</sup> We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this less than fair value (LTFV) investigation for which we received comments from interested parties:

### General Comments

#### 1. Differential Pricing

### Company-Specific Comments

#### POSCO

2. International Freight and Domestic Brokerage and Handling Expenses
3. Loading and Foreign Inland Freight Expenses

---

<sup>1</sup> Daewoo International Corporation and POSCO were collapsed in the preliminary determination. See the February 29, 2016, memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled “Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea” (Preliminary Decision Memorandum). No parties commented on that decision to collapse those two entities, and they are considered to be one entity for the final determination.

4. Quality Product Characteristic
5. Yield Loss
6. General and Administrative Expenses
7. Home Market Gross Unit Price Field
8. Inclusion of Warehousing Expense in Freight Revenue Cap Calculations
9. CEP Offset
10. Affiliated Party Purchases Cost Adjustment

#### Hyundai Steel

11. Whether or Not to Apply Total Adverse Facts Available to Hyundai Steel
12. Control Numbers and Prime/Non-Prime Designations
13. U.S. Sales and Further Manufacturing Costs
14. Repacking Cost for Further Manufactured Merchandise
15. Reporting of Inland Freight, Warehousing Services, International Freight, and Other Services Provided by an Affiliated Company
16. 2013 Financial Statements
17. Certain Home Market Customers
18. CEP Offset
19. Other Issues
20. Other Cost Issues

## **II. BACKGROUND**

On March 7, 2016, the Department of Commerce (the Department) published the *Preliminary Determination* of sales at LTFV of cold-rolled steel from Korea.<sup>2</sup> The period of investigation (POI) is July 1, 2014, through June 30, 2015. During the period January through April 2016, the Department conducted sales and cost verifications at the offices of POSCO and Hyundai Steel, in accordance with section 782(i) of the Tariff Act of 1930, as amended (Act).

We invited parties to comment on the *Preliminary Determination*. On June 6, 2016, ArcelorMittal USA LLC (petitioner),<sup>3</sup> POSCO, and Hyundai Steel submitted case briefs. On June 13, 2016, petitioner, POSCO, and Hyundai Steel submitted rebuttal briefs. Based on our analysis of the comments received, as well as our findings at verification, we recalculated the weighted-average dumping margins for POSCO and Hyundai Steel from the *Preliminary Determination*, which in turn resulted in a recalculation of the estimated all-others rate.

## **III. PERIOD OF INVESTIGATION**

The period of investigation (POI) is July 1, 2014, through June 30, 2015.

---

<sup>2</sup> See *Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 11757 (March 7, 2016) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum.

<sup>3</sup> ArcelorMittal USA LLC, along with AK Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., and United States Steel Corporation, are collectively referred to as “petitioners.”

#### IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain cold-rolled (cold-reduced), flat-rolled steel products, whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

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

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

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

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

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

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

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

- Ball bearing steels;<sup>4</sup>
- Tool steels;<sup>5</sup>
- Silico-manganese steel;<sup>6</sup>
- Grain-oriented electrical steels (GOES) as defined in the final determination of the U.S. Department of Commerce in Grain-Oriented Electrical Steel From Germany, Japan, and Poland.<sup>7</sup>

---

<sup>4</sup> Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

<sup>5</sup> Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

<sup>6</sup> Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

<sup>7</sup> *Grain-Oriented Electrical Steel From Germany, Japan, and Poland: Final Determinations of Sales at Less Than Fair Value and Certain Final Affirmative Determination of Critical Circumstances*, 79 FR 42501, 42503 (July 22, 2014). This determination defines grain-oriented electrical steel as “a flat-rolled alloy steel product containing by weight at least 0.6 percent but not more than 6 percent of silicon, not more than 0.08 percent of carbon, not more than 1.0 percent of aluminum, and no other element in an amount that would give the steel the characteristics of

Non-Oriented Electrical Steels (NOES), as defined in the antidumping orders issued by the U.S. Department of Commerce in Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan.<sup>8</sup>

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0070, 7209.16.0091, 7209.17.0030, 7209.17.0060, 7209.17.0070, 7209.17.0091, 7209.18.1530, 7209.18.1560, 7209.18.2510, 7209.18.2520, 7209.18.2580, 7209.18.6020, 7209.18.6090, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6090, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7225.50.6000, 7225.50.8080, 7225.99.0090, 7226.92.5000, 7226.92.7050, and 7226.92.8050. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7212.50.0000, 7215.10.0010, 7215.10.0080, 7215.50.0016, 7215.50.0018, 7215.50.0020, 7215.50.0061, 7215.50.0063, 7215.50.0065, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.19.0000, 7226.19.1000, 7226.19.9000, 7226.99.0180, 7228.50.5015, 7228.50.5040, 7228.50.5070, 7228.60.8000, and 7229.90.1000.

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

## V. CHANGES SINCE THE PRELIMINARY DETERMINATION

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

### POSCO

1. We revised home market sale inland freight expenses based on minor corrections at the sales verification in Korea.
2. We revised the payment date and imputed credit expenses for unpaid home market sales based on minor corrections at the sales verification in Korea.

---

another alloy steel, in coils or in straight lengths.”

<sup>8</sup> *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Antidumping Duty Orders*, 79 FR 71741, 71741-42 (December 3, 2014). The orders define NOES as “cold-rolled, flat-rolled, alloy steel products, whether or not in coils, regardless of width, having an actual thickness of 0.20 mm or more, in which the core loss is substantially equal in any direction of magnetization in the plane of the material. The term ‘substantially equal’ means that the cross grain direction of core loss is no more than 1.5 times the straight grain direction (*i.e.*, the rolling direction) of core loss. NOES has a magnetic permeability that does not exceed 1.65 Tesla when tested at a field of 800 A/m (equivalent to 10 Oersteds) along (*i.e.*, parallel to) the rolling direction of the sheet (*i.e.*, B800 value). NOES contains by weight more than 1.00 percent of silicon but less than 3.5 percent of silicon, not more than 0.08 percent of carbon, and not more than 1.5 percent of aluminum. NOES has a surface oxide coating, to which an insulation coating may be applied.”

3. We revised the interest rate and imputed credit expenses for U.S. export price (EP) sales based on minor corrections at the sales verification in Korea.
4. We revised the domestic indirect selling expenses for U.S. sales based on minor corrections at the sales verification in Korea.
5. We revised the customer relationship field for one home market customer based on minor corrections at the sales verification in Korea.
6. We revised the calculation of international freight expenses for certain sales to one U.S. customer based on information obtained during the sales verification in Korea (*see comment 2 below*).
7. We revised the Quality product characteristic and control number (CONNUM) for certain home market sales (*see comment 4 below*).
8. We revised general and administrative (G&A) expenses by disallowing an income offset (*see comment 6 below*).
9. We changed the field we used for home market gross unit price, to correct an error in the preliminary determination (*see comment 7 below*).

#### Hyundai Steel

1. We revised the rounding error to gross unit price based on minor corrections from the U.S. sales verification.
2. We updated missing customer-specific billing adjustment ratios for six customers based on the minor corrections at the U.S. sales verification.
3. We updated the U.S. short-term rate used in calculating U.S. inventory carrying costs based on the minor corrections at the U.S. sales verification.
4. We updated the demurrage expenses for HSA's sales within the order confirmation dates within the POI based on minor corrections at the U.S. sales verification.
5. We revised the U.S. sales channel codes based on the minor corrections at the sales verification in Korea.
6. We updated marine insurance based on the minor corrections at the sales verification in Korea.
7. We updated bank charges based on the minor corrections at the sales verification in Korea.
8. We revised domestic indirect selling expenses based on the minor corrections at the sales verification in Korea.
9. We revised domestic brokerage expenses based on the minor corrections at the sales verification in Korea.
10. We made certain adjustments to product characteristics, CONNUMs, and total cost of manufacturing due to errors and inconsistencies associated with some home market sales, and assigned the highest calculated Hyundai Steel margin to certain U.S. sales for which Hyundai Steel did not provide adequate explanation for product information inconsistencies (*see comment 12 below*).
11. We revised repacking cost for further manufactured merchandise (*see comment 14 below*).
12. We revised Hyundai Steel's reporting of inland freight, warehousing services, international freight, and other services provided by an Affiliated Company (*see comment 15 below*).
13. We revised domestic brokerage and handling for U.S. sales (*see comment 19 below*).

## VI. DISCUSSION OF ISSUES

### General Issues

#### **Comment 1: Differential Pricing**

Both POSCO and Hyundai Steel disagree with the Department's decision to calculate their weighted-average dumping margins using the average-to-transaction (A-to-T) method rather than the average-to-average (A-to-A) method, and state that even if the Department continues to use the A-to-T method in its final determination, they disagree with the use of zeroing, as a matter of law.<sup>9</sup>

Both POSCO and Hyundai Steel claim that the Department has "failed to establish that a 'pattern' of price differences exists."<sup>10</sup> Both respondents argue that the Department's analysis "simply measures price *variations* measured against arbitrary statistical benchmarks."<sup>11</sup> Thus, they both assert that the Department cannot use the alternative A-to-T method.

Furthermore, both POSCO and Hyundai Steel claim that the Department has not provided an explanation why the A-to-A method cannot account for such differences. Both respondents state that "the differences in the margins it identifies are not the result of the difference between the A-to-A and the A-to-T methodology; the differences are solely attributable to zeroing."<sup>12</sup> POSCO and Hyundai continue that had "the Department not applied zeroing under any alternative, {their} margin would not meaningfully differ among the different calculation methodologies."<sup>13</sup>

POSCO additionally argues that the 1.58 percent difference in the calculated rates from the *Preliminary Determination* between the A-to-A method and the A-to-T method "is not indicative of a significant difference in the margins or the Department's analysis."<sup>14</sup> POSCO's logic behind its claim is first, that 1.58 percent is less than the *de minimis* threshold established by the statute,<sup>15</sup> and second, that 1.58 percent, when measured against the A-to-T result of 6.89 percent, only represents a 23 percent change and thus does not even meet the Department's definition of a meaningful difference.

POSCO and Hyundai Steel argue that the Department's current interpretation of the statute to allow its application of the A-to-T methodology to all transactions, rather than just those for which differential pricing was found to occur, is also in violation of U.S. law. POSCO and Hyundai Steel state that Department interpretation was first expressed in *Polyethylene Retail Carrier Bags from Taiwan*, but that the Department has provided no rationale for its reversal of

---

<sup>9</sup> See POSCO's Case Brief at 14 and Hyundai Steel's Case Brief at 13.

<sup>10</sup> See POSCO's Case Brief at 16 and Hyundai Steel's Case Brief at 14.

<sup>11</sup> See POSCO's Case Brief at 15 and Hyundai Steel's Case Brief at 14 (emphasis in the originals).

<sup>12</sup> See POSCO's Case Brief at 16 and Hyundai Steel's Case Brief at 14.

<sup>13</sup> See POSCO's Case Brief at 16 and Hyundai Steel's Case Brief at 14.

<sup>14</sup> See POSCO's Case Brief at 16..

<sup>15</sup> *Id.*, citing 19 U.S.C. § 1673(b)(3) {sic} {section 773(b)(3) of the Act}.

its prior interpretation that the A-to-T methodology would only be used for differential pricing transactions.<sup>16</sup>

Finally, POSCO and Hyundai Steel both argue that application of the A-to-T method to all U.S. sales and the application of zeroing (*i.e.*, denying offsets for non-dumped U.S. sales) is unlawful under the WTO Antidumping Agreement. Their argument is founded on each respondent's interpretation of the text of the Antidumping Agreement, as well as the meaning of past panel and Appellate Body reports to the WTO's Dispute Settlement Body.

Petitioner counters that the Department, in its *Preliminary Determination*, found a pattern of prices that differed significantly among purchasers, regions, or time periods, both for POSCO and for Hyundai Steel.<sup>17</sup> Petitioner argues the price variations generated by the differential pricing test for POSCO and Hyundai Steel constitute a pattern of prices that differ significantly.<sup>18</sup>

Petitioner claims POSCO and Hyundai Steel misconstrue the Department's differential pricing analysis when they claim the differences in margins it identified are solely attributable to zeroing. Petitioner notes that under the differential pricing analysis, if both the Cohen's *d* test and the ratio test show the existence of a pattern of prices that differ significantly, as it did for POSCO and Hyundai Steel, the Department will then determine whether the A-to-A method accounts for such differences by comparing the margin from the A-to-A method with the margin from the A-to-T method. Petitioner states that if the difference is found to be meaningful (either a 25 percent relative change between the margins determined from the two methods (as was the case with POSCO) or if the resulting weighted-average margin moves across the *de minimis* threshold (as was the case with Hyundai Steel), the Department will rely on the alternative method. Petitioner concludes by stating POSCO and Hyundai Steel's objection to the Department's differential pricing analysis is nothing other than a complaint about the Department using a standard differential pricing analysis.<sup>19</sup>

Petitioner rejects POSCO's calculation of only a 23 percent relative change between the A-to-A and A-to-T methodologies because POSCO applied the difference in the A-to-A and A-to-T preliminary margins (1.58 percent) as a percentage of the A-to-T weighted-average margin. Petitioner states the Department's use of the A-to-A weighted-average margin in the denominator of the calculation of the relative change is meaningful and rational, given the Department is asking what impact there is to move away from the standard (A-to-A) methodology.<sup>20</sup> Petitioner also dismisses POSCO's statement that the difference should be considered irrelevant because it is less than the Department's *de minimis* rate of 2 percent, noting POSCO is mixing two completely different aspects of the Department's analysis with completely different statutory, regulatory, and procedural foundations.<sup>21</sup>

---

<sup>16</sup> See POSCO's Case Brief at 20 and Hyundai Steel's Case Brief at 18, both citing *Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value*, 75 FR 14569 (March 26, 2010) and accompanying Issues and Decision Memorandum at comment 1.

<sup>17</sup> See Petitioner's POSCO Rebuttal Brief at 24 and Petitioner's Hyundai Steel Rebuttal Brief at 18-19.

<sup>18</sup> See Petitioner's POSCO Rebuttal Brief at 24 and Petitioner's Hyundai Steel Rebuttal Brief at 19.

<sup>19</sup> See Petitioner's POSCO Rebuttal Brief at 24-25 and Petitioner's Hyundai Steel Rebuttal Brief at 19-20.

<sup>20</sup> See Petitioner's POSCO Rebuttal Brief at 25-26.

<sup>21</sup> *Id.*, at 16 (footnote 64).



Finally, petitioner rejects the claims of POSCO and Hyundai Steel that the Department's denial of offsets for non-dumped sales in the A-to-T method is unlawful under the WTO Antidumping Agreement. Petitioner states the Department has confirmed that the denial of offsets with regard to the A-to-T method is consistent with the United States' international obligations.<sup>22</sup> Petitioner states the Department correctly noted in *Washers from Korea* that it acted in accordance with U.S. law by denying offsets under the A-to-T method, and that the Federal Circuit "has held that WTO reports are without effect under U.S. law unless and until such a report has been adopted pursuant to the specified statutory scheme established in the URAA."<sup>23</sup> Petitioner notes the United States has not adopted the WTO report in *Washers from Korea*, and that the United States notified the WTO Dispute Settlement Body of its decision to appeal certain issues in that report.<sup>24</sup> Petitioner states the reliance of POSCO and Hyundai Steel upon *U.S. – Stainless Steel (Mexico)* is misplaced, given the steps taken in response to that report do not require change to the Department's approach of calculating weighted-average margins in this investigation.<sup>25</sup> Petitioner concludes the Department's application of the differential pricing analysis in its *Preliminary Determination* was consistent with U.S. law.

### **Department Position:**

As an initial matter, we note that there is nothing in section 777A(d) of the Act that mandates how the Department measures whether there is a pattern of prices that differs significantly or explains why the A-to-A method or the transaction-to-transaction (T-to-T) method cannot account for such differences. On the contrary, carrying out the purpose of the statute here is a gap filling exercise properly conducted by the Department.<sup>26</sup> As explained in the *Preliminary Determination*, as well as in various other proceedings,<sup>27</sup> the Department's differential pricing

---

<sup>22</sup> See Petitioner's POSCO Rebuttal Brief at 26 and Petitioner's Hyundai Steel Rebuttal Brief at 20, both citing *Large Residential Washers From the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2012-2014*, 80 FR 55595 (September 16, 2015) and accompanying Issues and Decision Memorandum at comment 6 (*Washers from Korea*).

<sup>23</sup> See Petitioner's POSCO Rebuttal Brief at 26 and Petitioner's Hyundai Steel Rebuttal Brief at 20, both citing *Washers from Korea* that in turn cites *Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347 (Fed. Cir. 2005) *cert. denied*, 126 S. Ct. 1023 (2006), and also referencing Statement of Administrative Action, H.R. Doc. 103-316 (I) (1994) at 659 ("WTO dispute settlement panels will not have any power to change U.S. law or order such a change.") and *NSK Ltd. v. United States*, 510 F.3d 1375, 1379-80 (Fed. Cir. 2007) ("{W}e...refuse to overturn Commerce's zeroing practice based on any ruling by the WTO or other international body unless and until such ruling has been adopted pursuant to the specific statutory scheme.")

<sup>24</sup> See Petitioner's POSCO Rebuttal Brief at 26-27 and Petitioner's Hyundai Steel Rebuttal Brief at 20, both citing *United States – Antidumping and Countervailing Measures on Large Residential Washers from Korea*, Dispute Settlement: Dispute DS464 (April 19, 2016).

<sup>25</sup> See Petitioner's POSCO Rebuttal Brief at 27 (footnote 68) and Petitioner's Hyundai Steel Rebuttal Brief at 21 (footnote 78), both citing *Certain Polyester Staple Fiber from the Republic of Korea*, 75 FR 64252 (October 19, 2010) and accompanying Issues and Decision Memorandum at comment 1.

<sup>26</sup> See *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984) (*Chevron*) (recognizing deference where a statute is ambiguous and an agency's interpretation is reasonable); see also *Apex*, 37 F. Supp. 3d at 1302 (applying *Chevron* deference in the context of the Department's interpretation of section 777A(d)(1) of the Act).

<sup>27</sup> See, e.g., *Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*Lipe Pipe from Korea*) and the accompanying Issues and Decision Memorandum

analysis is reasonable, including the use of the Cohen's *d* test as a component in this analysis, and it is in no way contrary to the law.

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

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

(1) Investigations.--

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

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

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

- (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and
- (ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).

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

The Statement of Administrative Action (SAA) expressly recognizes that:

---

at comment 1; *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32937 (June 10, 2015) (CWP from Korea), and the accompanying Issues and Decision Memorandum at comments 1 and 2, and *Welded ASTM A-312 Stainless Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 46647 (July 18, 2016) at comment 4.

New section 777A(d)(1)(B) provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an A-to-A 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.<sup>28</sup>

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

In part the reluctance to use the A-to-A methodology had been based on a concern that such a methodology could conceal "targeted dumping." In such situations, an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions."<sup>29</sup>

With the enactment of the URAA, the Department's standard comparison method in an LTFV investigation is normally the A-to-A method. This is reiterated in the Department's regulations, which state that "the Secretary will use the A-to-A method unless the Secretary determines another method is appropriate in a particular case."<sup>30</sup> As recognized in the SAA, the application by the Department of the A-to-A method to calculate a company's weighted-average dumping margin has raised concerns that dumping may be masked or hidden. The SAA states that consideration of the A-to-T method, as an alternative comparison method, may respond to such concerns where the A-to-A method, or the T-to-T method, "cannot account for a pattern of prices that differ significantly among purchasers, regions, or time periods, *i.e.*, where targeted dumping *may* be occurring."<sup>31</sup> Neither the Act nor the SAA state that this is the only reason why the Department could resort to the A-to-T method, simply that this *may* be a situation where the A-T method would be appropriate or that the U.S. sales which constitute a pattern are the only sales where "targeted dumping" may be occurring or masked. As stated in the Act, the requirements for considering whether to apply the A-to-T method are that there exist a pattern of prices that differ significantly and that the Department explains why either the A-to-A method or the T-to-T method cannot account for such differences.

Accordingly, the Department finds that the purpose of section 777A(d)(1)(B) of the Act is to evaluate whether the A-to-A method is the appropriate tool to measure whether, and if so to what extent, a given respondent is dumping the subject merchandise at issue in the U.S. market.<sup>32</sup>

---

<sup>28</sup> See Uruguay Round Agreement Act, Statement of Administrative Action (SAA), H.R. Doc. No. 103-316 at 843 (1994), reprinted in 1994 U.S.C.C.A.N. 4040, 4161

<sup>29</sup> See SAA at 842.

<sup>30</sup> See 19 CFR 351.414(c)(1). This approach is also now followed by the Department in administrative and new shipper reviews. See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*) (where the Department explained that it would now "calculate weighted-average margins of dumping and antidumping duty assessment rates in a manner which provides offsets for non-dumped comparisons while using monthly average-to-average ("A-A") comparisons in reviews, paralleling the WTO-consistent methodology that the Department applies in original investigations").

<sup>31</sup> See SAA at 843 (emphasis added).

<sup>32</sup> See 19 CFR 351.414(c)(1).

While “targeting” and “targeted dumping” may be used as a general expression to denote this provision of the statute,<sup>33</sup> these terms impose no additional requirements beyond those specified in the statute for the Department to otherwise determine that the A-to-A method is not appropriate based upon a finding that the two statutory requirements have been satisfied. Furthermore, “targeting” implies a purpose or intent on behalf of the exporter to focus on a subgroup of its U.S. sales. The court has already found that the purpose or intent behind an exporter’s pricing behavior in the U.S. market is not relevant to the Department’s analysis of the statutory provisions of section 777A(d)(1)(B) of the Act.<sup>34</sup> The Court of Appeals for the Federal Circuit (CAFC) has stated:

Section 1677f-1(d)(1)(B) does not require Commerce to determine the reasons why there is a pattern of export prices for comparable merchandise that differs significantly among purchasers, regions, or time periods, nor does it mandate which comparison methods Commerce must use in administrative reviews. As a result, Commerce looks to its practices in antidumping duty investigations for guidance. Here, the CIT did not err in finding there is no intent requirement in the statute, and we agree with the CIT that requiring Commerce to determine the intent of a targeted dumping respondent “would create a tremendous burden on Commerce that is not required or suggested by the statute.”<sup>35</sup>

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

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

---

<sup>33</sup> See, e.g., *Samsung v. United States*, Slip Op. 15-58, p. 5 (“Commerce may apply the A-to-T methodology ‘if (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or period of time, and (ii) the administering authority explains why such differences cannot be taken into account using’ the A-to-A or T-to-T methodologies. Id. § 1677f-1(d)(1)(B). Pricing that meets both conditions is known as ‘targeted dumping.’”).

<sup>34</sup> See *JBF RAK LLC v. United States*, 991 F. Supp. 2d 1343, 1355 (CIT 2014); *aff’d JBF RAK LLC v. United States*, 790 F.3d 1358 (Fed. Cir. 2015) (“*JBF RAK*”).

<sup>35</sup> See *JBF RAK*, 790 F.3d at 1368 (internal citations omitted).

Cohen's *d* test to determine whether the extent of the identified differences in prices which are found to be significant is sufficient to find a pattern and satisfy the pattern requirement, *i.e.*, that conditions exist which may result in masked dumping.

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

#### 1. The Department's Differential Pricing Analysis Fails to Identify a “Pattern”

As stated in the *Preliminary Determination*, the purpose of the Cohen's *d* test is to evaluate “the extent to which the net prices to a particular purchaser, region, or time period differ significantly from the net prices of all other sales of comparable merchandise.”<sup>36</sup> The Cohen's *d* coefficient is a recognized measure which gauges the extent (or “effect size”) of the difference between the means of two groups.

In the final determination for *Xanthan Gum from the PRC*, the Department explained that “{e}ffect size is a simple way of quantifying the difference between two groups and has many advantages over the use of tests of statistical significance alone.” In addressing Deosen's comment in *Xanthan Gum from the PRC*, the Department continued:

Effect size is the measurement that is derived from the Cohen's *d* test. Although Deosen argues that effect size is a statistic that is “widely used in meta-analysis,” we note that the article also states that “{e}ffect size quantifies the size of the difference between two groups, and may therefore be said to be a true measure of *the significance of the difference*.” The article points out the precise purpose for which the Department relies on the Cohen's *d* test to satisfy the statutory language, to measure whether a difference is significant.<sup>37</sup>

The Cohen's *d* coefficient is based on the difference between the means of the test and the comparison groups relative to the variances within the two groups, *i.e.*, the pooled standard deviation. When the difference in the weighted-average sale prices between the two groups is

---

<sup>36</sup> See Preliminary Decision Memo at page 10.

<sup>37</sup> See *Xanthan Gum from the PRC* at comment 3 (emphasis in original, internal citations omitted).

measured relative to the pooled standard deviation, then this value is expressed in standardized units, and is based on the dispersion of the prices within each group. In other words, the “significance” of differences between the average prices of the test group and the comparison group (*i.e.*, between a specific purchaser, region or time period and all other purchasers, regions or time periods, respectively) is measure by how widely the individual prices differ within these two groups. When there is little variation in prices within each of these groups (*i.e.*, not between the two groups), then a small difference in the mean prices of the test and comparison groups will be found to be significant. Conversely, when there are wide variations in prices within each of these groups, then a much larger difference in the mean prices of the test and comparison groups will be necessary in order to find that the difference is significant.

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

Subsequently, the ratio test aggregates the sales value for each U.S. sale whose price has been found to differ significantly among purchasers, regions or time periods. As described in the *Preliminary Determination*, when 66 percent or more of the U.S. sales value are represented by U.S. prices which differ significantly, then the Department finds that the “pattern” requirement of the statute has been met and that the Department should consider that the appropriate alternative comparison method is the application of the A-to-T method to all U.S. sales. When between 33 percent and 66 percent of the U.S. sales value are represented by U.S. prices which differ significantly, then the Department also finds that the “pattern” requirement of the statute has been met and that the Department should consider that the appropriate alternative comparison method is the application of the A-to-T method to those U.S. sales which exhibit prices that differ significantly (*i.e.*, which pass the Cohen’s *d* test) and the application of the A-to-A method to those sale which do not exhibit prices that differ significantly.

Contrary to the general statement submitted by POSCO and Hyundai Steel, the Department continues to find that this approach reasonably fills the gap in the statute in how to identify whether there exists a pattern of prices that differ significantly.<sup>38</sup>

## 2. The Department’s Differential Pricing Analysis Fails to Address Why the A-to-A Method Cannot Account for Such Differences

The Department disagrees, in part, with POSCO and HYSCO that the difference in the weighted-average dumping margins, calculated using the A-to-A method and the appropriate alternative comparison method based on the A-to-T method, “are not the result of the difference between the

---

<sup>38</sup> See *Apex Frozen Foods Pvt. Ltd. v. United States*, 144 F. Supp.3d 1308, 1330, (CIT 2016), *appeal pending* (*Apex Frozen Foods*) (“Commerce is not restricted in what type of sales it may consider in assessing the existence of such a pattern so long as its methodological choice enables Commerce to reasonably determine whether application of A-T is appropriate.”)

A-to-A and the A-to-T methodology; the differences are solely attributable to zeroing.”<sup>39</sup> Indeed, the difference in the calculated results for the two comparison methods are directly attributable to the differences in these two methods.

To consider the extent of the masking under the A-to-A method, as opposed to an alternative comparison method based on the A-to-T method,<sup>40</sup> the Department uses a “meaningful difference” test where it compares the weighted-average dumping margin calculated using the A-to-A method and the weighted-average dumping margin calculated using the appropriate alternative comparison method. A meaningful difference in these two results is caused by higher U.S. prices offsetting lower U.S. prices where the dumping, which may be found on lower priced U.S. sales, is hidden or masked by higher U.S. prices, such that the A-to-A method would be unable to account for such differences.<sup>41</sup> Such masking or offsetting of lower prices with higher prices may occur implicitly within the averaging groups or explicitly when aggregating the A-to-A comparison results. Therefore, in order to understand the impact of the unmasked “targeted dumping,” the Department finds that the comparison of each of the calculated weighted-average dumping margins using the standard and alternative comparison methodologies exactly quantifies the extent of the unmasked “targeted dumping.”

The simple comparison of the two calculated results belies all of the complexities in calculating and aggregating individual dumping margins (*i.e.*, individual results from comparing export prices, or constructed export prices, with normal values). It is the interaction of these many comparisons of export prices or constructed export prices with normal values, and the aggregation of these comparison results, which determine whether there is a meaningful difference in these two calculated weighted-average dumping margins. When using the A-to-A method, lower-priced U.S. sales (*i.e.*, sales which may be dumped) are offset by higher-priced U.S. sales. Congress was concerned about offsetting and that concern is reflected in the SAA which states that “targeted dumping” is a situation where “an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions.”<sup>42</sup> The comparison of a weighted-average dumping margin based on comparisons of weighted-average U.S. prices that also reflects offsets for non-dumped sales, with a weighted-average dumping margin based on comparisons of individual U.S. prices without such offsets (*i.e.*, with zeroing) precisely examines the impact on the amount of dumping which is hidden or masked by the A-to-A method. Both the weighted-average U.S. price and the individual U.S. prices are compared to a normal value that is independent from the type of U.S. price used for

---

<sup>39</sup> See DOSCO’s Case Brief at 16 and Hyundai Steel’s Case Brief at 14.

<sup>40</sup> See *Koyo Seiko Co., Ltd. v. United States*, 20 F.3d 1156, 1159 (Fed. Cir. 1994) (“The purpose of the antidumping statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at less-than-fair value with higher priced sales. Commerce refers to this practice as ‘masked dumping.’ By using individual U.S. prices in calculating dumping margins, Commerce is able to identify a merchant who dumps the product intermittently—sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result.” (internal citations omitted)).

<sup>41</sup> See *Union Steel v. United States*, 713 F.3d 1101, 1108 (Fed. Cir. 2013) (“{the A-to-A} comparison methodology masks individual transaction prices below normal value with other above normal value prices within the same averaging group.”).

<sup>42</sup> See SAA at 842.

comparison, and the basis for normal value will be constant because the characteristics of the individual U.S. sales<sup>43</sup> remain constant whether weighted-average U.S. prices or individual U.S. prices are used in the analysis.

Consider the simple situation where there is a single, weighted-average U.S. price, and this average is made up of a number of individual U.S. sales which exhibit different prices, and the two comparison methods under consideration are the A-to-A method with offsets (*i.e.*, without zeroing) and the A-to-T method with zeroing.<sup>44</sup> The normal value used to calculate a weighted-average dumping margin for these sales will fall into one of five scenarios with respect to the range of these different, individual U.S. sale prices:

- 1) the normal value is less than all of the U.S. prices and there is no dumping;
- 2) the normal value is greater than all of the U.S. prices and all sales are dumped;
- 3) the normal value is nominally greater than the lowest U.S. prices such that there is a minimal amount of dumping and a significant amount of offsets from non-dumped sales;<sup>45</sup>
- 4) the normal value is nominally less than the highest U.S. prices such that there is a significant amount of dumping and a minimal amount of offsets generated from non-dumped sales;
- 5) the normal value is in the middle of the range of individual U.S. prices such that there is both a significant amount dumping and a significant amount of offsets generated from non-dumped sales.

Under scenarios (1) and (2), either there is no dumping or all U.S. sales are dumped such that there is no difference between the weighted-average dumping margins calculated using offsets or zeroing and there is no meaningful difference in the calculated results. Under scenario (3), there is a minimal (*i.e.*, *de minimis*) amount of dumping, such that the application of offsets will result

---

<sup>43</sup> These characteristics include may include such items as product, level-of-trade, time period, and whether the product is considered as prime- or second-quality merchandise.

<sup>44</sup> The calculated results using the average-to-average method with offsets (*i.e.*, no zeroing) and the calculated results using the average-to-transaction method with offsets (*i.e.*, no zeroing) will be identical. *See* Attachment 2 of DOSCO Final Calculation Memo (pages 123-125 of the SAS output); and Attachment 2 of HiSteel Final Calculation Memo (pages 180-182), where the calculation results of the average-to-average method and each of the alternative comparison methods are summarized. The sum of the “Positive Comparison Results” and the “Negative Comparison Results” for each of the three comparison methods (*i.e.*, the average-to-average method, the “mixed” method, and the average-to-transaction method, are identical, *i.e.*, with offsets for all non-dumped sales (*i.e.*, negative comparison results), the amount of dumping is identical. As such, the difference between the calculated results of these comparison methods is whether negative comparison results are used as offsets or set to zero.

<sup>45</sup> As discussed further below, please note that scenarios 3, 4 and 5 imply that there is a wide enough spread between the lowest and highest U.S. prices so that the differences between the U.S. prices and normal value can result in a significant amount of dumping and/or offsets, both of which are measured relative to the U.S. prices.



in a zero or *de minimis* amount of dumping (*i.e.*, the A-to-A method with offsets and the A-to-T method with zeroing both results in a weighted-average dumping margin which is either zero or *de minimis*) and which also does not constitute a meaningful difference. Under scenario (4), there is a significant (*i.e.*, non-*de minimis*) amount of dumping with only a minimal amount of non-dumped sales, such that the application of the offsets for non-dumped sales does not change the calculated results by more than 25 percent, and again there is not a meaningful difference in the weighted-average dumping margins calculated using offsets or zeroing. Lastly, under scenario (5), there is a significant, non-*de minimis* amount of dumping and a significant amount of offsets generated from non-dumped sales such that there is a meaningful difference in the weighted-average dumping margins calculated using offsets and zeroing.

Only under scenarios (3), (4) and (5) are the granting or denial of offsets relevant to whether dumping is being masked, as there are both dumped and non-dumped sales. Under scenario (3), there is only a *de minimis* amount of dumping such that the extent of available offsets will only make this *de minimis* amount of dumping even smaller and have no impact on the outcome. Under scenario (4), there exists an above-*de minimis* amount of dumping, and the offsets are not sufficient to meaningfully change the results. Only with scenario (5) is there an above-*de minimis* amount of dumping with a sufficient amount of offsets such that the weighted-average dumping margin will be meaningfully different under the A-to-T method with zeroing as compared to the A-to-T / A-to-A method with offsets. This difference in the calculated results is meaningful in that a non-*de minimis* amount of dumping is now masked or hidden to the extent where the dumping is found to be zero or *de minimis* or to have decreased by 25 percent of the amount of the dumping with the applied offsets.

This example demonstrates that there must be a significant and meaningful difference in U.S. prices in order to resort to an alternative comparison method. These differences in U.S. prices must be large enough, relative to the absolute price level in the U.S. market, where not only is there a non-*de minimis* amount of dumping, but there also is a meaningful amount of offsets to impact the identified amount of dumping under the A-to-A method with offsets. Furthermore, the normal value must fall within an even narrower range of values (*i.e.*, narrower than the price differences exhibited in the U.S. market) such that these limiting circumstances are present (*i.e.*, scenario (5) above). This required fact pattern, as represented in this simple situation, must then be repeated across multiple averaging groups in the calculation of a weighted-average dumping margin in order to result in an overall weighted-average dumping margin which changes to a meaningful extent.

Further, for each A-to-A comparison result which does not result in set of circumstances in scenario (5), the “meaningfulness” of the difference in the weighted-average dumping margins between the two comparison methods will be diminished. This is because for these A-to-A comparisons which do not exhibit a meaningful difference with the A-to-T comparisons, there will be little or no change in the amount of dumping (*i.e.*, the numerator of the weighted-average dumping margin) but the U.S. sales value of these transactions will nonetheless be included in the total U.S. sales value (*i.e.*, the denominator of the weighted-average dumping margin). The aggregation of these intermediate A-to-A comparison results where there is no “meaningful” difference will thus dilute the significance of other A-to-A comparison results where there is a “meaningful” difference, which the A-to-T method avoids.

Additionally, the extent of the amount of dumping and potential offsets for non-dumped sales is measured relative to the total export value (*i.e.*, the denominator of the weighted-average dumping margin) of the subject merchandise. Thus, the “targeted dumping” analysis accounts for the difference in the U.S. prices relative to the absolute price level of the subject merchandise. Only under scenario (5) above will the Department find that the A-to-A method is not appropriate – where there is an identifiable above *de minimis* amount of dumping along with an amount of offsets generated from non-dumped sales such that the amount of dumping is changed by a meaningful amount when those offsets are applied. Both of these amounts are measured relative to the total export value (*i.e.*, absolute price level) of the subject merchandise sold by the exporter in the U.S. market.

With respect to POSCO’s and Hyundai Steel’s claims that the differences in the calculated rates are solely attributable to so called zeroing, we do not disagree that the use of zeroing aids the Department’s analysis, but the respondents over speak when they claim that it is solely attributable to zeroing. As we’ve explained, zeroing addresses masked “targeted dumping” which is created when offsets are granted for non-dumped sales. In this situation, Congress’s intent of addressing “targeted dumping,” when the requirements of section 777A(d)(1)(B) of the Act are satisfied,<sup>46</sup> would be thwarted if the A-to-T method without zeroing were applied since this produces the same results (a mathematical equivalent) when the standard A-to-A method without zeroing is applied. Under that scenario, both methods would inherently mask dumping. It is for this reason that the Department finds that the A-to-A method cannot take into account the pattern of prices that differ significantly for either respondent, *i.e.*, the conditions where “targeted” or masked dumping “may be occurring.” Thus, the Department continues to find that application of the A-to-T method, with zeroing, is an appropriate tool to address masked “targeted dumping.”<sup>47</sup>

For Hyundai Steel, based on the results of the differential pricing analysis, the Department finds that 66.46 percent of the value of U.S. sales pass the Cohen’s *d* test,<sup>48</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the A-to-A method can account for such differences because the relative change in the weighted-average dumping margin between the A-to-A method and the appropriate alternative method (*i.e.*, the A-to-T method) is less than 25 percent. Thus, for this final determination, the Department finds that there is not a meaningful difference

---

<sup>46</sup> See SAA at 842-843.

<sup>47</sup> See *Apex Frozen Foods*. The CIT in *Apex Frozen Foods* held that the “purpose” of applying the average-to-transaction method is to “reveal those cases where offsetting masks dumping, and that purpose is achieved by zeroing.” *Apex Frozen Foods* at 44. The Court explained that without zeroing the results of the average-to-average and average-to-transaction comparisons would be mathematically equivalent, obviating any benefit derived from the provision of a statutory alternative. *Id.* The Court therefore held that “The zeroing characteristic of A-T is inextricably linked to the comparison methodology and its effect in the meaningful difference analysis does not render the approach unreasonable.” *Id.*, at 44-45.

<sup>48</sup> See Memorandum to the File, “Preliminary Determination Calculation for Hyundai Steel Company in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from Republic of Korea,” dated February 29, 2016 (“Hyundai Steel Preliminary Analysis Memorandum”).

between using the different comparison methods, and is applying the A-to-A method to all U.S. sales to calculate the weighted-average dumping margin for Hyundai Steel.

For POSCO, based on the results of the differential pricing analysis, the Department finds that 73.04 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>49</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the A-to-A method cannot account for such differences because the relative change in the weighted-average dumping margin between the A-to-A method and the appropriate alternative method (*i.e.*, the A-to-T method) is 25 percent or greater. Thus, for this final determination, the Department finds that there is a meaningful difference between using the different comparison methods, and is applying the A-to-T method to all U.S. sales to calculate the weighted-average dumping margin for POSCO.

### 3. The "Meaningful Difference" for POSCO Does Not Satisfy Either the Statute's Or the Department's Stated Thresholds

The Department disagrees with POSCO's argument that the 1.58 percent difference in the weighted-average dumping margin calculated using the A-to-A method and the alternative comparison method in the *Preliminary Determination* are contrary to the statute or the Department's stated practice.

Section 733(b)(3) of the Act defines the *de minimis* amount of dumping for a less-than-fair-value investigation as two percent *ad valorem*. This represents an overall rate of dumping, *i.e.*, an amount of dumping relative to the total U.S. sales value. This is materially different from the difference in two rates of dumping, which POSCO misconstrues as an overall rate of dumping.

Likewise, POSCO's depiction of the Department's stated threshold for a meaningful difference is without merit. In the *Preliminary Determination*, the Department stated:

A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the A-to-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the A-to-A method and the appropriate alternative method move across the *de minimis* threshold.<sup>50</sup>

The Department's analysis examines the impact of the change in results from the standard application of the A-to-A method. Therefore, it is unreasonable, and illogical, to base this analysis on the alternative results based on the application of the A-to-T method. This is analogous to 19 CFR 351.224(g)(1) which defines a "significant ministerial error" where the

---

<sup>49</sup> See Memorandum to the File, "Preliminary Determination Calculation for Daewoo International Corporation in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea," dated February 29, 2016 (POSCO/DWI Preliminary Analysis Memorandum).

<sup>50</sup> See *Preliminary Determination* and Preliminary Decision Memorandum at 10.

difference is measured relative to the rate calculated and published by the Department in a preliminary determination.

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

The Department disagrees with POSCO's and Hyundai Steel's claim that the Act prohibits the application of the A-to-T method to all U.S. sales. As noted above, the statute is silent on how the Department address the requirements provided for under section 777A(d)(1)(B) of the Act, and thus it has used its discretion to fill the gap in the statutory language. As part of that gap, Congress has not set forth a prescription on how the A-to-T method must be applied as an alternative comparison method to either of the standard comparison methodologies (*i.e.*, the A-to-A method or the T-to-T method). The Department has reasonably filled that gap. Likewise, this discretion has been affirmed by the court.<sup>51</sup>

#### 5. The WTO Antidumping Agreement Prohibits the Application of the A-to-T Method to All U.S. Sales and the Use of Zeroing

The Department disagrees with POSCO and Hyundai Steel, both on their interpretation of the Antidumping Agreement and on the requirement that it and the reports issued by WTO panels and the Appellate Body impose on this final determination. The CAFC has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.<sup>52</sup> In fact, Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.<sup>53</sup> As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute.<sup>54</sup>

To date, the United States has fully complied with all adverse panel and Appellate Body reports adopted by the Dispute Settlement Body with regards to Article 2.4.2 of the Antidumping Agreement. With regard to the A-to-T method, specifically, as an alternative comparison method and the use of zeroing under the second sentence of Article 2.4.2 of the WTO Antidumping Agreement, the Department has issued no new determination and the United States has adopted no change to its practice pursuant to the statutory requirements of sections 123 or 129 of the URAA.

### **POSCO Issues**

#### **Comment 2: International Freight and Domestic Brokerage and Handling Expenses**

---

<sup>51</sup> See, e.g., *Apex Frozen Foods*, 144 F. Supp. 3d at 1319; see also *Timken v. United States*, 2016 WL 2765448 at \*5 (CIT May 10, 2016).

<sup>52</sup> See *Corus Staal BV v. U.S. Dep't of Commerce*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), *cert. denied* 126 S. Ct. 1023 (2006); accord *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007).

<sup>53</sup> See, e.g., 19 U.S.C. § 3533, 3538 (sections 123 and 129 of the URAA).

<sup>54</sup> See, e.g., 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary).

Petitioner states that POSCO reported ocean freight expenses for some sales to one U.S. customer when it could have reported them on a transaction-specific basis. Petitioner states this reporting methodology was discovered at verification, during which the Department noted the methodology used by POSCO to calculate the weighted-average expense for those sales understated the average, given it included some volume of sales for which the identified expense in the calculation was blank. Petitioner states the Department's preference is to calculate such expenses on a transaction-specific basis.<sup>55</sup> Petitioner states that while allocations have been found to be acceptable, they are limited to situations where transaction-specific information is unavailable and the allocations reasonable.<sup>56</sup> Petitioner argues the Department should apply as adverse facts available (AFA) for the sales in question the highest ocean freight expense for sales to that customer for which transaction-specific expenses were reported in the U.S. sales database because POSCO chose to not provide transaction-specific expense data when it could have done so and because the Department discovered at verification POSCO's use of the inappropriate average expense methodology and POSCO's actual miscalculation of the average in its favor. Alternatively, petitioner states that if the Department does not conclude AFA is warranted, the Department should assign the weighted-average ocean freight expense for sales to that customer for which transaction-specific expenses were reported in the U.S. sales database.<sup>57</sup>

Similarly, petitioner states that POSCO reported domestic brokerage and handling expenses for some sales to the same U.S. customer when it could have reported them on a transaction-specific basis, and even did so for some sales to that customer for which POSCO reported transaction-specific ocean freight expenses. Petitioner argues the Department should apply as AFA for the sales to that U.S. customer the highest domestic brokerage and handling expense for sales to all other customers. Alternatively, petitioner states that if the Department does not conclude AFA is warranted, the Department should assign the weighted-average brokerage and handling expense for sales to all other U.S. customers.<sup>58</sup>

With regard to international freight expenses, POSCO states that the Department possesses the information needed to revise the average ocean freight calculation to exclude the volume of the sales for which no ocean freight expense was listed, thereby enabling a recalculation of the average, if that is deemed necessary.<sup>59</sup>

---

<sup>55</sup> See Petitioner's POSCO Case Brief at 5, citing *Circular Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 64170 (October 28, 2014) (*Thai Pipe*) and accompanying Issues and Decision Memorandum at Comment 4, in turn citing 19 CFR 351.401(g) and *Antidumping Duties: Countervailing Duties; Final Rule*, 62 FR 27296, 27346 (May 19, 1997).

<sup>56</sup> See Petitioner's POSCO Case Brief at 5, citing *Fag Italia S.p.A. v. United States*, 24 C.I.T. 587, 592-93, 200 CIT LEXIS 83 at \*15-16 (2000), *aff'd in part, vacated in part on other grounds* 291 F.3d 806 (Fed. Cir. 2002); and 19 CFR 351.401(g)(2) ("Any party seeking to report an expense or a price adjustment on an allocated basis must demonstrate to the Secretary's satisfaction that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology used does not cause inaccuracies or distortions.").

<sup>57</sup> See Petitioner's POSCO Case Brief at 2-4 and Petitioner's POSCO Rebuttal Brief at 22.

<sup>58</sup> See Petitioner's POSCO Case Brief at 4-5 and Petitioner's POSCO Rebuttal Brief at 22-23.

<sup>59</sup> See POSCO's Case Brief at 13. See also POSCO's Rebuttal Brief at 4-5. Petitioner states this recalculation relies on an electronic spreadsheet not on the record, and claims that the photocopy of the spreadsheet on the record from verification is in extremely small font and largely illegible. See Petitioner's POSCO Rebuttal Brief at 21.

POSCO states that petitioner's criticism of POSCO's reporting methodology focuses upon a single sale examined at verification, and glosses over the fact that the sale and others in the sales channel in question were made out of U.S. inventory.<sup>60</sup> POSCO states that to report transaction-specific data would have required linking a POSCO shipment expense to the product sold from its U.S. affiliate's inventory, and claims that in similar circumstances, the Department routinely accepts average expense data.<sup>61</sup> POSCO claims that its CEP inventory sales do not readily link back to the international freight expenses, so average expense data are appropriate, in contrast to its EP sales and its direct CEP sales (such another sale examined at verification), for which it was able to link the expense data on a transaction-specific basis.<sup>62</sup> POSCO claims prior international freight expenses are not typically tied to a specific sale from U.S. inventory or directly built into the subsequent sales price on a transaction basis, and that such average expense calculations are consistent with 19 CFR 351.402(g), which it states allows for average expense reporting where transaction-specific reporting is not feasible and the calculations are not distortive.<sup>63</sup>

POSCO states that the worksheet provided at verification does not demonstrate it could have linked the sales to particular sales made out of U.S. inventory, because the data in question relate to POSCO's shipments from Korea, not to shipments from the U.S. inventory of its affiliates.<sup>64</sup>

POSCO also rejects petitioner's extension of its argument against transaction-specific data to domestic brokerage expenses, stating that the calculation of the average domestic brokerage and handling expense reflects all the relevant domestic brokerage and handling expenses divided by a corresponding shipment volume. POSCO states that the Department is capable of recalculating the average expense to exclude those few shipments for which no domestic and handling expenses were incurred, but POSCO argues this would not be appropriate because shipments with no expenses should remain in the calculation because they form part of an average.<sup>65</sup>

**Department Position:** As noted by petitioner, the Department prefers transaction-specific expenses to average expenses.<sup>66</sup> However, the Department may accept allocations of expenses under certain circumstances if they are not distortive.<sup>67</sup> In this case, when asked in a supplemental questionnaire for clarification regarding how international freight expenses were reported, POSCO referred to difficulties tying the products its U.S. affiliates shipped to U.S. customers from their inventories back to the specific ocean shipments of the merchandise from

---

<sup>60</sup> See POSCO's Rebuttal Brief at 3, citing "Verification of the Sales Response of POSCO/Daewoo International Corporation," dated April 11, 2016 ("POSCO Sales Verification Report") at 24.

<sup>61</sup> *Id.*, at 3, citing as an example (in footnote 3) *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Sweden*, 63 FR 40449, 40458 (July 29, 1998) (*SSWR from Sweden*) and accompanying Issues and Decision Memorandum at comment 9 (drawing a distinction between EP sales where the Department sought transaction-specific international freight expense data and CEP sales where the Department accepted average expense information).

<sup>62</sup> See POSCO's Rebuttal Brief at 3 (footnote 3) and 4 (referencing a direct CEP sale for which the transaction-specific expense was reported).

<sup>63</sup> See POSCO's Rebuttal Brief at 4.

<sup>64</sup> *Id.*, at 5.

<sup>65</sup> *Id.*, at 5-6.

<sup>66</sup> See, e.g., *Thai Pipe* and accompanying Issues and Decision Memorandum at Comment 4.

<sup>67</sup> See 19 CFR 351.401(g).

Korea, and stated that for such sales an average expense methodology was being used.<sup>68</sup> The Department did not require that POSCO revise its reported ocean freight expenses. The Department verified an example of an average expense calculation of international freight expenses for merchandise sold to an unaffiliated U.S. customer from the U.S. affiliate's inventory, and only noted a discrepancy in the calculation, which, as POSCO notes, can be corrected based on the information on the record.<sup>69</sup> The example of another average international freight expense calculation did not contain the same type of error.<sup>70</sup> Therefore, there is no evidence of a miscalculation that is pervasive throughout the data reported, and because there is no indication that use of such an allocation is distortive, we corrected the average calculation of international freight expenses for sales to the customer in question and are using the corrected average in our final margin calculations.<sup>71</sup>

While POSCO did not state in its responses that domestic brokerage and handling were being reported using an average expense methodology for sales made by U.S. affiliates from their inventory, the same rationale applies for those expenses as would apply for international freight expenses, both of which were incurred in Korea for coils that were inventoried by HSA and then later resold in the United States by HSA, often after further manufacturing.<sup>72</sup> Therefore, we are not revising domestic brokerage and handling expenses for sales to the U.S. customer in question.

### **Comment 3: Loading and Foreign Inland Freight Expenses**

Petitioner argues that POSCO did not adequately explain why neither loading charges (normally a part of the reported domestic brokerage and handling expense field) nor foreign inland freight charges would have been incurred for a certain U.S. sale examined at verification. Petitioner claims POSCO's assertion at verification that the absence of a freight surcharge to the customer indicated the absence of any freight expense incurred by POSCO is illogical. Petitioner argues the Department should apply as AFA the highest domestic brokerage and handling and foreign inland freight expenses for any reported sale for the sale in question. Alternatively, petitioner states that if the Department does not conclude AFA is warranted, the Department should assign to that sale the weighted-average brokerage and handling expense and the weighted-average foreign inland freight expense of all reported U.S. sales for which a non-zero expense was reported.<sup>73</sup>

POSCO states that the Department verified the single U.S. sale in question, confirmed that no loading/unloading charges or foreign inland freight charges were recorded for the transaction, and noted the customer was not charged for freight expenses, which POSCO states indicated it did not incur any such expenses for the shipment.<sup>74</sup> POSCO argues no adjustment, adverse or

---

<sup>68</sup> See POSCO's December 7, 2015, supplemental response at 30.

<sup>69</sup> See POSCO Sales Verification Report at 2 and 24.

<sup>70</sup> See POSCO's December 7, 2015, supplemental response at Exhibit S-53-C.

<sup>71</sup> See the July 20, 2016, "Analysis Memorandum for POSCO/DWI for the Final Determination of Certain Cold-Rolled Steel Flat Products from the Republic of Korea" (POSCO Final Analysis Memorandum) for details.

<sup>72</sup> See, e.g., POSCO's November 5, 2016, section C response at C-25.

<sup>73</sup> See Petitioner's POSCO Case Brief at 6.

<sup>74</sup> See POSCO's Rebuttal Brief at 6, citing POSCO Sales Verification Report at 24.

otherwise, is warranted, and note that this was the only U.S. transaction for which zero was reported for both loading/unloading charges and foreign inland freight expenses, indicating no systematic error exists but, rather, that this was a single transaction for which neither expense was incurred.<sup>75</sup>

**Department Position:** When asked at verification why no loading and unloading expenses were reported for this single U.S. sale, the company checked its records and confirmed that no such expense was recorded for the transaction. The company also noted that the absence of a freight charge to POSCO's customer (an unaffiliated Korean trading company that was reselling the merchandise to the U.S. market) was an indication that no freight expense was incurred by POSCO, given POSCO's customers in Korea are usually charged for freight.<sup>76</sup> Furthermore, in a prior response POSCO noted that under certain circumstances, loading and unloading expenses and foreign inland freight expenses are not broken out separately from other movement expenses that were incurred and reported in the international freight expense field.<sup>77</sup> Based on the information on the record and verified with POSCO, the Department concludes there is no evidence that a loading and unloading expense or foreign inland freight expense were separately incurred for the merchandise in question, and thus no adjustment is being made for the final determination in this regard.

#### **Comment 4: Quality Product Characteristic**

Petitioner argues that the Department should reclassify the Quality product characteristic for a certain grade of home market sales because the reported quality is unsupported by the record. Petitioner acknowledges that because there is only one error, the number of sales involved is limited in number, and the Department is able to fully account for such a correction in a way that will not reflect distortion of matching or costs of production for control numbers, the Department should simply correct the reported quality, and revise the control numbers for the sales. Petitioner contrasts this situation with that of Hyundai Steel, for which the errors in product characteristics are multiple, and for which any attempt to revise control numbers would amount to building new sales and cost databases on behalf of the respondent.<sup>78</sup>

POSCO states that it believes its reporting of Quality for the grade of sales in question was reasonable and accurate, but notes that these sales have no impact on the Department's calculations because they were very small in number, because the product in question was not sold to the United States, and because the merchandise in question was non-prime merchandise.<sup>79</sup> POSCO states the Department did not indicate its reporting of Quality for these few sales was incorrect, that POSCO cannot be expected to provide additional documentation that is not available, and that POSCO's reporting was reasonable given the product was sold in such small quantities.<sup>80</sup>

---

<sup>75</sup> *Id.*, at 6-7.

<sup>76</sup> See POSCO Sales Verification Report at 24.

<sup>77</sup> See POSCO's December 7, 2015, supplemental response at page 29.

<sup>78</sup> See Petitioner's POSCO Case Brief at 7-8.

<sup>79</sup> See POSCO's Case Brief at 14 and POSCO's Rebuttal Brief at 7.

<sup>80</sup> See POSCO's Rebuttal Brief at 7-8.



**Department Position:** We agree with petitioner that the reporting of Quality for the few home market sales in question is unsupported by the record, and we are revising that product characteristic, and the resulting CONNUMs, for the transactions in question. The products in question were reported as ultra high strength/advance high strength quality code 20. POSCO provided an explanation for the reporting of Quality for the product in one of its questionnaire responses, referencing high carbon content and solution hardening as associated with higher strength, but adding to that explanation a statement that no specific strength properties of the merchandise were guaranteed.<sup>81</sup> The Department did not request in subsequent questionnaires that POSCO revise its reporting of Quality to reflect that acknowledgment regarding the absence of strength requirements, and confirmed at verification the accuracy of that statement regarding the absence of strength property requirements.<sup>82</sup> The Department concludes the absence of any particular strength property requirements for the product in question, which as noted POSCO had identified prior to verification, requires reclassification of the quality.<sup>83</sup> The very few sales in question were reported with CONNUMs distinct those of all other home market sales, and continue to be in distinct CONNUMs after the revision to the Quality product characteristic.

#### **Comment 5: Yield Loss**

Petitioner argues that actual yield loss information obtained at verification for a specific process indicated a higher yield loss than that based on the standard yield loss reported by POSCO. Petitioner argues that because the actual yield loss data were available, the Department should apply an AFA adjustment, increasing the cost of manufacturing by the greatest difference between the actual and standard consumption rates analyzed at verification. Alternatively, Petitioner states that if the Department does not conclude AFA is warranted, the Department should increase the cost of manufacturing by the average difference between the actual and standard consumption rates in question.<sup>84</sup>

POSCO states that it accounts for yield losses incurred at each stage of the production process within its standard cost accounting system, and the Department's cost verification report did not identify an omission in POSCO's cost calculations with regard to yield losses, but rather presented the Department's analysis in testing the reasonableness of the standard yields versus actual yield losses. POSCO states that the Department concluded that the actual yields compared to the standard yields "within a reasonable range," and that the Department should therefore reject Petitioner's request that facts available be employed to adjust POSCO's reported yield losses, given facts available are only required where necessary data are missing or not available on the record.<sup>85</sup>

#### **Department Position:**

---

<sup>81</sup> See POSCO's December 7, 2015, supplemental questionnaire response at 9. See also POSCO's January 8, 2016, supplemental questionnaire response at 18.

<sup>82</sup> See POSCO Sales Verification report at 21.

<sup>83</sup> For discussion of that reclassification, see the POSCO Final Analysis Memorandum.

<sup>84</sup> See Petitioner's POSCO Case Brief at 8-9.

<sup>85</sup> See POSCO's Rebuttal Brief at 8-10.

We disagree with petitioner that an adjustment to POSCO's yield loss calculations is appropriate. In its normal books and records POSCO uses a standard cost accounting system to calculate product costs in inventory, including a standard product-specific yield loss at each stage of production. At verification, as a reasonableness test of POSCO's standard yield losses, we compared, for a sample product, the product-specific standard yield losses at several stages of production to the POI average actual yield losses for these stages (*i.e.*, cost centers) because POSCO normally keeps track of actual yields only at the cost center level.<sup>86</sup> POSCO calculates multiple variances between standard and actual costs on a monthly basis. Some of these variances are applied to the standard cost of the products in inventory and others are included in the cost of goods sold in the financial statements. With respect to yield loss, POSCO captures the variance between the standard yield loss and the actual yield loss through its work in process (WIP) and back flush variances.<sup>87</sup> At verification we determined that for reporting purposes, POSCO included these two variances, along with the other variances assigned to the cost of goods sold, in a separate field in its cost file (*i.e.*, the VAR field), thereby including actual yield loss in the reported costs of the merchandise under consideration.<sup>88</sup> Therefore, we have determined that an adjustment to POSCO's reported costs for additional yield loss is not necessary for the final determination.

#### **Comment 6: General and Administrative Expenses**

Petitioner argues that the Department should disallow certain gains as offsets to general and administrative (G&A) expenses. Petitioner states one of the claimed offsets is a long-term investment financial transaction, rather than short-term income, and therefore it is not properly classified as general or administrative income. Petitioner states that another claimed offset is not an income item related in any manner to POSCO's core steel production business, and in keeping with past practice, the Department should not deduct such income as an offset to G&A expenses.<sup>89</sup>

POSCO rebuts that it properly included in the numerator of the G&A expense ratio calculation non-operating expense and income items other than those related to investment activities or those that would be captured as interest expense.<sup>90</sup> POSCO argues that the activities in question generally result in expenses to the company, rather than income, and it is the Department's practice to include such expenses in the G&A expense ratio calculation.<sup>91</sup> POSCO states that because the Department would normally include such expenses in the calculation of the numerator used in the G&A expense ratio calculation, it should also include income generated from the same type of activity as an offset.<sup>92</sup>

---

<sup>86</sup> See "Verification of the Cost Response of POSCO and Daewoo International Corporation in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from Korea," dated May 25, 2016 (POSCO Cost Verification Report) at 5.

<sup>87</sup> *Id.*, at 12.

<sup>88</sup> *Id.*, at 6.

<sup>89</sup> See Petitioner's POSCO Case Brief at 9-10.

<sup>90</sup> See POSCO Rebuttal Brief at 10.

<sup>91</sup> *Id.*, at 10-11, citing two cases that cannot be referenced in this summary because they have been bracketed.

<sup>92</sup> *Id.*, at 11.

**Department Position:**

We agree with petitioner that one of POSCO's claimed offsets involves a long-term investment financial transaction and is therefore not properly classified as a G&A expense, and have revised the G&A expense ratio to exclude this offset. We are not revising the G&A expense ratio to exclude the other offset identified by petitioner. Due to the proprietary nature of the details associated with these items, additional analysis is provided in a separate proprietary document.<sup>93</sup>

**Comment 7: Home Market Gross Unit Price Field**

POSCO argues that the Department used as the gross unit price for home market sales the field that includes freight revenue charged to customers, but then added the separate freight revenue field in its calculation of net price. POSCO indicates this double-counts the freight revenue, and states that the easiest way to correct this error is to instead use the PROVALH field that POSCO had reported in its database, as that field does not include freight revenue.<sup>94</sup>

Petitioner did not comment on this issue.

**Department Position:** We agree with POSCO that the PROVALH field, unlike the field used by the Department in the *Preliminary Determination*, does not reflect freight revenue.<sup>95</sup> Consequently, we revised our calculations to use the PROVALH field as gross unit price for home market sales.

**Comment 8: Inclusion of Warehousing Expense in Freight Revenue Cap Calculations**

POSCO argues that the Department erred in including warehousing expenses in the calculation of the freight revenue cap for home market sales. POSCO does not dispute the inclusion of the other fields the Department used to calculate the freight revenue cap (*i.e.*, inland freight from plant to customer; inland freight from plant to warehouse; and the direct selling expenses field the Department characterized as movement expenses), but POSCO argues that when customers are charged a separate amount for delivery, those charges relate to the transportation of the product, not the storage. POSCO states the customers do not specify whether or not the supplier is to deliver products from a warehouse versus from a plant.<sup>96</sup> POSCO states, rather, that producers use distribution warehouses of their own accord to ensure efficient distribution of their products to geographically diverse locations.<sup>97</sup>

Petitioner states that the Department should continue to include the warehousing expense as part of the calculation of the movement expenses used for the determination of the freight revenue

---

<sup>93</sup> See the July 20, 2016 "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – POSCO and Daewoo International Co., Ltd." (Final POSCO Cost Memo).

<sup>94</sup> See POSCO's Case Brief at 11-12.

<sup>95</sup> See, *e.g.*, POSCO's November 5, 2015, section B response at B-26.

<sup>96</sup> See POSCO's Case Brief. at 10-11.

<sup>97</sup> *Id.*, at 11, citing POSCO's November 5, 2015 section B response at B-32.

cap for home market sales. Petitioner argues that when a company provides multiple stages of delivery services and bills the customers for services provided, the revenue cap should encompass the totality of those delivery services. Petitioner states that POSCO uses combinations of trucks, trains, barges, roll-on/roll-off ships and distribution warehouses in order to deliver goods to home market customers' designated locations. Petitioner notes that for many home market sales the reported freight revenue exceeds the collective freight expenses reported by POSCO, regardless of which of the movement expense fields are included in the latter, and that limiting the revenue cap to the sum of only nominal "freight" expenses would be incorrect, as POSCO has clearly considered the totality of movement expenses required to deliver the goods when establishing the delivery surcharge as a pricing mechanism.<sup>98</sup>

**Department Position:** When asked at verification about differences in freight expenses incurred for shipments to the same customer, "the company stated such differences may arise due to different shipping modes, such as truck versus train, and through a warehouse versus directly to the customer location."<sup>99</sup> POSCO confirmed not only that the warehousing does not involve "just-in-time" inventory services, but also indicated "this warehousing serves simply as a temporary point from the plant to the customers, and the goal is to get the merchandise to the customer by the already agreed upon time and at the lowest cost."<sup>100</sup> In its initial questionnaire response, POSCO stated "{t}he warehouses are a necessary element in the chain of transport from the mill to the customer and, therefore, are part of movement expenses."<sup>101</sup> It is evident the warehousing is simply part of the delivery process from the plant to the customer's final destination, and is among the options POSCO considers when trying to minimize its cost of shipping the merchandise to the ultimate customer destination. Therefore, we determined that it is reasonable to treat the warehousing expenses as part of the total movement expenses used in the calculation of the freight revenue cap, and we continue to do so for the final determination.

#### **Comment 9: CEP Offset**

POSCO states that the decision of the Department not to grant a CEP offset, which it indicated was based on a conclusion that only three of the fifteen selling functions identified by POSCO were performed in the home market at a greater level of activity than for U.S. sales, was contrary to the Department's decisions in prior cases where POSCO was granted a CEP offset.<sup>102</sup> POSCO

---

<sup>98</sup> See Petitioner's POSCO Rebuttal Brief at 20-21, citing POSCO's final home market sales database.

<sup>99</sup> See POSCO Sales Verification Report at 19.

<sup>100</sup> *Id.*, at 26.

<sup>101</sup> See POSCO's November 5, 2015 section B response at B-32.

<sup>102</sup> See POSCO's Case Brief at 3, citing "Preliminary Determination Calculation for Daewoo International Corporation in the Antidumping Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea," dated February 29, 2016 (POSCO Prelim Calc Memo) at 7-8, citing *Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of the Seventeenth Antidumping Duty Administrative Review*, 76 FR 55004, 55009 (September 6, 2011), unchanged at *Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Final Results of the 2009-2010 Administrative Review and Revocation, in Part*, 77 FR 14501 (March 12, 2012), and *Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Preliminary Results of the Sixteenth Antidumping Duty Administrative Review*, 75 FR 55769, 55775 (September 14, 2010), unchanged at *Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review*, 76 FR 15291 (March 21, 2011).

argues the Department overlooked key facts and the record as it pertains to POSCO's selling functions, and contends the record establishes that the selling functions performed by POSCO in the home market are greater in number and intensity than in selling to its affiliates in the United States and are therefore at a more advanced level of trade than those U.S. sales.<sup>103</sup>

POSCO states the Department typically analyzes selling functions based on four general selling function categories: (1) sales and marketing activities; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support.<sup>104</sup> POSCO states it identified and explained the differences in selling functions performed for home market sales versus sales to the U.S. affiliates in various questionnaire responses, identifying 15 different selling functions performed for home market sales and six selling functions performed for the sales to U.S. affiliates. POSCO states the Department essentially disregarded eight of the nine selling functions performed for home market sales but not for sales to the U.S. affiliates, even though the record establishes the POSCO performs sales and marketing activities at a significantly higher degree for the home market sales.<sup>105</sup>

POSCO cites various statements it made at verification indicating its trading company customers, including those affiliated with POSCO, generally initiate the sales between them and POSCO, generally identify and approach overseas customers for POSCO merchandise, and normally promote sales to U.S. affiliates of U.S. customers of POSCO and its affiliates.<sup>106</sup> POSCO concludes these statements indicate POSCO is not centrally involved in the sales process for customers where a trading company such as DWA or POSAM (its affiliated U.S. trading companies) are involved, as the latter are responsible for much of the work leading to the sale.<sup>107</sup>

POSCO asserts it engages in significant pre-sale research, marketing, and customer outreach in the home market, and points to documentation it provided at verification as evidence POSCO meets with customers, performs market research, engages in promotional events. POSCO indicates that documentation also confirms "that much of these activities are directed solely at home market customers."<sup>108</sup>

POSCO also points to the large volume of home market sales and the large number of home market customers as requiring significant marketing and sales activities, and states maintaining those customer relationships and sales volume requires significant market presence and sales activity.<sup>109</sup>

With regard to the second general category of selling activities, freight and delivery, POSCO contends that the volume of home market shipments, the variation in sales quantity, and the

---

<sup>103</sup> *Id.*, at 3.

<sup>104</sup> *Id.*, at 4, citing, for example, the Preliminary Decision Memorandum at 19.

<sup>105</sup> *Id.*, at 4-5.

<sup>106</sup> *Id.*, at 5, citing POSCO Sales Verification Report at 8.

<sup>107</sup> *Id.*, at 5.

<sup>108</sup> *Id.*, at 5-6.

<sup>109</sup> *Id.*, at 6.

number of home market customers indicates that this function is performed at a more intense level than the U.S. market, which involves bulk shipments.<sup>110</sup>

As for the third category, inventory maintenance and warehousing, POSCO states the Department correctly determined that this function was performed to a greater degree in the home market.<sup>111</sup>

With regard to the fourth category, warranty and technical support, POSCO states it did not incur any warranty expenses for its U.S. sales, but did so for home market sales.<sup>112</sup> POSCO states this disparity indicates POSCO performed a greater degree of warranty and technical support for home market sales than for U.S. sales.<sup>113</sup>

POSCO concludes that the Department should grant a CEP offset because POSCO performed significantly more selling functions for its home market sales than for its U.S. sales, consistent with segments in other proceedings, such as those referenced above.<sup>114</sup>

Petitioner argues that the Department properly denied POSCO a CEP offset in its preliminary determination, given that the Department examined in POSCO Prelim Calc Memo all the selling functions identified by POSCO and found POSCO failed to meet its evidentiary burden of justifying such an offset. Petitioner states the Department properly looked for evidence to support or contradict POSCO's descriptions of the selling functions and their relative intensities, consistent with the CIT's finding that "it is the responsibility of the respondent requesting the CEP offset to procure and present the relevant evidence" to the Department.<sup>115</sup>

Petitioner states that contrary to POSCO's claim, the Department did not disregard eight of the nine selling functions POSCO claimed it performed in the home market but not in the U.S. market but, rather, closely examined those selling functions and concluded "the record contains little evidence of substantial activity in the home market with respect to these selling functions, and also indicates POSCO and/or DWI performed all of those eight selling functions for its U.S. customers."<sup>116</sup> Petitioner notes as an example that POSCO had claimed sales forecasting was not performed for U.S. sales, but that the Department had referenced such activity in detail for one important U.S. customer and more generally for its affiliated reseller customers for the U.S. market (*i.e.*, DWA and POSAM) and found no basis for distinguishing the level of activity between the home market and the U.S. for this selling function.<sup>117</sup>

---

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*, at 6-7, citing POSCO's November 5, 2015, section C response at C-36 and its November 5, 2015, section B response at B-40 and Exhibit B-15.

<sup>113</sup> *Id.*, at 7.

<sup>114</sup> *Id.*

<sup>115</sup> See Petitioner's POSCO Rebuttal Brief at 3-4, citing *Ad Hoc Shrimp Trade Action Comm. v. United States*, 616 F. Supp. 2d 1354, 1374 (CIT 2009), *aff'd* 596 F.3d 1365 (Fed. Cir. 2010).

<sup>116</sup> *Id.*, at 4-5, citing POSCO Prelim Calc Memo at 7.

<sup>117</sup> *Id.*, at 5-6, citing POSCO Prelim Calc Memo at 6-7.

Similarly, petitioner discusses the other selling functions POSCO claims the Department disregarded (strategic/economic planning, personnel training/exchange, advertising, sales promotions, sales marketing/support, market research, and technical assistance), and notes the Department analyzed these functions and concluded that for some there was no evidence of greater sales activity in the home market than in the U.S. market (strategic/economic planning, advertising, sales marketing/support, and technical support), in one there was evidence of greater sales activity in the U.S. market than in the home market (personnel training/exchange), and for two there was evidence of somewhat higher level of activity in the home market (sales promotions and market research).<sup>118</sup>

Petitioner states POSCO essentially claims that because there is a CEP agency in the United States that facilitates sales to customers, there must be significantly higher selling functions in the home market, where POSCO sells directly to customers. Petitioner also rejects POSCO's unsupported claims that the size of POSCO's home market in total volume and number of home market customers requires significant market presence and thus greater sales market and sales activities, arguing that POSCO confuses scale with intensity, and noting the number of customers and numbers of sales transactions in a market have no impact on the type of selling functions performed or the level of intensity associated with those selling functions.<sup>119</sup>

Petitioner also claims that volumes and frequency of home market sales indicate that the home market is characterized by a predominance of long-term, regular customers, rather than reflecting a pervasive need for intense marketing to find and develop buyers.<sup>120</sup> Petitioner states POSCO's claims about the variety and size of shipments in the home market versus the U.S. market supporting its contention that freight and delivery functions are more advanced in the home market are incorrect. Petitioners state this is because when home market sales are compared to POSCO's back-to-back CEP sales (those reflecting the size of CEP shipments outbound from POSCO through the U.S. affiliates), the greater variation in volumes was in the home market, not the U.S. market, that the record demonstrates both markets had a broad mix of small-, medium-, and large-volume purchases, and that the difference in average shipment size between markets is modest and cannot explain why more selling activities would be required for the home market than for the U.S. market.<sup>121</sup>

Petitioner claims the relative lack of claims for U.S. sales versus home market sales reflects the greater care an exporter will take to ensure the quality of exports, which are shipped great distances and must be inspected and packed to be seaworthy. Petitioner notes that warranty expenses for U.S. sales varied across years, and that while they were zero for the POI for U.S. sales, during the POI they were only a very small fraction of home market sales value. Petitioner states that when warranty and technical guarantee programs are in place, the incidence and scope of claims and payment by market are literally and commercially an accident of business, and that

---

<sup>118</sup> *Id.*, at 6-8, citing POSCO Prelim Calc Memo at 7-10.

<sup>119</sup> *Id.*, at 9-10, citing *Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol From the Republic of South Africa*, 62 FR 61084, 61090 (November 14, 1997) ("While it is our preference to examine selling functions on both a qualitative and quantitative basis, our examination is not contingent on the number of customers nor on the number of sales for which the activity is performed.")

<sup>120</sup> *Id.*, at 10.

<sup>121</sup> *Id.*, at 12-13.

POSCO provided similar warranty services to both markets and experienced claims and payments in both markets with differences that were periodic in nature.<sup>122</sup>

Petitioner states the information provided by POSCO at verification regarding selling functions, and which POSCO states shows it engaged in significant pre-sale research, marketing, and customer outreach in the home market, does not support POSCO's contention that home market sales functions are substantially more intense than U.S. sale market functions. Petitioner asserts POSCO must be aware of the lack of evidentiary support in those pages in the sales verification exhibit in question, given POSCO did not bother to summarize them, much less provide a basis for how they could quantitatively or qualitatively support its claim. Petitioner states POSCO cherry picked the items in question, and even withdrew some of the pages of untranslated information it originally presented to the Department at verification. With regard to the information in the pages included in the final verification exhibit, Petitioner states various information in the exhibits either apply to the U.S. market as well as the home market, or do not obviously apply to only the home market, and conclude that on balance the information in the exhibit do not support defining more intense home market selling functions than U.S. market selling functions.<sup>123</sup>

Petitioner states the Department's granting of CEP offsets to POSCO in other proceedings is not relevant in this proceeding, because whether the Department has granted a CEP offset to a respondent in a different proceeding with a different factual record does not necessarily bind the Department in determining whether to grant or deny an offset adjustment in another proceeding.<sup>124</sup> Petitioner cites various court rulings in support of this point in the context of CEP offsets, even if the facts in one proceeding were identical to those in a prior one.<sup>125</sup> Furthermore, petitioner notes there is no evidence that the fact pattern in this case is like that in the previous one cited by POSCO, and there is no record evidence that POSCO performs selling functions in the home market at a more advanced stage of distribution compared to the U.S. market.<sup>126</sup>

**Department Position:** In the preliminary determination, we analyzed the various selling functions POSCO indicated it performed for sales in the home market versus those performed with respect to its U.S. affiliates for its CEP sales.<sup>127</sup> We concluded that "of fifteen identified selling functions performed in the home market for which there is some evidence or claim of home market activity, for only three of these selling functions (post-sale warehousing, sales promotion, and market research), does the record suggest a greater level of activity than for U.S.

---

<sup>122</sup> *Id.*, at 13-15.

<sup>123</sup> *Id.*, at 10-12.

<sup>124</sup> *Id.*, at 15, citing *Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Final Results of Antidumping Duty Administrative Review*, 80 FR 19633 (April 13, 2015) and accompanying Issues and Decision Memorandum at 3, and *Shandong Huarong Machinery Co. v. United States*, 29 CIT 484, 491 (2005).

<sup>125</sup> *Id.*, at 15-16, citing, e.g., *Timken U.S. Corp. v. United States*, 434 F.3d 1345, 1352 (Fed. Cir. 2006).

<sup>126</sup> *Id.*, at 16.

<sup>127</sup> See POSCO Prelim Calc Memo at 4-10. Those functions were identified as follows: 1) packing; 2) inventory maintenance; 3) order input/processing; 4) direct sales personnel; 5) provide warranty service; 6) provide freight and delivery; 7) sales forecasting; 8) strategic/economic planning; 9) personnel training/exchange; 10) advertising; 11) sales promotion; 12) sales marketing/support; 13) market research; 14) technical assistance; and 15) provide post-sale warehousing.



sales,” and that “{f}or one selling function, personnel training/exchange, the record suggested a greater intensity for the U.S. market.” From this, we concluded “there is no basis for concluding that there are differences in levels of trade between the home market and the U.S. market,” and we “preliminarily determine{d} that no such differences exist” and, “{t}herefore, no CEP offset is warranted.”<sup>128</sup>

As noted above, POSCO asks that the Department revise its analysis to consider the four broad categories of selling functions that the Department has sometimes used in such analysis (sales and marketing activities, inventory maintenance and warehousing, freight and delivery, and warranty and technical support) as well as additional information it provided at verification and other arguments it provides in support of its claim that its home market sales are at a more advanced level of trade than the U.S. CEP sales. Such an analysis, however, confirms that there is no basis for concluding the home market and U.S. CEP sales are at different levels of trade.

### *Sales and Marketing Activities*

Of the claimed 15 selling functions, those which would be classified under “sales and marketing activities” would be “order input/processing,” “direct sales personnel,” “sales forecasting,” “strategic/economic planning,” “personnel training/exchange,” “advertising,” “sales promotion,” “sales marketing/support,” and “market research.” Regarding “order input/processing” and “direct sales personnel,” the Department found in its preliminary analysis that POSCO’s descriptions provided no basis for evaluating the overall intensity of the selling activities performed, and that even accepting those functions as presented by POSCO, the activities are, at a minimum, equivalent between the two markets.<sup>129</sup> No additional information or argument was presented since the preliminary determination with respect to those two selling functions.

With regard to the remaining seven selling functions in the “sales and marketing activities” grouping, the Department found in its preliminary analysis that two appeared to be performed at a higher level of intensity for home market sales (sales promotion and market research), one at a higher level of intensity for U.S. sales (personnel training/exchange), and the other four at the same level of intensity (sales forecasting, strategic/economic planning, advertising, and sales marketing/support).<sup>130</sup> POSCO cites documentation provided in a sales verification exhibit as supporting its claim that more significant selling function activity occurs for home market sales than for U.S. CEP sales, but that information contains very little detail regarding what sales activities were performed, or the intensity of those activities. To the extent any of the documentation is relevant to the POI and to subject merchandise, it also is in some instances relevant for export sales as well as domestic sales. Furthermore, to the extent this documentation may pertain to home market sales only, they are simply self-selected examples of particular activities that do not justify any conclusions regarding overall intensity of selling functions in one market versus another.<sup>131</sup>

---

<sup>128</sup> *Id.*, at 10.

<sup>129</sup> *Id.*, at 5-6.

<sup>130</sup> *Id.*, at 6-9.

<sup>131</sup> See POSCO’s March 21, 2016 sales verification exhibit submission at Exhibit 23. Because the information in the verification exhibit in question is proprietary, analysis of that information is provided in the POSCO Final Analysis

POSCO also cites sales verification report statements to support its argument that more significant “sales and marketing activities” are performed for home market sales than for U.S. CEP sales. However, with regard to POSCO’s references to statements in the POSCO sales verification report culminating in POSCO’s conclusion that “POSCO is not centrally involved in the sales process for customers where a trading company such as DWA or POSAM is involved” because “those companies are responsible for the leg work leading to the sale,” POSCO’s argument focuses not on the sale between POSCO and its U.S. affiliates, but upon the downstream sale by the U.S. affiliates.<sup>132</sup> The record does not indicate that POSCO was involved significantly in the “leg work leading to the sale” to its home market customers’ customers, other than a reference to an affiliated reseller and notification to customers/potential customers of sales promotions/events.<sup>133</sup> The company statements cited in the verification report indicate that POSCO was at times involved with such “leg work” for U.S. sales, in support of the U.S. affiliates through which it makes its CEP sales. When asked “who identifies and approaches potential new overseas customers for POSCO merchandise, POSCO or its trading company customers,” the company’s response was “that *generally* POSCO’s trading company customers perform those tasks, not POSCO,” and when asked “if POSCO tries to promote sales to U.S. affiliates of POSCO’s non-U.S. customers,” the company’s response was “that *normally* trading companies would perform that role, not POSCO itself.”<sup>134</sup> These qualifications indicate that at least at certain times POSCO is involved with the tasks and sales promotion in question relating to the U.S. market.

Furthermore, from the context of the statements in the verification report, DWI itself, which sells to affiliated U.S. reseller DWA, is one of the “trading companies” that would “generally” and “normally” be involved with such tasks and sales promotion, and the respondent POSCO consists of the collapsed DWI as well as the manufacturer POSCO.<sup>135</sup> Therefore, just as POSCO (the manufacturer) sometimes performs some sales promotion activities for home market sales, POSCO (the manufacturer) sometimes performs them for U.S. CEP sales, and DWI (part of the collapsed respondent POSCO) also performs them for U.S. CEP sales. Consequently, although the Department had concluded at its preliminary determination that the “sales promotion” selling function was performed slightly more for home market sales than for U.S. CEP sales, there appears to be no basis for this conclusion once consideration is given to the statements made by the company at the sales verification.

In short, with regard to “sales and marketing activities,” there is no basis from the record to allow us to conclude that significantly more such activity is performed by POSCO for home market sales than for U.S. CEP sales. Of the nine selling functions falling under the classification of “sales and marketing activities,” as discussed above and in the POSCO Prelim

---

Memorandum.

<sup>132</sup> See POSCO’s Case Brief at 5.

<sup>133</sup> In the preliminary determination, the Department acknowledged POSCO had stated “it works with an affiliated reseller to find new customers in the home market, and that it notifies customers and potential customers of sales promotions and events,” and indicated this was a basis for finding the level of activity of “sales promotion” was somewhat higher for home market sales than for U.S. CEP sales. See POSCO Prelim Calc Memo at 8-9.

<sup>134</sup> See POSCO’s Case Brief at 5, citing POSCO Sales Verification Report at 8 (emphasis added).

<sup>135</sup> *Id.*

Calc Memo, there is only evidence on the record suggesting market research was performed slightly more for home market sales, and POSCO has not contested the Department's preliminary conclusion that "personnel training/exchange" was performed more for U.S. CEP sales.

### *Inventory Maintenance and Warehousing*

Of the claimed 15 selling functions, those which would typically be classified under inventory maintenance and warehousing are "inventory maintenance" and "post-sale warehousing." The basis for the Department's conclusion in the *Preliminary Determination* that "this selling function is a distinction between the home market sales and the U.S. sales" was based on POSCO's claim, in conjunction with the reported warehousing expense for certain U.S. sales, rather than upon any specified detail regarding the efforts that "were associated with arranging such warehousing."<sup>136</sup> In its initial questionnaire response, POSCO characterized the warehouses as "distribution warehouses," and had indicated the customers choose whether or not the merchandise is "shipped through" a warehouse.<sup>137</sup> However, at verification the Department was informed that this warehousing not only was not associated with any "just-in-time" inventory services, but that "this warehousing serves simply as a temporary point from the plant to the customers, and the goal is to get the merchandise to the customer by the already agreed upon time and at the lowest cost."<sup>138</sup> There is no indication that POSCO's home market customers care whether merchandise en route to them is temporarily located at some intermediate point or not. Consequently, the function of arranging for such warehousing, from the perspective of both POSCO and its home market customers, is better classified under the "freight and delivery" grouping, discussed below.

The remaining activity under "inventory maintenance and warehousing" is reflected in the inventory maintained by POSCO at its facility, and for both home market and U.S. sales, POSCO reported identical inventory carrying days information.<sup>139</sup> As an explanation for this methodology, the company noted that the manufacturer "POSCO produces to order irrespective of market."<sup>140</sup> Therefore, inventory maintenance, to the extent it is relevant, appears comparable for both home market sales and U.S. CEP sales.

Therefore, we conclude that the inventory maintenance and warehousing category is comparable for POSCO's home market and U.S. CEP sales.

### *Freight and Delivery*

Of the claimed 15 selling functions, the one that would be classified under freight and delivery is "provide freight and delivery." In its preliminary determination, the Department concluded that POSCO had not provided a basis for evaluating the overall intensity of the selling activity

---

<sup>136</sup> See POSCO Prelim Calc Memo at 6.

<sup>137</sup> See POSCO's November 5, 2015, section B response at B-34.

<sup>138</sup> See POSCO Sales Verification Report at 26.

<sup>139</sup> See, e.g., POSCO December 7, 2015, supplemental response at 21.

<sup>140</sup> *Id.*

performed, but accepting the function as presented by POSCO, it is, “at a minimum, equivalent” for the home market and U.S. markets.<sup>141</sup> The addition of the temporary “warehousing” to this selling function does not significantly alter this conclusion. POSCO noted that it arranges for freight transport for home market sales, and that “[t]he warehouses are a necessary element in the chain of transport from the mill to the customer....”<sup>142</sup> POSCO’s arrangement for freight and delivery for its U.S. CEP sales also involve a chain of transport from the mill to the delivery location required by its U.S. affiliates. This chain includes movement of the merchandise from the plant to and onto the ships at the ports, arrangement for completion of various actions associated with export of merchandise (e.g., arrangement for marine insurance and completion of customs export documentation), and movement of the merchandise across the ocean to the U.S. delivery locations (arrangement for international freight), and involve both work performed directly by POSCO and work POSCO arranges to be performed by other parties.<sup>143</sup> Therefore, there is no basis for concluding that the level of “freight and delivery” activity performed by POSCO for its home market sales exceeds that performed by POSCO for its U.S. CEP sales.

### *Warranty and Technical Support*

Of the claimed 15 selling functions, those which would be classified under warranty and technical support are “provide warranty service” and “technical assistance.” POSCO has acknowledged it provides warranty services for the U.S. market as well as the home market, and as petitioner notes, the incidence and scope of claims and payment by market are an accident of business, and are by nature periodic.<sup>144</sup> POSCO acknowledged that it performs work pertaining to warranty claims for U.S. sales, including receiving claims from its U.S. affiliates filed by those affiliates’ customers, reviewing details of the claims and the reasons why the claims were made, checking all possible factors related to the reported problems, and deciding whether to provide compensation for the claims.<sup>145</sup> This description is very similar to that provided for the process associated with home market customer warranty claims.<sup>146</sup> For claims involving the U.S. market, POSCO even contracts with an affiliated party to assist with analyzing the claim.<sup>147</sup> In its selling functions chart, POSCO even characterized its provision of warranty services for home market sales and for U.S. CEP sales as identical.<sup>148</sup> That is consistent with the Department’s statement in the *Preliminary Determination* that this selling function was equivalent for both markets,<sup>149</sup> and there is no basis for determining otherwise for the final determination.

With regard to the other selling function under the warranty and technical support grouping, “technical assistance,” POSCO does not identify any evidence to challenge the Department’s

---

<sup>141</sup> See POSCO Prelim Calc Memo at 5-6.

<sup>142</sup> See POSCO’s November 5, 2015, section B response at B-32.

<sup>143</sup> See, e.g., POSCO’s November 5, 2015, section C response at C-27 and C-28, and POSCO’s December 7, 2015, supplemental response at 28.

<sup>144</sup> See Petitioner’s POSCO Rebuttal Brief at 14-15, citing POSCO’s December 7, 2015, supplemental response at Exhibit S-49.

<sup>145</sup> See POSCO’s December 7, 2015, supplemental response at 39-40.

<sup>146</sup> See POSCO’s November 5, 2015, section B response at B-40 and B-41.

<sup>147</sup> See POSCO’s January 8, 2016, supplemental response at 23.

<sup>148</sup> See POSCO’s November 17, 2015, supplemental response at Exhibit SA-10.

<sup>149</sup> See Prelim POSCO Calculation Memo at 5-6.

decision not to identify this as a selling function with varying activity by market. At verification, when asked “if the home market customers require assistance with understanding what specific products are available from POSCO, or with understanding details about those products,” the company responded that “its home market customers know and understand on their own what they want and what is available from POSCO.”<sup>150</sup> This is consistent with a conclusion that little, if any, resources are devoted by POSCO to the home market for technical assistance associated with subject merchandise, which confirms it is not possible for there to be much, if any, difference for this selling function with respect to both markets.<sup>151</sup>

Consequently, there is no basis for concluding that the “warranty and technical support” grouping is characterized by significant differences in selling function activity between home market sales and U.S. CEP sales.

### *Conclusion*

The remaining function referenced in the preliminary determination analysis, “packing,” is one that the Department no longer considers relevant for level of trade analysis.<sup>152</sup> Even if one were to include this in the analysis, there is no evidence of variation across markets, as noted in the preliminary determination.<sup>153</sup> Therefore, analysis of the relevant 14 selling functions, as classified under the four general categories of selling functions, yields the conclusion that there is no basis for concluding that a significant variation in overall selling activity exists for home market sales versus U.S. CEP sales. For all four of those categories - - warranty and technical support, freight and delivery, inventory maintenance and warehousing, and sales and marketing activities - - there is no basis on the record for concluding POSCO’s level of selling function activity is greater for home market sales than for U.S. CEP sales.<sup>154</sup> Given we found no evidence to suggest that the selling functions performed by the respondent at the CEP level of trade and the home market level of trade are significantly different to warrant a finding that the home market level of trade is at a more advanced stage of distribution than the CEP level of trade,

---

<sup>150</sup> See POSCO Sales Verification Report at 8.

<sup>151</sup> POSCO also stated at verification that DWA, one of POSCO’s U.S. affiliates, “handles technical product issues that are raised by DWA’s customers in the United States, including new customers as well as established ones.” See POSCO Sales Verification Report at 9. However, as noted in the preliminary determination, POSCO (the manufacturer) provides some technical assistance to customers in both markets, and that for all transactions there is some discussion regarding the needs and requirements of end-customers. See Prelim POSCO Calculation Memo at 9-10, citing POSCO’s January 8, 2016, supplemental response at 7-8.

<sup>152</sup> See, e.g., *Non-Oriented Electrical Steel From the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 61612 (October 14, 2014) and accompanying Issues and Decision Memorandum at comment 1, and *Chlorinated Isocyanurates From Spain: Final Results of Antidumping Duty Administrative Review*, 72 FR 64194 (November 15, 2007), and accompanying Issues and Decision Memorandum at comment 1B.

<sup>153</sup> See Prelim POSCO Calculation Memo at 5-6.

<sup>154</sup> With regard to POSCO’s claim that the sheer size of POSCO’s home market mandates significant marketing and sales activities, as noted by petitioner, these factors are not relevant because POSCO has confused scale with intensity. The volume of home market sales relative to the volume of U.S. sales, and the number of home market customers relative to the number of U.S. customers, are not indicators, in and of themselves, of the levels of selling function activity occurring at the basis on which a CEP offset would be granted (*i.e.*, per kilogram).

there is no basis for concluding that there are differences in levels of trade between home market sales and U.S. CEP sales, and no CEP offset is warranted.<sup>155</sup>

#### **Comment 10: Affiliated Party Purchases Cost Adjustment**

POSCO argues that the Department should not have adjusted POSCO's reported costs related to purchases of ferroalloys from affiliated parties in its preliminary determination. POSCO notes the Department's intention in making the adjustment was to reflect the market price, but that the differences the Department observed between prices charged by affiliated parties and prices charged by unaffiliated parties reflected the weighted-average of a variety of different types of ferroalloys purchased in a variety of different months.<sup>156</sup> POSCO states that an analysis of purchases of the same types of ferroalloy purchased from affiliated and unaffiliated parties in the same month shows that the prices paid were the same regardless of supplier.<sup>157</sup> POSCO also argues that the Department's recalculation of G&A and interest expenses to reflect the adjustment to ferroalloy costs was incorrect, because the Department did not revise its calculation of the G&A and interest expense ratios to reflect the change to cost of goods sold that results from making the aforementioned adjustment to ferroalloy costs.<sup>158</sup>

Petitioner counters that the Department should continue to adjust POSCO's reported costs related to purchases of ferroalloys from affiliated parties because POSCO elected not to report its transaction data on either a month-specific or ferroalloy-specific basis but, instead, only provided its purchases for all ferroalloys on a combined and POI-average basis. Despite several opportunities to provide more specific detail, POSCO waited until verification to provide this self-selected detail, with no chance for petitioner or the Department to analyze the data prior to verification.<sup>159</sup>

Petitioner notes that in *SSSS from Germany*, the Department based its comparison of prices from affiliated and unaffiliated parties for a specific ferroalloy on average POI prices because the respondent had not provided monthly-specific data.<sup>160</sup> Petitioner states that in this case, as in *SSSS from Germany*, the Department should not analyze whether affiliated transactions should be disregarded beyond the details reported in POSCO's cost response information submitted prior to verification. Petitioner argues respondents should not be allowed to cherry pick which inputs they want to restate from scratch at verification, such as ferroalloys, and which ones they do not, which petitioner states was the case for another major input, coal. Petitioner states POSCO did not provide the month-and-vendor specific detail regarding coal purchases in its responses, but then did so at verification, and even at verification did not provide any purchase price detail by type of coal, even though in the past the Department has found distinctions in coal

---

<sup>155</sup> See, e.g., *Silicomanganese From Australia: Final Determination of Sales at Less Than Fair Value*, 81 FR 8682 (February 22, 2016) and accompanying Issues and Decision Memorandum at comment 2.

<sup>156</sup> See POSCO's Case Brief at 8-9.

<sup>157</sup> *Id.*, at 9, citing an example in POSCO Cost Verification Report at 18.

<sup>158</sup> *Id.*, at 9.

<sup>159</sup> See Petitioner's POSCO Rebuttal Brief at 17-18.

<sup>160</sup> *Id.*, at 18, citing *Stainless Steel Sheet and Strip in Coils From Germany; Notice of Final Results of Antidumping Duty Administrative Review*, 67 FR 7668 (February 20, 2002), and accompanying Issues and Decision Memorandum at comment 2 (*SSSS from Germany*).

types to be relevant.<sup>161</sup> Petitioner notes that for one affiliated party, the coal pricing data provided at verification would need to be restated and reanalyzed to reflect prices specific to certain types of coal (*e.g.*, anthracite coal versus bituminous coal) in order to evaluate whether the purchases were at arm's-length prices. Petitioner asserts that this is an example of how POSCO attempted to selectively revise its responses at verification, and urges the Department to reject POSCO's analyses provided at verification with respect to affiliated party purchases, including those for ferroalloys.<sup>162</sup>

### **Department Position:**

We agree with petitioner and have continued to adjust POSCO's costs for purchases of ferroalloys from affiliated suppliers. POSCO's submissions prior to verification showed on average that prices paid for ferroalloys to affiliated suppliers were lower than prices paid to unaffiliated suppliers. At verification, for only two types of ferroalloys out of the numerous types that it purchased from its affiliated suppliers, POSCO provided an analysis that showed purchases broken out further by sub-type of ferroalloy, month purchased, and supplier.<sup>163</sup> POSCO did not provide this detailed information for all of the sub-types of ferroalloys that it purchased.<sup>164</sup> Rather, it was a self-selected minor subset of the entire population. This analysis provided at verification showed a few instances where the same sub-type of ferroalloys were purchased in the same month from affiliated and unaffiliated suppliers, and the prices paid were the same. However, we agree with petitioner that had POSCO believed that affiliated party purchases for ferroalloys should have been analyzed on a more detailed sub-type basis, it should have provided such information in its submissions prior to verification. In addition, it should have provided such an analysis in its section D questionnaire responses for all of its sub-type ferroalloys and not just those within two self-selected types. Further, we do not consider the results of their analysis to be relevant simply by providing only several examples. Thus, we find that the record does not support the analysis at the level of detail POSCO argued for at verification, because POSCO did not provide detailed information for all subtypes of ferroalloys. Accordingly, consistent with *SSSS from Germany*, because POSCO did not provide the detailed data for all subtypes of ferroalloys, we have continued to perform the transactions disregarded analysis for ferroalloys at the ferroalloy level rather than the sub-type ferroalloy level. In addition, since the reported costs are based on an annual weighted average basis, we consider it appropriate to likewise perform the transactions disregarded analysis on the same annual average basis as we did in the preliminary determination.<sup>165</sup>

We disagree with POSCO that G&A and financial expenses were overstated as a result of our affiliated party transactions disregarded adjustment in the *Preliminary Determination*. We note

---

<sup>161</sup> *Id.*, at 18-19, citing *Certain Activated Carbon From the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 77 FR 67337 (November 9, 2012), and accompanying Issues and Decision Memorandum at 8-16 (*Activated Carbon from the PRC*), said to find that anthracite coal and bituminous coal should be distinguished for as inputs for valuation purposes, reflecting inherent physical differences, including levels of volatiles such as ash, and differing useful heat values. *See also* the POSCO Cost Verification Exhibit 11.

<sup>162</sup> *Id.*, at 19.

<sup>163</sup> *See* POSCO Cost Verification Report at 18 and POSCO Cost Verification Exhibit 11 at 29-30.

<sup>164</sup> *See* POSCO Cost Verification Exhibit 11 at 29-30.

<sup>165</sup> *See* section 773(f)(2) of the Act.

that while these ratios were calculated using the cost of goods sold denominator that excludes the transactions disregarded adjustment, the ratios were likewise applied to the TOTCOM that excluded this adjustment. This is because, to make the ratios arithmetically correct, the denominator must be on the same basis as the cost to which the ratios are applied. Because the product-specific cost to which the ratios are applied has been increased by the affiliated party transactions adjustment, the G&A and financial expense ratios should be applied to the COM before the adjustment for the affiliated party transactions, because the denominators of the G&A and financial expense ratios do not include the additional costs associated with the affiliated party transactions adjustment.<sup>166</sup> Therefore, for the final determination we continue to apply the G&A and financial expense ratios to the TOTCOM exclusive of the transactions disregarded adjustment.

### **Hyundai Steel Issues**

#### **Comment 11: Whether or Not to Apply Total Adverse Facts Available to Hyundai Steel**

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

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

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.<sup>167</sup>

#### *1. Use of Facts Available*

#### **Petitioner’s Case Brief**

---

<sup>166</sup> See *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*, 74 FR 40167 (August 11, 2009) and the accompanying Issue and Decision Memorandum at comment 6.

<sup>167</sup> See 19 CFR 351.308(c).



A. The Department Should Base the Dumping Margin for Hyundai Steel on Total Adverse Facts Available (AFA) for the Final Determination

Petitioner cites to the legal standard at section 776(a) of the Act, as set forth above.<sup>168</sup>

Petitioner asserts that Hyundai Steel has failed to cooperate to the best of its ability in this investigation and has obstructed the Department's investigation.<sup>169</sup> Petitioner asserts that the Department applies total adverse facts available where (1) the information submitted by a respondent is insufficient to allow for the calculation of a relevant and reliable dumping margin or (2) it would be unduly difficult for the Department to perform such a calculation.<sup>170</sup> Petitioner contends even if the Department tried to use some form of facts available, as opposed to total adverse facts available, it would not be able to fully correct and account for the numerous problems with Hyundai Steel's data in the margin, thus, giving an incentive to Hyundai Steel to continue its uncooperative behavior in future proceedings.

Petitioner cites to section 776(a) of the Act, stating that the Department will resort to facts available if "necessary information is not available on the record" or if an interested party "withholds information that has been requested" by the Department.<sup>171</sup> Petitioner asserts that the record evidence clearly demonstrates that necessary U.S. sales, home market sales, as well as cost of production from Hyundai Steel are missing from the record of this investigation. Specifically, petitioner argues that Hyundai Steel has (1) withheld critical freight and warehouse documents requested by the Department at verification; (2) reported the wrong CONNUMs in the U.S. sales, home market sales and costs data, thus, withheld accurate data from the Department; (3) reported the wrong prime/non-prime designations; (4) withheld U.S. sales and their associated further manufacturing costs; and (5) other key information requested by the Department.<sup>172</sup>

Petitioner further claims that Hyundai Steel also failed to provide complete and accurate responses to the Department's questions by the Department's deadlines and in the form and manner requested. Specifically, petitioner asserts that Hyundai Steel failed to submit substantial factual information regarding its U.S. sales and further manufactured cost data by the deadlines established, in the form and manner requested by the Department.<sup>173</sup>

Petitioner argues that Hyundai Steel's withholding of necessary information has rendered its U.S. sales, home market sales, cost of production, and further manufactured costs data materially inaccurate, incomplete, and unreliable. Petitioner contends that by refusing to accurately report the CONNUM, prime/non-prime designation, and overrun designation, Hyundai Steel has failed

---

<sup>168</sup> See the Petitioner's Hyundai Steel Case Brief at 39; 19 USC §1677e(a); and *see also* 19 CFR 351.308.

<sup>169</sup> *Id.*, and 19 USC §1677e(b) and *also see* *Shanghai Taoen Int'l Trading Co. v. United States*, 360 F.Supp.2d. 1339, 1345 n. 13 (CIT 2005) (*Shanghai Taoen*).

<sup>170</sup> *Id.*, citing to *e.g.*, *China Steel Corp. v. United States*, 306 F. Supp. 2d 1291,1306 (CIT 2004) (*China Steel*); *Nippon Steel Corp. v. United States*, 337 F.3d 1373 (Federal Circuit 2003) (*Nippon Steel*); *see also* *Shandong Huarong Gen. Group Corp. v. United States*, 27 CIT 1568, 1590-91 (CIT 2003) (*Shandong Huarong*).

<sup>171</sup> *Id.*, citing to 19 USC 1677e(a)(1).

<sup>172</sup> *Id.*, at 41.

<sup>173</sup> *Id.*, citing to 19 USC 1677e(a)(2)(B).

to provide complete, accurate and timely information in this investigation, and therefore, has significantly impeded this proceeding.<sup>174</sup>

Petitioner argues that the necessary information missing from the record is so fundamental to this proceeding that the Department cannot attempt to engage in gap-filling measures for Hyundai Steel. Petitioner asserts that the Department's "long-standing practice is to reject a respondent's questionnaire response *in toto* when essential components of the response are so riddled with errors and inaccuracies as to be unreliable."<sup>175</sup>

Petitioner claims that the Department generally uses partial adverse facts available only to fill "minor gaps" in the record due to deficient submissions or other causes. Petitioner asserts that in the instant case, there are significant flaws in the U.S. sales, home market sales, costs of production, and further manufactured cost data submitted by Hyundai Steel that the verifications could not fill. Because Hyundai Steel submitted incomplete and inaccurate U.S. sales, home market sales, costs of production, as well as failed to submit all further manufactured U.S. sales and associated further manufactured costs, the petitioner contends that the Department can no longer reasonably conclude that the company's submissions are reliable and trustworthy.<sup>176</sup> For these reasons, petitioner argues that the Department should reject Hyundai Steel's submissions in their entirety and determine that the use of total facts available is warranted.

### **Hyundai Steel's Rebuttal Brief**

Hyundai Steel rebuts that it has acted to the best of its ability and has provided accurate and reliable data. Hyundai Steel claims that the Department has no basis to apply facts available, partial facts available, and certainly has no basis to apply total facts available.<sup>177</sup> Petitioner's claim can be boiled down to four main arguments, found on page 41 of its Case Brief:<sup>178</sup>

- Hyundai Steel withheld freight and warehousing documentation information requested by the Department;
- Hyundai Steel reported incorrect CONNUM information;
- Hyundai Steel reported "the wrong" prime/non-prime designations;
- Hyundai Steel withheld U.S. sales and associated further manufacturing cost data.

Hyundai Steel addresses each of these points above:

First, Hyundai Steel states that its freight and warehousing documentation that petitioner complains about pertain only to additional documentation to establish that the transactions with affiliated parties were at arm's length. Hyundai Steel provided the Department with ample

---

<sup>174</sup> *Id.*, citing to 19 USC 1677e(a)(2)(C)

<sup>175</sup> *Id.*, at footnote 131.

<sup>176</sup> *Id.*, at 43.

<sup>177</sup> See Hyundai Steel's Rebuttal Brief citing to Petitioner's Hyundai Steel Case Brief at 40.

<sup>178</sup> *Id.*, at 41.

documentation for the Department's use in evaluating whether the transactions were at arm's length and, if not; to render any adjustment the Department believes is necessary.<sup>179</sup>

Second, Hyundai Steel claims that the Department fully verified Hyundai Steel's product reporting information, including its reported CONNUMs, prime/non-prime designations, and its treatment of overruns. Indeed, for the few products the Department flagged for further consideration, these products are either demonstrably coded correctly, sold in insignificant volumes, or both. Hyundai Steel states that its data reporting is accurate and no adjustment is needed, and furthermore, no AFA or total AFA adjustment is required.<sup>180</sup>

Third, Hyundai Steel contends that the Department verified the accuracy of Hyundai Steel's reported prime/nonprime designations and overruns, and that the treatment matched Hyundai Steel's characterization of its reporting as disclosed in the questionnaire responses. In fact, the one product that petitioner alleges was incorrectly reported as prime was expressly verified by the Department via supporting sales documentation demonstrating that the product was sold as prime merchandise and was reported as such.<sup>181</sup>

Fourth, Hyundai Steel contends that the petitioner's complaints that Hyundai Steel did not provide further manufactured sales and cost data wholly ignore the fact that the Department never requested that Hyundai Steel report the data. Hyundai Steel asserts that it provided the Department with all requested information, and the Department successfully verified the data.<sup>182</sup>

Hyundai Steel asserts that it has provided the U.S. sales, home market, sales, cost of production, and further manufactured cost data that the Department would need to conduct its antidumping analysis. Contrary to petitioner's claim, Hyundai Steel contends that it has provided all data necessary, which has in fact been verified by the Department through separate thorough verifications. Therefore, Hyundai Steel states that petitioner has offered no basis to substantiate its claim that there were any "gaps" in the data - minor or otherwise - that would require the applicable of facts otherwise available.<sup>183</sup>

## 2. *Application of Facts Available with an Adverse Inference*

### **Petitioner's Case Brief**

Petitioner asserts that section 776(b) of the Act allows the Department to utilize an adverse inference if it "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information."<sup>184</sup> As the Federal Circuit has held, "the statutory mandate that a respondent act 'to the best of its ability' requires the respondent to do the maximum that it is able to do."<sup>185</sup> Petitioner contends in considering this issue, "{a}n adverse

---

<sup>179</sup> See Hyundai Steel's Rebuttal Brief at 46.

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*, at 47.

<sup>182</sup> *Id.*

<sup>183</sup> See Hyundai Steel's Rebuttal Brief citing to Petitioner's Hyundai Steel Case Brief at 40.

<sup>184</sup> See 19 USC §1677e(b).

<sup>185</sup> See the Petitioner's Hyundai Steel Case Brief citing to *Nippon Steel*.

inference may not be drawn merely from a failure to respond, but only under circumstances in which it is reasonable for the Department to expect that more forthcoming responses should have been made; *i.e.*, under circumstances in which it is reasonable to conclude that less than full cooperation has been shown. While intentional conduct, such as deliberate concealment or inaccurate reporting, surely evinces a failure to cooperate, the statute does not contain an intent element.”<sup>186</sup>

In addition, the petitioner argues that the CIT has found that purposely withholding or providing misleading information is grounds for the application of facts available under section 1677e(a), but is also grounds for application of adverse facts available under section 1677(e)(b).<sup>187</sup> Petitioner asserts that a party that withholds information purposefully or misleads the Department cannot be said to be putting forth a “maximum effort” to cooperate with the Department.<sup>188</sup> Petitioner states that the application of this standard to the facts of record in this case fully support a finding that Hyundai Steel has failed to cooperate to the best of its ability and that application of total adverse facts available is warranted.

### **Hyundai Steel’s Rebuttal Brief**

Hyundai Steel contends that it has provided the information requested by the Department in an accurate and timely matter, and therefore, there is no basis to apply facts otherwise available. Hyundai Steel rebuts Petitioner’s assertion that the Department should apply not only an adverse inference, but total adverse facts available, as preposterous, insulting, and completely disregards the legal standard for the application of such measure.

Hyundai Steel states that 19 U.S.C. § 1677e(b) permits the Department to utilize an adverse inference if it “finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information.” Hyundai Steel asserts that the Department has generally found it appropriate to apply AFA when an interested party has engaged in a deliberate attempt to impede the Department’s investigation that substantially affected the Department’s ability to calculate an antidumping duty margin.<sup>189</sup> Hyundai Steel argues that the circumstances described in the aforementioned cases bear no resemblance to Hyundai Steel’s behavior in this investigation. Hyundai Steel asserts that it has responded to each of the Department’s numerous questionnaires and supplemental questionnaires, participated fully in the investigation, and successfully participated in three verifications, during which the Department did not identify any major issues.<sup>190</sup>

---

<sup>186</sup> *Nippon Steel*, 337 F.3d at 1383.

<sup>187</sup> *Id.*, citing, for example, to 19 USC 1677e(a) and *Shanghai Taoen Int’l Trading Co. v. United States*, 360 F.Supp.2d 1339, 1345 n. 13 (CIT 2005).

<sup>188</sup> *Id.*, citing to *Nippon Steel*, 337 F.3d at 1382-83.

<sup>189</sup> See Hyundai Steel’s Rebuttal Brief citing to *e.g.*, *Lightweight Thermal Paper From Germany: Final Results of Antidumping Duty Administrative Review; 2010–2011*, 78 FR 23220 (April 18, 2013) and accompanying Issues & Decision Memorandum at comment 1; *Pure Magnesium from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 66089 (December 14, 2009) and accompanying Issues and Decision Memorandum at comment 1; and also see *Welded Stainless Pressure Pipe From Thailand: Amended Preliminary Determination of Sales at Less Than Fair Value*, 79 FR 10772, 10773-774 (February 26, 2014).

<sup>190</sup> *Id.*, at page 49.

Moreover, Hyundai Steel contends that petitioner steps over the line in suggesting that total AFA is warranted. Hyundai Steel asserts that the CAFC has ruled that total AFA is appropriate “where none of the reported data is reliable or usable,” and the CIT has found the Department’s reliance upon total AFA proper where there is missing information.<sup>191</sup> Hyundai Steel contends that the Courts have confirmed that the application of total AFA is to be reserved for extreme situations, where the respondent has outright refused to participate in the Department’s proceedings or has displayed otherwise egregious behavior, such as concealing information or altering documents requested by the Department.<sup>192</sup>

Hyundai Steel asserts that there is a significant difference between Hyundai Steel’s efforts of cooperation and the egregious conduct and omission of the respondents in the cases mentioned above. Hyundai Steel contends that such a distinction demonstrates the shortfall of petitioner’s argument of the application of total AFA. Hyundai Steel states that the Department should therefore reject petitioner’s AFA argument and calculate Hyundai Steel’s dumping margin based on the accurate and reliable data that it has provided to the Department throughout this investigation.<sup>193</sup>

### 3. *The Application of AFA Using the Highest Margin Alleged in the Petition*

#### **Petitioner’s Case Brief**

Petitioner notes that the statute expressly authorizes the Department to use information from the petition in making adverse inferences.<sup>194</sup> In doing so, petitioner urges that the Department selects the highest margin alleged in the petition. In this case, petitioner alleged dumping margins of 75.42 percent and 177.50 percent in the petition.<sup>195</sup> Accordingly, petitioner argues that the Department should rely on the highest margin alleged in the petition (177.50 percent) for Hyundai Steel that was corroborated by the Department in its initiation of the investigation for the final determination.<sup>196</sup>

#### **Hyundai Steel’s Rebuttal Brief**

Hyundai Steel claims that there is no measure of AFA or total AFA that is appropriate in this case. Hyundai Steel contends that the petition rate bears no relation to commercial reality or Hyundai Steel’s commercial experience, as the Department calculated at 2.17 percent margin for Hyundai Steel in the *Preliminary Determination*.

---

<sup>191</sup> *Id.*, citing to *e.g.*, *Zhejiang Dunan Hetian Metal Co. v. United States*, 652 F.3d 1333, 1348 (Federal Circuit 2011) and *Shanghai Taoen Int’l Trading Co. v. United States*, 360 F.Supp.2d. 1339, 1348 n. 13 (CIT 2005).

<sup>192</sup> *Id.*, citing, for example, to *Qingdao Taifa Group Co. v. United States*, 637 F. Supp. 2d 1231, 1239 (CIT 2009) and also see *Papierfabrik August Koehler S.E. v. United States*, 7 F. Supp. 3d 1304, 1310-1311 (CIT 2014).

<sup>193</sup> *Id.*, at 50.

<sup>194</sup> See 19 USC § 1677e(b).

<sup>195</sup> See the Petitioner’s Hyundai Steel Case Brief citing to the *Certain Cold-Rolled Steel Flat Products From Brazil, the People’s Republic of China, India, Japan, the Republic of Korea, the Netherlands, the Russian Federation, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 51198, 51203 (August 24, 2015).

<sup>196</sup> See the Petitioner’s Hyundai Steel Case Brief at 45.

Hyundai Steel asserts that the Department has reliable data from Hyundai Steel and there is no need to ignore its data, which does establish the actual margin of dumping and Hyundai Steel's commercial reality. Hyundai Steel contends that the Department is aware of Hyundai Steel's minor reporting issues and does not support disregarding all of Hyundai Steel's submissions and data, as the Department is obligated to use the data where the data can serve as a reliable basis for reaching the determination. Based on these facts, Hyundai Steel states that the Department cannot reasonably corroborate the margin suggested by Petitioners, or any other margin derived from the petition.

**Department's Position:** The Department disagrees with petitioner with regard to the application of total AFA to Hyundai Steel. Pursuant to Section 782(e) of the Act, we believe that we may derive from the record sufficient information to calculate an appropriate margin for Hyundai Steel. The record reflects that, overall, Hyundai Steel submitted reliable original questionnaire and supplemental questionnaire responses. Hyundai Steel's reported price, expense, and cost information was, in general, confirmed to be accurate and reliable. For most issues, we find that Hyundai Steel cooperated to the best of its ability. Certain issues identified by petitioner can be remedied, as identified in Hyundai Steel's comments 12, 15, and 19 below. However, there are certain gaps in the record and other errors that we could not address with Hyundai Steel's responses (*see* Hyundai Steel's comments 12, 15, and 19 below).

The facts of this instant investigation can be distinguished from the facts in *Shanghai Taoen* or *Nippon Steel*, cited by petitioner in its Case Brief, because we find that Hyundai Steel has cooperated to the best of its ability and has provided satisfactory explanations to the Department's supplemental questions.<sup>197</sup> Based on our analysis of the comments submitted for the final determination of this investigation, we find no basis for the application of total facts available for purposes of determining Hyundai Steel's dumping margin. None of the criteria under section 776(a) of the Act have been met.

Specifically, we cannot conclude that necessary information is not available on the record, nor can we conclude that Hyundai Steel withheld all cost and sales information requested by the Department, that it failed to provide such information in the form or manner requested, or that it acted to significantly impede the proceeding. As discussed in response to the other comments filed for these final results, with the exception of the information discussed below in comments 12, 15, and 19, Hyundai Steel has complied with all of our requests for information, and the necessary information requested by the Department and provided by Hyundai Steel is sufficient to determine Hyundai's final dumping margin for this review period. Furthermore, we have not found that Hyundai Steel acted at any time to significantly impede the proceeding.

We have determined that the application of total AFA to Hyundai Steel is not warranted. However, we are recommending partial AFA or facts available where the Department deems it necessary to fill particular gaps in the record, as explained further in comments 12, 15, and 19 below.

---

<sup>197</sup> See Petitioner's Case Brief, citing to *Shanghai Taoen*, 360 F.Supp.2d. 1339 and *Nippon Steel*, 377 F.3d at 1382.

## Comment 12: Control Numbers and Prime/Non-Prime Designations

### Petitioner's Case Brief

A. Petitioner asserts that Hyundai Steel reported inaccurate, inconsistent, and unverifiable CONNUMs to the Department

Petitioner claims that two key data points for the Department's margin analysis are the CONNUM and the prime/non-prime designations. In this investigation, petitioner asserts that at verification the Department confirmed that both the control number (CONNUM) and prime/non-prime designations reported by Hyundai Steel were inaccurate and unreliable. Petitioner contends that given the significance of this data and Hyundai Steel's failure to cooperate in this investigation, the Department should find that a total adverse fact available is warranted for Hyundai Steel pursuant to sections 776(a) and (b) of the Act.

Petitioner claims that a respondent is required to assign a CONNUM to each unique product reported in the sales databases.<sup>198</sup> While each identical product would be assigned the same CONNUM, products with differences in the physical characteristics defined by the CONNUM require the reporting of their own unique CONNUMs.<sup>199</sup> Here, petitioner urges that Hyundai Steel and Hyundai Steel America (HSA) reported inaccurate and unverifiable CONNUMs. At verification, petitioner asserts that Hyundai Steel combined multiple unique products in a single CONNUM, while in other instances Hyundai Steel reported multiple CONNUMs for a unique product.<sup>200</sup> Moreover, petitioner contends in several other instances, Hyundai Steel reported CONNUMs that conflicted with its own documentation, or reported CONNUMs that could not be documented by Hyundai Steel.<sup>201</sup>

Petitioner asserts that the Department's verification report identifies several instances where the Department discovered that Hyundai Steel wrongly reported products with different QUALITYH/U codes in a single CONNUM. Specifically, petitioner cites to the Department's findings<sup>202</sup> that a certain product "specification," referred to here as Spec A, was reported in field PRODCOD2H/U in the home and U.S. sales file, was reported as code "25" (high strength low alloy quality) in CONNUM characteristic QUALITYH/U.<sup>203</sup> Based on documents obtained at verification, petitioner contends that the Department found that PRODCOD2H/U identified as Spec A was a "dual phase steel" that Hyundai Steel "classifies under its own designation as

---

<sup>198</sup> Petitioner cites to the Department's antidumping questionnaire, available at <http://enforcement.trade.gov/questionnaires/questionnaires-ad.html>

<sup>199</sup> *Id.*

<sup>200</sup> See the Memorandum to the File, entitled "Verification of Hyundai Steel Corporation Sales Responses in the Antidumping Duty Investigation of Cold-Rolled Steel Flat Products from the Republic of Korea" at 14, dated May 6, 2016 (Hyundai Steel's Sales Verification Report).

<sup>201</sup> See the Petitioner's June 6, 2016, case brief concerning Hyundai Steel Corporation (Petitioner's Hyundai Steel Case Brief), citing to Hyundai Steel's Sales Verification Report at 19 and 41.

<sup>202</sup> *Id.*, at 1.

<sup>203</sup> *Id.*, at 7-10. Because the names of the specifications in the verification documents have been treated as proprietary information, we are referring to these products as "Spec A," "Spec B," *etc.*

‘AHSS’ merchandise”, and should have reported in the QUALITYH/U as code “20” (advanced high strength steel and ultra high strength steel).<sup>204</sup>

Petitioner states that this single misreporting of the QUALITYH/U field in the CONNUM impacts numerous CONNUMs, for which Hyundai reported QUALITYH/U as code “25” for those sales showing PRODCOD2H/U as Spec A, where QUALITYH/U is the third characteristic in the CONNUM.

Petitioner states that if the Department were to correct this problem, it would have to revise the costs for numerous existing CONNUMs to account for moving the Product A product out of certain CONNUMs into others, and to create additional CONNUMs that do not currently exist. Petitioner contends, however, that the Department does not have the information necessary to correct the record.

Based on the Department’s verification, petitioner asserts that PRODCOD2H/U of Spec A should have been reported as QUALITYH/U code “20” (ultra high strength steel, advanced high strength steel),<sup>205</sup> but Hyundai Steel improperly reported code “25” (high-strength low-alloy steel). Petitioner asserts that there is insufficient data to remove the costs from CONNUMs that include Product A and separately report those costs in new CONNUMs.

Petitioner also claims that the Department identified discrepancies in reporting QUALITYH/U for PRODCOD2H/U of Spec B.<sup>206</sup> In its response, petitioner contends that for a U.S. sale, Hyundai reported the QUALITYU for Spec B as code “25” (high-strength low alloy steel) for a CONNUM, instead of code “20” (ultra high strength/advanced high strength steel)<sup>207</sup> For other sales of Spec B, petitioner claims that Hyundai Steel reported QUALITYH as code “20.” Petitioner states that the sales and cost data would need to be redefined and recalculated, a task that the Department cannot undertake due to the lack of data on the record.

Petitioner asserts that other reported CONNUMs are unreliable because of product classification errors. Petitioner claims that HSA reported the wrong QUALITYU for products with a PRODCOD2U of Spec C for several sale observations.<sup>208</sup> Specifically, petitioner contends that HSA reported in its U.S. sales database that Spec C products were one quality, when the information obtained at verification indicated it was another<sup>209</sup> Petitioner states that the Department also identified additional U.S. sale observations of Spec C that HSA had identified as two incorrect qualities.<sup>210</sup>

Moreover, petitioner asserts that Hyundai Steel reported all of its home market sales of Spec C as a single QUALITYH code.<sup>211</sup> Petitioner asserts that HSA not only misreported the QUALITYU

---

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*, at 10.

<sup>206</sup> *Id.*, citing to Hyundai Steel’s Sales Verification Report at 19 and 41.

<sup>207</sup> *Id.*, at 11.

<sup>208</sup> *Id.*, citing to Hyundai Steel’s Sales Verification Report at 11.

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*, at 12.

<sup>211</sup> *Id.*



field, it also artificially created additional CONNUMs for Spec C products as a result of the aforementioned inconsistent reporting. Petitioner states that Hyundai Steel manipulated the margin by forcing the margin program to incorrectly match various inaccurate CONNUMs to other CONNUMs, instead of comparing the U.S. sales to CONNUMS defined based on the proper quality code.<sup>212</sup>

Petitioner states that the Department found at verification the CONNUM characteristic reported by Hyundai Steel for Spec D did not agree with the product documentation for products of that specification.<sup>213</sup> For Spec D, petitioner asserts that Hyundai Steel reported the QUALITYH/U with one quality code.<sup>214</sup> According to petitioner, the “spec chart” provided by Hyundai Steel in its response indicates Spec D corresponds to a certain public specification/grade.<sup>215</sup> Petitioner claims that the Department found at verification that the mechanical and chemical requirements of Spec D actually correspond to those of a different public specification/grade than the one claimed by Hyundai Steel.<sup>216</sup> Petitioner asserts that if Hyundai Steel relied on its internal systems, it would have reported QUALITYH/U with correct code.<sup>217</sup> Petitioner contends that failing to follow the product characteristic information identified in its internal systems, Hyundai Steel has reported the wrong CONNUM to the Department, and impeded the Department's ability to calculate accurate margins.

Petitioner claims that Hyundai Steel could not provide any support for the mechanical (*e.g.*, yield strength or tensile strength) or chemical (*e.g.*, carbon content) characteristics for certain CONNUMs.<sup>218</sup> Petitioner states that Hyundai Steel presented a copy of the “spec chart” prepared for the Department that Hyundai submitted in its original section B response.<sup>219</sup> When asked to document the reported product characteristics for PRODCOD2H/U for three specifications, Spec E, Spec F, and Spec G, petitioner contends that Hyundai Steel could not present documentation in support of the reported product characteristics.<sup>220</sup> Petitioner states that during verification, the Department inquired with Hyundai Steel whether it was plausible that a product such as Spec E “would have no internal production guidelines for either mechanical properties or chemistry.”<sup>221</sup> Hyundai Steel stated that Spec E is “a full hard product” (a cold-rolled product that has not been subsequently annealed) that is used to produce a certain type of galvanized product.<sup>222</sup> Petitioner asserts that the Department obtained Hyundai Steel’s galvanized steel products brochure, which reported that the galvanized product has a minimum specified yield strength that is far different from the undocumented minimum specified yield strength Hyundai Steel identified for Spec E.<sup>223</sup>

---

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*, at 12-13.

<sup>214</sup> *Id.*, at 13 (footnote 36).

<sup>215</sup> *Id.*, at footnote 37.

<sup>216</sup> *Id.*, citing to Hyundai Steel’s Sales Verification Report at 21.

<sup>217</sup> *Id.*, at 13.

<sup>218</sup> *Id.*, at 13-14.

<sup>219</sup> *Id.*, at 14 citing to Hyundai Steel’s Sales Verification Report at 15, 18, and exhibit 12; and Hyundai Steel’s November 6, 2015, Section B Response at exhibit B-7 (Section B Response).

<sup>220</sup> *Id.*, at 15, citing to Hyundai Steel’s Sales Verification Report at 18, 20, and 23.

<sup>221</sup> *Id.*, at 15, citing to Hyundai Steel’s Sales Verification Report 18.

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

Petitioner further comments that for PRODCOD2H for Spec H, Hyundai Steel did not present any documentation in support for the reported quality (QUALITYH code 20, ultra high strength steel/high-strength low-alloy steel).<sup>224</sup> While Hyundai Steel was asked to support this reporting, petitioner state that the Department concluded that “there is no indication this product meets the company's characteristics of UHSS or AHSS merchandise.”<sup>225</sup>

Petitioner contends that it is the respondent’s obligation to maintain all records used in preparation of its response; however, Hyundai Steel and HSA signed company certifications where they acknowledged that “the information contained in this submission may be subject to verification or corroboration (as appropriate) by the U.S. Department of Commerce”<sup>226</sup> and it could not provide documentation in support of its reported CONNUM reporting.

B. Petitioner states that Hyundai Steel inaccurately reported prime merchandise from non-prime merchandise

Petitioner asserts that the Department’s questionnaire not only required Hyundai Steel to report the individual product characteristics of the CONNUM, but to also report whether the merchandise was prime or nonprime (secondary) product. Petitioner states that the Department will first parse the data to compare prime merchandise with prime merchandise, non-prime merchandise to non-prime merchandise, and will then determine model matching based on the CONNUM. Petitioner explains that Hyundai Steel reported prime merchandise in its initial Section B Response, as code “1” when the merchandise “meets a recognized industry specification, even if the product does not meet the specification originally intended at the time of manufacture,” or as “non-prime” - code “2,” when the merchandise did not pass the quality test.”<sup>227</sup> Petitioner also contends that Hyundai Steel sold non-prime merchandise overruns.<sup>228</sup>

However, at verification, petitioner notes that the Department confirmed that Hyundai Steel failed to accurately designate its merchandise as prime or non-prime. Petitioner claims that when asked to provide the actual yield strength results of the Spec E products, Hyundai Steel stated that their files “did not contain any yield strength measurements.”<sup>229</sup> When questioned by the Department as to why there were no measurements, petitioner asserts that Hyundai Steel replied that the products were “non-prime.”<sup>230</sup> Petitioner claims the sale observations in question were improperly reported as prime merchandise.<sup>231</sup>

By failing to accurately report the prime and non-prime merchandise, petitioner states that the Department cannot rely on Hyundai Steel’s initial segregation of the CONNUMs.

C. Petitioner claims that Hyundai Steel inaccurately reported overruns

---

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*, at 15-16, citing to Hyundai Steel’s Sales Verification Report at 21.

<sup>226</sup> *Id.*, at 16.

<sup>227</sup> *Id.*, at 16-17.

<sup>228</sup> *Id.*, at 18.

<sup>229</sup> *Id.*, at 17, citing to Hyundai Steel’s Sales Verification Report at 21.

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

Petitioner asserts that Hyundai Steel stated that it internally “categories” its overrun products as non-prime products.<sup>232</sup> At verification, petitioner contends that Hyundai Steel stated that it “is unable to segregate overrun products from non-prime products,” and that it, therefore, reported “N” in field OVERRUNH for all sales.<sup>233</sup> Petitioner contends that the Department should find that Hyundai Steel failed to properly report whether or not its sales were overruns, thus, prohibiting the Department from accurately analyzing whether overrun sales should be used when model matching.

Petitioner states that Hyundai Steel defines prime merchandise as products that pass the quality test.<sup>234</sup> In contrast, non-prime products are those that do not pass the quality test.<sup>235</sup> Petitioner asserts that this data is electronically maintained by Hyundai Steel by coil number,<sup>236</sup> and that Hyundai Steel could have electronically checked to see if the test results (by coil number) passed the quality test, but chose not to do so. Petitioner contends that the Department should find that Hyundai Steel inaccurately reported its overrun field.

D. Petitioner states the impact of Hyundai Steel’s failure to accurately report the CONNUMs and prime and non-prime designation

Petitioner contends that the Department’s product sampling at verification uncovered a series of significant problems with the CONNUMs and the prime/non-prime designation reported by Hyundai Steel. Petitioner claims that without an accurate reporting of CONNUMs and the prime/non-prime designations, the Department cannot accurately (1) select identical and similar model matches, (2) test arm’s-length home market sales, (3) test home market sales below costs, (4) calculate the differences-in-merchandise (“DIFMER”) adjustment, (5) perform the differential pricing analysis, (6) calculate sale-to-sale margins, and (7) calculate sales-to-constructed value margins.<sup>237</sup> For this reason, petitioner states that total adverse facts available are warranted for Hyundai Steel.

### **Hyundai Steel’s Case Brief**

Hyundai Steel contends that the Department, in its sales verification report, identified four specific product grades for which the Department indicated Hyundai Steel’s product quality (QUALITYU/H) coding may require further consideration.<sup>238</sup> In each instance, Hyundai Steel believes that its reporting was reasonable and accurate and no modification to the reported data is required. Moreover, Hyundai Steel states that three of the four products identified by the Department are not sold in meaningful quantities and have no impact on the Department’s analysis in this investigation. As an initial matter, Hyundai Steel stresses that the Department

---

<sup>232</sup> *Id.*, at 18, citing to Hyundai Steel’s Sales Verification Report at 14 and Hyundai Steel’s Section B Response at B-10.

<sup>233</sup> *Id.*, citing to Hyundai Steel’s Sales Verification Report at 14.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*, citing to Hyundai Steel’s Sales Verification Report at 7.

<sup>237</sup> *Id.*, at 19.

<sup>238</sup> *See* Hyundai Steel’s Case Brief at 9.

conducted an extremely in-depth and exhaustive verification of Hyundai Steel's CONNUM reporting.<sup>239</sup> Hyundai Steel states that the Department nonetheless identified four specific products for further consideration.

Hyundai Steel indicated that in the Department's verification report, the Department indicates that Hyundai Steel reported Spec A products as quality code "25" (corresponding to "High-Strength Low-Alloy Steel"). However, Hyundai Steel contends that the Department states that "documentation obtained during the verification indicates the company identified that product as dual phase steel" which was otherwise classified under quality code 20, as Advanced High Strength Steel (AHSS)/Ultra High Strength (UHSS) steel.<sup>240</sup>

Hyundai Steel states that while the Department's verification report is correct that "dual phase" steel can be classified as AHSS, the documentation provided at verification also confirms that dual phase steel is not necessarily advanced or ultra high strength. In particular, Hyundai Steel cites to page 80 of Hyundai Steel's Sales Verification Report at exhibit 19 to show that Hyundai Steel provided its own product groupings based on IISI standards, showing that ultra high strength steels are those with tensile strengths above 700 MPa. Hyundai Steel claims that the diagram on page 80 shows dual phase products can be classified as "high" strength or "ultra high" strength. Moreover, Hyundai Steel contends that the IISI guidelines generally use a tensile strength of 700 MPa as the dividing line between "high strength" (which would be classified as QUALITY 25) and "ultra high strength" (QUALITY 20).<sup>241</sup>

Hyundai Steel asserts that the R&D materials included at page 79 of the exhibit mentioned above and cited by the Department do categorize Spec A as an "AHSS" product. However, Hyundai Steel states that it sold the product as a high strength steel product, to be consistent with the IISI guidelines, and is therefore appropriately classified as QUALITY 25, which it states is consistent with the Department's questionnaire reporting guidelines. Hyundai Steel asserts that page 5 of Hyundai Steel's Sales Verification Report at exhibit 13, confirms that it establishes the reported QUALITY based on the item code for each product and page 8 of exhibit 13 shows that the code for Spec A products indicates they were categorized as high strength steel products and not ultra high strength steel products.

Accordingly, Hyundai Steel contends that its reporting methodology is consistent with the IISI guidelines, and that Spec A products were properly reported to the Department as high-strength low-alloy steel, under QUALITY code 25.<sup>242</sup>

Regarding Spec B, Hyundai Steel asserts that the Department's verification reports make clear, the product coding question regarding this specification only impacts a single CEP sale. In particular, Hyundai Steel contends that this issue relates to U.S. surprise sale 3, a sale which the Department examined both at Hyundai Steel's verification and HSA's CEP verification.<sup>243</sup>

---

<sup>239</sup> *Id.*, at 9-10.

<sup>240</sup> *Id.*, at 10..

<sup>241</sup> *Id.*, at 10-11.

<sup>242</sup> *Id.*, at 11.

<sup>243</sup> *Id.*, at 11.

Hyundai Steel states that, as discussed in the Department's HSA Sales Verification Report, while Hyundai Steel reported PRODCOD2U for this sale as Spec B, the actual product produced and sold was a Spec A product.<sup>244</sup>

Accordingly, Hyundai Steel states that it reported the product characteristic information based on the coil as produced by Hyundai Steel. Thus, Hyundai Steel contends that it reported the product characteristic information for this sale correctly, and no revisions to the data are necessary. Moreover, Hyundai Steel notes that because this issue relates to a single sale in the database, the issue identified by the Department in its verification reports is minor and explained in the record.

Regarding Spec D, Hyundai Steel contends that this specification noted in the Department's verification report is not a product commonly sold by Hyundai Steel. Hyundai Steel notes that it only had a small amount of home market sales transactions for this product. Hyundai Steel states that it did not sell this product in the United States and the QUALITY classification of this product has no meaningful impact on the Department's analysis in light of the insignificant quantity of merchandise at issue. That said, Hyundai Steel asserts that the QUALITY classification of this product as a commercial steel quality product as opposed to a drawing steel quality product was reasonable even if the mechanical and physical requirements of the product are consistent with other products classified as drawing steel products.<sup>245</sup>

Hyundai Steel states that sales of products to Spec H were also made in truly insignificant quantities, and the appropriate coding of this product has no measurable impact on the Department's analysis. Specifically, Hyundai Steel asserts that this product was not sold in the United States during the POI, and Hyundai Steel very few home market sales transactions for this product. Nonetheless, Hyundai Steel notes that its records for this product indicate that Hyundai Steel's classification of this product as an ultra-high strength steel quality product is reasonable. In particular, Hyundai Steel asserts that page 5 of Hyundai Steel's Sales Verification Report at Exhibit 12 shows that Hyundai Steel classifies this product under a certain product code, and that page 8 of Hyundai Steel's Sales Verification Report at exhibit 13 shows products under that product code are classified as Ultra High Strength Steel products.<sup>246</sup>

### **Petitioner's Rebuttal Brief<sup>247</sup>**

Petitioner states that contrary to Hyundai Steel's assertion, the Department's verification confirmed that Hyundai Steel and HSA reported inaccurate CONNUMS in its home market sales, U.S. sales and costs data. Petitioner contends while the Department's verification found that Hyundai Steel incorrectly combined at least two unique products into a single CONNUM, Hyundai Steel also wrongly separated a unique product into multiple CONNUMS and reported CONNUMS that contradict Hyundai Steel's product documentation. Petitioner also argues that

---

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*, at 12.

<sup>246</sup> *Id.*, at 12-13.

<sup>247</sup> See the Petitioner's June, 13, 2016, rebuttal brief concerning Hyundai Steel Corporation (Petitioner's Hyundai Steel Rebuttal Brief).

Hyundai Steel reported CONNUMs which it could not document.<sup>248</sup> Petitioner contends that Hyundai Steel inexplicably characterizes this behavior as “reasonable and accurate.”<sup>249</sup> Petitioner argues that such a characterization fails to acknowledge that Hyundai Steel’s submission of inaccurate and unverifiable CONNUMs has a far-reaching impact on the U.S. sales, home market sales and costs databases.<sup>250</sup>

Moreover, petitioner asserts that Hyundai Steel’s attempt to minimize the impact of its failure to report accurate CONNUMs by trying to isolate the discussion on the quantity sold of each spec code is wrong.<sup>251</sup> Petitioner points to its case brief stating in order to correct Hyundai’s incorrect reporting of one spec code, Spec A, Hyundai Steel would have had to revise costs for existing CONNUMs and create additional CONNUMs.<sup>252</sup> Thus, contrary to Hyundai Steel’s claim, petitioner argues that the impact of reporting the wrong CONNUM is significant.

Petitioner asserts that the Department has no possible means to correct these extensive issues or calculate accurate dumping margins based on the record developed by Hyundai Steel. Petitioner states that the Department should reject Hyundai Steel’s attempts to minimize its uncooperative behavior and determine that the assignment of total adverse facts available is warranted.

### **Hyundai Steel’s Rebuttal Brief<sup>253</sup>**

#### The Department Should Rely On Hyundai Steel’s Reported Sales and Cost Data

Hyundai Steel asserts that the Department noted in its verification report a few minor instances where the Department indicated that further consideration may be required as it pertained to Hyundai Steel’s reported quality characteristic (QUALITYH/U).<sup>254</sup> Hyundai Steel claims that petitioner takes these few instances, each involving low-volume products and reasonable CONNUM classifications and argues that the Department should disregard all of Hyundai Steel’s reported CONNUM data.<sup>255</sup> Hyundai Steel asserts that the petitioner’s statement that the Department’s verification was a “spot check” and its allegation that “the extent of Hyundai Steel’s misreporting remains unknown” are simply incorrect. Hyundai Steel contends that it correctly demonstrated all of its reported CONNUMs as written in the Department’s extensive verification report addressing product coding. Hyundai Steel refutes that this exercise was not a typical verification “spot check,” but rather was a top-to-bottom comprehensive review of all of Hyundai Steel’s cold rolled products and every element of the CONNUM reporting.<sup>256</sup>

---

<sup>248</sup> *Id.*, at 4, citing to Hyundai Steel’s Case Brief at 15.

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*, at 4-5, citing to Petitioner’s Hyundai Steel Case Brief at 2-16.

<sup>251</sup> *Id.*, at 5.

<sup>252</sup> *Id.*, citing to its Petitioner’s Hyundai Steel Case Brief at 7-9.

<sup>253</sup> See Hyundai Steel’s June 13, 2016, rebuttal brief of Hyundai Steel Corporation (Hyundai Steel’s Rebuttal Brief).

<sup>254</sup> See Hyundai Steel’s Rebuttal Brief at 8, citing to its Case Brief at 9-13 and Hyundai Steel’s Sales Verification Report at 2.

<sup>255</sup> *Id.*, citing to the Petitioner’s Hyundai Steel Case Brief at 11.

<sup>256</sup> *Id.*

Hyundai Steel states that in its verification report, the Department indicated that Hyundai Steel reported Spec A products as quality code 25 (corresponding to “High-Strength Low-Alloy Steel”). Hyundai Steel states that the Department’s report also indicates that “documentation obtained during the verification indicates the company identified that product as dual phase steel,” and that dual phase steels are otherwise classified under the AHSS/UHSS quality code 20. Hyundai Steel contends that petitioner’s claims that this one Spec A product justifies application of total AFA is inaccurate, and that petitioner failed to establish that Hyundai Steel’s reporting was wrong. Hyundai Steel further contends that its reporting for this product was reasonable and consistent with verified documentation.<sup>257</sup>

Hyundai Steels notes that while the Department’s analysis singles Spec A as dual phase steel and that other such products were reported under the AHSS/UHSS quality classification, the Department’s verification report does not conclude that Hyundai Steel’s reporting was at all inaccurate but, rather, only notes that this product was classified differently than other dual phase steel products. Hyundai Steel comments that the documentation included by the Department in a verification exhibit indicates Spec A should not be categorized under the AHSS/UHSS quality because of the limited strength requirements of Spec A. Hyundai Steel asserts that it provided similar materials from its own product classification and product descriptions.<sup>258</sup>

Hyundai Steel asserts this dual phase steel product may be grouped together with other dual phase steels as AHSS products, because Spec A products do not satisfy the strength requirements associated by the industry with AHSS/UHSS products, and that Hyundai Steel reasonably classified the product as an HSLA product under QUALITY 25. Hyundai Steel claims the distinction between Spec A and AHSS/UHSS was explained to the Department at verification, as indicated by horizontal and vertical lines drawn on page 50 of Verification Exhibit 19 separating Spec A from products properly categorized as AHSS/UHSS.<sup>259</sup>

Hyundai Steel acknowledges that some internal product materials contain general groupings of products categorizing dual phase products generally as AHSS products, but argues that does not establish that Hyundai Steel’s reporting of quality for Spec A was incorrect. Hyundai Steel notes that it did not rely on, and the Department would not have accepted, reporting based simply on some internal classifications of specifications into general categories.<sup>260</sup>

While the Department flagged this product for further consideration, Hyundai Steel states that neither the Department nor the petitioner has pointed to any record evidence that products with the limited strength requirements of Spec A are AHSS/UHSS products. Hyundai Steel asserts that its reporting methodology was reasonable, and that even if the Department disagrees with Hyundai Steel’s classification and determines that the product should have been classified under the AHSS/UHSS quality, that there is no basis for applying AFA, because there was no reporting failure or a lack of best efforts that could support AFA, and especially, total AFA. Accordingly,

---

<sup>257</sup> *Id.*, at 9.

<sup>258</sup> *Id.*, at 9-10.

<sup>259</sup> *Id.*, at 10.

<sup>260</sup> *Id.*, at 11.

Hyundai Steel argues that the Department should not apply any adjustment, let alone one that is adverse.<sup>261</sup>

Regarding Spec C products, Hyundai Steel claims that the Department's verification report for HSA notes a few instances where the reported CONNUM information for CEP sales does not match the reported product code reported in the field PRODCOD2U.<sup>262</sup> Hyundai Steel asserts that petitioner attempts to cast these few sales as an indication that Hyundai Steel's reported CONNUMs are in error.<sup>263</sup> The Department's verification report describes these sales as "type 3" transactions. Hyundai Steel explains that "Type 3" sales are sales where HSA was able to link the product sold to the actual imported coil, but the HSA sale was of a different steel specification/grade.<sup>264</sup>

Hyundai Steel states that it identified the product characteristic data (CONNUM data) based on the coil as imported into the United States *i.e.*, the coil as produced. For CEP sales, Hyundai Steel contends that it identified the informational product code (PRODCOD2U) based on HSA's records. However, Hyundai Steel notes that there are a few instances where the PRODCOD2U (HSA's records) did not match the CONNUM as sold (the actual product). Hyundai Steel states that this can happen where HSA's inventory records do not perfectly trace the product information back to the imported coil or where HSA sold a higher or comparable grade product as a substitute for another product (where the customer would be indifferent or happy to accept a higher quality product than the product ordered). In such situations, Hyundai Steel states that it correctly reported the product characteristics based on the Hyundai Steel imported coil (*i.e.*, the actual physical characteristics of the steel) and reported the PRODCOD2U based on HSA's sales records.<sup>265</sup>

Hyundai Steel argues that the sales noted in the Department's verification report were not examined in detail at verification and the Department did not identify any instances where the CONNUM reporting was actually incorrect. Hyundai Steel argues that it identified the QUALITYU characteristic based on the product as imported, *i.e.*, as produced, and this could differ from the HSA sold quality. Further, Hyundai Steel contends that the "type 3" sales noted by the Department are limited to those instances where a single coil was sold as multiple products (*i.e.*, multiple reported PRODCOD2Us for a single coil in HSA's sales records and reported in the U.S. database). Hyundai Steel maintains that it provided information and an explanation for these instances where a single coil was sold (and reported in the U.S. database) as multiple specifications. However, Hyundai Steel explains that there could be other instances where the QUALITYU reported would not match the PRODCOD2U, for example, an entire coil was processed and sold as a single different specification. In this scenario, Hyundai Steel states it would not have classified these sales as "type 3" in the table prepared for verification because the entire coil was sold as a single different specification, rather than as multiple different specifications.<sup>266</sup>

---

<sup>261</sup> *Id.*, at 11-12.

<sup>262</sup> *Id.*, at 12, citing to the HSA Sales Verification Report at 10.

<sup>263</sup> *Id.*, citing to the Petitioner's Hyundai Steel Case Brief at 11-12.

<sup>264</sup> *Id.*, citing to HSA's Sales Verification Report at 13.

<sup>265</sup> *Id.*, at 12-13.

<sup>266</sup> *Id.*, at 13-14



Hyundai Steel contends that the differences noted may arise where customers are delivered a higher quality product citing, as an example, if a customer orders commercial quality product but is delivered higher quality drawing quality product. Hyundai Steel states that under such circumstances, it is proper for Hyundai Steel to have reported the CONNUM based on the actual steel, but to have reported the PRODCOD2U field consistent with the sale and the customer's order.<sup>267</sup>

Hyundai Steel contends that these sales volumes at issue are truly miniscule, hardly evidence of the mass manipulation that petitioner asserts. Hyundai Steel further contends that these sales quantities are minimal and have no meaningful impact on the Department's analysis. Hyundai Steel's argues that its reporting was correct and the sales volume at issue is so small, this aspect of Hyundai Steel's reporting does not support the application of total AFA.<sup>268</sup>

Hyundai Steel contends that petitioner also raises various allegations concerning other products (Spec D, Spec B, Spec E, Spec F, Spec G, and Spec H) which are all either insignificant, readily explainable, or both. For Spec D, Hyundai Steel contends that this product is not commonly sold by Hyundai Steel, and that the low volumes have no impact on the Department's calculations and AFA is unreasonable.<sup>269</sup> Regarding Spec B, Hyundai Steel states the Department's verification reports make clear that it only impacts a single CEP sale, which was examined both at Hyundai Steel's verification and HSA's CEP verification. Hyundai Steel states that it reported the PRODCOD2U in accordance with the records of Hyundai Steel and HSA (as Spec B), but that the product produced and sold was actually a Spec A product. Hyundai claims no revision to reported data is needed, because it reported the product characteristic information based on the coil as produced by Hyundai Steel.<sup>270</sup>

Regarding Spec E, Hyundai Steel claims this specification was not sold in the U.S. market, and that there were only a few home market sales of products classified under that specification. Hyundai Steel argues the sales documentation for these products indicates there were no yield strength requirements for the product, which explains why no documentations of yield strengths for the products sold existed.<sup>271</sup>

Hyundai Steel claims Spec F and Spec H were not sold in the U.S. market, and that there were only a few home market sales of products classified under those specifications.<sup>272</sup> Hyundai Steel states the Department verified the yield strength information of Spec G without issue.<sup>273</sup>

Regarding the reporting of overrun products, Hyundai Steel notes that in its section B response, it had not identified overrun products separately from non-prime products and had reported all overrun and non-prime products as non-prime in the field PRIMEH. Hyundai Steel explained

---

<sup>267</sup> *Id.*, at 14.

<sup>268</sup> *Id.*, at 15.

<sup>269</sup> *Id.*, at 16.

<sup>270</sup> *Id.*, at 16-17.

<sup>271</sup> *Id.*, at 17, citing Hyundai Steel Sales verification Exhibit 19 at page 93.

<sup>272</sup> *Id.*, at 17.

<sup>273</sup> *Id.*, citing Hyundai Steel Sales verification report at 23.

that it “categorizes overrun products in its internal accounting systems as non-prime products.”<sup>274</sup> Hyundai Steel contends that the Department did not question this reporting via supplemental questionnaires and the Department successfully verified the information that Hyundai Steel submitted. Hyundai Steel refutes that petitioner, despite submitting numerous comments on Hyundai Steel’s questionnaire responses, did not raise this issue in its comments, and petitioner has waited until its case brief to unreasonably argue this allegation for the first time.<sup>275</sup>

Hyundai Steel asserts that despite the Department’s successful verification, petitioner alleges that the Department’s product sampling at verification uncovered a “series” of significant problems with the prime/non-prime designations reported by Hyundai Steel. Hyundai Steel argues that petitioner’s claim that certain Spec E products were improperly reported as prime sales, rather than non-prime sales, is incorrect, because the Department verified they were properly reported as prime sales.<sup>276</sup> Hyundai Steel affirms that its prime/non-prime and overrun reporting is correct and fully verified and no adjustment, adverse or otherwise, is warranted in the final determination.

**Department Position:** The Department conducted a very detailed review of many product-related issues at the Hyundai Steel and HSA verifications, including many not referenced by petitioner, for which no problems requiring changes to our calculations are required or warranted. In addition, several of the issues raised by petitioner, as discussed below, are the same, in that no errors were identified and no changes are needed.

With regard to distinctions between prime and non-prime merchandise, and overrun sales in particular, the respondent explained in a questionnaire response that it could not differentiate which overrun sales were of prime merchandise and which were of non-prime merchandise, given limitations of its product coding system.<sup>277</sup> Petitioner did not challenge this methodology in comments at the time, and the Department did not ask Hyundai Steel for further clarification or to revise its reporting. At verification, the Department reviewed information relating to overruns, and documentation obtained at verification confirmed that Hyundai Steel’s product coding system does not fully differentiate between overrun merchandise that could be classified as prime merchandise and overrun merchandise that could be classified as non-prime merchandise.<sup>278</sup> Therefore, for purposes of this investigation, there exists no basis for concluding that Hyundai Steel’s reporting of overrun merchandise requires application of an adverse inference, because the Department successfully verified the information on the record and Hyundai cooperated with the Department’s request. Regarding the examples of sales of products made to a particular specification (Spec E products) that petitioner states were categorized improperly as prime merchandise rather than non-prime merchandise, we agree with Hyundai Steel that those sales are properly classified as prime merchandise, based on information on the record. Although during verification a company official speculated that the products were non-

---

<sup>274</sup> *Id.*, at 18, citing B-10 to B-11.

<sup>275</sup> *Id.*, at 18.

<sup>276</sup> *Id.*, at 18-20.

<sup>277</sup> See Hyundai Steel’s Section B Response at B-10-11.

<sup>278</sup> See Hyundai Sales Verification exhibit 13 at page 3a.

prime, it was later determined there was no basis for concluding they were non-prime.<sup>279</sup> Furthermore, analysis of sales documentation for a sample sale of the merchandise confirmed it had been categorized as prime merchandise.<sup>280</sup> In short, there is no basis for rejecting Hyundai Steel's product reporting from the standpoint of differentiation of prime and non-prime merchandise.

With regard to other particular "specifications" that petitioner states the respondent misreported, in some of those instances there is no indication of a problem requiring adjustment, or of a problem at all. Petitioner did not identify any specific problem with Spec F or Spec G, and the Department did not identify any issues suggesting changes are required for such products.<sup>281</sup>

For the quality issue raised for Spec A products, Hyundai Steel's references to internal classifications it claims support its decision not to report such products as UHSS/AHSS quality are unsupported. Hyundai's references to internal classifications include internal groupings of products with no reference to UHSS/AHSS or high-strength low-alloy terminology (such as the product coding lists on page 5 of Hyundai Sales Verification Exhibit 12) or to groupings of product specifications by product category that had been prepared in the context of the investigation (such as the product coding lists on page 8 of Hyundai Sales Verification Exhibit 13). Hyundai Steel's reference to horizontal and vertical lines on page 50 of Hyundai Sales Verification Exhibit 19 also demonstrate nothing regarding the proper categorization of UHSS/AHSS products, and in discussing that verification exhibit page and in particular the products separated from the others on the page by the scribbled horizontal line, the Department only stated that the company "noted it had reported code '20' for QUALITY for the last four products listed on {that page}."<sup>282</sup> Nevertheless, specific proprietary information on the record relating to Spec A warrants not rejecting the respondent's reporting methodology for this investigation.<sup>283</sup>

For those remaining issues for which the respondent was unable to substantiate its product reporting, which include instances in which information was misreported and/or based on inconsistent internal information, recalculations are possible without resort to total AFA, though involving some application of partial AFA where data do not exist on the record to fully correct the problems in question and the Department found Hyundai to be uncooperative. Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply facts otherwise available if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section

---

<sup>279</sup> See Hyundai Sales Verification report at 17-18 and 21-22.

<sup>280</sup> *Id.*, at 21-22, citing Hyundai Sales verification exhibit 19 at 93.

<sup>281</sup> See, e.g., Hyundai Sales Verification report at 1-3, 19-20, and 23.

<sup>282</sup> See Hyundai Sales Verification report at 19.

<sup>283</sup> Much of the information required for analysis of this issue is proprietary, so such analysis is provided in a separate memorandum. See Hyundai Steel's July 20, 2016, final determination sales analysis memorandum entitled, "Final Determination Sales Calculation Analysis Memorandum for Hyundai Steel Company (Hyundai Steel)," (Hyundai Steel's Sales Final Calculation Memo).

782(i) of the Act. The information which Hyundai did not provide was necessary, so therefore in accordance with section 776(a)(1) the application of facts available was warranted. Furthermore, the application of facts available is warranted, as discussed below, pursuant to Sections 776(a)(1), (a)(2)(A), (a)(2)(C), and (a)(2)(D) of the Act because Hyundai withheld the requested information, significantly impeded the proceeding in doing so, and the Department was therefore unable to verify the missing information.

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. An adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.<sup>284</sup> In this case, because the information was never provided, and was instead discovered by the Department at verification, we concluded in each instance that the application of an adverse inference is also warranted, as described further below.

Regarding Spec D, the products in question are properly characterized as drawing quality products rather than commercial quality products. As noted in the Department's Hyundai Sales verification report, the products have properties associated with the former quality.<sup>285</sup> Furthermore, the Spec D is even identified in a way that is very obviously characteristic of drawing quality rather than commercial quality, given Hyundai Steel's product coding designations, which were examined in detail during the verification of Hyundai Steel.<sup>286</sup> Therefore, the Department is revising the reporting of that product characteristic for the sales in question.

Regarding Spec H products, which Hyundai Steel classified as AHSS/UHSS quality, Hyundai Steel referenced documentation similar to that cited for Spec A, including product lists that show groupings of products but do not reference AHSS or UHSS terminology (page 5 of Hyundai Sales Verification Exhibit 12) and product lists that do reference such terminology, but which were simply prepared for the Department in the context of the investigation (page 8 of Hyundai Sales Verification Exhibit 13). As the Department has noted, the product-specific documentation provided by the respondent at verification that utilizes AHSS/UHSS terminology does not reference Spec H products.<sup>287</sup> During discussions of this product at verification, Hyundai Steel provided technical information supporting its reporting of the products in question as AHSS/UHSS quality.<sup>288</sup> In addition, although Spec H products have some basic strength requirements, they do not possess any chemical requirements, so they may contain little or no amount of alloying elements associated with AHSS/UHSS (or high-strength low-alloy products).<sup>289</sup> The properties of the merchandise are not consistent with AHSS/UHSS merchandise, based both on Hyundai Steel's representations of such products and upon

---

<sup>284</sup> See 19 CFR 351.308(c).

<sup>285</sup> See Hyundai Sales Verification report at 2 and 21.

<sup>286</sup> Because of the proprietary nature of this issue, it is discussed separately in Hyundai Steel's Sales Final Calculation Memo.

<sup>287</sup> See Hyundai Sales Verification report at 2 and 21.

<sup>288</sup> *Id.*

<sup>289</sup> *Id.*, at 21.

information about such products elsewhere on the record. Thus, there was no basis for Hyundai Steel to report the products as AHSS/UHSS quality; based on the information available, the Department concludes it is best characterized for this investigation as structural quality (QUALITY reporting code 30) and is revising the sales as such.<sup>290</sup>

Regarding Spec E products, Hyundai Steel identified a minimum specified yield strength for the products in question.<sup>291</sup> Hyundai Steel's reporting of the minimum yield strength code for products classified under this specification (code "1") was consistent with the identified minimum specified yield strength. However, at verification it was determined that there was no basis for the minimum specified yield strength that Hyundai Steel identified. Documentation examined at verification indicated there was no minimum specified yield strength required for the specification.<sup>292</sup> Further examination at verification also revealed the absence of evidence of any actual yield strength measurements for the products in question, which Hyundai Steel initially opined was due to the merchandise being classified as non-prime merchandise. However, the Department concluded that the merchandise had been properly reported by Hyundai Steel as prime merchandise, not non-prime merchandise.<sup>293</sup> During the discussions of this specification, therefore, Hyundai Steel provided no information indicating how it had devised the minimum yield strength value it had identified as the basis for reporting the minimum specified yield strength field.<sup>294</sup> The minimum specified yield strength identified by Hyundai Steel for Spec E, therefore, is unsupported by the record. The record indicates, however, that the minimum specified yield strength for the galvanized steel products made from Spec E is a level that would fall in reporting code "4" for the minimum specified yield strength characteristic.<sup>295</sup> Accordingly, under section 776(a) of the Act, as facts otherwise available, the Department is reclassifying the products under Spec E with the minimum specified yield strength reporting code of "4."

The Spec B and Spec C product issues were raised in the context of an examination of U.S. sales, even though products classified under those specifications were also sold in the home market. The problems referenced by petitioner each involve differences between the specification identified for CONNUM purposes (based on the input coils HSA obtains from Hyundai Steel) and the specification of the final products sold by HSA to its unaffiliated U.S. customers. For the one sale of Spec B, such an inconsistency exists. When asked why it had not reported a SPECGRADEU field in its U.S. sales database (given the field had been requested in conjunction with the product characteristic fields information, and had been reported as SPECGRADEH for home market sales), Hyundai stated the same information is reflected in the PRODCOD2U field.<sup>296</sup> For the sale in question, the PRODCOD2U field identifies the product as Spec B, which was reported as an AHSS/UHSS quality for all other sale observations, and, nevertheless, the respondent reported the quality product characteristic as "high-strength low-

---

<sup>290</sup> Because of the proprietary nature of this point, it is discussed separately in Hyundai Steel's Sales Final Calculation Memo.

<sup>291</sup> See page 18 of Hyundai Sales Verification report, citing Hyundai Sales Verification Exhibit 12 at page 23.

<sup>292</sup> See pages 17-18 of Hyundai Sales Verification Report, citing Hyundai Sales Verification Exhibit 19 at page 3.

<sup>293</sup> See pages 21-22 of Hyundai Sales Verification Report.

<sup>294</sup> See pages 17-18 and 21-22 of Hyundai Sales Verification Report.

<sup>295</sup> See page 18 of Hyundai Sales Verification Report.

<sup>296</sup> See Hyundai Sales Verification report at 15.

alloy” rather than AHSS/UHSS. Hyundai Steel indicated that HSA had at some point misidentified the product as Spec B, and during the Hyundai Steel sales verification, the respondent indicated that HSA information could clarify this matter.<sup>297</sup> The Department indicated it would have the opportunity to provide such an explanation at the HSA verification, if one were to take place.<sup>298</sup> At the HSA verification, the respondent stated that documentation it provided indicated the input coil from Hyundai Steel was not Spec B merchandise, but was Spec A merchandise (which, as noted above, was reported as high-strength low-alloy quality).<sup>299</sup> While the material description of the merchandise in question references Spec B, the coil number for the product, like the others on that documentation, ties to a coil number identified as Spec A.<sup>300</sup> Therefore, it is reasonable to conclude that HSA had misidentified the specification in its resale, and that the proper specification (Spec A) was reflected in the reported CONNUM for the single sale in question. Therefore, no changes or adjustments are required for the sale in question.

With regard to Spec C, however, the U.S. sales in question (both those identified by the respondent during the HSA sales verification and those later referenced by the Department in the HSA sales verification report) possess an inconsistency between the reported PRODCOD2U (all commercial quality) and the reported quality for product characteristic purposes (either drawing quality or deep drawing quality). Hyundai Steel argues this variation is not due to some type of classification error, but, rather, that it is due to certain products being sold to the final customer as specifications requiring less stringent requirements than the specifications to which the products were actually made. It is not evident from the record which, if any, of the Hyundai Steel specifications in question are more or less stringent than the others, with respect to requirements. Furthermore, some of the mismatches identified by the respondent at the HSA verification involve two different specifications for which the quality used as the basis for reporting the CONNUM cannot be consistent with the quality identified under the PRODCOD2U field.<sup>301</sup> More fundamentally, during the Hyundai Steel sales verification the company had stated that “HSA did not intentionally alter or revise the specification and grade designations from those of the original coil it purchased from Hyundai Steel.”<sup>302</sup> Given that explanation, as well as the lack of information on the record to support the respondent’s belated assertions regarding products meeting multiple specifications, we find that the sales in question (*i.e.*, those referenced in the second grouping at the bottom of page 61 of HSA Sales Verification Exhibit 17, and those identified within the last two paragraphs on page 10 of the HSA Sales Verification report) are considered unverified. Those sale observations were not shown to be linked to the products as imported into the United States, and no adequate explanation has been provided by the respondent for those mismatches between the alleged Hyundai Steel input coils and the products sold by HSA to its unaffiliated U.S. customers. These mismatches were not identified by the respondent prior to verification.

---

<sup>297</sup> *Id.*, at 41.

<sup>298</sup> *Id.*

<sup>299</sup> See HSA Sales Verification report at 13, citing HSA Sales Verification Exhibit 17 at 62.

<sup>300</sup> See Hyundai Sales Verification Exhibit 45 at 4-5.

<sup>301</sup> See HSA Sales Verification Exhibit 17 at 61. Because of the proprietary information associated with this point, it is analyzed in Hyundai Steel’s Sales Final Calculation Memo.

<sup>302</sup> See Hyundai Sales Verification Report at 15.

We find that the errors and inconsistencies associated with the aforementioned analyses of Spec D, Spec H, and Spec E sales, and of certain Spec C sales, are such that the Department should apply AFA to this information. These are problems involving products analyzed during verification, and for which Hyundai Steel had no plausible explanation either at verification or in its case and rebuttal briefs for misidentifying these sales, as discussed above. Accordingly, the Department finds that under section 776(b) of the Act, Hyundai did not cooperate to the best of its ability with regard to this information, and finds it necessary to apply an adverse inference. For the U.S. sales associated with the Spec C issue (which are limited to a small volume of U.S. sales of products classified under that specification and under the two other specifications with comparable linking problems), we are assigning as AFA the highest calculated margin for any other reported U.S. sale of Hyundai Steel. For Spec D, Spec H, and Spec E, all of which involve only home market sales, as AFA we are revising the reported product characteristics, and therefore also the CONNUMs, as described above, and assigning to the appropriate CONNUMs the highest reported total cost of manufacturing for the CONNUMs in question.<sup>303</sup>

### **Comment 13: U.S. Sales and Further Manufacturing Costs**

#### **Petitioner's Case Brief**

Petitioner claims that while Hyundai Steel asked to be excluded from reporting tailor welded blanks (TWB) U.S. sales and further manufacturing costs, the law provides that such an exclusion can only be granted where the value added “is likely to exceed substantially” the value of the imported goods.<sup>304</sup> Petitioner notes that the Department’s regulations define such instances as where the value added is at least 65 percent of the price charged to the first U.S. unaffiliated purchaser.<sup>305</sup>

Petitioner contends that Hyundai Steel had an obligation to submit its U.S. sales of TWBs and the associated further manufacturing costs to the Department, and then present arguments to the Department regarding the inclusion of these sales in the margin analysis.<sup>306</sup> Petitioner notes that The CIT has held that the “...capture of all U.S. sales at their actual price is at the heart of ITA’s investigation,” and that the omission of even one U.S. sale is a “serious error.”<sup>307</sup> Petitioner argues that Hyundai Steel withheld its U.S. sales of TWBs and its associated further manufacturing costs, thus the Department should apply total adverse facts available because Hyundai Steel failed to report all of its U.S. sales.<sup>308</sup>

#### **Hyundai Steel's Rebuttal Brief**

Hyundai Steel contends that petitioner alleges that Hyundai Steel “withheld” its U.S. sales of TWBs and their associated further manufacturing costs, and urges the Department to conclude

---

<sup>303</sup> For additional details, *see* Hyundai Steel’s Sales Final Calculation Memo.

<sup>304</sup> *See* the Petitioner’s Hyundai Steel Case Brief citing to 19 U.S.C. §1677a(e).

<sup>305</sup> *Id.*, citing to 19 CFR 351.402(c)(2).

<sup>306</sup> *Id.*, at footnote 65.

<sup>307</sup> *Id.*, at footnote citing to *Florex v. United States*, 705 F. Supp. 582, 588 (CIT 1988) (*Florex v. United States*) and *Persico Pizzamiglio. S.A. v. United States*, 18 CIT 299, 301-02 (1994).

<sup>308</sup> *Id.*, at footnote 68.

that “Hyundai Steel failed to report all U.S. sales to the Department.”<sup>309</sup> Hyundai Steel argues that much like petitioner's other arguments, petitioner again ignores that Hyundai Steel has reported all of the data the Department has required and instead seeks to impose its own reporting requirements with an end goal of adverse inferences. Hyundai Steel also contends that petitioner avoids making direct claims that Hyundai Steel failed, or refused, to submit TWB sales and cost data, but rather, simply asserts that Hyundai Steel had an obligation to report its U.S. sales of TWBs and associated further manufacturing costs, because Hyundai Steel's value-added ratio for TWBs was allegedly below the threshold for which such exceptions are typically granted.<sup>310</sup>

Hyundai Steel asserts that petitioner also ignores that Hyundai Steel did in fact report further manufactured sales where the product was slit, sheared, or blanked into skelp, sheet, or blanks of cold-rolled steel.<sup>311</sup> Hyundai Steel refutes petitioner's line of reasoning, which it states ignores the plain language of 19 CFR 351.402(c) which indicates that the Department will “normally” consider a further manufactured product to qualify for the “special rule” where the value added exceeds 65 percent of the value of the imported product. In this instance, Hyundai Steel claims that it provided the Department with the requested value added calculations - calculations the Department subsequently verified.<sup>312</sup>

Hyundai Steel further claims that petitioner also ignores the fact that Hyundai Steel has provided all of the information that the Department needs to evaluate whether reporting sales of these products was necessary. Hyundai Steel claims that it notified the Department of the complexities and significant further manufacturing operations related to automotive steel, which is ultimately incorporated into automobiles or automobile parts.<sup>313</sup> Subsequently, Hyundai Steel states that it provided the Department with detailed analysis of the products, the further manufacturing processes, the value added in the United States, and an analysis of the sales volumes and sales channels at issue.<sup>314</sup> Hyundai Steel asserts that it demonstrated to the Department's satisfaction that these products involved significant further manufacturing and were properly exempt from reporting under 19 USC § 1677a(e) and 19 CFR 351.401(c)(2). The Department did not request that Hyundai Steel report sales of these products.

Hyundai Steel asserts that petitioner is complaining that Hyundai Steel did not report data the Department never requested.<sup>315</sup> Hyundai Steel contends that the only request the Department made concerning these sales was in its October 14, 2015, letter to Hyundai Steel in which the Department sought additional explanation and detail regarding the exclusion request as it

---

<sup>309</sup> See Hyundai Steel's Rebuttal Brief citing to Petitioner's Hyundai Steel's Case Brief at 20-21.

<sup>310</sup> *Id.*, at 19.

<sup>311</sup> *Id.*, citing to Hyundai Steel's Section C Response at C-8; Hyundai Steel's Sections A-C Supplemental Response at 1-3 and exhibits S-1 to S-4.

<sup>312</sup> *Id.*, citing to HSA's Sales Verification Report at 16-17.

<sup>313</sup> *Id.*, citing to its October 2, 2015, letter to the Department stating Hyundai Steel's Notice of Difficulty and Request for Alternate Calculation Method.

<sup>314</sup> *Id.*, citing to Hyundai Steel's October 30, 2015, response to the Department's Request Regarding Further Manufactured Products.

<sup>315</sup> *Id.*, citing to *Queen's Flowers de Colombia v. United States*, 981 F.Supp. 617, 628 (CIT 1997).



pertained to TWBs and other products.<sup>316</sup> Petitioner knows this, but nonetheless seeks to now impose a reporting requirement the Department itself did not impose, all in an effort to apply AFA. In particular, Hyundai Steel comments that under the heading, “The Department Must Direct Hyundai Steel to Immediately Report All U.S. Sales and Associated Further Manufacturing Costs,” petitioner recognized that Hyundai Steel had properly sought an exemption and that “...the Department, however, has not yet acted upon Hyundai Steel’s exclusion request.”<sup>317</sup> Hyundai Steel states that the Department continued to issue supplemental questionnaires to Hyundai Steel following this letter, but at no time required Hyundai Steel to report sales and further manufacturing cost data for TWBs or other similar products for which Hyundai Steel sought a reporting exclusion.

Hyundai Steel further asserts that petitioner refers to the Department’s final determination in the *CORE from Korea* investigation,<sup>318</sup> in which the Department applied adverse facts available to Hyundai Steel for its reporting of certain further manufactured U.S. sales, arguing that “...the same result should apply here.”<sup>319</sup> Hyundai Steel affirms that by even accepting the Department’s application of adverse facts available in that case, the facts upon which the Department made its AFA determination in that investigation are not present here.<sup>320</sup> Hyundai Steel contends that the Department fully and successfully verified Hyundai Steel’s further manufacturing sales and cost data in this investigation.<sup>321</sup>

Hyundai Steel states that petitioner’s assertion that the Department should apply total AFA based on a failure to provide U.S. sales and further manufacturing cost data for TWBs is factually incorrect, and represents another baseless attempt to have the Department rely on adverse inferences when none is warranted. Hyundai Steel maintains that the Department successfully verified the data in support of Hyundai Steel’s request and the Department did not require data for TWBs.

**Department Position:** We agree with Hyundai Steel. We find that Hyundai Steel’s sales of auto parts qualify for exclusion under the “special rule” as defined by section 772(e) of the Act and 19 CFR 351.402(c)(2).<sup>322</sup> The appropriate value-added calculation for further manufacturing

---

<sup>316</sup> *Id.*, citing to the October 14, 2015, Letter from the Department to Hyundai Steel.

<sup>317</sup> *Id.*, citing to letter from petitioner, “Comments to Hyundai Steel’s Supplemental Sections Band C Response,” dated December 28, 2015 at 5.

<sup>318</sup> See *Certain Corrosion-Resistant Steel Products From the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 35305 and accompanying Issues and Decision Memorandum at comment 2 (*CORE from Korea*).

<sup>319</sup> *Id.*, citing to the Petitioner’s Hyundai Steel Case Brief at 20.

<sup>320</sup> *Id.*, at 23.

<sup>321</sup> *Id.*, citing to HSA’s Sales Verification Report at 16-17.

<sup>322</sup> See 351.402(c)(2) (“The Secretary normally will determine that the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise if the Secretary estimates the value added to be at least 65 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States. The Secretary normally will estimate the value added based on the difference between the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the price paid for the subject merchandise by the affiliated person. The Secretary normally will base this determination on averages of the prices and the value added to the subject merchandise.”) See also, e.g., *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of the Antidumping Duty*

compares: (i) the price charged to the first unaffiliated purchaser for the auto parts.<sup>323</sup> When counting the actual value added to the subject cold-rolled by affiliates in the United States, Hyundai Steel's sales of auto parts meet the 65 percent threshold set forth in 19 CFR 351.402(c)(2). These sales have been not been included in the final determination. Although we find that the value added by Hyundai Steel's sales for its sales TWBs in the United States fell below the 65 percent threshold,<sup>324</sup> and further that the Department never compelled Hyundai Steel to report its sales of TWBs because the volume of sales in the United States were insignificant. These sales also have been not been included in the final determination.

We further disagree with petitioner's assertion that the Department should apply total AFA based on Hyundai Steel's inability to provide U.S. sales and further manufacturing cost data for TWBs, or that Hyundai's omission was a serious error.<sup>325</sup> The purpose of the "special rule" is to reduce the administrative burden on the Department in analyzing complex further manufacturing scenarios, *see* 19 CFR 351.402(c)(2).<sup>326</sup> Here, unlike *CORE from Korea*,<sup>327</sup> we agree with Hyundai Steel that the Department successfully verified the data in support of Hyundai Steel's request and the Department did not require data for TWBs.<sup>328</sup> We further agree that Hyundai Steel reported its further manufactured sales where the product was slit, sheared, or blanked into skelp, sheet, or blanks of cold-rolled steel.<sup>329</sup>

#### **Comment 14: Repacking Cost for Further Manufactured Merchandise**

Hyundai Steel claims that in its original Section C Response, it reported the unit costs of slitting, shearing, or blanking in the variable field REPACKU.<sup>330</sup> Hyundai Steel states that it reported these expenses in the field FURMANU as directed by the Department in its Hyundai Steel complied with this instruction in its January 4, 2016, Sections A-C Supplemental Response at 1-3. In so doing, Hyundai Steel asserts that it modified its initial calculation of the processing costs to more accurately reflect the production flow of the various products during the POI.

Hyundai Steel states that the Department subsequently verified Hyundai Steel's further manufacturing costs, reviewing the conversion cost calculations and examining company source

---

*Administrative Review*, 74 FR 46110, 46112 (September 8, 2009).

<sup>323</sup> See Hyundai Steel's October 30, 2015, response to the Department's Request Regarding Further Manufactured Products (Hyundai Steel's October 30, Submission) and HSA's Sales Verification Report at 16-17.

<sup>324</sup> *Id.*

<sup>325</sup> See *Flores v. United States*, 705 F. Supp. at 588.

<sup>326</sup> See, e.g., *Certain Hot-Rolled Steel Flat Products From the Netherlands: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 81 FR 15225 (March 22, 2016) (*Certain Hot-Rolled Steel Flat Products from the Netherlands*) and accompanying Preliminary Decision Memorandum, at Part XI, Export Price and Constructed Export. See also *Polyethylene Terephthalate Film, Sheet, and Strip from Thailand*, 73 FR 24564 (May 5, 2008) (*PET Film from Thailand*) (preliminary determination, unchanged in the final determination).

<sup>327</sup> See *CORE from Korea* and accompanying Issues and Decision Memorandum at comment 2.

<sup>328</sup> See Hyundai Steel's October 30, 2015, response to the Department's Request Regarding Further Manufactured Products (Hyundai Steel's October 30, Submission) and HSA's Sales Verification Report at 16-17.

<sup>329</sup> See Hyundai Steel's Section C Response at C-8; Hyundai Steel's Sections A-C Supplemental Response at 1-3 and exhibits S-1 to S-4.

<sup>330</sup> See Hyundai Steel's June 6, 2016, case brief of Hyundai Steel Company at 8 (Hyundai Steel's Case Brief).

documents. Moreover, Hyundai Steel notes that the Department confirmed that the reported FURMANU processing costs included all repacking costs incurred in these operations. Finally, Hyundai Steel further asserts that the Department identified no issues for further consideration with respect to these reported costs.<sup>331</sup>

During the *Preliminary Determination*, Hyundai Steel notes that the Department calculated an adjustment to Hyundai Steel's costs to account for repacking costs for further manufactured products sold in the United States. Specifically, Hyundai Steel states that the Department calculated the difference between costs Hyundai Steel had reported in its original Section C costs in the variable REPACKU and costs reported in its supplemental C response in the variable FURCOM. The Department then deducted the resulting difference from U.S. price.<sup>332</sup>

Hyundai Steel contends that the costs Hyundai Steel reported in the FURMAN variable in its January 4, 2016, Sections A-C Supplemental Response replaced those reported in the REPACKU variable in its original Section C response. Further, Hyundai Steel asserts that the Department verified that any repacking activities performed as part of the further processing were included in the reported costs. Thus, for the Final Determination, Hyundai Steel comments that the Department should eliminate this adjustment.

Petitioner claims that Hyundai Steel argues that the Department should remove the adjustment for U.S. repacking costs made in the *Preliminary Determination* based on the reported difference between the values in the REPACKU and FURMANU fields.<sup>333</sup> Petitioner asserts if the Department does not apply total adverse facts available, it should reject Hyundai Steel's arguments with regard to repacking costs because they are not supported by record evidence.

According to the Hyundai Steel's Section C Response at exhibit C-22, petitioner contends that Hyundai Steel reported the costs for skelp, sheet, and blanks. Petitioner also comments that Hyundai Steel reported further manufacturing and packing costs. In its supplemental questionnaire, petitioner claims that the Department required Hyundai Steel to abide by the Department's initial Section C requirements, and report the further manufacturing and repacking costs in field FURMANU and to respond to the Section E questionnaire.<sup>334</sup> On January 4, 2016, petitioner notes Hyundai Steel filed its response to the Department's supplemental questionnaire, again only submitting the further manufacturing costs for skelp, sheets and blanks (omitting the costs for TWBs and automotive parts). Petitioner contends that despite two requests to file a complete Section E response including costs for TWBs and automotive parts, Hyundai Steel failed to do so.<sup>335</sup>

---

<sup>331</sup> See HSA's Sales Verification Report at 16-17.

<sup>332</sup> See Hyundai Steel's Case Brief citing to Hyundai Steel's Memorandum to the File, entitled "Preliminary Determination Calculation for Hyundai Steel Company," dated February 29, 2016 (Hyundai Steel's Preliminary Sales Calc Memo) at 3-4.

<sup>333</sup> See Petitioner's Hyundai Steel Rebuttal Brief at 15.

<sup>334</sup> *Id.*, at 16.

<sup>335</sup> *Id.*

Moreover, in its supplemental response petitioner asserts that Hyundai Steel changed its further manufacturing costs for sheet and for blanks.<sup>336</sup> Petitioner contends that these changes were not solicited by the Department and were not properly explained or documented. Hyundai Steel offered a vague explanation for these changes claiming that they were made “to more accurately reflect the production flow of the various products during the POI.”<sup>337</sup> At verification, petitioner states that Hyundai Steel only presented data for the total quantity consumed in each production process.<sup>338</sup>

Given that Hyundai Steel (1) withheld U.S. sales and further manufacturing costs for tailor welded blanks and intermediate auto parts, (2) failed to submit a complete Section E response, despite two requests to do so, and (3) reported further manufacturing costs that Hyundai Steel, but were not solicited by the Department, and not supported by the record, petitioner assert that the Department should find that it cannot accept Hyundai Steel's further manufacturing costs.

**Department Position:** We agree with Hyundai Steel that it properly reported in its original Section C Response, the unit costs of slitting, shearing, or blanking in the variable field REPACKU.<sup>339</sup> The Department then directed Hyundai Steel to report these expenses in the field FURMANU.<sup>340</sup> Hyundai Steel asserts that it modified its initial calculation of the processing costs to more accurately reflect the production flow of the various products during the POI.<sup>341</sup>

At the *Preliminary Determination*, we calculated an adjustment to Hyundai Steel's costs to account for repacking costs for further manufactured products sold in the United States. Specifically, Hyundai Steel states that the Department calculated the difference between costs Hyundai Steel had reported in its original Section C costs in the variable REPACKU and costs reported in its supplemental C response in the variable FURCOM. We then deducted the resulting difference from U.S. price.<sup>342</sup> We then verified Hyundai Steel's further manufacturing costs, reviewing the conversion cost calculations and FURMANU processing costs, which included all repacking costs incurred in these operations.<sup>343</sup>

We disagree with petitioner's assertion that Hyundai Steel's response to the Department's supplemental questionnaire only submitted the further manufacturing costs for skelp, sheets and blanks (omitting the costs for TWBs and automotive parts). Petitioner contends that despite two requests to file a complete Section E response including costs for TWBs and automotive parts, Hyundai Steel failed to do so, but as explained above, we found this not to be the case.<sup>344</sup> We disagree with petitioner because we never requested Hyundai Steel to complete a Section E

---

<sup>336</sup> *Id.*, citing to Sections A-C Supplemental Response at exhibit S-1.

<sup>337</sup> *Id.*

<sup>338</sup> *Id.*, citing to HSA's Sales Verification Report at SVE 12, pages 1-6 to 1-8.

<sup>339</sup> See Hyundai Steel's June 6, 2016, case brief of Hyundai Steel Company at 8 (Hyundai Steel's Case Brief).

<sup>340</sup> See Hyundai Steel's Supplemental Sections A-C Response at 1-3.

<sup>341</sup> *Id.*

<sup>342</sup> See Hyundai Steel's Case Brief citing to Hyundai Steel's Memorandum to the File, entitled “Preliminary Determination Calculation for Hyundai Steel Company,” dated February 29, 2016 (Hyundai Steel's Preliminary Sales Calc Memo) at 3-4.

<sup>343</sup> See HSA's Sales Verification Report at 16-17.

<sup>344</sup> See Petitioner's Hyundai Steel Rebuttal Brief at 15.

response.<sup>345</sup> We also disagree with petitioner's claims that if the Department does not apply total adverse facts available, it should reject Hyundai Steel's arguments with regard to repacking costs because they are not supported by record evidence. Again, we find that Hyundai adequately reported its costs.

We agree with Hyundai Steel that the costs Hyundai Steel reported in the FURMAN variable in its January 4, 2016, Sections A-C Supplemental Response replaced those reported in the REPACKU variable in its original Section C response.<sup>346</sup> In the final determination, we will eliminate this adjustment from our antidumping calculations.

### **Comment 15: Reporting of Inland Freight, Warehousing Services, International Freight, and Other Services Provided by an Affiliated Company**

#### Domestic Freight, Warehousing, and International Freight

Petitioner notes that Hyundai Steel's affiliated company provided domestic inland freight from factory to warehouse (INLFTWH), domestic warehousing expenses (WAREHSH), domestic inland freight from factory/warehouse to customer (INLFTCH), domestic inland freight for U.S. sales from factory to port (DINLFTPU), international freight (INTNFRU), and other freight services to Hyundai Steel.<sup>347</sup> Petitioner asserts that these freight and warehousing services were provided by an affiliated party and Hyundai Steel was obligated to verify that the prices charged by the affiliated company were at arm's-length prices.

Petitioner states that when "the Department requested that Hyundai Steel obtain certain freight information between its affiliate and other unaffiliated parties,"<sup>348</sup> Hyundai Steel stated that its affiliated company refused to provide the data. Despite affiliation between Hyundai Steel and that company, petitioner claims that in "multiple instances of common ownership between various companies in the Hyundai Group," Hyundai Steel was unable to compel the affiliated provider to comply with the Department's data requests, asserting that there was no "direct ownership."<sup>349</sup> Petitioner contends that even though the information was not forthcoming from Hyundai Steel, the Department examined the record and requested Hyundai Steel's affiliated company's shareholder list.<sup>350</sup> While the spellings of the last name were different in the documents provided by Hyundai Steel, petitioner explains that the Department confirmed that

---

<sup>345</sup> See the Department's September 18, 2015, original questionnaire at 2 stating "you are not currently required to respond to section E (Cost of Further Manufacturing or Assembly Performed in the United States). However, we may request a response to this section, if we determine, based on your response to section A, that we require the information to account for further-processing expenses incurred in the United States.

<sup>346</sup> See Hyundai Steel's Section C Response at C-44.

<sup>347</sup> See the Petitioner's Hyundai Steel Case Brief citing to Hyundai Steel's Section B Response at B-28-30, November 9, 2015, Section C Response at C-27-30 (Section C Response), and November 5, 2015, Section D Response at D-6 and exhibit D-4 (Section D Response).

<sup>348</sup> See the Petitioner's Hyundai Steel Case Brief citing to Hyundai Steel's Sales Verification Reports at 3 and footnote at 71.

<sup>349</sup> See the Petitioner's Hyundai Steel Case Brief citing to Hyundai Steel's Sales Verification Reports at 43.

<sup>350</sup> *Id.*

Hyundai Steel and the affiliate company were held and controlled by the same family members.<sup>351</sup>

Finally, petitioner explains that the Department noted that Hyundai Steel reported in its Section A response that “Hyundai Motor Group and M.K. Chung (the chairman of the Group) commonly control Hyundai Steel,” which Hyundai Steel dismissed by claiming that it is not an incorporated entity and that there is no board of directors for the Hyundai Motor Group.<sup>352</sup> Petitioner asserts that whether the Hyundai Motor Group is incorporated is of no importance, as Hyundai Steel defined the companies that are members of the Hyundai Motor Group and/or held by the Chung family as being affiliated parties via control by a “group,” which has the ability to directly or indirectly control its group members, and are expected to cooperate with the Department’s antidumping investigation.

Petitioner contends that Hyundai Steel’s uncooperative behavior with regard to the affiliated company for its freight and warehousing services is egregious, as the Department found that the amount of international freight reported on the export permit - an official Korean government document - strongly suggests that Hyundai Steel has manipulated its data.<sup>353</sup> By refusing to provide data requested by the Department and manipulating the data on the record, petitioner asserts that the Department should find that Hyundai Steel failed to cooperate to the best of its ability and impeded the Department’s investigation, and total adverse facts available is warranted.

#### U.S. Freight Services

Petitioner asserts that when describing its affiliates in its Section A Response, Hyundai Steel confirmed that it was affiliated with the company that provided its freight and warehousing services. However, there were no mention by Hyundai Steel that the affiliated company’s U.S. subsidiary provided any services for cold-rolled sales. While Hyundai Steel indicated that it “will demonstrate in its forthcoming Sections B and C responses that transactions with affiliated service providers are at arm’s length,” petitioner contends that Hyundai Steel only reported that the affiliated company provided the freight services for U.S. sales (from Hyundai Steel to the Korean port of export (DINLFTPU) and ocean freight (INTNFRU)) in its Section C Response.<sup>354</sup> Petitioner states that Hyundai Steel made no mention of any other freight services provided by the affiliated freight provider’s U.S. subsidiaries.

At verification, petitioner asserts that Hyundai Steel, when asked by the Department which entities provided U.S. inland freight from port to warehouse service and which entities provided U.S. inland freight from warehouse to customer, Hyundai Steel admitted that its affiliated freight company’s U.S. subsidiaries both provided U.S. inland freight from port to warehouse, and that

---

<sup>351</sup> *Id.*

<sup>352</sup> See the Petitioner’s case brief citing to Hyundai Steel’s Section A Response at A-13 and Hyundai Steel’s Sales Verification Report at 44.

<sup>353</sup> See the Petitioner’s case brief citing to Hyundai Steel’s Sales Verification Report at 39.

<sup>354</sup> *Id.*, citing to Hyundai Steel’s Section C Response at C-26-27 and C-29-30.

two unaffiliated companies provided U.S. inland freight from warehouse to customer for Hyundai Steel.<sup>355</sup>

By not disclosing the role played by these affiliates with U.S. freight services in its Section C Response, petitioner argues that Hyundai Steel failed to acknowledge the involvement of its affiliated parties with U.S. freight expenses and failed to demonstrate the arm's-length nature of these services. Accordingly, petitioner asserts that the Department was prohibited from investigating the arm's-length nature of these affiliate services and Hyundai Steel's behavior requires the Department to rely on facts otherwise available, with an adverse inference, pursuant to sections 776(a) and (b) of the Act.

Hyundai Steel asserts that it obtains various logistical services from affiliated providers. Specifically, Hyundai Steel states its affiliated party is involved in arranging ground transport, managing most (not all) of the independent warehouses, or arranging ocean transport.<sup>356</sup> Hyundai Steel contends that the Department will adjust the cost of various expenses used in the margin calculation, such as transport, to reflect market value.<sup>357</sup> Hyundai Steel affirms that it followed the Department's instructions to 1) calculate market value by using purchases of the inputs or services in question from unaffiliated parties during the same period, 2) if there are no such purchases, but the affiliated supplier sells the identical input to unaffiliated customers in the market under consideration, companies may provide the average price paid for the input or service by the unaffiliated purchasers, and 3) that if a company is unable to obtain a market value for the input, it should provide the product specific unit cost of production.<sup>358</sup>

In accordance with the arm's-length measurements noted above, Hyundai Steel asserts that it sought to provide the Department with materials to demonstrate that the transactions with its affiliated party were at arm's length. In particular, Hyundai Steel states that it provided in its initial questionnaire response contracts its affiliated company maintained with its sub-contractors demonstrating that the affiliated company passed on its full costs plus an amount to cover the affiliated company's expenses and profit.<sup>359</sup> In addition, Hyundai Steel affirms that it attempted to obtain this supplier's prices to its unaffiliated customers, but was refused.<sup>360</sup> Hyundai Steel also maintains that it was able to obtain this supplier's cost of acquiring the service in question - on a transaction specific basis - and so provided an analysis showing that its affiliated company's charges well exceeded the cost of acquiring the transportation services in amounts that covered all operating costs and provided a profit to the company.

Hyundai Steel argues that it also submitted documentation demonstrating the arm's-length nature of these transactions and at verification the Department requested that Hyundai Steel also obtain

---

<sup>355</sup> *Id.*, citing to Hyundai Steel's Sales Verification at 12.

<sup>356</sup> See Hyundai Steel's Rebuttal Brief citing to Hyundai Steel's Section A Response at A-12.

<sup>357</sup> *Id.*, citing to 19 USC § 1677b(f)(2) and Department's September 18, 2015, initial questionnaire at D-3.

<sup>358</sup> *Id.*

<sup>359</sup> *Id.*, citing to Hyundai Steel's Section C Response at exhibit C-10; Hyundai Steel's Section B Response at exhibit B-15. See also Hyundai Steel's Sales Verification Report at 42.

<sup>360</sup> *Id.*, citing to Hyundai Steel's December 15, 2015, Supplemental Sections B-C Response at 24 and Hyundai Steel's Sales Verification Report at 44.

freight information between the affiliated company and other unaffiliated parties. However, Hyundai Steel reported that the affiliated company refused to provide that information.

Hyundai Steel claims that petitioner argues that the Department's questionnaire required Hyundai Steel to provide a single response that incorporated itself and "all affiliates involved in the production or sale of the products under investigation."<sup>361</sup> Hyundai Steel refutes petitioner's assertion that Hyundai Steel was obligated to demonstrate that it did not have control over and could not compel the affiliated company to provide the requested information.<sup>362</sup> Hyundai Steel argues that it complied with the Department's instructions to demonstrate that the affiliated company provides transport services on an arm's length basis. Hyundai Steel claims it provided an analysis showing that the affiliated company earned a markup on the cost of acquiring services from third parties that covered all its costs and provided for profit.<sup>363</sup>

Hyundai Steel argues that petitioner complains that Hyundai Steel took a hands off approach in seeking full cooperation from its affiliate company pointing to *Kawasaki Steel Corp. v. United States*.<sup>364</sup> Hyundai Steel states that in that case, the respondent was unable to persuade its affiliate to provide essential CEP sales and related manufacturing cost data for the Department's margin calculations after multiple requests.<sup>365</sup> Here, Hyundai Steel affirms that the only piece of information the affiliated company refused to provide was one additional measure of the arm's length nature of its transactions with Hyundai Steel. Hyundai Steel claims that the Department has all of the information it needs and can assess whether these transactions are at an arm's length basis, and if not, it has the information necessary to calculate an accurate arm's length adjustment to the data. Next, Hyundai Steel argues that there is no evidence that Hyundai Steel "manipulated" the data on the record as shown repeatedly through sales traces.

Hyundai Steel contends that petitioner points to an export permit alleging that it shows different freight amounts than the reported freight amounts. However, Hyundai Steel asserts that the petitioner missed the total freight amount shown on the export permit is inclusive of all freight elements (inland freight and ocean freight). Further, Hyundai Steel claims that petitioner missed the freight amounts reported on the export permit. Hyundai Steel maintains that this makes sense given that the export permit is prepared at the time of export - prior to the final invoicing for the freight expenses from the service provider. Thus, Hyundai Steel states that it reported the actual freight expenses as invoiced by the freight provider, and this is not contradicted by the freight expenses shown on the export permit prepared at the time of export.

Hyundai Steel notes to the extent that an adjustment is necessary – although there is no need in this case, the adjustment is achieved through a simple formula. Hyundai Steel states that the Department should not reject Hyundai Steel's submissions in their entirety and resort to total AFA as petitioner suggests. Hyundai Steel claims that in the event the Department adjusts these

---

<sup>361</sup> *Id.*, citing to the Petitioner's Hyundai Steel Case Brief at 23.

<sup>362</sup> *Id.*, at 24.

<sup>363</sup> *Id.*, citing to Hyundai Steel's Sales Verification at 42-43.

<sup>364</sup> *Id.*, citing to *Kawasaki Steel Corp. v. United States*, 110 F. Supp. 2d, 1029 (CIT) 2000.

<sup>365</sup> *Id.*, at 1033-1034.



transaction prices to state those on an arm's length basis, any adjustment must be designed so that the result reflects market based transaction amounts.<sup>366</sup>

Hyundai Steel asserts that the same holds true for U.S. freight expenses associated with the affiliated company's U.S. subsidiaries. Hyundai Steel asserts that although petitioner complains that Hyundai Steel withheld from the Department that it relied on the affiliated company's U.S. subsidiaries for U.S. freight services, that it did disclose that it obtained transport services from these affiliates in its initial Section A Response.<sup>367</sup> As to demonstrating arm's length, Hyundai Steel states that it demonstrated that these companies provide their services at a markup over their costs of acquisition that is sufficient to cover their operating costs and earn a profit. Therefore, Hyundai Steel claims that the Department if the Department applies an adjustment to other services provided by these companies, it can easily apply the same adjustment here.

**Department Position:** We agree with petitioner. At the verification of Hyundai Steel and HSA, we had the opportunity to thoroughly examine the relationship between Hyundai Steel and its affiliated company and the affiliated company's U.S. subsidiaries. When the Department specifically requested that Hyundai Steel obtain certain freight information between its affiliate and other unaffiliated parties,<sup>368</sup> Hyundai Steel stated that its affiliated company refused to provide the data. Despite the affiliation between Hyundai Steel and the affiliated company, petitioner claims that in "multiple instances of common ownership between various companies in the Hyundai Group," Hyundai Steel was unable to compel the affiliated provider to comply with the Department's data requests, asserting that there was no "direct ownership."<sup>369</sup>

We examined the record and requested Hyundai Steel's affiliated company's shareholder list at verification.<sup>370</sup> We further requested various documents for Hyundai Steel at verification, and found that the name translations for certain owners/directors at Hyundai Steel were spelled differently than those for the affiliated company. As we noted in the verification report:

"Although in the provided translations for both companies, the names were spelled differently and were spelled in a different order, we asked {Hyundai Steel's official if this} was the same person. Company officials confirmed that yes, in fact, they were the same person. It was further offered that in Korea, the English translations of Korean words/names are not standardized. The Department verifier made a notation of this variant spelling on the verification exhibit 28."<sup>371</sup>

Once the issue of conflicting translations was resolved, the Department was able to confirm that one of Hyundai Steel's affiliated freight provider's two largest shareholders is also a part owner of Hyundai Steel (M.K. Chung) and that the other large shareholder is the Vice Chairman of

---

<sup>366</sup> *Id.*, citing to *Certain Corrosion-Resistant Steel Products From Taiwan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 35313 (June 2, 2016) and accompanying Issues and Decisions Memorandum at comment 8 page 46.

<sup>367</sup> *Id.*, citing to Hyundai Steel's Section A Response at A-12.

<sup>368</sup> See Hyundai Steel's Sales Verification Report at 3.

<sup>369</sup> See the Petitioner's Hyundai Steel Case Brief citing to Hyundai Steel's Sales Verification Reports at 43.

<sup>370</sup> See the Petitioner's Hyundai Steel Case Brief citing to Hyundai Steel's Sales Verification Reports at 43.

<sup>371</sup> See Hyundai Steel's Sales Verification Report at 43 and exhibit 28.

Hyundai Steel (E.S. Chung).<sup>372</sup> We further noted that these two individuals are father and son, respectively.<sup>373</sup> When the Department raised these overlapping roles/ownership positions in Hyundai Steel and the affiliated company, Hyundai Steel officials continued to indicate that they could not obtain the affiliated company's information requested by the Department.<sup>374</sup>

We agree with petitioner that the Department confirmed that Hyundai Steel and the affiliated company were held and commonly controlled by the same family members during the POI.<sup>375</sup> Hyundai Steel defined the companies that are members of the Hyundai Motor Group and/or held by the Chung family as being affiliated parties via control by a "group," which has the ability to directly or indirectly control its group members, and are expected to cooperate with the Department's antidumping investigation.

We also find that Hyundai Steel failed to demonstrate the arm's-length nature of these services provided by the affiliated company and its U.S. subsidiaries. Accordingly, we find that we are unable to determine the arm's-length nature of transactions provided by these affiliates. Hence, we are relying on facts otherwise available under section 776(a) of the Act for the final determination. Furthermore, because Hyundai Steel failed to provide the requested information or fully cooperate with the Department's request for this information, we are applying an adverse inference under section 776(b) of the Act to these transactions. For the final determination, we will apply AFA to Hyundai Steel's home market inland freight, home market warehousing expenses, international freight, and U.S. inland freight. For home market inland freight and warehousing, we will apply Hyundai Steel's lowest reported value for its home inland freight and warehousing fields for the final determination. For international freight and U.S. inland freight, we will apply the highest reported values by destination for Hyundai Steel's international freight and U.S. inland freight for the final determination. For home market inland freight for U.S. sales, we have selected second-highest transaction-specific value as AFA.<sup>376</sup>

#### **Comment 16: 2013 Financial Statements**

Petitioner asserts that on three separate occasions the Department sought the submission of 2013 financial statements for various affiliated parties from Hyundai Steel.<sup>377</sup> Despite three attempts by the Department to obtain the 2013 financial statements, petitioner asserts that Hyundai Steel simply pointed to its submissions of 2014 financial statements, which contain limited comparative data for 2013.<sup>378</sup> Moreover, petitioner contends that Hyundai Steel also stated that "pursuant to discussions with the Department Hyundai Steel understands that where the 2014

---

<sup>372</sup> *Id.* at 3.

<sup>373</sup> *See* Hyundai Steel's October 16, 2015, Section A Response at A-11.

<sup>374</sup> *See* Hyundai Steel's Sales Verification Report at 3.

<sup>375</sup> *See* the Petitioner's Hyundai Steel Case Brief at 22-23.

<sup>376</sup> *See* Hyundai Steel's Sales Final Calculation Memo.

<sup>377</sup> *Id.*, citing to Hyundai Steel's Section A Response at A-33; Hyundai Steel's November 18, 2015, Section A Supplemental Questionnaire Response at 12 (Section A Supplemental Response), and Hyundai Steel's January 4, 2016, Sections A-C Supplemental Questionnaire Response at 8 (Section A-C Supplemental Response).

<sup>378</sup> *Id.*, citing to Hyundai Steel's Section A Supplemental Response at 12 and Hyundai Steel's Sections A-C Supplemental Response at 8-9.

financial statements include complete 2013 financial information, Hyundai Steel is not required to submit separate 2013 financial statements for these companies.”<sup>379</sup>

Petitioner notes that during verification, the Department obtained the missing financial statements, and had the Department’s interpreter translate the headers of the following financial statements.<sup>380</sup> Petitioner further notes that the Department in its Section A questionnaire, financial statements included the financial data accompanying footnotes and the auditor’s opinion.<sup>381</sup> Petitioner asserts that a comparison of the 2014 financial statements with the 2013 financial statements show that the 2014 statements do not provide “complete 2013 financial information” that are presented in the actual 2013 financial statements. Therefore, petitioner argues that Hyundai Steel was required to submit the requested 2013 financial statements to the Department, but chose to withhold this information.<sup>382</sup>

Petitioner claims that even based on the simple review that petitioner could make of the 2014 and 2013 financial statements, it is clear that the 2014 financial statements do not provide a complete reporting of the data reported in the 2013 financial statements.<sup>383</sup> Here, petitioner contends that Hyundai Steel knew that the 2014 financial statements did not include complete data from the 2013 financial statements, and that the 2013 financial statements were in Hyundai Steel’s possession. Petitioner asserts that the Department should find that Hyundai Steel withheld information requested by the Department. Petitioner further asserts that the failure of Hyundai Steel to submit the 2013 financial statements for the record constitutes a failure of Hyundai Steel to cooperate to the best of its ability with the Department’s information request and warrants the application of facts available.

Hyundai Steel contends that petitioner mischaracterizes the Department’s instructions with respect to the 2013 financial statements, claiming that Hyundai Steel failed to provide requested data “...despite three attempts by the Department to obtain the 2013 financial statements.”<sup>384</sup> Hyundai Steel asserts that in its Section A Response, it submitted financial statements for each of the twenty two affiliates involved in the production, distribution, or sale of the subject merchandise in the home or U.S. markets.<sup>385</sup> In accordance with the Department’s instructions to provide the financial documents, Hyundai Steel maintains that “for the two most recently completed fiscal years,” Hyundai Steel provided the 2014 financial statements, which also included financial information for fiscal year 2013.<sup>386</sup>

Hyundai Steel contends that it exerted tremendous efforts to obtain and translate lengthy financial statements of affiliates that were only marginally involved in the production, distribution, or sale of the merchandise under consideration, including affiliates.<sup>387</sup> Considering

---

<sup>379</sup> *Id.*, citing to Hyundai Steel’s Section A Supplemental Response at 12.

<sup>380</sup> See Hyundai Steel’s Sales Verification Report at exhibit 17.

<sup>381</sup> See the Petitioner’s Hyundai Steel Case Brief citing to Hyundai Steel’s Section A Response at A-33.

<sup>382</sup> See the Petitioner’s Hyundai Steel Case Brief at 27-28.

<sup>383</sup> *Id.*, at 29.

<sup>384</sup> See Hyundai Steel’s Rebuttal Brief citing to the Petitioner’s Hyundai Steel Case Brief at 26.

<sup>385</sup> *Id.*, citing to Hyundai Steel’s Section A Response at Appendix III.

<sup>386</sup> *Id.*, citing to Hyundai Steel’s Section A Response at A-33 to A-34.

<sup>387</sup> *Id.*, at footnote 69, citing to Hyundai Steel’s Section A Response at A-12-17.

the broad wording of the Department' instructions, and cognizant of petitioner's complaints, Hyundai Steel sought guidance from the Department concerning the scope of financial documentation the Department required, specifically inquiring whether 2013 financial statements were separately required if the 2014 financial statements included all relevant information for the 2013 financial year. Hyundai Steel asserts that the Department confirmed that submitting such duplicative documentation was not required. Hyundai Steel noted this fact in its supplemental questionnaire response.<sup>388</sup>

During its sales verification, Hyundai Steel asserts that the Department specifically requested the 2013 financial statements for the ten companies that were included in its Supplemental Sections A-C Questionnaire, but which the Department had previously confirmed were not required and, "...to address petitioner's comments, had the headers of each financial statement for 2013 translated."<sup>389</sup> Hyundai Steel affirms that the Department did not note any inconsistencies or identify any concerns upon reviewing the 2013 financial statements during verification. Despite the Department's collection of the various financial statements at verification that petitioner identified, Hyundai Steel refutes that petitioner seeks total AFA for the final determination because Hyundai Steel did not provide the 2013 financial statements earlier.

Moreover, Hyundai Steel maintains that these financial statements were gathered in the course of reviewing "the nature of any affiliations between Hyundai Steel and other companies."<sup>390</sup> However, Hyundai Steel argues that the Department did not rely on any of the specific content contained in these financial statements to ascertain the relationship between Hyundai Steel and its affiliates, and indeed, had no reason to, as the financial statements that Hyundai Steel had provided throughout the course of the investigation were more than sufficient for the Department's purposes.<sup>391</sup>

Hyundai Steel contends that it has submitted thousands of pages of financial documents, and has incurred significant expenses to translate this documentation from Korean to English. Moreover, despite the various complaints, Hyundai Steel argues that petitioner has not made a single substantive claim for why the 2013 financial statements are even necessary or relevant to this investigation. Hyundai Steel states that petitioner attempts to inflate the importance of the 2013 financial statements by pointing to insignificant and minor differences between the 2014 and 2013 financial statements, but petitioner fails to explain why these minor differences are relevant to the Department's purpose of collecting the financial statements, and more broadly, to the Department's calculating of Hyundai Steel's antidumping duty margin.<sup>392</sup>

Hyundai Steel maintains that petitioner's complaint that Hyundai Steel did not provide duplicative financial statements that the Department specifically confirmed were not required is simply an attempt to impose unnecessary reporting burdens on Hyundai Steel and have the

---

<sup>388</sup> *Id.*, citing to Hyundai Steel's Supplemental Section A Response at 12; Hyundai Steel's Supplemental Sections A-C Response at 8-9 and exhibit S-6.

<sup>389</sup> *Id.*, citing to Hyundai Steel's Sales Verification Report at 4 and Petitioner's Pre-Verification Comments, dated March 3, 2016 at 2.

<sup>390</sup> *Id.*

<sup>391</sup> *Id.*, at 4-6.

<sup>392</sup> *Id.*, citing to the Petitioner's Hyundai Steel Case Brief at 28-29.

Department resort to some element of AFA, and does not further the Department's task of calculating an antidumping duty margin for Hyundai Steel. Therefore, Hyundai Steel asserts that the Department should find that Hyundai Steel acted to the best of its ability in collecting, translating, and providing several dozen financial statements that provided more than enough for the Department to conduct its antidumping analysis.

**Department Position:** We agree with Hyundai Steel. Hyundai Steel cooperated to the best of its ability by answering all of the Department's supplemental questionnaires adequately with respect to this issue.<sup>393</sup> We disagree with petitioner's assertion that the failure of Hyundai Steel to submit the 2013 financial statements for the record constitutes a failure of Hyundai Steel to cooperate to the best of its ability with the Department's information requests and warrants the application of adverse facts available. We agree with Hyundai Steel that the Department collected the financial statements from Hyundai Steel's affiliates which were involved in the sale and production of cold-rolled steel during the POI. In addition, at verification, we collected all of Hyundai Steel's affiliated 2013 financial statements identified in petitioner's pre-verification comments – translating what the Department could at verification in the limited time that was available.<sup>394</sup> Therefore, we find that Hyundai Steel acted to the best of its ability in collecting, translating, and providing several dozen financial statements that provided information sufficient for the Department to conduct its antidumping analysis.

#### **Comment 17: Certain Home Market Customers**

Petitioner asserts that a significant amount Hyundai Steel's home market sales are sold to certain home market customers. Petitioner notes that it outlined and provided independent, third-party documentation that demonstrates that Hyundai Steel is affiliated with these home market companies via a close supplier relationships, and that these relationships have the potential to impact decisions concerning the production, pricing, and the cost of the foreign like product.<sup>395</sup> While these affiliations are not based on standard stock ownership, petitioner contends the dumping law and regulations recognizes these types of relationships as a basis for a finding of affiliation.<sup>396</sup> Petitioner argues that Hyundai Steel claims ignorance to its affiliation with these home market customers by simply speculating that these companies "wanted to impress their clients by using Hyundai Steel's name."<sup>397</sup>

Petitioner asserts that the Department should find that in the face of the independent, third-party information that confirms that Hyundai Steel has a close supplier relationship with these home market customers, and that Hyundai's Steel's denials are unconvincing and simply self-serving

---

<sup>393</sup> See Hyundai Steel's Section A Response at A-34 stating, "Hyundai Steel provides the most recent financial statements for fiscal year 2014 for those affiliates that were involved in the production, distribution, or sale of the subject merchandise in the home or U.S. markets as discussed above. These 2014 financial statements also include financial information for fiscal year 2013;" Hyundai Steel's November 18, 2015, Supplemental Section A Response at 12-16; Hyundai Steel's January 4, 2016, Supplemental Sections A-D Response at 8-9; and Hyundai Steel's February 2, 2016, Supplemental B-D Response at 6 and exhibits 10-11.

<sup>394</sup> See Hyundai Steel's Sales Verification Report at 4 and exhibit 17.

<sup>395</sup> *Id.*, at 30, citing to 19 CFR 351.102(b)(3).

<sup>396</sup> *Id.*, at footnote 96.

<sup>397</sup> *Id.*, at footnote 102.

statements. Petitioner states that this is just another attempt by Hyundai Steel to mislead the Department (as it attempted to do on several occasions at verification), and further warrants the application of total adverse facts available.

Hyundai Steel refutes petitioner's claim that the Department should apply total adverse facts available based on Hyundai Steel's legitimate efforts to demonstrate to the Department that it has no affiliation relationship with its customers. Hyundai Steel contends that petitioner seeks for the Department to apply AFA because Hyundai Steel disagrees with petitioner's unsupported allegation that Hyundai Steel is affiliated with certain customers. Hyundai Steel asserts that acknowledging that the alleged affiliations are "not based on standard stock ownership," petitioner claims that Hyundai Steel is nonetheless affiliated with these home market companies via close supplier relationship pursuant to 19 USC 1677(33).<sup>398</sup>

Hyundai Steel rebuts petitioner's proclamations that it has uncovered "independent third-party documentation" that demonstrates that Hyundai Steel is affiliated with these customers. Hyundai Steel asserts that these materials do not establish affiliation, nor do they overcome the Department's extensive verification of this topic which confirmed the fact that these companies are not affiliated with Hyundai Steel.<sup>399</sup> Hyundai Steel maintains that this "documentation" comprises of little more than company websites, which, as the Department is aware, have a largely promotional purpose.

Hyundai Steel argues that petitioner recycles its prior claims with utter disregard for the extensive verification exercise the Department conducted on this topic.<sup>400</sup> For example, Hyundai Steel claims, without citation, that the materials "in Hyundai Steel's Shareholder Communication" establish that Hyundai Steel is affiliated with its certain customer. As explained in the Department's verification report, Hyundai Steel refutes that the publication at issue is a "shareholder communication" as petitioner represents. Hyundai Steel explains that the publication was a promotional piece published in 2009 related to the United Nation's Global Compact and sustainability.<sup>401</sup> Hyundai Steel asserts that petitioner ignores the Department's thorough verification of these issues which establishes that Hyundai Steel is not affiliated with these companies as they do not have any common business interests aside from that typical of buyer and seller relationships. Moreover, Hyundai Steel claims that the Department's verification established that these relationships were not "exclusive" as petitioner speculates.<sup>402</sup>

Hyundai Steel argues that petitioner's comments focus on the general term "service center" and on public statements made by Hyundai Steel's customers to promote the high quality of their offerings to argue that the Department find that "control" exists between Hyundai Steel and its customers. Hyundai Steel claims that the term "steel service center" is a common term in the steel industry simply meaning that the company processes steel coils into sheet, skelp, or any other product at its own facility, and does not mean that the processor provides these services for

---

<sup>398</sup> *Id.*, citing to the Petitioner's Hyundai Steel Case Brief at 35.

<sup>399</sup> *Id.*, at 30-35.

<sup>400</sup> *Id.*, citing to Hyundai Steel's Sales Verification Report at 30.

<sup>401</sup> *Id.*, citing to Hyundai Steel's Sales Verification Report at 30.

<sup>402</sup> *Id.*, at 26.

a particular company.<sup>403</sup> Moreover, it is not uncommon for smaller companies to advertise the fact that they have a business relationship with Hyundai Motor Group in order to enhance their brand image, given the high regard and status of the Hyundai Motor Group in Korea.<sup>404</sup> Hyundai Steel affirms that it has addressed each of petitioner's frivolous allegations in full and petitioner cannot legitimately hold Hyundai Steel responsible for explaining general statements that its unaffiliated customers make on their own websites.

Hyundai Steel states that the Department has a self-described "history of recognizing that exclusivity arrangements that arise either through contractual provisions or market conditions do not automatically result in a finding of affiliation."<sup>405</sup> Hyundai Steel asserts that the Department further noted that even where sole supplier situations exist through exclusivity contracts or other means, it does not normally indicate control of one party over another.<sup>406</sup> Hyundai Steel maintains that these self-serving arguments that petitioner sets forth fall far short of the facts required to satisfy the high threshold of "control" that the Department has traditionally required in order finding affiliation based on a close supplier relationship. Accordingly, Hyundai Steel argues that the Department should reject these arguments outright in its forthcoming final determination.

**Department Position:** We disagree with petitioner that the information provided is sufficient to result in a determination that Hyundai Steel has various close supplier relationships with the home market customers identified by petitioner. Petitioner claims that Hyundai Steel is affiliated with certain home market customers via close supplier relationship pursuant to 19 USC § 1677(33).<sup>407</sup> Petitioner alleges that Hyundai Steel is affiliated with its home market customers based on "independent third party documentation"<sup>408</sup> and that these relationships have the potential to impact decisions concerning the production, pricing, and the cost of the foreign like product.<sup>409</sup> However, the Department verified each of these claims at verification, and found that while Hyundai Steel may have long-standing relationships with certain home market customers, the information reviewed at verification did not reflect a potential impact decisions concerning the production, pricing, or the cost of the home market sales to these customers.

---

<sup>403</sup> *Id.*, citing to Hyundai Steel's Supplemental Sections A-C Response at 7.

<sup>404</sup> *Id.*, at 8

<sup>405</sup> *Id.*, citing to *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Korea*, 63 FR 40404 (July 29, 1998) and accompanying Issues and Decision Memorandum at comment 2.

<sup>406</sup> *Id.*, citing, for example, to *Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From Indonesia*, 62 FR 1719, (January 13, 1997) and accompanying Issues and Decision Memorandum at comment 17 (finding the Indonesian producer not affiliated with its sole U.S. customer); *Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol From the Republic of South Africa*, 62 FR 61084 (November 14, 1997) at comment 2 (finding that respondent is the sole supplier of furfuryl alcohol to the home market is insufficient to demonstrate control of, and affiliation with, domestic purchasers); *Certain Pasta From Turkey: Notice of Final Results of the 14th Antidumping Duty Administrative Review*, 76 FR 68399 (November 4, 2011) and accompanying Issues and Decisions Memorandum at comment 1 (finding no affiliation despite sole supplier relationship); and also see *Chlorinated Isocyanurates From Spain: Final Results of Antidumping Duty Administrative Review*, 72 FR 64194 (November 15, 2007) and accompanying Issues and Decision Memorandum at comment 4 (finding no affiliation with the sole supplier of packaging services and the producer of chlorinated isocyanurates).

<sup>407</sup> *Id.*, at 35.

<sup>408</sup> See the Petitioner's Hyundai Steel Case Brief at 30-35.

<sup>409</sup> *Id.*, at 30, citing to 19 CFR 351.102(b)(3).

We therefore determined that adverse facts available is unwarranted, as Hyundai Steel provided sufficient information to demonstrate that it has no affiliation relationship with its customers.<sup>410</sup> Even when supplier situations exist through exclusivity contracts or other means, it does not necessarily indicate control of one party over another, and no evidence of such control relationships were found during the course of this investigation.<sup>411</sup> We therefore agree with Hyundai Steel that the information provided by petitioner fails to satisfy the high threshold of “control” that the Department has traditionally required in order to find affiliation based on a close supplier relationship.<sup>412</sup> Therefore, AFA is unwarranted for this issue.

## **Comment 18: CEP Offset**

### **Petitioner’s Case Brief**

For its home market sales, petitioner claims that Hyundai Steel has claimed a single level of trade, or direct sales from Hyundai Steel to home market customers.<sup>413</sup> Petitioner asserts that Hyundai Steel has also reported a level of effort that is too high for its home market sales, as compared with all levels of trade for U.S. sales, thus, wrongly claiming a CEP offset. Petitioner claims that this is wrong because Hyundai Steel (1) reported the wrong level of packing for home market sales (high);<sup>414</sup> (2) reported the wrong level of effort required providing freight and delivery services for its home market customers (high), as U.S. sales require domestic freight, domestic brokerage services, and international freight for its U.S. sales, while it only arranges for domestic freight for home market sales;<sup>415</sup> (3) reported too low of a level of effort for the U.S. for order input processing, as it not only prepares sales orders, but also prepares contracts/order confirmations for its U.S. Channel 1 and U.S. Channel 2 sales—a task not undertaken by Hyundai Steel for its home market sales,<sup>416</sup> and prepares additional sales documents, such as Korean customs documents, Korean export permit documents, *etc.*, for the U.S. customer that are not required for home market sales;<sup>417</sup> (4) wrongly claimed the same level of inventory maintenance

---

<sup>410</sup> See Hyundai Steel’s Sales Verification Report at 30.

<sup>411</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From Indonesia*, 62 FR 1719 (January 13, 1997) and accompanying Issues and Decision Memorandum at comment 17 (finding the Indonesian producer not affiliated with its sole U.S. customer); *Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol From the Republic of South Africa*, 62 FR 61084 (November 14, 1997) at comment 2 (finding that respondent is the sole supplier of furfuryl alcohol to the home market is insufficient to demonstrate control of, and affiliation with, domestic purchasers); *Certain Pasta From Turkey: Notice of Final Results of the 14th Antidumping Duty Administrative Review*, 76 FR 68399 (November 4, 2011) and accompanying Issues and Decisions Memorandum at comment 1 (finding no affiliation despite sole supplier relationship). See also *Chlorinated Isocyanurates From Spain: Final Results of Antidumping Duty Administrative Review*, 72 FR 64194 (November 15, 2007) and accompanying Issues and Decision Memorandum at comment 4 (finding no affiliation with the sole supplier of packaging services and the producer of chlorinated isocyanurates).

<sup>412</sup> *Id.*

<sup>413</sup> See the Petitioner’s Hyundai Steel Case Brief citing to Hyundai Steel’s Section A Response at A-20 and Section A Supplemental Response SA-13.

<sup>414</sup> *Id.* citing to Hyundai Steel’s Section A Response at A-14.

<sup>415</sup> *Id.*, at A-13.

<sup>416</sup> *Id.*, at exhibits A-11-12.

<sup>417</sup> *Id.*, at A-27.



for its home market sales (low) as it does for its U.S. sales (low),<sup>418</sup> as Hyundai Steel would have to hold finished goods for a longer period for sales to U.S. customers until it has the full export shipment ready for shipment; a requirement that would not exist for home market sales; and (5) wrongly reported a higher level of effort for sales forecasting in its home market (medium) than it did for U.S. Channels 1, 2 and 3 sales (low),<sup>419</sup> this general task would need to be undertaken by Hyundai Steel for all sales to the U.S. Petitioner therefore argues that the Department should find that there are no differences in the U.S. and home market levels of trade, and deny any request for a CEP offset.

### **Hyundai Steel's Case Brief**

Hyundai Steel asserts that the Department found that Hyundai Steel did not qualify for a CEP offset during the *Preliminary Determination*. Hyundai Steel contends that the Department reviewed Hyundai Steel's reported U.S. and home market selling functions and concluded that "Hyundai Steel's home market LOT is not at a more advanced stage of distribution than its CEP LOT through Channels 1, 2, and 3."<sup>420</sup> Hyundai Steel argues that the record demonstrates that the selling functions performed by Hyundai Steel in the home market are greater in number and intensity than in selling to its affiliates in the United States and Hyundai Steel's home market is therefore at a more advanced level of trade.<sup>421</sup>

Hyundai Steel notes that in conducting this analysis in a CEP offset context, the Department compares the functions the respondent performs in selling to home market customers to the selling functions the respondent engages in in selling to its affiliates in the United States. Specifically, Hyundai Steel contends that the Department typically analyzes selling functions based on four general selling function categories: (1) sales and marketing activities; (2) freight and delivery; (3) inventory maintenance and warehousing; and (4) warranty and technical support.<sup>422</sup>

Hyundai Steel asserts that its selling functions performed in the home market are significantly greater than the functions it engages in for U.S. sales. As it relates to the first category, sales and marketing activities, Hyundai Steel described that in the home market Hyundai Steel engages in significant selling activities in dealing directly with its numerous customers for thousands of transactions.<sup>423</sup> Hyundai Steel explained that these activities were greater than its sales activities to U.S. distributor customers. Hyundai Steel states that this logic also applies to its affiliated customers, as Hyundai Steel is only required to deal with the affiliated reseller directly.

Hyundai Steel states that while it did explain that it plays a supporting role to its affiliates with respect to sales in the automotive industry, these activities are necessarily performed to a lesser degree than with respect to its home market sales, where Hyundai Steel alone coordinates the

---

<sup>418</sup> *Id.*, at Section A Supplemental Response exhibit SA-13.

<sup>419</sup> *Id.*

<sup>420</sup> See Hyundai Steel's Case Brief citing to the Preliminary Decision Memo at 21.

<sup>421</sup> *Id.*, citing to 19 CFR 351.412(c)(2).

<sup>422</sup> *Id.*, citing to Preliminary Decision Memo at 19.

<sup>423</sup> *Id.*, citing to Hyundai Steel's Supplemental Section A Response at 10-11.

sales process from start to finish. Hyundai Steel contends that it supports its affiliate HSA, and HSA itself engages in significant selling functions as demonstrated in HSA Sales Verification Exhibit at 8. Moreover, Hyundai Steel claims that the sheer size of Hyundai Steel's home market mandates significant marketing and sales activities.<sup>424</sup> Hyundai Steel asserts that maintaining these customer relationships and sales volumes requires significant market presence and sales activity.

With respect to the second category, "freight and delivery activities," Hyundai Steel contends that it delivers its products to both the home and U.S. markets and states that the volume of home market shipments, variation in sales quantity, and number of home market customers indicates that this function is performed at a more intense level than the U.S. market, which involves bulk shipments. With respect to the third category, "inventory maintenance and warehousing," Hyundai Steel claims that it incurred warehousing expenses for some of its home market sales but incurred no such expenses for its U.S. sales.<sup>425</sup> Thus, Hyundai Steel contends that these functions were performed to a greater degree in the home market than for sales to the United States.

With respect to the fourth selling function category, "warranty and technical support," Hyundai Steel contends that while it guarantees its products in all markets, Hyundai Steel only incurred warranty expenses in the home market.<sup>426</sup> For U.S. sales, Hyundai Steel itself only incurred warranty expenses for its EP sales while HSA managed warranty issues with U.S. customers for CEP sales.<sup>427</sup> Accordingly, Hyundai Steel affirms that the record confirms that Hyundai Steel performed a greater degree of warranty and technical support activities for its home market sales than it did for sales to the United States.

Hyundai Steel contends that in the Department's concurrent investigation concerning corrosion resistant steel - involving similar sales channels and facts - the Department determined that Hyundai Steel qualified for a CEP offset.<sup>428</sup> Hyundai Steel argues that there is no justification for the Department to reach a different conclusion regarding the same sales channels and similar products in these two investigations. Accordingly, consistent with the Department's determination in the corrosion-resistant case, Hyundai Steel affirms that the Department in this investigation should grant a CEP offset to Hyundai Steel's CEP sales.<sup>429</sup>

---

<sup>424</sup> *Id.*, citing to Hyundai Steel's Section A Response at exhibit A-2 and Section B Response at exhibit B-8.

<sup>425</sup> *Id.*, citing to Hyundai Steel's Section B Response at B-29.

<sup>426</sup> *Id.*, at 35.

<sup>427</sup> *Id.*, at C-37-38.

<sup>428</sup> *Id.*, citing to the Preliminary Decision Memorandum at 23.

<sup>429</sup> *Id.*, citing to *e.g.*, *Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of the Seventeenth Antidumping Duty Administrative Review*, 76 FR 55004, 55009 (September 6, 2011) and unchanged in *Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Final Results of the 2009-2010 Administrative Review and Revocation, in Part*, 77 FR 14501 (March 12, 2012) (Under section 773(a)(7)(B) of the Act and 19 CFR 351.412(f), we are preliminarily granting a CEP offset for HYSCO, POSCO, Dongbu, and Union because the NV sales for each company are at a more advanced LOT than the LOT for the U.S. CEP sales); *Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Preliminary Results of the Sixteenth Antidumping Duty Administrative Review*, 75 FR 55769, 55775 (September 14, 2010), and unchanged in *Certain Corrosion-Resistant Carbon Steel Flat Products From the*

In conclusion, Hyundai Steel urges that the Department grant Hyundai Steel a CEP offset in this investigation because the record demonstrates that Hyundai Steel's home market sales were at a more advanced level of trade than its U.S. sales, consistent with prior determinations, in the final determination.

### **Petitioner's Rebuttal Brief**

Petitioner claims that Hyundai Steel's argument that the Department should apply a CEP offset is based on the unsupported claim that "the selling functions Hyundai Steel performs in the home market are significantly greater than the functions it engages in for U.S. sales."<sup>430</sup> As the Department properly found in its *Preliminary Determination*, petitioner states that the record evidence demonstrates that Hyundai Steel's home market sales during the POI were "not made at a more advanced stage of distribution than its CEP" sales, as Hyundai Steel performed selling functions that are "virtually the same as those performed for its U.S. customers at the same relative level of intensity."<sup>431</sup> Petitioner asserts that an examination of the information gathered at verification confirms that Hyundai Steel has significantly overstated its home market selling expenses and understated its U.S. selling expenses.

Petitioner contends that the Department must find significant differences in Hyundai Steel's selling activities before it may grant a CEP offset. Petitioner asserts that an examination of Hyundai Steel's four selling function categories: (1) sales and marketing; (2) freight and delivery services; (3) inventory maintenance and warehousing; and (4) warranty and technical support - Hyundai Steel's home market sales are not at a more advanced stage of distribution than its CEP sales.<sup>432</sup> Specifically, with regard to sales and marketing activities, petitioner contends that Hyundai Steel's selling functions chart shows that it engaged in sales and marketing activities at either the same or at a higher level of intensity for its CEP sales compared to its home market sales.<sup>433</sup> For sales/marketing support, petitioner contends that Hyundai Steel performed at a higher level of intensity for its U.S. customers than for its home market customers.<sup>434</sup>

Although Hyundai Steel reported that it expended the same level of effort for order input/processing to its home market customers and its U.S. customers, petitioner states that this is incorrect.<sup>435</sup> For its U.S. sales, petitioner notes that Hyundai Steel not only prepares sales orders, it also prepares contracts/order confirmations for its U.S. channel 2 sales - a task not undertaken by Hyundai Steel for its home market sales.<sup>436</sup> In addition, Hyundai Steel prepares

---

*Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review*, 76 FR 15291 (March 21, 2011) (Under section 773(a)(7)(B) of the Act and 19 CFR 351.412(f), we are preliminarily granting a CEP offset for HYSCO, POSCO, Dongbu, and Union because the NV sales for each company are at a more advanced LOT than the LOT for the U.S. CEP sales).

<sup>430</sup> *Id.*, citing to Hyundai Steel's Case Brief at 4.

<sup>431</sup> *Id.*, citing to the Preliminary Decision Memorandum at 20-21.

<sup>432</sup> *Id.*, citing to 19 CFR 351.412(f)(ii) and 19 CFR 351.412(c)(2).

<sup>433</sup> *Id.*, at footnotes 20 and 21.

<sup>434</sup> *Id.*, citing to Hyundai Steel's Section A Supplemental Response at SA-13.

<sup>435</sup> *Id.*

<sup>436</sup> *Id.*, citing to Hyundai Steel's Section A Response at exhibits A-11-12.

additional sales documents, such as Korean customs documents, Korean export permit documents, bills of lading, *etc.*, for its U.S. sales that are not required for home market sales.<sup>437</sup> Thus, petitioner asserts that the order input processing for Hyundai Steel's U.S. sales are at a higher level of intensity than for its home market sales.

Petitioner notes that Hyundai Steel also claimed a higher level of effort for sales forecasting in the home market, but this is a general task undertaken by the company and would be identical for all sales.<sup>438</sup> Petitioner asserts that the Department should find that the sales forecasting function is performed at the same level of effort for both Hyundai Steel's home market and U.S. sales. Hyundai Steel's assertion that it "engages in significant selling activities in dealing directly with its numerous customers for thousands of transactions" in its home market is also unavailing.<sup>439</sup> Petitioner contends that contrary to Hyundai Steel's claim, the number of customers and number of sales transactions have no impact on the type of selling functions performed or the level of intensity incurred on those selling functions.<sup>440</sup> Second, the record demonstrates that Hyundai Steel has "long-standing relationships with its home market customers and, therefore, it is unlikely that Hyundai Steel engages in significant selling activities for such customers. However, petitioner argues that it is unlikely that "maintaining these customer relationships and sales volumes requires significant market presence and sales activity," as claimed by Hyundai Steel.<sup>441</sup> Moreover, Hyundai Steel reported that it sells via ecommerce to its other home market customers, which would not require any of the general selling functions.<sup>442</sup> Accordingly, petitioner notes that the Department should find that the record does not demonstrate that Hyundai Steel provided significant selling expenses to its home market customers.

With regard to freight and delivery activities, petitioner states that Hyundai Steel reported the same "high" level of effort in both markets, but argues that because of the volume of home market shipments, variation in sales quantity, and number of home market customers, this function is performed at a more intense level in the home market than in the U.S. market.<sup>443</sup> By its own admission, however, petitioner contends that Hyundai Steel stated that it arranges for domestic freight, domestic brokerage services, and international freight for its U.S. sales, while it only arranges for domestic freight for home market sales.<sup>444</sup>

Similarly, Hyundai Steel reported that it incurs the same "low" level of inventory maintenance for its home market sales as it does for its U.S. sales, but claims that the inventory maintenance function was performed to a greater degree in the home market than for sales in the United States.<sup>445</sup> Specifically, it claims that it incurred warehousing expenses for some of its home market sales, while it incurred no such expenses for its U.S. sales.<sup>446</sup> Petitioner states that

---

<sup>437</sup> *Id.*, at A-27.

<sup>438</sup> *Id.*

<sup>439</sup> *Id.*, citing to Hyundai Steel's Case Brief at 4.

<sup>440</sup> *Id.*, at footnote 29.

<sup>441</sup> *Id.*, citing to Hyundai Steel's Case Brief at 5.

<sup>442</sup> *Id.*, citing to Hyundai Steel's Section A Supplemental Response at 9.

<sup>443</sup> *Id.*, at exhibit SA-13 and Hyundai Steel's Case Brief at 5.

<sup>444</sup> *Id.*, at exhibit SA-13.

<sup>445</sup> *Id.*, citing to Hyundai Steel's Case Brief at 5.

this claim has no merit. First, petitioner asserts that the Department could not verify the claimed home market warehousing expenses and, therefore, the Department cannot consider Hyundai Steel's warehousing expenses in its analysis.<sup>447</sup> Further, petitioner claims that Hyundai Steel would have had to hold finished goods for a longer period for U.S. sales until it has the export shipment fully produced and ready for shipment, which is a requirement that would not exist for home market sales.

Next, with regard to the warranty and technical support category, petitioner states that Hyundai Steel reported a higher level of effort for its U.S. sales than for its home market sales.<sup>448</sup> Hyundai Steel claims that although it guarantees its products in all markets, it only incurred warranty expenses in the home market.<sup>449</sup> Petitioner argues that this statement is factually wrong. First, Hyundai Steel reported warranty expenses for its EP sales.<sup>450</sup> Second, documents were collected at the verification by the Department that Hyundai Steel incurred warranty expenses.<sup>451</sup> Petitioner contends that Hyundai Steel has not presented any new salient factual information to support its claim and, therefore, the Department should continue to deny Hyundai Steel's request for a CEP offset in the final determination.

Petitioner rebuts that Hyundai Steel also contends that because the Department granted it a CEP offset in other cases in which it was a respondent, the Department should do the same in the present investigation.<sup>452</sup> Petitioner argues that the CIT has held that "whether the Department has granted a CEP offset to {a respondent} in a different proceeding with a different factual record . . . does not necessarily bind the Department in determining whether to grant or deny an offset adjustment to NV" in another proceeding.<sup>453</sup> Petitioner notes that the CIT has also upheld that the Department's decisions in one segment of a proceeding do not dictate its decision in subsequent segments.<sup>454</sup>

Accordingly, petitioner asserts if the law does not bind the Department to an administrative determination made in an earlier segment of the same proceeding, it does not bind the Department to an administrative determination made in a prior segment involving a different product and a different investigation. Rather, petitioner notes that each proceeding should be treated new, and therefore, the Department must weigh the facts presented on the record at issue in determining whether, in this case, substantial evidence exists to permit a CEP offset.<sup>455</sup> Petitioner rebuts that the facts of record in this investigation are also distinguishable from previous cases in which the Department treated Hyundai Steel's (or Hyundai HYSCO) request

---

<sup>446</sup> *Id.*, at exhibit SA-13 and Hyundai Steel's Case Brief at 5-6.

<sup>447</sup> *See* the Petitioner's Hyundai Steel Case Brief at 3, 21-24, and 37.

<sup>448</sup> *See* the Petitioner's Hyundai Steel Rebuttal Brief citing to Hyundai Steel's Section A Supplemental Response at SA-13.

<sup>449</sup> *Id.*, citing to Hyundai Steel's Case Brief at 6.

<sup>450</sup> *Id.*, citing to Hyundai Steel's Section C Response at C-37-38.

<sup>451</sup> *Id.*, citing to Hyundai Steel's Sales Verification Report at exhibit 23 at page 3.

<sup>452</sup> *Id.*, citing to Hyundai Steel's Case Brief at 1 and 6-7.

<sup>453</sup> *Id.*, at footnote 46.

<sup>454</sup> *Id.*, citing to *e.g.*, *Pakfood Public Co. v. United States*, 724 F. Supp. 2d 1327, 1342 (CIT 2010); *Timken U.S. Corp. v. United States*, 434 F.3d 1345, 1352 (Fed. Cir. 2006).

<sup>455</sup> *Id.*, citing to *Ad Hoc Shrimp Trade Action Comm. v. United States*, 616 F. Supp. 2d 1354, 1373-74 (CIT 2009), and affirmed upon appeal, 596 F.3d 1365 (Fed Cir. 2010).

for a CEP offset. In this case, petitioner contends that there is no record evidence that Hyundai Steel performs selling functions in the home market at a more advanced stage of distribution compared to the U.S. market. Accordingly, petitioner urges that the Department should disregard Hyundai Steel's claimed differences in levels of trade and continue to deny a CEP offset in the final determination.

### **Hyundai Steel's Rebuttal Brief**

Hyundai Steel contends that there is nothing supporting petitioner's claim that Hyundai Steel's request for a CEP offset show "uncooperative behavior." Hyundai Steel asserts that its claim for a CEP offset is a qualitative presentation of data accompanied by a legal argument. Hyundai Steel rebuts that the Department granted a CEP offset to Hyundai Steel under similar facts in the corrosion resistant case.

As to petitioner's request to deny the CEP offset, Hyundai Steel rebuts that the Department should reverse its *Preliminary Determination* and find that Hyundai Steel qualifies for a CEP offset. In conducting this analysis in a CEP offset context, Hyundai Steel contends that the Department compares the functions the respondent performs in selling to home market customers to the selling functions the respondent engages in in selling to its affiliates in the United States, where U.S. affiliates act on the respondent's behalf to sell to unaffiliated customers. Hyundai Steel states that its submissions show that the selling functions Hyundai Steel performs in the home market are significantly greater than the functions it engages in for U.S. sales.

As to sales and marketing activities, Hyundai Steel notes that it engages in significant selling activities in dealing directly with its numerous customers for thousands of transactions.<sup>456</sup> Hyundai Steel argues that these activities were greater than its sales activities to U.S. distributor customers. Hyundai Steel states that this also applies to Hyundai Steel's affiliated customers as Hyundai Steel is only required to deal with the affiliated reseller directly, performed by HSA for U.S. sales.

In contrast, Hyundai Steel argues that these activities are performed solely by Hyundai Steel in the home market. Hyundai Steel asserts that the record demonstrates that HSA performs significant selling functions in the United States and there is no need for Hyundai Steel in Korea to duplicate these functions for its sales to the United States. In contrast, for its sales to the Korean market, Hyundai Steel notes that it performs all of these functions and activities itself. Hyundai Steel states that it plays a supporting role to its U.S. affiliate with respect to sales in the automotive industry; these activities are necessarily performed to a lesser degree than with respect to its home market sales, where Hyundai Steel alone coordinates the sales process from start to finish. For example, Hyundai Steel contends that it supports its affiliate HSA, HSA itself engages in significant selling functions as demonstrated at verification.<sup>457</sup> In contrast, Hyundai Steel affirms that these activities are performed solely by Hyundai Steel in the home market. Hyundai Steel states that for its sales to the Korean market, Hyundai Steel performs all of these functions and activities itself.

---

<sup>456</sup> See Hyundai Steel's Rebuttal Brief citing to Hyundai Steel's Supplemental Section A Response at 10-11.

<sup>457</sup> *Id.*, citing to HSA's Sales Verification Report at exhibit 8.

Hyundai Steel argues that its home market sales were at a more advanced level of trade than its U.S. sales. Therefore, consistent with prior determinations, Hyundai Steel asserts that the Department should in the final determination grant Hyundai Steel a CEP offset in this investigation.

**Department Position:** We agree with petitioner that no CEP offset is warranted. In the *Preliminary Determination*<sup>458</sup> and again at verification,<sup>459</sup> we analyzed the various selling functions Hyundai Steel indicated it performed for sales in the home market versus those performed with respect to its U.S. affiliates for its CEP sales. In the home market, Hyundai Steel reported that it made sales through two channels of distribution (*i.e.*, direct shipments to end-users or distributors). Hyundai Steel reported that it performed the following selling functions for sales to all home market customers: sales forecasting; strategic/economic planning; personnel training/exchange; engineering services; advertising; sales promotion; distributor/dealer training; procurement/sourcing services; packing; inventory maintenance; order input/processing; direct sales personnel; sales/marketing support; market research; technical assistance; provide rebates; provide cash discounts; pay commission; provide warranty services; provide guarantees; provide after sales services; perform repacking; freight and delivery arrangement; and post-sale warehousing.<sup>460</sup>

Selling activities can be generally grouped into four selling function categories for analysis: 1) sales and marketing; 2) freight and delivery services; 3) inventory maintenance and warehousing; and 4) warranty and technical support.<sup>461</sup> Based on these selling function categories, we find that Hyundai performed sales and marketing, freight and delivery services, and warranty and technical support for its reported sales to affiliated and unaffiliated customers in the home market. Because Hyundai performed the same selling functions at the same relative level of intensity for all of its home market sales, we preliminarily determine that all home market sales are at the same LOT.

With respect to the U.S. market, Hyundai reported that it made sales through three channels of distribution: EP sales through unaffiliated Korean distributors (Channel 1); CEP sales through its affiliates HSA, Hyundai Corporation, and HCUSA<sup>462</sup> to unaffiliated processors (Channel 2); and CEP sales through its affiliate HSA to unaffiliated processors and affiliated processors (Channel 3).<sup>463</sup>

With respect to the U.S. LOT for Channel 1 and Channel 2 sales (EP sales to unaffiliated Korea distributors and CEP sales to HCUSA, respectively), Hyundai Steel reported that it performed the following selling functions for its sales to the United States: sales forecasting;

---

<sup>458</sup> *Preliminary Determination* at 19-21.

<sup>459</sup> *Id.*

<sup>460</sup> See Hyundai Steel's November 10, 2015, section A supplemental questionnaire at 10 and exhibit SA-13.

<sup>461</sup> *Id.*

<sup>462</sup> See Hyundai Steel's section A response at A21-A25 and exhibit A-13. Hyundai Steel and Hyundai Corporation are affiliated through familial relationship. During the POI Hyundai made some sales of subject merchandise to a U.S. customer through these companies.

<sup>463</sup> *Id.*, and Hyundai Steel's November 10, 2015, section A supplemental questionnaire at 10 and exhibit SA-13.

strategic/economic planning; personnel training/exchange; advertising; sales promotion; packing; inventory maintenance; order input/processing; direct sales personnel; sales/marketing support; market research; technical assistance; provide warranty service (Channel 1 only);<sup>464</sup> and freight and delivery arrangements.

Based on the selling function categories noted above, we find that with respect to Channels 1 and 3, Hyundai Steel performed sales and marketing, freight and delivery services, technical services, and inventory management for U.S. sales. Because Hyundai performed the same selling functions at the same relative level of intensity (same or low/medium or medium/high) for its U.S. sales in Channel 1 and Channel 3 (with the exception of sales/marketing support, which is provided with different intensity in Channel 1 and Channel 3), we find the differences between Channel 1 and Channel 3 are too insignificant to warrant two different LOTs. Thus, we determine that Hyundai's U.S. sales through Channel 1 and Channel 3 are made at the same LOT.

With respect to the U.S. Channel 2 (CEP sales through its affiliate Hyundai Corporation and HCUSA, which sold subject merchandise to the United States to unaffiliated processors (Channel 2), Hyundai Steel reported that it performed the following selling functions for its sales to the United States: packing; inventory maintenance; order input/processing; direct sales personnel; technical assistance; and freight and delivery arrangements.

Based on the selling function categories noted above, we find that with respect to Channel 2, Hyundai Steel performed sales and marketing, freight and delivery services, and inventory management for U.S. sales; however, while Hyundai Steel provided selling functions in three of the four categories of selling functions, and those performed at the same level of intensity as in Channels 1 and 2, it did not provide eight of the selling functions included in Channels 1 and 3, and none in category 4, warranty and technical support.<sup>465</sup> Because Hyundai provided notably fewer selling functions in Channel 2 than it did in Channels 1 and 3, we determine Channel 2 to be at another, less advanced LOT than Channels 1 and 3.

We compared the EP (Channel 1) and the CEP (Channel 3) LOT to the home market LOT and found that the selling functions Hyundai Steel performed for its home market customers are virtually the same as those performed for its U.S. customers at the same relative level of intensity. The only difference is that Hyundai provides warranty services for home market customers and does not provide this service for EP sales.<sup>466</sup> This difference is not sufficient to determine that Hyundai's EP LOT is different from the home market LOT. Therefore, based on the totality of the facts and circumstances, we determine that sales to the home market during the POI were made at the same LOT as Hyundai's EP sales through Channel 1 and its CEP sales (Channel 3). Consequently, we matched EP sales (Channel 1) and CEP sales (Channel 3) to home market sales at the same LOT, and determined no LOT adjustment was warranted.

---

<sup>464</sup> *Id.*

<sup>465</sup> *Id.*

<sup>466</sup> See Hyundai Steel's November 10, 2015, section A supplemental questionnaire at 10 and exhibit SA-13 and see Hyundai Steel's section A response at A21-A25 and exhibit A-13.



Given the above, we agree with petitioner that Hyundai Steel should not receive a CEP offset in the final determination. Petitioner asserts that Hyundai Steel reported a level of effort that is too high for its home market sales, as compared with all levels of trade for U.S. sales, thus, wrongly claiming a CEP offset. We find that Hyundai Steel's home market sales are not at a more advanced level of trade than its U.S. sales. We disagree with Hyundai Steel that it engages in significant selling activities in dealing directly with its numerous customers for thousands of transactions and on behalf of its U.S. affiliates. We agree with petitioner that the number of customers and number of sales transactions have no impact on the type of selling functions performed or the level of intensity incurred on those selling functions. Therefore, there is no evidence of variation across markets and a CEP offset for is unwarranted for Hyundai Steel.

Therefore, analysis of the relevant selling functions under the rubric of the four general categories of selling functions yields the conclusion that there is no basis for concluding that a significant variation in overall selling activity exists for home market sales versus U.S. CEP sales.<sup>467</sup> Here, there is no variation across both markets and for all four of those categories - - warranty and technical support, freight and delivery, inventory maintenance and warehousing, and sales and marketing activities - - there is no basis on the record for concluding Hyundai Steel's level of activity is greater for home market sales than for U.S. CEP sales, which was also verified at the Hyundai Steel's and HSA's sales verifications.<sup>468</sup>

Based on the totality of the facts and circumstances, we determine that Hyundai Steel's home market sales during the POI were made at a same LOT as its CEP sales. Also, Hyundai Steel's home market LOT is not at a more advanced stage of distribution than its CEP LOT through Channels 1, 2, and 3, and thus, no LOT adjustment is possible. Consequently, there is no basis for considering a CEP offset with respect to Hyundai Steel. Accordingly, we have not granted a CEP offset, pursuant to section 773(a)(7)(B) of the Act.

## **Comment 19: Other Issues**

Petitioner identified the following additional issues:

- Petitioner asserts that Hyundai Steel failed to accurately submit the direct materials costs in field FURMAT.<sup>469</sup> This field should include (1) all movement charges incurred to transport the subject merchandise from the port of entry to the company's U.S. further manufacturing facilities, and (2) the actual costs incurred for any yield loss in connection with the further manufacture of the subject merchandise in the United States. Petitioner mentions that Hyundai Steel failed to include the transportation of the imported cold-rolled coils in FURMAT.<sup>470</sup> In addition, petitioner states that HSA's G&A ratio is

---

<sup>467</sup> See Hyundai Steel's Sales Verification Report at 10 and exhibit 11 and *also see* HSA's Sales Verification Report at 8.

<sup>468</sup> *Id.*

<sup>469</sup> See the Petitioners' Hyundai Steel Case Brief citing to Sections A-C Supplemental Response at exhibit S-1.

<sup>470</sup> *Id.*, citing to the Department Section E Questionnaire.

significantly understated for the further manufacturing costs.<sup>471</sup> Finally, petitioner claims that the interest ratio is also understated.<sup>472</sup>

- Petitioner notes that Hyundai Steel understated the reported U.S. brokerage expenses by reporting those on a net (short) ton basis, instead of a metric ton basis.<sup>473</sup>
- Petitioner contends that Hyundai Steel incorrectly reported warranty expenses for subject and non-subject merchandise in its warranty expenses.<sup>474</sup>
- Petitioner asserts that Hyundai Steel failed to verify the values reported in its home market warehousing expense field. As recounted by the Department, Hyundai Steel presented a worksheet that did not identify the coil number or the order number for home market sales.<sup>475</sup>
- Hyundai Steel did not accurately report the marine insurance charges for U.S. sales. Hyundai Steel inaccurately allocated marine insurance expenses over weight.<sup>476</sup>

Hyundai Steel responded as follows:

- Hyundai Steel asserts that the Department fully verified Hyundai Steel's reported further manufacturing cost data without issue.<sup>477</sup> Hyundai Steel claims that petitioner fails to recognize that Hyundai Steel did report the costs of transporting the imported coils from the port of entry to HSA in the field INLFPWU.<sup>478</sup> Hyundai Steel contends that reporting that cost again as part of FURMAT as suggested by petitioner would have resulted in double counting. As to the further manufacturing G&A calculation (FURGNA), Hyundai Steel contends that the Department's instructions called for Hyundai Steel to calculate the G&A ratio by dividing expenses by COGS less the value of the imported subject merchandise, not all steel.<sup>479</sup> Hyundai Steel argues that petitioner fails to recognize that the Department elected to modify the calculation of the FURGNA ratio on its own accord, by dividing the G&A expenses by total COGS, and then multiplying that result times the sum of further manufacturing to include the material costs (consisting of the imported coil).<sup>480</sup> Finally, as to the further manufacturing interest expense calculation (FURINT), Hyundai Steel contends that petitioner simply points to its pre-preliminary comments, in which it complained that HYSCO's consolidated financial statements

---

<sup>471</sup> *Id.*, citing to Hyundai Steel's Sales Verification at 12.

<sup>472</sup> See the Petitioners' February 16, 2016, Submission, "Pre-Preliminary Comments for Hyundai Steel," at 18-20.

<sup>473</sup> See the Petitioner's Hyundai Steel Case Brief citing to Hyundai Steel's Sales Verification Report at 11-12.

<sup>474</sup> See the Petitioner's Hyundai Steel Case Brief citing to Hyundai Steel's Sales Verification Report at 35-36, Hyundai Steel's Section B Response at B-35, and Hyundai Steel's Section C Response at C-37.

<sup>475</sup> *Id.*, citing to Hyundai Steel's Sales Verification Report at 38.

<sup>476</sup> See the Petitioner's Hyundai Steel Case Brief citing to Hyundai Steel's Sales Verification Report at 39.

<sup>477</sup> See Hyundai Steel's Rebuttal Brief citing to HSA's Verification Report at 16-17.

<sup>478</sup> *Id.*, citing to Hyundai Steel's Section C Response at C-30 and Hyundai Steel's Supplemental Sections A-C Response at 2.

<sup>479</sup> *Id.*, citing to the Department's September 18, 2015, initial questionnaire at Section E at E-11.

<sup>480</sup> *Id.*, citing to Hyundai Steel's Preliminary Cost Calculation Memorandum.

showed that Hyundai HYSCO incurred a greater interest expense in FY 2014 than shown on Hyundai Steel's worksheet and that Hyundai Steel should have added to this higher amount other expenses for foreign currency translations, transactions, and forward contracts.<sup>481</sup> Hyundai Steel argues that petitioner fails to acknowledge that the Department clearly considered - and rejected - these complaints as having no basis. Hyundai Steel contends that the documentation that was included with the worksheet showing the calculation of FURINT showed how the amounts reported reconciled to HYSCO's consolidated financial statements, clearly demonstrating that Hyundai Steel's calculations were accurate and consistent with Department practice.

- For U.S. brokerage expenses, Hyundai Steel argues that the Department recognized in its verification report, this was a simple error with a simple fix, which is to apply a conversion ratio to the reported expense. Specifically, the Department could divide the reported expense by the ratio of short tons to net tons, 0.9072, or alternatively multiply the expense by the inverse, *i.e.*,  $1/0.9072 = 1.102396$ .<sup>482</sup>
- For warranty expenses, Hyundai Steel argues that it calculated its reported warranty expense on a customer-specific basis for the product group, *i.e.*, the "cold-rolled" division, dividing total warranty expenses by total shipment weight to the customer for the POI.<sup>483</sup> Hyundai Steel states that its cold rolled division includes non-subject products, such as pickling and oiling products (hot-rolled) and galvanized products (corrosion-resistant). That is, Hyundai Steel contends that it reported a customer-specific average unit expense for flat-rolled steel products, which the Department verified. Hyundai Steel maintains that the Department identified no discrepancies or issues for further consideration.<sup>484</sup>
- During the POI, Hyundai Steel claims that on occasion it used offsite warehouse facilities to temporarily store finished subject products prior to shipment to the final customer and reported these expenses in the field WARESH.<sup>485</sup> At verification, Hyundai Steel contends that the Department reviewed five pre-selected and five surprise home market sales, checking the reported expense information for each, including warehousing expense.<sup>486</sup> Hyundai Steel states that the verification report indicates that for two transactions, surprise sales 3 and 5, one part of the supporting documentation appeared to indicate that these transactions did not incur "initial charges." However, Hyundai Steel claims that the Documentation examined at verification included the warehouse expense documents pertaining to the release of the goods from warehouse, which demonstrated that the warehouse expense tied to the payment for the warehousing invoice.

---

<sup>481</sup> *Id.*, citing to footnote 93, stating "as of July 1, 2015, Hyundai Steel acquired Hyundai HYSCO and the two companies merged into a single entity. In 2014, Hyundai Steel America was known as HYSCO America Company (HAC) and was a wholly owned subsidiary of Hyundai HYSCO. Hyundai HYSCO was the ultimate consolidated parent company of HAC" and Petitioner's February 16, 2016, Pre-Preliminary comments at 20.

<sup>482</sup> *Id.*, citing to HSA's CEP Sales Verification Report at 12.

<sup>483</sup> *Id.*, citing to Hyundai Steel's Supplemental Sections B-C Response at 11-12.

<sup>484</sup> *Id.*, citing to Hyundai Steel's Sales Verification Report at 44-45.

<sup>485</sup> *Id.*, citing to Hyundai Steel's Section B Response at B-29.

<sup>486</sup> *Id.*, citing to Hyundai Steel's Sales Verification Report at 34.

Consequently, Hyundai Steel asserts that the initial charges shown correspond to the products that entered into the warehouse in July, not May when these particular products went in and as a result, the initial charges were not shown on the particular supporting documentation. As to the storage charges, Hyundai Steel claims that the documentation shows that the storage fees per month and that these products were stored two months.<sup>487</sup> As the Department verified, for these transactions, Hyundai Steel asserts that the company simply doubled the unit cost of storage to account for the time that the products had been in storage.

- For marine insurance, Hyundai Steel asserts that, as the Department verified, its reporting methodology was not distortive because there was not a great deal of variation in values for products that the company ships (which the Department then observed in various sales documents that included hot-rolled, cold-rolled, and corrosion-resistant products).<sup>488</sup> Hyundai Steel contends that had the Department had an issue with Hyundai Steel's reporting,<sup>489</sup> it was obligated to request modification via the standard supplemental questionnaire process, not wait until the end and apply total AFA as petitioner unreasonably suggests.

#### **Department Position:**

- With regard to Petitioner's argument that HSA's reported G&A expense ratio was not computed on the same basis to the costs which it was then applied, we disagree. Consistent with our practice, because HSA's G&A activities support the general activities of the company as a whole, we applied the G&A ratio, computed over total cost of goods sold (COGS), to the total cost of further manufactured products (including the cost of producing the coil).<sup>490</sup> See *Lipe Pipe from Korea*. Petitioner presented an alternative method of computing the G&A expense rate over a COGS denominator, exclusive of coil costs, and applying that G&A expense only to the further manufacturing costs. However, petitioner's methodology would apply all of HSA's G&A expenses only to the further manufacturing processing, and ignores the other products and activities which are reflected in the COGS denominator. HSA's financial expense ratio was computed using Hyundai Steel's consolidated total financial expenses divided by consolidated COGS. We applied the financial expense ratio to the total further manufacturing expenses (not including the CR coil). In the same respect, we noted that because Hyundai Steel's financial expenses are allocated over its consolidated COGS, the financial expense ratio was already applied to coil costs in Hyundai Steel's reported costs of production. Therefore, we would be double-counting if we applied them again to the coil costs in terms of HSA's expenses. As a result, we have not further

---

<sup>487</sup> *Id.*, at 41.

<sup>488</sup> *Id.*, citing to Hyundai Steel's Sales Verification Report at 38-39 and Hyundai Steel's Section C Response at exhibit C-11.

<sup>489</sup> *Id.*

<sup>490</sup> See *Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) and accompanying Issues and Decision Memorandum at comment 20 (*Lipe Pipe from Korea*).

revised HSA's G&A and financial expenses from the preliminary determination.<sup>491</sup> . Last, Hyundai Steel claims that petitioner fails to recognize that Hyundai Steel did report the costs of transporting the imported coils from the port of entry to HSA in the field INLFPWU. However, for the final determination, we will apply AFA for Hyundai Steel's U.S. inland freight field (INLFPWU). For a further discussion, *see* comment 14 above and *also see* Hyundai Steel's Sales Final Calculation Memo.

- We agree with Hyundai Steel that at verification the understated U.S. brokerage outlined by petitioner is a simple adjustment to the margin program. The Department will correct the calculations for the reported expense for the final determination.
- We agree with Hyundai Steel that its warranty expenses reported on a customer-specific basis for the product group, *i.e.*, the "cold-rolled" division, dividing total warranty expenses by total shipment weight to the customer for the POI<sup>492</sup> was calculated properly. As the necessary information is available on the record and verified, the Department finds that Hyundai Steel's reported warranty expenses needs no further consideration for the final determination.<sup>493</sup>
- We disagree with Hyundai Steel that it accurately reported its warehousing expenses in the home market. At verification, we found that Hyundai Steel indicated that merchandise warehoused for home market sales incurred "initial charges" as well as charges tied to the length of time in which the merchandise was warehoused. However, for surprise home market sales 3 and 5, for which the company indicated "initial charges" were incurred, no evidence was provided indicating the company incurred such charges for the coils in question.<sup>494</sup> For the final determination, we will apply AFA for Hyundai Steel's home market warehousing expenses. For a further discussion, *see* comment 14 above.
- We agree with Hyundai Steel that it reported its marine insurance expenses accurately. At verification, we reviewed that there was not a great deal of variation for products that Hyundai Steel ships, and thus its reporting methodology for marine insurance was correct.<sup>495</sup> As the necessary information is available on the record and verified, we disagree with petitioner that AFA is necessary.

## **Comment 20: Other Cost Issues**

### **Hyundai Steel G&A Expenses**

---

<sup>491</sup> *See* the Department's February 29, 2016, Preliminary Determination Cost Calculation Memorandum entitled, "Cost of Production, Constructed Value, and Further Manufacturing Cost Calculation Adjustments for the Preliminary Determination Hyundai Steel Company (Hyundai Steel) (Prelim Cost Calc Memo).

<sup>492</sup> *See* Hyundai Steel's Supplemental Sections B-C Response at 11-12.

<sup>493</sup> *See* Hyundai Steel's Sales Verification Report at 44-45.

<sup>494</sup> *Id.*, at 2.

<sup>495</sup> *Id.*, citing to Hyundai Steel's Sales Verification Report at 38-39 and Hyundai Steel's Section C Response at exhibit C-11.

## Petitioner

- In its G&A expenses, Hyundai Steel (1) failed to include losses on disposal reality (land) held for trading and (2) wrongly included miscellaneous gains.
- The Department should include the loss on the disposal of land, as holding land for possible future use would be in the norm for Hyundai Steel's general operations.
- The Department should exclude miscellaneous gains, as Hyundai Steel is not in the rental business or second-hand merchandise sales business.

## Hyundai Steel

- G&A calculations were computed fully in accordance with Department practice.
- Assets held for trading are related to the company's investment activities, which the Department excludes.
- Expenses associated with these supplies and building depreciation are part of the manufacturing overhead or SG&A, as applicable, therefore the income related to these miscellaneous items should be included.

**Department Position:** With regard to Hyundai Steel's G&A expense ratio calculation, we agree with Hyundai Steel. Hyundai Steel excluded the loss on the disposal of land for the final determination. The Department considers the nature, significance and relationship of an activity when determining whether or not it is related to the general operations of the company.<sup>496</sup> In this case, we note that Hyundai Steel is in the business of manufacturing and selling merchandise and is not in the real estate business. Generally, we consider purchase and sales of one parcel of real estate to be more akin to an investment activity rather than a general operating activity of the company. Accordingly, we have adjusted Hyundai Steel's G&A expense calculation to exclude the losses on sale of land.

Regarding the miscellaneous gains, we found at verification that these gains related primarily to the accounts "miscellaneous income no draft supplies," "rent revenue," and "gain on disposal of useless goods."<sup>497</sup> We noted that the sold items were used in production and that the rent was related to leasing out excess space in its headquarters buildings.<sup>498</sup> As the expenses related to these revenue items were included in reported costs, we consider it reasonable to include the revenue offset in the G&A expense ratio calculation.

## Hyundai Steel Financial Expenses

### Petitioner

---

<sup>496</sup> See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India*, 69 FR 76916 (December 23, 2004).

<sup>497</sup> See Cost Verification Exhibit E1.

<sup>498</sup> *Id.*

- Hyundai Steel wrongly included interest income on loans and reversal of finance guarantee liabilities in its financial expense rate calculation, as these were both long-term income items.

## Hyundai Steel

- The Department's cost verification report notes that it may be appropriate to exclude these two line items from the interest calculation and the impact of this adjustment would be minor.

**Department Position:** In calculating a respondent's cost of production and constructed value, it is the Department's well-established practice to allow a respondent to offset financial expenses with short-term interest income generated from a company's current assets and working-capital accounts.<sup>499</sup> We agree with the petitioner that two of the financial income accounts that Hyundai Steel claimed as short-term interest income offsets should be disallowed.

Specifically, the interest income on loan amount account includes loans that Hyundai Steel made to its employees which have a maturity date greater than a year, which is not short-term in nature. In addition, the reversal of finance guarantee liabilities account is related to financial guarantees that Hyundai Steel maintained, acting as a guarantor for other companies.<sup>500</sup> As this amount was a reversal of a portion of the financial guarantee liability amount, it is not an interest income item.<sup>501</sup> We adjusted Hyundai Steel's financial expense ratio to exclude these items in our preliminary determination.<sup>502</sup> We continued to exclude these items from Hyundai Steel's financial expense rate for our final determination.

## Affiliate

### Petitioner

- Petitioner claims that Hyundai Steel presented, as a minor correction at the cost verification, a previously un-reported affiliate. However, petitioner notes they had already reported that affiliate in their response and that the company description in the response conflicts with the one in the minor correction. Therefore, petitioner contends that the information is incorrect.
- In addition, petitioner asserts that Hyundai Steel did not demonstrate the transactions with the affiliate were made at arms-length.

## Hyundai Steel

---

<sup>499</sup> See, e.g., *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47551 (September 16, 2009) (*Thailand Shrimp*), and accompanying issues and decision memorandum at comment 7.

<sup>500</sup> *Id.*

<sup>501</sup> See page 2 of the cost verification report.

<sup>502</sup> See Prelim Cost Calc Memo.

- Hyundai Steel argues that there were no inconsistencies in Hyundai Steel's presentation of minor corrections with its Section A Response and that petitioner has conflated two different affiliated companies.
- Hyundai Steel further asserts that it has presented documentation demonstrating the arm's length nature of its transactions with the affiliate identified in the minor corrections.

**Department Position:** Regarding petitioner's allegation that Hyundai Steel had inappropriately reported its affiliate, we disagree. As Hyundai Steel pointed out, petitioner has confused two different affiliated parties. The affiliated party Green Air was not previously reported. However, the Department obtained the information about the affiliate on the first day of the cost verification.<sup>503</sup> With the information obtained on the first day, the Department tested the transactions that Hyundai Steel had with Green Air and did not note anything unusual in relation to Green Air, as noted in the cost verification report.<sup>504</sup> Due to the proprietary nature of the details associated with these items, additional analysis is provided in a separate proprietary document.<sup>505</sup>

---

<sup>503</sup> See page 3 of the cost verification report.

<sup>504</sup> *Id.*

<sup>505</sup> See the Department's July 20, 2016, Final Cost Calculation Memorandum entitled, "Cost of Production, Constructed Value, and Further Manufacturing Cost Calculation Adjustments for the Final Determination – Hyundai Steel Company (Hyundai Steel) (Final Cost Calc Memo).



## VII. RECOMMENDATION

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

  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

  
\_\_\_\_\_  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

  
\_\_\_\_\_  
(Date)