



March 1, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Negative  
Determination in the Less-Than-Fair-Value Investigation of  
Common Alloy Aluminum Sheet from the Republic of Korea

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## I. SUMMARY

The Department of Commerce (Commerce) finds that common alloy aluminum sheet (aluminum sheet) from the Republic of Korea (Korea) is not being, nor is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is January 1, 2019, through December 31, 2019.

After analyzing the comments submitted by interested parties, we have made changes to the *Preliminary Determination*.<sup>1</sup> We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a complete list of the issues for which we have received comments from the interested parties:

- Comment 1: Price-Based Particular Market Situation (PMS) Allegation Relating to Aluminum Sheet Sales in the Korean Market
- Comment 2: General and Administrative (G&A) Expense Ratio
- Comment 3: Affiliated Party Transactions
- Comment 4: Deduction of Section 232 Duties from U.S. Price

## II. BACKGROUND

On October 15, 2020, Commerce published in the *Federal Register* its preliminary affirmative determination in the LTFV investigation of aluminum sheet from Korea. On December 1, 2020, Commerce issued a supplemental questionnaire to Novelis Korea Limited (Novelis Korea) and

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<sup>1</sup> See *Common Alloy Aluminum Sheet from the Republic of Korea: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 65354 (October 15, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

Ulsan Aluminum Limited (Ulsan) (collectively, Novelis/Ulsan) in lieu of performing an on-site verification, as required under section 782(i) of the Act, to which Novelis/Ulsan timely responded.<sup>2</sup> On December 15, 2020, we issued a post-preliminary analysis memorandum finding that the petitioners<sup>3</sup> had not demonstrated that a price-based PMS existed in the Korean aluminum sheet market.<sup>4</sup>

On December 16, 2020, we invited parties to comment on the *Preliminary Determination*.<sup>5</sup> On December 30, 2020, we received case briefs from the petitioners and Novelis/Ulsan.<sup>6</sup> On January 11, 2021, we also received rebuttal briefs from these parties.<sup>7</sup> On January 28, 2021, we held a virtual public hearing at the petitioners' and Novelis/Ulsan's request.<sup>8</sup>

### III. CHANGES FROM THE *PRELIMINARY DETERMINATION*

- We revised the denominator of Novelis Korea's G&A expense ratio. *See* Comment 2 below.
- We revised the U.S. net price for certain transactions to no longer deduct USDUTY2U. *See* Comment 4 below.

### IV. DISCUSSION OF THE ISSUES

#### **Comment 1: Price-Based PMS Relating to Aluminum Sheet Sales in the Korean Market**

On July 22, 2020, the petitioners alleged that a price-based PMS distorted Korean aluminum sheet prices, and that this PMS prevented a proper comparison between the price of aluminum sheet sold in the Korean market with the price of aluminum sheet sold to the United States.<sup>9</sup> On September 3, 2020, Novelis/Ulsan submitted comments and factual information in response to

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<sup>2</sup> *See* Commerce's Letter, "Request for Documentation," dated December 1, 2020; *see also* Novelis/Ulsan's Letter, "Common Alloy Aluminum Sheet from Brazil{sic}: Novelis Korea and Ulsan Aluminum Verification Questionnaire Response," dated December 9, 2020.

<sup>3</sup> The petitioners are the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its individual members: Aleris Rolled Products, Inc.; Arconic, Inc.; Constellium Rolled Products Ravenswood, LLC; JW Aluminum Company; Novelis Corporation; and Texarkana Aluminum, Inc. (collectively, the petitioners).

<sup>4</sup> *See* Memorandum, "Less-Than-Fair-Value Investigation of Common Alloy Aluminum Sheet from the Republic of Korea: Post-Preliminary Decision Memorandum on Particular Market Situation Allegation," dated December 15, 2020 (Post-Preliminary PMS Memorandum).

<sup>5</sup> *See* Memorandum, "Briefing Schedule," dated December 16, 2020. We subsequently extended the deadlines for submission of case and rebuttal briefs. *See* Memoranda, "Extension of Time for Case and Rebuttal Briefs," dated December 18, 2020, and "Extension of Time to Submit Rebuttal Briefs," dated December 28, 2020.

<sup>6</sup> *See* Novelis/Ulsan's Letter, "Administrative Case Brief of Novelis Korea Limited and Ulsan Aluminum Limited," dated December 30, 2020 (Novelis/Ulsan Case Brief); and Petitioners' Letter, "Petitioners' Case Brief," dated December 30, 2020 (Petitioners Case Brief).

<sup>7</sup> *See* Petitioners' Letter, "Petitioners' Rebuttal Brief," dated January 11, 2021 (Petitioners Rebuttal Brief); and Novelis/Ulsan's Letter, "Rebuttal Brief of Novelis Korea Limited and Ulsan Aluminum Limited," dated January 11, 2021 (Novelis/Ulsan Rebuttal Brief).

<sup>8</sup> *See* Petitioners' Letter, "Petitioners' Request for a Hearing," dated November 13, 2020; and Novelis/Ulsan's Letter, "Novelis Korea's Hearing Request," dated November 13, 2020; *see also* Commerce's Letter, "Hearing Schedule," dated January 25, 2021.

<sup>9</sup> *See* Petitioners' Letter, "Petitioners' Price-Based Particular Market Situation Allegation, dated July 22, 2020 (Petitioners PMS Allegation).

the PMS allegation.<sup>10</sup> On September 14, 2020, the petitioners submitted sur-rebuttal comments and factual information.<sup>11</sup> On September 25, 2020, Novelis/Ulsan submitted a reply to the petitioners' sur-rebuttal.<sup>12</sup>

After analyzing this allegation and associated submissions, however, Commerce found that the record did not demonstrate that a price-based PMS existed during the POI such that Novelis/Ulsan's sales in the Korean market could not be used as a viable basis for normal value (NV).<sup>13</sup> In particular, we found that the data underlying the PMS allegation could not demonstrate the alleged price impact of global overcapacity on Korean aluminum sheet prices, and that other information on the record did not support the petitioners' allegation.

*Petitioners' Case Brief:*

- Although Commerce determined there was insufficient evidence to demonstrate the existence of a PMS in the Post-Preliminary PMS Memorandum, the petitioners' PMS allegation meets the legal and evidentiary standards required to demonstrate the existence of a PMS. Commerce's decision in the Post-Preliminary PMS Memorandum did not fully consider the global and national market forces and conditions outlined by the petitioners or the variety of record evidence provided by the petitioners. Commerce departed from its usual practice and held the petitioners' PMS allegation to a higher evidentiary standard than that established in various steel antidumping duty (AD) proceedings. Therefore, for the final determination, Commerce should reconsider the evidence for the Korean aluminum sheet market as a whole, acknowledge the existence of a PMS, and calculate NV based on constructed value (CV) for Novelis/Ulsan.<sup>14</sup>
- Commerce rejected the premise that distortions due to global aluminum overcapacity contribute to a Korean aluminum sheet PMS; instead, Commerce maintains that any distortions in the global London Metals Exchange (LME) prices are a result of global overcapacity not specific to the Korean market.<sup>15</sup> This incorrectly assumes a homogenous global aluminum marketplace when, in fact, each national market is impacted by, and responds to, global distortions in the LME prices in a "particular" manner.
- Neither the Act, the SAA, Commerce's regulations, nor the *Preamble* specifically defines the circumstances necessary to find a PMS.<sup>16</sup> Commerce developed an agency practice for cost-based PMS situations under Section 504 of the Trade Preferences Extension Act of 2015 (TPEA) and has noted that global overcapacity-based distortions are expressed differently

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<sup>10</sup> See Novelis/Ulsan's Letter, "Common Alloy Aluminum Sheet from Korea; Novelis Korea Limited and Ulsan Aluminum Limited Rebuttal Factual Information Regarding Petitioners' PMS Allegation," dated September 3, 2020 (Novelis/Ulsan PMS Comments).

<sup>11</sup> See Petitioners' Letter, "Petitioners' Pre-Preliminary Comments Regarding the Price-Based Particular Market Situation Allegation and Submission of Factual Information to Rebut, Clarify, or Correct Information Contained in Novelis Korea's September 3, 2020 Submission," dated September 14, 2020 (Petitioners Pre-Preliminary PMS Comments).

<sup>12</sup> See Novelis/Ulsan's Letter, "Novelis Korea's Reply to Petitioners' PMS Sur-Rebuttal," dated September 25, 2020 (Novelis/Ulsan PMS Sur-Rebuttal Reply).

<sup>13</sup> See Post-Preliminary PMS Memorandum.

<sup>14</sup> See Petitioners Case Brief at 2.

<sup>15</sup> *Id.* at 5 (citing Post-Preliminary PMS Memorandum).

<sup>16</sup> *Id.* at 6 (citing Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (1994) (SAA) at 822, reprinted in 1994 U.S.C.C.A.N. 4040, 4162; and *Davis Wire Corp. v. United States*, 180 F.Supp. 3d 1187, 1193 (CIT 2016)); see also *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27357 (May 19, 1997) (*Preamble*)).

and uniquely at the national level.<sup>17</sup> Record evidence provided by the petitioners in this proceeding demonstrates that global aluminum overcapacity distortions have an impact at the national level in the same manner as global steel overcapacity distortions.

- Neither Commerce nor Novelis/Ulsan disputes the existence of a global primary aluminum overcapacity crisis; rather, they only question its role in regard to the existence of a PMS in the Korean market for aluminum sheet.<sup>18</sup> The LME for primary aluminum is the main transmission mechanism for global aluminum overcapacity distortions, including distortions from Chinese primary aluminum production.<sup>19</sup> Novelis/Ulsan confirmed that its aluminum sheet transaction prices are set in reference to the LME, whereby the distortive effects of global aluminum overcapacity is reflected in the LME prices which “spill over” into the national markets.<sup>20</sup>
- There is an inverse and statistically-significant relationship between global overcapacity and the LME cash price for primary aluminum, as well as between global overcapacity and import average unit values (AUVs) of unwrought aluminum.<sup>21</sup> A one percentage point increase in the global capacity rate results in a 2.46 percent decrease in national import AUVs; because primary aluminum accounts for approximately 75 to 86 percent of total production costs for downstream semi-fabricated aluminum products, this relationship extends to downstream products like aluminum sheet.<sup>22</sup>
- The petitioners’ regression model indicates meaningful variation in import AUVs of unwrought aluminum between countries, which reflects the degree to which the impacts of overcapacity affect national markets differently.<sup>23</sup> Commerce confirmed this primary aluminum price variation between markets in the companion aluminum sheet LTFV investigation involving Bahrain.<sup>24</sup> National-level aluminum prices vary beyond the LME and regional premia, meaning that price variations are “particular” to each national market. Although aluminum sheet prices are set in reference to the LME, differential impacts stemming from global overcapacity are reflected differently in the price of primary aluminum at the national level.
- In previous steel-industry PMS determinations, Commerce found that global distortions trigger other distortive market forces and other changes at the national level, making the global distortion “particular” to the national market. The petitioners provided extensive evidence of such effects in the Korean aluminum sheet market, such as a dramatic rise in the share of Chinese imports into Korea of aluminum sheet at significantly reduced prices.<sup>25</sup> Korea has no primary aluminum production capacity and, thus, imports all of its primary aluminum, leaving the Korean aluminum sheet market particularly sensitive to global distortions.<sup>26</sup> The Korean market is willing to absorb significant volumes of Chinese aluminum sheet and unwilling to insulate its domestic market through trade policy or

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<sup>17</sup> *Id.* at 7 (citing *Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2715 (January 16, 2020), and accompanying Issues and Decision Memorandum (IDM) at Comment 7).

<sup>18</sup> *Id.* at 7-8 (citing Post-Preliminary PMS Memorandum and Novelis/Ulsan PMS Comments).

<sup>19</sup> *Id.* at 8 (citing Petitioners Pre-Preliminary PMS Comments at 10).

<sup>20</sup> *Id.* (citing Novelis/Ulsan PMS Comments at 3).

<sup>21</sup> *Id.* at 8-9 (citing Petitioners PMS Allegation at 20-22).

<sup>22</sup> *Id.* (citing Petitioners PMS Allegation at 20-22 and Petitioners Pre-Preliminary PMS Comments at 10-11).

<sup>23</sup> *Id.* at 9 (citing Petitioners PMS Allegation at page 62 of Exhibit 2.13).

<sup>24</sup> *Id.* (citing Memorandum, “Post-Preliminary Analysis in the Countervailing Duty Investigation of Common Alloy Aluminum Sheet from Bahrain,” dated October 29, 2020).

<sup>25</sup> *Id.* at 10 (citing Petitioners PMS Allegation at 28-38).

<sup>26</sup> *Id.* at 11 (citing Petitioners PMS Allegation at 27).

remedial measures.<sup>27</sup> This has led to an unparalleled level of distortion in the Korean aluminum sheet market that, while not uniquely expressed in the Korean market, have eroded it such that Korean aluminum sheet prices can no longer be considered to be set competitively.<sup>28</sup>

- In support of their PMS allegation, the petitioners provided empirical analyses using Korean import data at the 6-digit level of Harmonized Tariff Schedule (HTS) subheading 7606.11 and 7606.12. However, Commerce asserted that HTS classification 7606.11 is a “basket” category which includes merchandise dissimilar to aluminum sheet which invalidates and distorts the petitioners’ analyses.<sup>29</sup> Yet Commerce provided no evidence that AUVs based on the 6-digit HTS subheading are distortive or unreliable and, instead, relied on Novelis/Ulsan’s data, which lacked information on the volume, value, and specific aluminum products imported under HTS 7606.11.
- Commerce has recognized import data at the 6-digit level as sufficiently product-specific, as HTS categories are only harmonized across countries at the 6-digit level, and additional 8- or 10-digit subheadings are defined by individual countries. This is reflected in Commerce’s practice. For instance, Commerce uses 6-digit level data for determining “significant” production in non-market economy proceedings, and Commerce will only reject surrogate values based on “basket” categories where record evidence demonstrates the data are unreliable.<sup>30</sup> Indeed, Commerce has recently used 4-digit level import data in the *CORE from Korea* PMS determination over 6-digit level data; yet Commerce abandoned that practice here and found that data at the 6-digit level are unacceptable without any explanation of why the 6-digit level aluminum data are prone to distortion.<sup>31</sup>
- Additionally, regarding the data used in the PMS allegation, Commerce criticized the exclusion of certain import data included in the scope of the investigation, namely HTS subheadings 7606.91 and 7606.92. This critique is misplaced. By relying on HTS subheadings 7606.11 and 7606.12 alone, the PMS allegation captures nearly the entirety of the aluminum sheet market, as HTS subheadings 7606.91 and 7606.92 only capture low-volume discrete lengths of aluminum sheet that have undergone some type of initial processing into non-rectangular shapes.<sup>32</sup> Subheadings 7606.91 and 7606.92 were included in the scope to prevent future circumvention or evasion and have a low quantitative impact; therefore, their exclusion does not affect the validity of the PMS allegation.
- Commerce misrepresents the petitioners’ arguments related to “fake semis,” which are not emphasized in the PMS allegation and do not play a major role in the non-market conditions present in the Korean aluminum sheet market.<sup>33</sup> Some evidence suggests that the Chinese export surges to Korea during the POI may have been fueled by “fake semis,” but the PMS

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<sup>27</sup> *Id.* (citing Petitioners PMS Allegation at 39-42).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 12 (citing Post-Preliminary PMS Memorandum at 9).

<sup>30</sup> *Id.* at 12-13 (citing *Wire Decking from the People’s Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 1597, 1599 (December 12, 2010); *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part; 2010-2011*, 78 FR 22513 (April 16, 2013), and accompanying IDM at 10; and *Sebacic Acid from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 69 FR 75303 (December 16, 2004), and accompanying IDM at 8).

<sup>31</sup> *Id.* at 13-14 (citing *Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 15114 (March 17, 2020) (*CORE from Korea*), and accompanying IDM at 35).

<sup>32</sup> *Id.* at 15 (citing Volume I of the Petition at Exhibit GEN-5).

<sup>33</sup> *Id.* at 15-16 (citing Post-Preliminary PMS Memorandum at 10 and Petitioners PMS Allegation at 22-23 and 40).

allegation does not address the specific price suppressive effects of “fake semis” or establish a relationship between “fake semis” and price distortions in the Korea aluminum sheet market.<sup>34</sup>

- Commerce’s PMS determination must be based on market-wide conditions rather than individual companies’ pricing or purchase data, which Commerce has recognized in steel proceedings.<sup>35</sup> Commerce discarded this practice and asserted that the petitioners were responsible for this deviation because they made company-specific arguments.<sup>36</sup> The preliminary decision, however, was made in response to a flawed single company price correlation which informed Commerce’s analysis of product specificity, global aluminum overcapacity’s price suppression effects, and the global sensitivity of the Korean aluminum sheet market.<sup>37</sup>
- Novelis/Ulsan used a single correlation in its rebuttal, and the petitioners were obligated to address this argument to show how the global and market-wide conditions extend to Novelis/Ulsan.<sup>38</sup> Swayed by Novelis/Ulsan’s comments,<sup>39</sup> Commerce’s analysis incorrectly cited lack of product specificity and the influence of “fake semis,” while disregarding the market-wide considerations highlighted by the petitioners, such as the conversion premium component (CP) which accurately reflects the Korean aluminum sheet market, imports, and global conditions.<sup>40</sup>
- Novelis/Ulsan argues that the full price of 5052-series alloy must be considered and that the petitioners’ analysis does not do so; yet, the petitioners’ correlations rely on Novelis/Ulsan’s reported CP for products manufactured from 5052-series alloy.<sup>41</sup> The CP must be the focus, because otherwise the price correlation will largely capture exogenous developments in global aluminum markets, rather than specific distortions to the Korean aluminum sheet market.
- Novelis/Ulsan objected to conversion of its pricing data from Korean won (KRW) to U.S. dollars, but the LME is denominated in U.S. dollars and largely unaffected by exchange rate fluctuations in Korea, so the petitioners’ U.S. dollar-based analysis avoids distortion.<sup>42</sup> Additionally, Novelis/Ulsan argues for the use of the Korean producer price index (PPI) instead of the consumer price index (CPI), yet the CPI measures inflation while the PPI reflects movements in commodity market prices. Because the PMS analysis seeks to identify distortions to commodity prices, using the PPI would use a distorted price to try to measure distortion and would manipulate and undermine the actual observed relationship.

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<sup>34</sup> *Id.* at 16 (citing Petitioners PMS Allegation at 40).

<sup>35</sup> *Id.* at 17-19 (citing *Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 2715 (January 16, 2020), and accompanying IDM at 29; *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 41538 (July 10, 2020), and accompanying IDM at 19; and *Biodiesel from Argentina: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 8837 (March 1, 2018), and accompanying IDM at 22).

<sup>36</sup> *Id.* at 19 (citing Post-Preliminary PMS Memorandum at 10).

<sup>37</sup> *Id.* at 20 (citing Petitioners Pre-Preliminary PMS Comments at 7-9 and Post-Preliminary PMS Memorandum at 10-11).

<sup>38</sup> *Id.* at 20-21 (citing Novelis/Ulsan PMS Comments at 2-4; Petitioners PMS Allegation at 36-38; and Petitioners Pre-Preliminary PMS Comments at 11-12).

<sup>39</sup> *Id.* at 21 (citing Novelis/Ulsan PMS Sur-Rebuttal Reply).

<sup>40</sup> *Id.* at 21-22 (citing Post-Preliminary PMS Memorandum at 11; Novelis/Ulsan PMS Sur-Rebuttal Reply at 4; and Petitioners PMS Allegation at page 3 of Exhibit 3.10).

<sup>41</sup> *Id.* at 22 (citing Novelis/Ulsan PMS Sur-Rebuttal Reply at 4-5 and Petitioners Pre-Preliminary PMS Comments at Attachment A).

<sup>42</sup> *Id.* (citing Novelis/Ulsan PMS Sur-Rebuttal Reply at 6).

*Novelis/Ulsan's Rebuttal Brief:*

- Commerce correctly found that the petitioners failed to demonstrate the existence of a price-based PMS and none of the petitioners' arguments provides a compelling reason to reverse Commerce's preliminary decision.
- Commerce preliminarily found that import data from the six-digit HTS subheadings used in the petitioners' analysis are over-inclusive. These HTS subheadings include non-aluminum sheet products, such as "fake semis," which artificially lower the AUV under these HTS subheadings. The burden of demonstrating that the selected import data reasonably correspond with in-scope merchandise rests with the petitioners;<sup>43</sup> they did not meet this burden because they relied on overly-broad HTS subheadings and omitted other subheadings included in the scope altogether.
- While the petitioners argue that Commerce has accepted six-digit HTS data, and even four-digit HTS level data in other cases, the degree of correspondence between HTS categories and the scope varies widely between cases. Further, none of the cases cited by the petitioners involve price-based PMS allegations; these cases require less precision than price-based allegations because Commerce has a "strong preference for using home market prices in its AD calculations."<sup>44</sup>
- The petitioners argue that "fake semis" were not the focal point of their argument, but the import data used by the petitioners included "fake semis." "Fake semis" do not compete with aluminum sheet, and their inclusion in HTS subheadings 7606.11 and 7606.12 make it unreasonable to assume that domestic Korean aluminum sheet prices are distorted.
- Novelis/Ulsan products do not compete with Chinese imports because Novelis/Ulsan sells higher grade aluminum sheet (*e.g.*, alloy series 5052) while the aluminum sheet imported from China is lower quality and lower priced. Novelis/Ulsan provided data for the past five years showing a lack of a strong correlation between its home market aluminum sheet prices and Chinese imports under subheadings 7606.11 and 7606.12.<sup>45</sup> In fact, the data show a positive correlation, *i.e.*, as Chinese imports increase, Korea aluminum sheet prices also tend to increase.<sup>46</sup>
- Even assuming the petitioners' data are correct, which they are not, the only data analysis that supports their argument is the correlation between Chinese import prices and Novelis/Ulsan's CP. However, this correlation is extremely weak and even if it were a strong correlation, the CP is only a small component of domestic aluminum sheet pricing.<sup>47</sup>
- Novelis/Ulsan's pricing of high end aluminum sheet products is insulated from Chinese imports as it does not compete with them and, therefore, there was no need for Korea to protect its domestic industry by implementing trade remedies.<sup>48</sup> While the petitioners argued that Commerce should not consider the company-specific pricing analyses by Novelis/Ulsan, the analyses presented were representative of the Korean market as a whole because the market is dominated by Novelis/Ulsan and the petitioners provided no evidence of significant

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<sup>43</sup> See Novelis/Ulsan Rebuttal Brief at 2 (citing *Certain Steel Nails from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2014-2016, 83 FR 4028 (January 29, 2018), and accompanying IDM at Comment 1; and *Preamble*, 62 FR at 27357).

<sup>44</sup> *Id.* at 3 (citing Post-Preliminary PMS Memorandum at 11).

<sup>45</sup> *Id.* at 5 (citing Novelis/Ulsan PMS Comments at 4-5 and Attachments 5 and 6 and Novelis/Ulsan PMS Sur-Rebuttal Reply at 2-6 and Attachments 1-4).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 6 (citing Post-Preliminary PMS Memorandum at 11; and Novelis/Ulsan PMS Sur-Rebuttal Reply at 3-6).

<sup>48</sup> *Id.* (citing Post-Preliminary PMS Memorandum at 11).

production by any other Korean entities.<sup>49</sup> Moreover, Novelis/Ulsan's analysis was for product series 5052, which comprised a large percentage of sales; if these sales were not distorted by Chinese imports, it is difficult to see how the market as a whole could be distorted.

- Any distortions in the LME price and regional premia are not specific to Korea, which is consistent with Commerce's PMS decisions in the companion Bahrain and Oman aluminum sheet investigations.<sup>50</sup> Indeed, given the global nature of the LME, if Commerce found every aluminum sale that incorporated an LME component to be unusable, Commerce would not be able to rely on prices for foreign like product in any of the 18 pending aluminum sheet AD investigations.
- While the petitioners argue that Commerce has found that national economies may respond to excess global capacity in steel cases in a way that creates a PMS, the steel industry has no equivalent pricing benchmark to the LME. By definition, the LME is not particular to a national market as it reflects the global market and establishes worldwide aluminum pricing.<sup>51</sup> The petitioners do not explain how the Korean market is affected differently than other national markets by distortions in the LME, and Novelis/Ulsan's pricing data contradict any such arguments.
- The petitioners argue that the LME price component accounts for an estimated 75 to 86 percent of total production costs for downstream semi-fabricated aluminum products, but the petitioners' PMS allegation is sales-based, not cost-based. There is nothing "particular" about primary aluminum comprising a significant portion of the cost of semi-finished aluminum products.<sup>52</sup>
- If the Korean home market price is distorted by the LME, U.S. prices are also necessarily distorted, and any such distortion would cancel itself out in the price-to-price dumping calculations. As a result, there is no need to resort to CV through application of a price-based PMS.<sup>53</sup>

### Commerce's Position:

We continue to find that the petitioners have not established the presence of a PMS in the Korean aluminum sheet market, and, therefore, we continue to use Novelis/Ulsan's home market sales as the basis for NV, pursuant to section 773(a)(1)(B) of the Act. As we stated in the Post-Preliminary PMS Memorandum, Commerce has a strong preference for using home market prices in its AD calculations.<sup>54</sup> As explained in *Shrimp from Thailand*, the Act explicitly directs

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<sup>49</sup> *Id.* at 7 (citing Post-Preliminary PMS Memorandum at 11 and Novelis/Ulsan PMS Sur-Rebuttal Reply at 2).

<sup>50</sup> *Id.* at 8 (citing *Common Alloy Aluminum Sheet from Bahrain: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 65372 (October 15, 2020), and accompanying PDM at 10-12; and *Common Alloy Aluminum Sheet from the Sultanate of Oman: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Negative Determination of Critical Circumstances, and Postponement of Final Determination*, 85 FR 65340 (October 15, 2020), and accompanying PDM at 17-19).

<sup>51</sup> *Id.* at 8 (citing Novelis/Ulsan PMS Sur-Rebuttal Reply at Attachment 5).

<sup>52</sup> *Id.* at 9.

<sup>53</sup> *Id.* at 9-10.

<sup>54</sup> See Post-Preliminary PMS Memorandum at 11.



Commerce to rely on home market prices as its normal practice and, as a result, we have “established a high threshold for rejecting home market sales based on an allegation of a PMS.”<sup>55</sup>

Based on our evaluation of the record facts and the parties’ comments, we continue to find that the petitioners have not established that Korean aluminum sheet prices are distorted by global overcapacity, or by attendant conditions within the Korean aluminum sheet market. The PMS allegation and supporting information do not demonstrate that these factors, when considered individually or cumulatively, prevent a comparison between the price of products sold in the Korean and U.S. markets during the POI. The *Preamble* to Commerce’s AD regulations states that “the party alleging the existence of a ‘particular market situation’ or that sales are not ‘representative’ has the burden of demonstrating that there is a reasonable basis for believing that a ‘particular market situation’ exists or that sales are not ‘representative.’”<sup>56</sup> The petitioners have not met this burden here. Therefore, for the reasons explained further below, we do not find a price-based PMS in the Korean market for aluminum sheet.

As discussed in the Post-Preliminary PMS Memorandum, the petitioners’ initial PMS analysis using import data is flawed because the petitioners rely on two six-digit HTS subheadings (7606.11 and 7606.12) that did not closely correspond to the subject merchandise. While these subheadings include several 10-digit categories identified in the scope of this investigation, the six-digit subheadings are basket categories which include merchandise that is dissimilar to the subject merchandise.<sup>57</sup> Because these subheadings include a variety of products that are not subject to the scope of this investigation, any observed relationship may, in fact, be capturing effects relating to non-subject merchandise.

The petitioners themselves highlighted the potential impact of imports of “fake semis,” which are not subject merchandise, yet are covered by the subheadings above, as noted in the Post-Preliminary PMS Memorandum.<sup>58</sup> The petitioners now attempt to downplay this aspect of their allegation, and argue that the issue of “fake semi” imports was not emphasized in the PMS allegation and that they do not play a major role in the non-market conditions present in the Korean aluminum sheet market. Whether or not the petitioners’ narrative focused on “fake semis,”<sup>59</sup> that does not change the fact that the importation of “fake semis” is relevant to the PMS allegation. “Fake semis” are included in HTS subheadings 7606.11 and 7606.12, although they are not aluminum sheet, and evidence suggests that the Chinese export surge to Korea during the POI may have been fueled by “fake semis.”<sup>60</sup> Given the evidence on the record that

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<sup>55</sup> See *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 76 FR 40881 (July 12, 2011) (*Shrimp from Thailand*), and accompanying IDM at Comment 3.

<sup>56</sup> See *Preamble*, 62 FR at 27357.

<sup>57</sup> For instance, the subheading includes plate exceeding 6.3 millimeters, can stock, non-alloyed aluminum, and all non-1XXX, 3XXX, or 5XXX series alloyed aluminum. See Post-Preliminary PMS Memorandum at 9.

<sup>58</sup> While fake semis are often melted into ingots prior to importation, this is ostensibly not always the case. See, e.g., Petitioners’ Letter, “Antidumping Investigation Concerning Common Alloy Aluminum Sheet from Korea – Petitioners’ Response to Department’s Supplemental Bracketing Instructions Regarding Price-Based Particular Market Situation Allegation,” dated August 26, 2020, at Exhibit 2.2, pages 27, 70-71.

<sup>59</sup> The petitioners claim that Commerce “misunderstands” the relevance of fake semis and asserts that “fake semis are not the focal point of the Petitioners’ allegations and are not emphasized in any manner.” See Petitioners Case Brief at 22-23. We note that the PMS allegation stated that “industry analysts believe China’s exports of fake semis likely surged in 2019,” and the allegation contained a heading titled “**China’s Export of Fake Semis Further Distorts the Aluminum Market.**” *Id.* at 22-23 (emphasis in original).

<sup>60</sup> See Petitioners PMS Allegation at 40 and Exhibit 3.13.

the import surge from China to Korea may have been affected by “fake semis” and the fact that the broad six-digit subheadings used by the petitioners for their analysis include non-subject merchandise, including “fake semis,” the data on which the petitioners based their PMS analysis are not specific to aluminum sheet, and, therefore, do not demonstrate the existence of a PMS in Korea relating to in-scope aluminum sheet.

Additionally, two other six-digit HTS subheadings (7606.91 and 7606.92), which are included in the scope of the investigation, are not used at all in the petitioners’ PMS analysis. The petitioners argue that those two subheadings were included in the scope to prevent future circumvention or evasion and have a low quantitative impact, and their exclusion from their PMS analysis does not affect the validity of the PMS allegation; however, because there are no data on the record regarding the quantity and corresponding impact of these two subheadings, the petitioners’ assertion that these subheadings do not affect the PMS allegation is unsupported.

The unsuitability of the HTS subheadings relied on by the petitioners is also highlighted by the product mix sold by Novelis/Ulsan. Novelis/Ulsan has shown that a large portion of the Korean aluminum sheet market consists of higher grade aluminum sheet (*e.g.*, alloy series 5052) which contrasts with the varieties of aluminum sheet imported from China, including the above-referenced “fake semis.”<sup>61</sup> These product differences undermine the petitioners’ assertions regarding the convergence of import prices and domestic prices.

The petitioners state that “Commerce abandons past practice to find import AUVs calculated at the 6-digit level unacceptable.”<sup>62</sup> We made no finding with respect to any requisite HTS specificity level. Data provided at the 6-digit level – or at the 4-digit level – may very well provide an adequate basis for a PMS allegation, in the appropriate context.<sup>63</sup> For the reasons detailed above, however, the record contains information demonstrating that the 6-digit categories relied on for this particular allegation are overly broad and include substantial amounts of non-subject merchandise; thus, here, data at this level do not clearly support the petitioners’ allegation.

Additionally, we note that, in discussing prices, the petitioners argue that Commerce incorrectly considered company-specific arguments regarding Novelis/Ulsan, rather than focusing exclusively on a country-wide analysis. However, as we explained in the Post-Preliminary PMS Memorandum, the petitioners made company-specific arguments regarding Novelis/Ulsan —*i.e.*, the producer accounting for the majority of the Korean market for in-scope aluminum sheet – and, therefore, it is appropriate to consider the data analysis relating to Novelis/Ulsan,<sup>64</sup> within the larger context of our market-wide PMS finding.

As stated in the Post-Preliminary PMS Memorandum, all parties agree that Novelis/Ulsan’s prices are comprised of two components, the metal price and the CP. The metal price, which, by the petitioners’ own estimate represents 75-86 percent of the cost of production (COP), consists of two sub-parts, the base metal cost, determined by the global (LME) price, and a regional

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<sup>61</sup> See Post-Preliminary PMS Memorandum at 10; *see also* Novelis/Ulsan PMS Sur-Rebuttal Reply at 2.

<sup>62</sup> See Petitioners Case Brief at 14.

<sup>63</sup> Novelis/Ulsan correctly points out that the degree of correspondence between HTS subheadings and the scope varies greatly by product. As noted above, the record contains evidence of non-subject merchandise imports during the POI in the applicable HTS subheadings.

<sup>64</sup> See Post-Preliminary PMS Memorandum at 10.

premium.<sup>65</sup> However, Novelis/Ulsan uses the Japanese regional premium, rather than the Korean premium, in its pricing.<sup>66</sup> Nonetheless, the petitioners argue that national level aluminum prices vary beyond the LME and regional premia, which they argue means that price variations are “particular” to each national market. However, the LME price is the basis for pricing of aluminum all over the world and, as noted by the petitioners, this LME price – along with any regional premium – represents the majority (75-86 percent) of the price for downstream semi-fabricated products, such as aluminum sheet.<sup>67</sup> While the petitioners argue that Commerce has found that global distortions trigger other market forces at the national level, making the global distortion “particular” to the national market in steel cases, we must make determinations based on the facts of each case. The facts of this case show that the LME relied on for aluminum pricing is global in nature, and is added to regional premia, making the combined impact on pricing non-market specific. The only portion of the price that is country-specific is the CP, and we note that there is a weak, or even negative, correlation between increasing levels of Chinese imports and Novelis/Ulsan’s CP, depending on the particular analysis and model specification.<sup>68</sup>

Finally, the petitioners argue that the lack of remedial trade measures in Korea demonstrates a market distorted by aluminum sheet from China. However, as we noted in the Post-Preliminary PMS Memorandum, the lack of trade remedies in Korea may simply be because the Korean industry, dominated by Novelis/Ulsan – which sells high end aluminum sheet products – has not been affected by Chinese aluminum sheet imports in a manner that warrants the imposition of trade remedies.<sup>69</sup>

In sum, the petitioners’ empirical analysis of import data in Korea does not justify a departure from Commerce’s standard margin analysis methodology. In particular, the allegation is based on flawed data. Therefore, for the reasons noted above, we continue to find that the petitioners have not established the presence of a PMS in the aluminum sheet market.

## **Comment 2: G&A Expense Ratio**

Novelis/Ulsan calculated separate G&A expense ratios for Novelis Korea and Ulsan and applied these ratios to each company’s own production. We accepted Novelis/Ulsan’s reported data, with one minor adjustment, in the *Preliminary Determination*; this adjustment did not alter the ratio that Novelis/Ulsan reported.<sup>70</sup>

### *Petitioners’ Case Brief:*

- Commerce should calculate a combined G&A expense ratio for Novelis and Ulsan and apply it to all products produced by Ulsan.<sup>71</sup>

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

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* (citing Novelis/Ulsan PMS Sur-Rebuttal Reply at Attachment 5).

<sup>68</sup> *Id.* Because we have found that the petitioners’ allegation suffers from several critical data deficiencies, we do not address the parties’ arguments relating to the appropriate indexes to rely on for inflation adjustments in the quantitative component of the petitioners’ allegation.

<sup>69</sup> *Id.* at 11.

<sup>70</sup> See Memorandum, “Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Novelis Korea Limited and Ulsan Aluminum Limited,” dated October 6, 2020.

<sup>71</sup> See Petitioners Case Brief at 24.

- Given the relatively recent split-off of the Ulsan production facilities from Novelis Korea, and instances of shared services and intercompany transactions related to those shared services, using an uncombined Ulsan-only G&A expense ratio fails to capture the full extent of G&A costs that support Ulsan's production and sales activities.<sup>72</sup>
- G&A activities (*i.e.*, research and development (R&D) activities, executive salaries and bonuses, and operations related to a company's headquarters) involve not only manufacturing operations but also sales-related activities; therefore, a portion of Novelis Korea's G&A should be allocated to Ulsan because Novelis Korea sells Ulsan's products.<sup>73</sup>
- Novelis/Ulsan acknowledges that Novelis Korea and Ulsan should be collapsed as a single entity. Therefore, transactions between the two companies would be considered intra-company transfers, and any profit associated with the transfers would be eliminated. If collapsing is appropriate with respect to materials transfers between the two companies, then collapsing is also appropriate for the calculation of G&A expenses.<sup>74</sup>
- Not all of the G&A support provided by Novelis Korea to Ulsan has been captured by intercompany charges. For example, the record demonstrates that Novelis Korea is performing R&D for Ulsan.<sup>75</sup>
- The record shows shared services between Novelis Korea and Ulsan and there appears to be overlap in management and directors between the two companies.<sup>76</sup>

*Novelis/Ulsan's Rebuttal Brief:*

- The G&A expense ratios used in the *Preliminary Determination* are consistent with Commerce's established practice. That is, Commerce calculates the G&A expense ratio separately for the companies of a collapsed respondent and applies the separate ratios to each company's cost of manufacturing before weight averaging their costs of production together.<sup>77</sup>
- Ulsan pays for G&A support services provided by Novelis Korea and such payments are already included in the numerator of Ulsan's G&A expense ratio.<sup>78</sup> The petitioners present no evidence that production-related G&A services were provided to Ulsan free of charge.
- The petitioners are correct that Novelis Korea incurs indirect selling expenses related to the sale of Ulsan-produced merchandise. However, those selling expenses have already been

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<sup>72</sup> *Id.* at 24-29.

<sup>73</sup> *Id.* at 26-29.

<sup>74</sup> *Id.* at 27-28 (citing Novelis/Ulsan's Letter, "Novelis Korea and Ulsan Aluminum Section D Response," dated June 22, 2020 (Novelis/Ulsan June 22, 2020 DQR), at 10; and Novelis/Ulsan's Letter, "Novelis Korea Limited and Ulsan Aluminum Limited Supplemental Section D Response," dated September 11, 2020 (Novelis/Ulsan September 11, 2020 SDQR), at 6-7).

<sup>75</sup> *Id.* at 28 (citing Novelis/Ulsan's Letter, "Novelis Korea and Ulsan Aluminum Section A Response," dated May 26, 2020 (Novelis/Ulsan May 26, 2020 AQR), at 9).

<sup>76</sup> *Id.* (citing Novelis/Ulsan May 26, 2020 AQR at 15-16).

<sup>77</sup> See Novelis/Ulsan Rebuttal Brief at 11-12 (citing *Rubber Bands from Thailand*, Notice of Final Determination of Sales at Less Than Fair Value, 84 FR 8304 (March 7, 2019) (*Rubber Bands from Thailand*), and accompanying IDM at Comment 6; *Certain Steel Nails from Malaysia: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 9753 (March 18, 2019) (*Nails from Malaysia*), and accompanying IDM at Comment 1; *Steel Concrete Reinforcing Bar from Mexico: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 27233 (June 14, 2017), and accompanying IDM at Comment 12; and Novelis/Ulsan June 22, 2020 DQR at Exhibit D-1).

<sup>78</sup> *Id.* at 13-14 (citing Novelis/Ulsan September 11, 2020 SDQR at 5-6 and Exhibits SSD-6 and SSD-7; and *Final Determination of Sales at Not Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire from Thailand*, 79 FR 25574 (May 5, 2014), and accompanying IDM at Comment 4).

captured in the INDIRSH and INDIRSU fields in the home market and U.S. sales listings. Therefore, it is unnecessary to attribute Novelis Korea's G&A expenses to Ulsan in order to capture Novelis Korea's sales-related activities for the sale of Ulsan-produced merchandise.<sup>79</sup>

- It would be distortive for Commerce to increase Ulsan's production costs by the G&A expenses incurred by Novelis Korea because assigning the sum of both Ulsan's and Novelis Korea's G&A ratios effectively results in double counting. Novelis Korea does not resell all of the merchandise produced by Ulsan, and the companies produce a different product mix.<sup>80</sup>
- Any G&A expenses attributable to selling activities are *de minimis*, given that Novelis Korea's selling expenses are dwarfed by its manufacturing costs. Regardless, Commerce's practice is to assign G&A expenses to manufacturing costs, not to selling expenses.<sup>81</sup>
- The questionnaire instructs respondents to include in the denominator of the G&A expense ratio the cost of goods sold (COGS) per the audited financial statements, which includes both the cost of manufacturing finished goods and the cost of purchased merchandise.<sup>82</sup>
- Commerce could exclude from the denominator of Novelis Korea's G&A expense ratio calculation the merchandise purchased from Ulsan in order to ensure that Novelis Korea's G&A expense ratio is applied consistently with what is in the denominator of the calculation.<sup>83</sup>
- The petitioners cite no precedent for treating a reseller's G&A expenses as part of the producer's COP.<sup>84</sup>

### Commerce's Position:

Section 773(b)(3)(B) of the Act provides that, for purposes of calculating COP, Commerce shall include "an amount for selling, general and administrative (SG&A) expenses based on actual data pertaining to the production and sales of the foreign like product by the exporter in question."<sup>85</sup> The law does not prescribe a specific methodology for calculating the G&A expenses. Where the Act is silent or ambiguous on a specific issue, the determination of a reasonable and appropriate method is left to the discretion of Commerce.<sup>86</sup> Because there is no bright-line definition in the Act of what constitutes G&A expenses, or precisely how to calculate a G&A expense ratio, Commerce has developed a consistent and predictable approach to calculate and allocate G&A expenses.<sup>87</sup>

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<sup>79</sup> *Id.* at 11 (citing Novelis/Ulsan's Letter, "Novelis Korea Limited and Ulsan Aluminum Limited Supplemental Sections B and C Response," dated July 30, 2020, at Exhibit SBC-15).

<sup>80</sup> *Id.* at 12 (citing Novelis/Ulsan May 26, 2020 AQR at 2-3 and 34-35; and *Nails from Malaysia* IDM at Comment 1).

<sup>81</sup> *Id.* at 14 (citing Novelis/Ulsan's Letter, "Novelis Korea Limited and Ulsan Aluminum Limited Supplemental Section D Response," dated August 11, 2020 (Novelis/Ulsan August 11, 2020 SDQR), at Exhibit SD-20).

<sup>82</sup> *Id.* at 14-15 (citing Novelis/Ulsan June 22, 2020 DQR at 46).

<sup>83</sup> *Id.* at 15-16.

<sup>84</sup> *Id.* at 15.

<sup>85</sup> See section 773 of the Act.

<sup>86</sup> Antidumping investigations are complex and complicated matters in which Commerce has particular expertise and, thus, Commerce's determinations are entitled to deference. See *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984) ("[I]f the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute").

<sup>87</sup> See *Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea, Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination*, 77 FR 17413 (March 26, 2012), and accompanying IDM at Comment 35.

It is Commerce's practice to calculate the G&A expense ratio separately for the companies of a collapsed respondent and to apply the separate ratios to each company's cost of manufacturing before weight-averaging its costs of production together.<sup>88</sup> Therefore, in keeping with Commerce's practice with regard to collapsed entities, we have continued to calculate and apply company-specific G&A expense ratios for this final determination. We find that there were shared G&A services between Novelis Korea and Ulsan, but Ulsan paid Novelis Korea for these services and included the cost of the services in the numerator of Ulsan's G&A expense ratio calculation.<sup>89</sup> With respect to the petitioners' assertion that, if collapsing is appropriate for materials transferred between the two companies then collapsing is also appropriate for G&A services, we note that the G&A services received by Ulsan from Novelis Korea were reported at the cost of those services, in the same manner as Novelis/Ulsan's reporting of the materials transferred between the two companies. Further, there is no evidence that the R&D facility located at Ulsan, and leased by Novelis Korea, conducts services for Ulsan free of charge; nor is there evidence that the overlapping management and direction cited by the petitioners were received by Ulsan free of charge. Therefore, based on record evidence, we find that Ulsan's G&A expense ratio has not been understated.

In this case, however, we find that a substantial portion of the production of Ulsan was sold to Novelis Korea for resale to unaffiliated customers, and the cost of these products was included in the COGS denominator of Novelis Korea's G&A expense ratio calculation as resold merchandise. As such, the COGS denominators in the calculation of the individual G&A expense ratios for both companies included the COGS of Ulsan's production. Therefore, in order to avoid double counting of the COGS for Ulsan's production in the denominators of both G&A expense ratio calculations, we removed the COGS from the denominator of Novelis Korea's G&A expense ratio calculation for the products Novelis Korea purchased from Ulsan.

### **Comment 3: Affiliated Party Transactions**

#### *Petitioners' Case Brief:*

- Commerce should make an arm's-length adjustment to the reported cost of sheet ingots under section 773(f)(3) of the Act, *i.e.*, the major input rule.
- The record shows that the affiliated supplier's COP of sheet ingots exceeds the average transfer price paid to the affiliate for sheet ingots. Therefore, in accordance with the major input rule, Commerce should make an upward adjustment to the reported costs of sheet ingots.<sup>90</sup>

*Novelis/Ulsan did not comment on this issue.*

#### **Commerce's Position:**

Novelis/Ulsan purchased sheet ingots for use in both the Yeongju (*i.e.*, Novelis Korea's factory) and Ulsan facilities.<sup>91</sup> As the affiliated sheet ingot purchases are extremely small, representing

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<sup>88</sup> See *Rubber Bands from Thailand* IDM at Comment 6.

<sup>89</sup> See Novelis/Ulsan September 11, 2020 SDQR at 5-6 and Exhibits SSD-6 and SSD-7.

<sup>90</sup> See Petitioners Case Brief at 29-30.

<sup>91</sup> See Novelis/Ulsan Supplemental August 11, 2020 SDQR at 5.

an insignificant percentage of the total costs of manufacturing,<sup>92</sup> we do not consider these transactions to qualify as major inputs. Accordingly, we evaluated the purchases of sheet ingots under section 773(f)(2) of the Act (*i.e.*, the transactions disregarded rule). We compared the transfer price paid to the affiliated party for sheet ingots to the market price for sheet ingots<sup>93</sup> and found that the transactions occurred at a fair market price. Therefore, we continue to accept Novelis/Ulsan's sheet ingot costs as reported.

#### **Comment 4: Deduction of Section 232 Duties from U.S. Price**

Novelis/Ulsan reported that it paid Section 232 duties on all of its U.S. sales with delivered duty paid (DDP) sales terms, and then received reimbursements from its customers for those duties.<sup>94</sup> Novelis/Ulsan also reported, in the narrative of its section C response, that the gross unit price field (GRSUPRU) in its U.S. sales listing was reported net of such duties, while it reported the value of the Section 232 duties in a separate field (*i.e.*, USDUTY2U).<sup>95</sup> In the *Preliminary Determination*, we subtracted USDUTY2U from GRSUPRU in our calculation of U.S. price.<sup>96</sup>

#### *Novelis/Ulsan's Case Brief:*

- Novelis/Ulsan reported two delivery terms for its U.S. sales, DAP (Delivered at Place) and DDP. For DAP sales, the customer is the importer of record and pays the Section 232 duties, and for DDP sales, Novelis/Ulsan is the importer of record and pays the Section 232 duties. For the DDP sales, Novelis/Ulsan's invoice shows the DAP value (*i.e.*, the value reported in the field GRSUPRU), U.S. import duties, and the total DDP value, which is the sum of the DAP value and the U.S. import duties.<sup>97</sup>
- For DDP sales, record evidence demonstrates that the values reported in the field GRSUPRU correspond to the DAP value of the merchandise and do not include the import duties, which are separately reported in the field USDUTY2U. Novelis/Ulsan's freight forwarder initially pays the Section 232 duties at the time of importation and, subsequently, Novelis/Ulsan pays the Section 232 duties to its freight forwarder. Finally, Novelis/Ulsan's customer pays the entire DDP value of the invoice to Novelis/Ulsan, including the DAP value and the U.S. import duties.<sup>98</sup>
- Commerce's established practice is that Section 232 duties are U.S. import duties under section 772(c)(2)(A) of the Act that should be deducted from the U.S. price when "included in such price."<sup>99</sup> However, a deduction is inappropriate when the Section 232 duties are not included in the reported prices. Here, such duties are not for included in the price reported in

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<sup>92</sup> *Id.*

<sup>93</sup> See Novelis/Ulsan September 11, 2020 SDQR at Exhibit SSD-3.

<sup>94</sup> See Novelis/Ulsan Section C Response at 27, 56-57, and Exhibit C-13.

<sup>95</sup> *Id.*

<sup>96</sup> See Memorandum, "Analysis for the Preliminary Determination in the Investigation of Common Alloy Aluminum Sheet from the Republic of Korea: Novelis/Ulsan," dated October 6, 2020 (Novelis/Ulsan Preliminary Analysis Memorandum), at 3.

<sup>97</sup> See Novelis/Ulsan Case Brief at 1-4.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 3 (citing section 772(c)(2)(A) of the Act; *Certain Corrosion-Resistant Steel Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 16613 (March 24, 2020), and accompanying IDM at Comment 1; and *Light-Walled Rectangular Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017-2018*, 85 FR 21829 (April 20, 2020), and accompanying IDM at Comment 2).

the field GRSUPRU.<sup>100</sup> Commerce's U.S. net price calculation in the *Preliminary Determination* erroneously deducted the field USDUTY2U from the field GRSUPRU, resulting in a double deduction of U.S. import duties. Therefore, Commerce should revise its programming to remove the incorrect deduction of U.S. import duties, as Novelis/Ulsan's U.S. prices are already reported net of duties.

*Petitioners' Rebuttal Brief:*

- The record does not support Novelis/Ulsan's claim that it was always reimbursed by its U.S. customers for Section 232 duties associated with DDP sales, because Novelis/Ulsan reported only expenses for paying Section 232 duties with no corresponding revenue field.<sup>101</sup> The burden to provide evidence demonstrating the payment of the Section 232 duties was on Novelis/Ulsan, and it failed to provide such evidence.<sup>102</sup> There is only a single sample DDP invoice on the record. Although documentation for this sale shows that the customer paid the full DDP price, Commerce cannot assume this same process applied to all DDP transactions.<sup>103</sup> For the other reported DDP sales, there is no evidence to support the claim that the customer paid the Section 232 duties, or that the reported gross unit prices exclude these duties.<sup>104</sup>
- Finally, Novelis/Ulsan's argument is inconsistent with the stated terms of "DDP," because under this sales term the seller incurs all expenses to deliver the merchandise to the customer's location. Given this, Commerce correctly deducted Section 232 duties from the U.S. price for all DDP sales. However, if Commerce agrees with Novelis/Ulsan's argument, it should revise its calculation of U.S. net price only for the one sale with supporting documentation on the record.<sup>105</sup>

**Commerce's Position:**

We agree with Novelis/Ulsan that we incorrectly deducted Section 232 duties from the price for DDP sales because Novelis/Ulsan reported the prices to Commerce net of duties paid. Novelis/Ulsan explained in its questionnaire responses that its invoices for DDP sales separately listed the DAP value of the merchandise, the Section 232 duties, and the combined value of the two, *i.e.*, the DDP value.<sup>106</sup> Novelis/Ulsan explained that, when reporting these DDP transactions in its sales listing, it reported the DAP value of the merchandise (*i.e.*, the value without Section 232 duties) in the field GRSUPRU, and it separately reported the value of the

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<sup>100</sup> *Id.* at 3-4 (citing *Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Final Results of Antidumping Duty Administrative Review, 2017-2018*, 85 FR 3618 (January 22, 2020), and accompanying IDM at Comment 2; and *Welded Carbon Steel Standard Pipes and Tubes from India: Preliminary Results of Antidumping Duty Administrative Review, 2017-2018*, 84 FR 33916 (July 16, 2019), and accompanying PDM at 14, unchanged in *Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review, 2017-2018*, 85 FR 2715 (January 16, 2020)).

<sup>101</sup> See Petitioners Rebuttal Brief at 2-5 (citing Novelis/Ulsan's Letter, "Novelis Korea and Ulsan Aluminum Section C Response," dated June 18, 2020 (Novelis/Ulsan June 18, 2020 CQR), at 26-27).

<sup>102</sup> *Id.* at 4 (citing *Essar Steel v. United States*, 678 F.3d 1268, 1277 (Fed. Cir. 2012) (citing *Zenith Elecs. Corp. v. United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993))).

<sup>103</sup> *Id.* at 2 and 5 (citing Novelis/Ulsan May 26, 2020 AQR at Exhibit A-21).

<sup>104</sup> *Id.* at 6 (citing Novelis/Ulsan's Letter, "Novelis Korea Limited Second Supplemental Sections B and C Response," dated September 3, 2020 (Novelis/Ulsan September 3, 2020 SBCQR), at Exhibit SSBC-6).

<sup>105</sup> *Id.* at 7.

<sup>106</sup> See Novelis/Ulsan June 18, 2020 CQR at 27, 56-57, and Exhibit C-13.



Section 232 duties in the field USDUTY2U.<sup>107</sup> However, in the preliminary programming, we incorrectly deducted USDUTY2U from GRSUPRU when, in fact, GRSUPRU was already net of USDUTY2U.<sup>108</sup> Therefore, we have revised our programming to no longer deduct USDUTY2U from GRSUPRU.<sup>109</sup>

Although the petitioners argue that the record does not support Novelis/Ulsan's claims regarding these DDP sales, the record evidence does, in fact, support Novelis/Ulsan's description of its DDP sales. The record contains two invoices relating to DDP sales and both show the DAP value, the Section 232 duties value, and the DDP value listed separately.<sup>110</sup> One of these invoices was for a sale outside the POI and, therefore, we cannot compare the invoice to the reporting of the sale in the U.S. sales listing. However, for the other invoice, the DAP merchandise value (*i.e.*, the value net of duties) corresponds to the value reported in the field GRSUPRU and the Section 232 value corresponds to the value reported in the field USDUTY2U. Additionally, for this invoice, Novelis/Ulsan provided a payment letter from the customer as well as a bank transfer confirmation, both of which show the payment by the customer of the full DDP invoice value (*i.e.*, the DAP value plus the Section 232 duties).<sup>111</sup>

The petitioners argue that Commerce cannot conclude, based on this one example, that all DDP sales to other customers, or even all other sales to this customer, followed this same pattern. However, the petitioners propose an unrealistic reporting standard. Commerce does not require documentation for every sale subject to a price adjustment for every customer in a sales listing. Here, the sample DDP sale shows that Section 232 duties were not included in the reported gross unit price and that the customer did pay Novelis/Ulsan for the full value of the invoice, which includes these duties. Any argument by the petitioners to the contrary is mere speculation that asks Commerce to disregard the record evidence in favor of a decision based on unsupported conjecture. Commerce must base its decisions on the record evidence, which here supports Novelis/Ulsan's arguments that the preliminary programming incorrectly deducted Section 232 duties from DDP sales.

While the petitioners argue that Novelis/Ulsan's description of DDP sales terms, in general, is incorrect, Novelis/Ulsan fully explained what the DDP term meant in the context of its sales. Novelis/Ulsan stated that its DDP sales term means that "{a}ll freight costs to the customer's delivery place and import clearance costs are paid by Novelis Korea."<sup>112</sup> Novelis/Ulsan did, in fact, initially cover these costs, as the importer of record.<sup>113</sup> Regardless of whether Novelis/Ulsan's characterization of sales as "DDP" comports with the definition as understood by the petitioners or by international traders, more generally, Novelis/Ulsan's response was clear as to how the costs were incurred and reported.

While the petitioners argue that Novelis/Ulsan reported no corresponding revenue to the duty expenses reported in USDUTY2U, we note that this was unnecessary as the total invoice value

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<sup>107</sup> *Id.*

<sup>108</sup> See Novelis/Ulsan Preliminary Analysis Memorandum at 3.

<sup>109</sup> See Memorandum, "Analysis for the Final Determination in the Investigation of Common Alloy Aluminum Sheet from the Republic of Korea: Novelis/Ulsan," dated March 1, 2021.

<sup>110</sup> See Novelis/Ulsan May 26, 2020 AQR at Exhibit A-21; and Novelis/Ulsan September 3, 2020 SBCQR at Exhibit SSBC-6.

<sup>111</sup> See Novelis/Ulsan May 26, 2020 AQR at Exhibit A-21.

<sup>112</sup> See Novelis/Ulsan June 18, 2020 CQR at 24.

<sup>113</sup> *Id.* at Appendix V.

(i.e., DDP value) includes the value of the Section 232 duties. As is evidenced by the DDP invoice with corresponding payment documentation, and as explained by Novelis/Ulsan, the revenue received for its DDP sales is the sum of (GRSUPRU + USDUTY2U) \* QTYU. In this case, the payment amount of the invoice is the DDP price. Although Novelis/Ulsan chose to break down the DDP price into two reported fields (i.e., GRSUPRU and USDUTY2U), it is still a single DDP price that is charged to the customer and paid by the customer. We agree with the petitioners that Commerce generally requires respondents to report movement revenue in separate fields in their sales databases,<sup>114</sup> and our practice also is to include such revenue in the dumping calculation as an offset to the underlying expense. However, here, requiring separate revenue and expense fields is unnecessary because the starting price in the margin analysis is the DAP price, and, thus, it is already net of the full amount of the Section 232 duties in question. As noted above, the sample documentation on the record does not call this reporting into question. Rather, Novelis/Ulsan's reporting methodology is substantiated by record evidence of a customer paying the full DDP invoice value; no evidence shows that customers either over or underpaid Novelis/Ulsan for the Section 232 duties. Accordingly, we accept Novelis/Ulsan's reporting as accurate.

In light of the discussion above, and because record evidence supports Novelis/Ulsan's description of its reporting of DDP sales, we have revised our programming to no longer deduct USDUTY2U from GRSUPRU for these sales, as GRSUPRU is already reported net of Section 232 duties.

## V. 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 of the investigation and the final estimated weighted-average dumping margins in the *Federal Register*.

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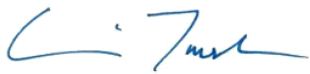
Agree

☐

Disagree

3/1/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance