



A-520-807
Administrative Review
POR: 12/1/2017 - 11/30/2018
Public Document
E&C/OII: MR/EWH

November 23, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Enforcement and Compliance

SUBJECT: Issues and Decision Memorandum for the Final Results of the
2017-2018 Administrative Review of the Antidumping Duty Order
on Circular Welded Carbon-Quality Steel Pipe from the United
Arab Emirates

I. SUMMARY

We analyzed the comments of interested parties in the 2017-2018 administrative review of the antidumping duty (AD) order on circular welded carbon-quality steel pipe (CWP) from the United Arab Emirates (UAE). As a result of our analysis, we made changes to the margin calculations from the *Preliminary Results*¹ for Universal Tube and Plastic Industries, Ltd. (UTP) /THL Tube and Pipe Industries LLC (TTP)/KHK Scaffolding and Formwork LLC (KHK) (collectively, Universal),² as well as the eighteen companies not selected for individual

¹ See *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 7279 (February 7, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² Commerce previously determined that Universal is a collapsed entity consisting of the following three producers/exporters of subject merchandise: Universal Tube and Plastic Industries, Ltd.; KHK Scaffolding and Framework LLC; and Universal Tube and Pipe Industries LLC. See *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 36881 (June 8, 2016), and accompanying Preliminary Decision Memorandum (PDM), unchanged in *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 81 FR 75030 (October 28, 2016), and accompanying Issues and Decision Memorandum (IDM). Because there is no information on the record of this administrative review that would lead us to revisit this determination, we are continuing to treat these companies as part of a single entity for purposes of this administrative review. Additionally, we previously determined that THL Tube and Pipe Industries LLC is the successor-in-interest to Universal Tube and Pipe Industries LLC. See *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 44845 (August 27, 2019).

examination.³ We continue to find that Conares Metal Supply Ltd. (Conares) and Universal made sales at prices below normal value (NV), and we are applying the simple average of the cash deposit rates for these two companies to the eighteen companies not selected for individual examination.

We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of issues in this administrative review for which we received comments from the interested parties.

Conares-Specific Issues

1. Application of Adverse Facts Available (AFA) Based on Alleged Duty Avoidance Scheme
2. Failure to Cooperate

Universal-Specific Issues

3. Universal Level of Trade (LOT) Adjustment
4. Section 232 Duties
5. Convert Currency for Universal Sales
6. Adjust Universal Surrogate Production Cost

II. BACKGROUND

On February 7, 2020, the Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review in the *Federal Register*.⁴ This review covers 20 producers and exporters. The period of review (POR) is December 1, 2017 through November 30, 2018.⁵

In January 2020, we issued supplemental questionnaires to Conares and Universal. We received responses to these supplemental questionnaires from February through April 2020.

We invited parties to comment on the *Preliminary Results*. On April 23, 2020, we postponed the final results until June 8, 2020.⁶ Also in April 2020, we received case briefs from the petitioners,

³ These companies are: Abu Dhabi Metal Pipes and Profiles Industries Complex; Ajmal Steel; Al Mansoori Industrial Supply; Baker Hughes EHO Ltd.; BioAir Solutions LLC; Bridgeway Shipping & Clearing Services, LLC; Ferrolab FTZ; Ferrolab LLC; Global Steel Industries; Halima Pipe Co., Ltd.; K.D. Industries Inc.; Lamprell; Link Middle East Ltd.; Noble Marine Metals Co.; W.L.L.; PSL FZE; Reyah Metal trading FZE; Three Star Metal Ind LLC; and Tiger Steel Industries LLC.

⁴ See *Preliminary Results*.

⁵ See 19 CFR 351.213(e)(1)(i).

⁶ See Memorandum, “Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: 2017-2018 Administrative Review: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,” dated April 23, 2020.

Universal, and Nucor Tubular Products Inc. (Nucor),⁷ and we received a letter in lieu of a case brief from Conares.⁸ On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.⁹ On July 21, 2020, Commerce further tolled all preliminary and final deadlines in administrative reviews by 60 days, thereby extending the deadline for these final results until November 23, 2020.¹⁰

In June 2020, we received rebuttal briefs from the petitioners,¹¹ Universal, Nucor, and Conares.¹² After analyzing the comments received, we changed the weighted-average margins for Universal and the companies involved in the review but not selected as mandatory respondents (the “non-selected” companies) from those presented in the *Preliminary Results*.

III. MARGIN CALCULATIONS

For Universal, we calculated constructed export price (CEP) and NV using the same methodology stated in the *Preliminary Results*, except as follows:

- We revised the calculation of Universal’s CEP to include Section 232 duties where those duties were paid by Universal rather than the customer. *See* Comment 4.
- We revised the calculation of Universal’s NV to correct a currency conversion error. *See* Comment 5.

⁷ *See* Petitioners’ Case Brief, “Certain Welded Carbon-Quality Steel Pipe from the United Arab Emirates,” dated April 20, 2020 (Petitioners’ Case Brief); *see also* Universal’s Case Brief, “Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates – Case Brief,” dated April 20, 2020 (Universal’s Case Brief); and Nucor Tubular Products Inc.’s Case Brief, “Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Case Brief,” dated April 20, 2020.

⁸ *See* Conares’s Letter, “Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Letter in Lieu of Case Brief,” dated April 20, 2020.

⁹ *See* Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19,” dated April 24, 2020.

¹⁰ *See* Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

¹¹ *See* Petitioners’ Rebuttal Brief, “Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Petitioners’ Revised Rebuttal Brief,” dated June 26, 2020. The petitioner timely filed its rebuttal brief on June 16, 2020. However, due to the inclusion of a new argument raised in its rebuttal brief, Commerce rejected the petitioners’ rebuttal brief and requested that the petitioner re-file the rebuttal brief omitting the untimely new argument. *See* Commerce’s Letter, “Antidumping Duty Administrative Review of Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Rejection of Rebuttal Brief,” dated June 24, 2020.

¹² *See* Conares’s Letter, “Rebuttal Brief on Behalf of Conares Metal Supply Limited, dated June 16, 2020 (Conares’s Rebuttal Brief); *see also* Nucor Tubular Products Inc.’s (Nucor Tubular’s) Letter, “Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates,” dated June 16, 2020; and Universal’s Letter, “Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates – Rebuttal Brief,” dated June 16, 2020.

IV. DISCUSSION OF THE ISSUES

Conares-Specific Issues

Comment 1: Application of AFA Based on Alleged Duty Avoidance Scheme

In the *Preliminary Results*, we determined that it was appropriate to exclude certain sales from Conares's U.S. sales database because the costs to galvanize pipe that was produced by an Indian producer and galvanized by Conares do not appear to be significant enough to warrant treatment of these sales as pipe produced in the UAE by Conares.¹³

Petitioners' Arguments

- Instead of excluding Conares's sales of Indian-produced pipe from its U.S. sales database,¹⁴ Commerce should assign a margin to Conares based upon total AFA because Conares engaged in a duty avoidance scheme by intentionally misreporting U.S. sales of Indian-produced pipes.¹⁵
- Conares's motivation appears to be an attempt to take advantage of the lower cash deposit rate for CWP from the UAE, instead of the higher rate for CWP from India, for the all others companies.¹⁶ Absent remedial action by Commerce, Conares similarly stands to benefit upon final assessment as well.¹⁷
- According to Conares, there was no other processing done to these sales other than painting and galvanizing.¹⁸ Thus, these should be considered a product of India. Further, Conares has repeatedly stated that this merchandise is non-subject with respect to this proceeding.¹⁹
- By declaring that the pipe is of Indian origin and not subject to this review, Conares engaged in a duty avoidance scheme.²⁰
- Additionally, Conares falsified mill test certificates to cover up the scheme. Mill test certificates and stenciling are required by U.S. regulations for all imports of steel.²¹ Thus, the Indian pipe entered with a mill test certificate and stenciling that indicated the country of

¹³ See Memorandum, "Conares Preliminary Margin Calculations," dated January 31, 2020 (Conares Preliminary Margin Calculations) at 2.

¹⁴ See Petitioners' Rebuttal Brief at 7 (citing Conares Preliminary Margin Calculations at 2).

¹⁵ *Id.*

¹⁶ *Id.* at 9 and 16 (citing *Welded Carbon Steel Standard Pipes and Tubes from India*, 51 FR 17384 (May 12, 1986); see also *Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman, Pakistan, and the United Arab Emirates: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Orders*, 81 FR 91906 (December 19, 2016) (the *Order*)).

¹⁷ *Id.*

¹⁸ *Id.* at 7 (citing Conares' May 21, 2019 Section A Questionnaire Response at 4 and 22).

¹⁹ *Id.* (citing Conares's December 23, 2019 Supplemental Section D Questionnaire Response at 21; and Conares's June 13, 2019 Section B and C Questionnaire Response at C-51).

²⁰ *Id.* at 9.

²¹ *Id.* at 10 (citing 19 CFR 141.89).

origin. Thus, the mill test certification and the stenciling on the pipe provided to CBP would have falsely shown the pipe as UAE origin instead of Indian origin.²²

- Conares initially failed to submit the Entry Form 7501 that Commerce specifically requested for a reported sale of Indian CWP, forcing Commerce to ask a second time for that information.²³ It was only after issuing several supplemental questionnaires that Commerce obtained evidence that Conares misreported the country of origin and AD case number on the Entry Form 7501.²⁴ Thus, Conares impeded the investigation.
- Commerce will apply total AFA when a respondent impedes Commerce's ability to calculate accurate antidumping duties pursuant to its statutory mandate under section 731 of the Act.²⁵ In *HFHT from China 2004*, Commerce applied total AFA to respondents who engaged in an invoicing scheme that prevented CBP from knowing the true identity of the seller, frustrating the assessment instructions issued by Commerce.²⁶ In that case, the petitioner argued that "the assessment rate calculated by Commerce for any given sale will not be assessed on that sale by CBP because CBP's records have a different company identified as the exporter."²⁷
- In *HFHT from China 2004*, Commerce applied AFA because: (1) the existence of the scheme during the POR undermined Commerce's ability to impose accurate antidumping duties because CBP was prevented from knowing the true seller of the agent sales; and (2) the universe of sales for which Commerce would calculate the AD rate and the universe of sales against which CBP would assess that rate are different.²⁸
- Similarly, in *HFHT from China 2005*, Commerce found that the scheme continued, and the record showed that this scheme, absent corrective action, undermined Commerce's ability to issue instructions to CBP to assess accurate cash deposit and assessment rates.²⁹ Commerce has discovered similar schemes in other proceedings.³⁰

²² *Id.* at 10-11.

²³ *Id.* at 10 (citing Memorandum, "Conares Metal Supply Limited Supplemental D Response: Request for Additional Information," dated January 15, 2020).

²⁴ *Id.*

²⁵ *Id.* at 11-13 (citing *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews*, 69 FR 55581 (September 15, 2004) (*HFHT from China 2004*) at Comment 19).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* (citing *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews*, 70 FR 54897 (September 19, 2005) (*HFHT from China 2005*) at Comment 2).

³⁰ *Id.* at 13 (citing *Xanthan Gum From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 82 FR 11428 (February 23, 2017) and accompanying IDM at Comment 1; see also *Xanthan Gum From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, Final Partial Rescission; 2014-2015*, 82 FR 11434 (February 23, 2017), and accompanying IDM at Comment 1).

- Absent discovery of the scheme, neither Commerce nor CBP would know that the government had been defrauded and that the entries were inaccurately liquidated.³¹
- Commerce normally presumes that the information regarding country of origin reported in its proceeding matches the information declared to CBP. When that is not true, accurate duties will not be assessed, frustrating Commerce's statutory mandates.³²
- Similar to the *HFHT* proceedings, while Conares did report certain information regarding these sales to Commerce, Conares only informed Commerce that it misreported these pipes to CBP after Commerce issued several supplemental questionnaires.³³
- Conares's scheme has wide-reaching ramifications that impact more than the instant proceeding. As Commerce emphasized in *HFHT from China 2005*, "because a respondent has ultimately responded to {Commerce}'s request for information does not mean that respondent has fully cooperated."³⁴
- The UAE and Indian CWP reviews have different statutorily-mandated schedules and will conclude at different times. Thus, the issues that arise in this case will extend beyond Commerce's inability to fulfill its statutory mandate under section 731, as noted in the *HFHT* proceedings.³⁵
- Notwithstanding the other issues, record information shows that this scheme continues to raise additional concerns.

Conares's Rebuttal Arguments

- The petitioners misrepresent the facts in this proceeding by claiming that there was a cover-up. To the contrary, Conares: immediately notified Commerce of the Indian-produced pipes in its questionnaire responses, including the total amount of pipes sold and addressed all of Commerce's questions about these pipes.³⁶
- The petitioner incorrectly asserts that Conares has impeded this proceeding due to an inadvertent omission of a requested United States Customs and Border Protection (CBP) 7501 Entry Forms. However, petitioner fails to recognize: (1) this minor error was caused by abnormal production circumstances, discovered during the preparation of this submission; (2) the missing 7501 CBP form were one portion of an exhibit in a submission with numerous pages and exhibits; (3) Conares inadvertently missed the CBP 7501 forms when Commerce initially requested it but did not fail to provide all other requested documentation such as customer correspondence, invoices, purchases orders, payment documentation,

³¹ *Id.*

³² *Id.*

³³ *Id.* at 14.

³⁴ *Id.* at 14-15.

³⁵ *Id.* at 15-16.

³⁶ See Conares's Rebuttal Brief at 16 and 17.

documentation of the purchase of Indian-produced pipes, and a cost reconciliation that included the Indian-produced pipes.³⁷

- Whether examining by volume, value, or total transactions, Conares's sales of Indian-produced pipe represent a small fraction of Conares's total U.S. sales.³⁸ Conares's fictitious gain from this supposed "duty avoidance scheme" would be miniscule, even if it existed.
- According to the petitioner, the difference between the all others cash deposit rate for CWP from the UAE versus that for CWP from India is a mere 1.13 percent.³⁹ This difference, when applied to the small amount of U.S. sales of Indian-origin pipe, results in a very small net gain. Thus, it is highly unlikely any party would defraud the U.S. government for such a paltry sum. The petitioner is attempting to parlay this self-disclosed and corrected minor error into an excessive penalty rate for Conares.
- The petitioner makes very serious and unsupported accusations regarding Conares's business practices, including that: (1) Conares created false mill test certifications and stenciling for its pipes; and (2) Conares fraudulently mislabeled merchandise and forged faulty documentation with its customers. However, the petitioner cannot point to any record evidence to prove that Conares mis-labeled or mis-classified the country of origin for the merchandise and instead rests its claims on baseless speculation.⁴⁰
- Further, it is not apparent that Commerce's substantial transformation criteria would consider this merchandise out of scope; thus, it is not clear that the pipe should have been reported as Indian-produced pipe.⁴¹ For instance, in other cases Commerce has found that the process of galvanizing pipe was sufficient to demonstrate that substantial transformation exists.⁴² Therefore, if Commerce determines that galvanizing constitutes substantial transformation, it follows that no duty avoidance scheme could exist since the pipe would have been properly designated as entered.
- Commerce should dismiss these accusations because the petitioner has demonstrated a pattern of submitting allegations based on wild speculation and disconnected from the facts in this review.⁴³ For instance, while the petitioner alleged the existence of a particular market situation (PMS) in the UAE, Commerce noted that the petitioner provided insufficient evidence to determine that a PMS exists in the petitioner's PMS allegation.⁴⁴
- The petitioners' case brief wrongfully asserts that the respondent selection process in this proceeding is impugned by the misreporting of a small amount of Indian-produced pipe in

³⁷ *Id.* at 4-6.

³⁸ *Id.* at 6-8.

³⁹ *Id.* at 8.

⁴⁰ *Id.* at 8-10.

⁴¹ *Id.* at 9.

⁴² *Id.* (citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062 at 37066 (July 9, 1993)).

⁴³ *Id.* at 8 and 9.

⁴⁴ *Id.* at 10 and 11.

the CBP data. The petitioners misunderstand the proper procedures for importation of resold merchandise and misunderstand Commerce's *Reseller Rule Classification Announcement*.⁴⁵

- Applying AFA to Conares would ignore information on the record and would be contrary to law because: (1) Conares has cooperated to the best of its ability in this proceeding; (2) Conares timely responded to all of Commerce's requests; (3) Commerce found no fault with the information Conares provided; (4) Conares did not withhold or fail to provide any information; and (5) Conares did not impede Commerce's ability to conduct this proceeding. Thus, Conares fully cooperated in this proceeding, and a finding of AFA is unwarranted.⁴⁶

Commerce's Position: Commerce disagrees with the petitioner and finds that Conares's actions do not warrant the application of total AFA.

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 776(b) of the Act provides that, if Commerce 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, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available.

It is undisputed by any interested party that, during the POR, Conares purchased CWP from a supplier in India, galvanized or painted that CWP in the UAE, and then sold that CWP to the United States. In the *Preliminary Results*, Commerce "preliminarily determined that it is appropriate to exclude certain sales made by Conares because . . . the costs to galvanize pipe, which was produced by an Indian producer and galvanized {by} Conares, do not appear to be significant enough to warrant treatment of these as pipe as produced in the UAE by Conares (e.g., they are product of India)."⁴⁷ After examining the record evidence, we find Conares's actions do not constitute a duty avoidance scheme, as alleged by petitioners. The cases cited by the petitioners where Commerce applied total AFA to a respondent have significantly different facts than in the instant case. In *HFHT from China 2004* and *HFHT from China 2005*, the respondent deliberately made sales through other companies that had lower duty rates in order to avoid paying antidumping duties.⁴⁸ In the instant review, Conares believed their painting or galvanizing of pipes transformed the subject merchandise into a product from the UAE. While

⁴⁵ *Id.* at 12 and 14 (citing *Reseller Rule Clarification Announcement*, 68 Fed. Reg. 23,954 (May 6, 2003)).

⁴⁶ *Id.* at 15-17 (citing Section 776 of the Act; *Zhejiang Dunan Hetian Metal Co. v. United States*, 652 F.3d 1333, 1346 (Fed. Cir. 2011); *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1381 (Fed. Cir. 2003); *E. Sea Seafoods LLC v. United States*, 703 F. Supp. 2d 1336, 1354 n.15 (CIT 2010); and *Changzhou Trina Solar Energy Co. v. United States*, 359 F. Supp. 3d 1329, 1340 (CIT 2019)).

⁴⁷ See Memorandum, "Second Administrative Review of the Antidumping Duty Order on Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Conares Preliminary Margin Calculations," dated January 31, 2020 at 2.

⁴⁸ See *HFHT from China 2004* IDM at Comment 19; see also *HFHT from China 2005* IDM at Comment 2.

incorrect, record evidence does not support a finding that Conares's actions reflect deliberate and intentional misreporting of the sales in question, unlike in *HFHT from China 2004* and *HFHT from China 2005*.

The respondent in *HFHT from China 2004* and *HFHT from China 2005* continually misrepresented the true nature of its relationship with the "agent" during the POR by portraying the company as a *bona fide* "agent" for the vast majority of its "agent" sales.⁴⁹ Commerce does not find that Conares impeded the review by withholding information or attempting to cover up their sale of Indian pipes to the United States. Conares promptly reported the sales at issue⁵⁰ to Commerce and timely responded to all supplemental questionnaires issued by Commerce in this review.

Although the petitioners contend that Conares engaged in a sequence of steps to cover up the scheme by falsifying mill test certificates and stenciling, there is no evidence on the record that Conares created false mill testing certificates or stenciling or that Conares submitted those false documents to CBP.

Finally, the petitioners contend that the application of total AFA is the only solution to ensure Conares does not benefit upon final assessment of the Indian pipe. However, Conares has already stated on the record that they have taken corrective action regarding the sales in question with CBP.⁵¹ Therefore, we do not find that Conares's actions regarding its Conares's sales of Indian-produced pipe warrant the application of total AFA in this review.

Comment 2: Application of AFA for Failure to Provide Unconsolidated Financial Statements

Petitioners' Arguments

- Commerce should also apply total AFA to Conares because Conares failed to cooperate to the best of its ability by failing to provide Conares LLC's unconsolidated financial statements; thus, Conares withheld information that would allow Commerce to calculate accurate general and administrative (G&A) expenses.
- In prior segments of this proceeding, the calculation of G&A expenses has been a contentious issue that centered on the inclusion of certain management fees. For example, in the *LTFV Final*, Commerce treated certain "management fees" incurred by Universal, as G&A expenses because they reasonably reflected a form of compensation paid to the active managers for their activities.⁵²

⁴⁹ *Id.*

⁵⁰ See Conares's May 21, 2019 Section A Questionnaire Response at 4.

⁵¹ See Conares Rebuttal Brief at 4.

⁵² See Petitioners' Case Brief at 17-18 (citing *Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 81 FR 75030 (October 28, 2016) (*LTFV Final*) and accompanying IDM at Comment 1).

- In the *LTFV Final*, Commerce disagreed with Universal that it should rely on Universal's consolidated financial statements because the financial statements supported the claim that the management fees are distributions of profit instead of expenses. Commerce explained that its practice is to "calculate the G&A expense ratio from the amounts reported in the respondent's unconsolidated financial statements and not from the amounts reported in the respondent's consolidated financial statements."⁵³
- Conares withheld requested information and impeded Commerce's investigation by dismissing Commerce's requests in its post-preliminary supplemental questionnaire to provide Conares LLC's unconsolidated financial statements. Specifically, Conares failed to: (1) provide Conares LLC's unconsolidated financial statements; (2) answer all of Commerce's questions; and (3) recalculate its G&A expenses based on Conares LLC's unconsolidated financial statements, as requested in a post-preliminary supplemental issued by Commerce.⁵⁴
- The record evidence shows that UAE law and the Memorandum of Association (MoA) between Conares Steel LLC and Conares Metal Supply Limited requires the generation of audited annual unconsolidated financial statements in direct contradiction to Conares's denial of their existence.⁵⁵
- Conares misled Commerce by stating that its G&A expenses conformed with Commerce's practice. Commerce's policy when calculating G&A expenses is to calculate G&A at the company level based on the company's unconsolidated financial statements. In Conares's initial questionnaire response, it gave the impression that it had followed that practice with respect to its G&A expenses. However, instead, Conares based its G&A expenses on the wrong company and the wrong level of consolidation, and Conares misled Commerce by stating that it had submitted Conares Steel LLC's unconsolidated financial statements when those statements are not on the record.⁵⁶
- The Federal Circuit Court has held that intentional conduct such as deliberate concealment or inaccurate reporting and failure to produce key documents, indicates a failure to cooperate on behalf of a company. Based on this, Commerce should determine that Conares failed to participate in this review to the best of its ability and that the application of total AFA is warranted.⁵⁷

⁵³ *Id.*

⁵⁴ *Id.* at 19-21.

⁵⁵ *Id.* at 20-22 (citing Conares's March 1, 2020 Supplemental Section D Questionnaire Response; and Petitioners' Letter, "Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Rebuttal Factual Information to Conares Metal Supply Limited's Second Supplemental Sections C-D Response," dated March 2, 2020 at Exhibit 1.

⁵⁶ *Id.* at 22-27 (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003); *Certain Softwood Lumber Products from Canada*, 67 FR 15539 (April 2, 2002), and accompanying IDM at Comment 19; Conares's June 17, 2019 Section D Questionnaire Response at D-23 and Exhibits D-13 and D-18; and Conares May 21, 2019 AQR at Exhibits A-3 and A-10).

⁵⁷ *Id.* at 27-28 (citing *Sulfanilic Acid From the Republic of Hungary*, 58 Fed. Reg. 8,256 at 8,257 (February 12, 1993); *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003); and *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1276 (Fed. Cir. 2012)).

Conares's Rebuttal Arguments

- The unconsolidated financial statements for Conares's affiliate, Conares Steel LLC do not exist. Thus, Commerce correctly calculated Conares's G&A expenses based on consolidated financial statements because no alternative reporting methodology was possible or appropriate. Therefore, Commerce must reject the petitioners' request to apply AFA to Conares in the final results.⁵⁸
- Despite the petitioner's claims, record evidence indicates that there is no legal or internal company requirement to create independent, audited unconsolidated financial statements for Conares Steel LLC. Thus, Conares's inability to provide these non-existent unconsolidated financial statements cannot constitute non-cooperation.⁵⁹
- The MOA cited as the alleged source of Conares's internal reporting requirement for the generation of audited financial statements between Conares Steel LLC and Conares does not indicate the need to create audited, unconsolidated financial statements. The MOA states several times that the preparation of "financial statements," not "unconsolidated financial statements," is required. Moreover, the petitioner cites to Articles 26 and 27 of the U.A.E. Federal Law No. 2 on Commercial Companies, which do not require separate unconsolidated, independently audited financial statements as the petitioner contends.⁶⁰
- Instead, Conares and Conares Steel LLC fulfill the requirements of the Federal Law on Commercial Companies because both Conares and Conares Steel LLC keep accurate accounting records in the normal course of business, maintain those records for at least five years, receive yearly audits from independent auditors, and prepare annual financial statements in the form of Conares's audited consolidated financial statements. Thus, nothing is missing.⁶¹
- Nowhere in these legal citations proffered by the petitioner is the preparation of consolidated financial statements of the UAE company forbidden. If the petitioner takes issue with Conares's compliance with UAE law, such grievances should be filed through the proper venues and not through Commerce.⁶²
- Conares Metal Supply Limited (BVI) operates as a branch company in the UAE, is affiliated with Conares Steel LLC, and is a domestic entity under UAE law. Conares Steel LLC's accounts are consolidated within those of Conares Metal Supply Limited (BVI) in one audited financial statement and are fully integrated.⁶³
- The record of this proceeding contains all the relevant information pertaining to Conares's G&A expenses and distributions of profits; thus, there is no missing information which

⁵⁸ Conares Rebuttal Brief at 18.

⁵⁹ *Id.* at 18-21.

⁶⁰ *Id.*

⁶¹ *Id.* at 21-22.

⁶² *Id.* at 21.

⁶³ *Id.* at 18, 22-26.

would require the application of “facts available” to Conares pursuant to section 776 of the Act.⁶⁴

- In order to draw an adverse inference, Commerce must make the additional finding that the party failed to cooperate by not acting to the best of its ability. However, given that the unconsolidated audited financial statements do not exist for Conares Steel LLC, AFA is not warranted.⁶⁵
- The courts have established that a respondent’s inability to provide additional information that does not exist is not a refusal to cooperate and thus Commerce may not resort to AFA. Further, the Court has held that Commerce must make the additional finding that a party failed to cooperate to the best of its ability before applying AFA in situations where it has asked for information, been told that it does not exist, and there is nothing on the record to contradict that absence of data.⁶⁶

Commerce’s Position: Commerce disagrees that Conares failed to cooperate to the best of its ability by failing to provide unconsolidated financial statements for Conares Steel LLC.

In response to our Initial AD Questionnaire, Conares provided its consolidated audited financial statements for Conares Metal Supply Limited (BVI).⁶⁷ Conares has established that the accounts of Conares Metal Supply Limited, the UAE-based producing and selling respondent, and Conares Steel LLC, a domestic holding company under UAE law, are included within the consolidated financial statements of Conares Metal Supply Limited (BVI).⁶⁸ Conares Steel LLC was created in accordance with UAE law,⁶⁹ which specifies that the “the majority shareholder (usually 51 percent) must be a UAE national while the minority shareholders (usually 49 percent) are non-UAE nationals for all companies incorporated outside a free trade zone.”⁷⁰

Under UAE law, companies are required to prepare annual audited financial statements.⁷¹ In response to our section D questionnaire, Conares provided the consolidated financial statements and reconciled its reported costs to these consolidated financial statements.⁷² Nothing on the record of this review indicates that Conares maintains standalone financial statements. In addition, the UAE law excerpts and the MOA that are on the case record do not indicate that unconsolidated audited financial statements are specifically required or that consolidated financial statements cannot satisfy the legal requirement.⁷³ Conares has shown that the underlying costs for Conares Metal Supply Limited are the same costs in the consolidated

⁶⁴ *Id.* at 27-29 (citing *Guizhou Tyre Co., Ltd. v. United States*, 389 F. Supp. 3d 1315, 1320 (CIT 2019); *Citic Trading Co. v. United States*, 27 C.I.T. 356, 371, (CIT 2003); *AK Steel Corp. v. United States*, 21 C.I.T. 1204, 1223, (CIT 1997); *Olympic Adhesives, Inc. v. United States*, 899 F.2d 1565 (Fed. Cir. 1990); and *Changzhou Trina Solar Energy Co. v. United States*, 352 F. Supp. 3d 1316, 1325 (CIT 2018)).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ See Conares’ May 21, 2019 Initial Questionnaire Response at Exhibit A-10.

⁶⁸ *Id.* at 7.

⁶⁹ See Conares Rebuttal Brief at 18.

⁷⁰ See *LTFV Final IDM* at 7.

⁷¹ *Id.*

⁷² See Conares March 12, 2019 AQR at A-10.

⁷³ See Conares May 21, 2019 AQR at Exhibit A-2; see also Petitioners NFI Letter at Exhibit 1.

Conares Metal Supply Limited BVI audited financial statements.⁷⁴ As to petitioners' argument that Conares stated it had reported G&A expenses based on Conares Steel LLC's financial statements in its original section D questionnaire response, Conares corrected that statement in response to our third supplemental D questionnaire, asserting that there are no unconsolidated financial statements for Conares Steel, LLC.⁷⁵

Commerce issued three supplemental D questionnaires related to the financial statements and other cost items, which Conares responded to in full.⁷⁶ Therefore, we do not find that Conares significantly impeded the proceeding or withheld any information. With regard to Conares Metal Supply Limited having the same costs as those in the consolidated Conares Metal Supply Limited BVI audited financial statements, we will pursue this issue in a subsequent administrative review, if Conares is selected as a respondent, and Conares should be prepared to provide consolidation worksheets and separate trial balances for each legal entity.

The petitioners correctly note that in the *LTFV Final*, Commerce explained its practice to include management fees incurred at the producer level in the respondents' G&A expense ratio. In the *LTFV Final*, the management fees were originally shown as distributions of profit for Universal and as fees after the profit calculation for Ajmal. For the *LTFV Final*, Commerce included the management fees in the appropriate respondent's G&A expense ratio.⁷⁷ In the instant proceeding, Conares has demonstrated that the management fees which it pays to the UAE national (a shareholder) and management staff have been included as salaries and remunerations in its reported G&A expenses.⁷⁸ Therefore, management fees are not missing from Conares's reported G&A expense ratio, and we do not find it necessary to adjust Conares's reported G&A expense ratio.

Comment 3: Universal Level of Trade (LOT) Adjustment

Universal's Arguments

- Commerce should revise its decision in the *Preliminary Results* and grant Universal an LOT offset, as a full analysis of the selling activities demonstrates that Universal made sales in the UAE at two different levels of trade.
- Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same LOT as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages. To determine the LOT, Commerce examines the distribution system in each market, including the selling functions and customer category, and the level of selling expenses for each sale.⁷⁹

⁷⁴ See Conares's April 1, 2020 Supplemental Questionnaire Response (Conares April 1, 2020 SQR) at 4.

⁷⁵ *Id.*

⁷⁶ See Conares's December 23, 2019 Supplemental Questionnaire Response; Conares's February 21, 2020 Supplemental Questionnaire Response (Conares February 21, 2020 SQR); *see also* Conares April 1, 2020 SQR.

⁷⁷ See *LTFV Final* IDM at Comment 1.

⁷⁸ See Conares February 21, 2020 SQR at 5.

⁷⁹ See Universal Case Brief at 7-8 (citing Section 773(a)(1)(B)(i) of the Act; and 19 CFR 351.412(c)(2)).

- Universal’s home market sales were made at two levels of trade during the POR: direct sales made by producers UTP, KHK, and TTP to unaffiliated customers (Channel 1); and sales made by Universal’s affiliated reseller, DSS Steel LLC (DSL), to unaffiliated customers (Channel 2). For the home market sales through Channel 2, DSL performs significant additional selling functions for their unaffiliated customers than sales made by Universal’s producers through Channel 1.⁸⁰
- Commerce has found different LOTs when a producer takes on the role of a reseller; thus, it is even more reasonable to find two different LOTs when the merchandise changes hands twice.⁸¹
- In the *Preliminary Results*, Commerce determined that, for its LOT analysis, selling activities can be grouped into five categories: (1) provision of sales support (including sales forecasting, strategic/economic planning, advertising, sales promotion, sales/marketing support, and market research); (2) provision of training services (including personnel training/exchange and distributor/dealer training); (3) provision of technical support (including engineering services, technical assistance); (4) provision of logistical services (including inventory maintenance, post-sale warehousing, repacking, freight and delivery); and (5) and performance of sales-related administrative activities (including order input/processing, rebate programs, warranty service).⁸²
- Universal provided a selling functions chart which demonstrated that while UTP, KHK, TTP, and DSL performed many of the same selling activities, DSL undertakes these selling functions to a significantly greater degree and at a much higher frequency.⁸³
- The quantitative analysis by Universal also demonstrates that DSL engaged in a higher level of sales and marketing activities. The data show a substantially greater amount of costs related to the additional selling functions needed to be undertaken by DSL for each metric ton and each product sold, including higher commission activities, inventory carrying costs, and frequencies and intensity of daily freight activities.⁸⁴

⁸⁰ *Id.* at 8-9. Universal notes that its other home market resellers (*i.e.*, Dayal Steel Suppliers LLC (DSS), DSS Ajman & Sharjah Branch (DSSSA), and Al Zaher Building Materials LLC (Al Zaher)) only made sales during the front “window period” and not during the POR.

⁸¹ *Id.* at 9-10 (citing *Certain Cold-Rolled Steel Flat Products from the United Kingdom: Final Determination of Sales at Less Than Fair Value*, 81 FR 49929 (July 29, 2016), and accompanying IDM at Comment 1; *Stainless Steel Bar from Brazil: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 79 FR 75789 (December 19, 2014), and accompanying PDM at 8; *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27371 (May 19, 1997); and *Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances: Certain Oil Country Tubular Goods from India*, 79 FR 41981 (July 18, 2014), and accompanying IDM at Comment 10).

⁸² *Id.* at 10 (citing PDM at 26-27).

⁸³ *Id.* at 10-12 (citing Universal’s May 22, 2019 Section A Questionnaire Response at Exhibit A5; and Universal’s December 11, 2019 Supplemental Questionnaire Response at Exhibit SA-9B, which were revised and re-submitted in Universal’s February 18, 2020 Supplemental Questionnaire Response (Universal February 18, 2020 SQR) at Exhibits SAD-2 and SAD-4).

⁸⁴ *Id.* at 12-14.

- DSL also provided greater technical assistance by answering customer questions and engaging in post-sale follow-up on a daily basis. DSL has a larger sales staff, interacts with its customers on a daily basis, holds large staff meetings, prepares various sales reports, continuously engages in sales forecasting, provides sales and marketing support for its customers (including assigning customer accounts), actively negotiates prices with its customers, runs advertisements in the yellow pages, gives promotional gifts to customers, and conducts customer outreach after identifying potential new customers. DSL performs all these activities more often and at a higher intensity than the Universal producers.⁸⁵
- Furthermore, the Universal producers who made sales through Channel 1 did not perform any of the following sales functions, which DSL performs frequently: maintaining inventory for sales of a wide range of products, including pipe; regularly selling to small customers and making small-quantity sales; extensively training sales personnel over a number of years; holding weekly meetings with sales staff to discuss market fluctuations and identify in-demand products; assisting customers with identifying the proper product; providing product loading for walk-in customers; and discussing market conditions in weekly sales meetings to assess market needs. DSL's indirect selling expense ratio is more than 20 times higher than the Universal producers' indirect selling expense ratio.⁸⁶
- Pursuant to Universal's business model in the home market, producers focus on manufacturing while DSL focuses on soliciting new customers, maintaining customer relationships, and making commercial sales.⁸⁷
- Another factor that supports the existence of different LOTs in the home market are the different types of customers that purchase from the Universal producers and those that purchase from DSL. The Universal producers overwhelmingly sell to distributors while DSL sells more to fabricators, retailers, and end users. The types of customers to whom DSL sells require greater support and more intense selling functions.⁸⁸
- In identifying LOTs for NV based on home market prices, and for Commerce to grant a LOT adjustment, there must be "a significant correlation between prices and selling expenses on the one hand, and levels of trade on the other."⁸⁹ In this review, the record evidence establishes not only that Universal's home market sales by its producers and through DSL represent two different LOTs in the home market, but also that the difference in LOT has an effect on price comparability.
- Because DSL's sales activities were so substantial, they meet the requirements of 19 CFR 351.412(c)(2), and, therefore, Commerce should find that there are two LOTs in the home market for Universal. For the same reasons, Commerce should also find that

⁸⁵ *Id.* at 14-17.

⁸⁶ *Id.* at 17-18.

⁸⁷ *Id.* at 19.

⁸⁸ *Id.* at 19-21.

⁸⁹ *Id.* at 21-22 (citing *Certain Uncoated Paper from Brazil: Final Determination of Sales at Less Than Fair Value*, 81 FR 3115 (January 20, 2016), and accompanying IDM at Comment 3).

affiliated resellers DSS, DSSSA, and Al Zaher also sold merchandise during the window period at a more advanced level of trade than sales made by the Universal producers.⁹⁰

Petitioners' Rebuttal Arguments

- Commerce correctly found that the differences between Universal's sales in Channel 1 and Channel 2 were not quantitatively sufficient to warrant finding different LOTs in the home market.⁹¹

Commerce's Position: Commerce disagrees with Universal that its sales in the home market were made at two different levels of trade. Commerce's regulations at 19 CFR 351.412(c)(2) outline Commerce's policy regarding differences in the LOTs as follows: "The Secretary will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing."

In the initial questionnaire sent to Universal, Commerce directed Universal to:

"Provide a quantitative analysis showing how the expenses assigned to POI/POR sales made at different claimed levels of trade impact price comparability. Your analysis should not include direct expenses reported to Commerce in your comparison market and U.S. market sales databases. For example, if you arranged freight services for sales of subject merchandise, you may consider in that analysis the expenses incurred for arranging freight services in your level of trade analysis, but should not consider the per-unit inland freight expenses reported to Commerce in your sales databases. Do not include selling activities performed by affiliated parties located in the United States in your analysis."⁹²

In two supplemental questionnaires, we requested that Universal provide a quantitative analysis of its selling expenses, as well as supporting documentation.⁹³

Commerce's requirement that respondents support LOT claims with quantitative evidence in all proceedings was implemented in 2018 to enhance Commerce's ability to determine whether reported differences in selling functions are substantial enough to warrant a finding that sales were made at different LOTs.⁹⁴ For instance, in *Corrosion Resistant Steel from Korea*,

⁹⁰ *Id.* at 22-23.

⁹¹ See Petitioners Rebuttal Case Brief 1-2 (citing PDM at 26-28).

⁹² See Commerce's Letter, "Antidumping Duty Questionnaire," dated April 16, 2019 (Initial AD Questionnaire).

⁹³ See Commerce's Letter, "First Supplemental Section A Questionnaire for Universal," dated November 20, 2019; see also Commerce's Letter, "Third Supplemental Sections A and D Questionnaire for Universal," dated January 24, 2020.

⁹⁴ See, e.g., *Magnesium from Israel: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 84 FR 32712 (July 9, 2019), and accompanying PDM at 13, unchanged in *Magnesium from Israel: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 65781 (November 29, 2019)); see also *Certain Cold-Rolled Steel Flat Products from the United Kingdom: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 34868 (July 19, 2019), and accompanying PDM at 10, unchanged in *Certain Cold-Rolled Steel Flat Products from the United Kingdom: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 59771 (November 6, 2019)).

Commerce considered, *inter alia*, the following quantitative information in its LOT and CEP offset analysis: (1) how expenses assigned to POR sales made at different claimed LOTs impact price comparability functions; (2) a demonstration of how indirect selling expenses vary by the different LOT claimed; and (3) an explanation of how the quantitative analysis provided by the respondent supported its claimed levels of intensity for the reported selling activities.⁹⁵ In *Corrosion Resistant Steel from Korea*, Commerce found that the quantitative analysis submitted by the respondent corroborated its reported level of intensity information.⁹⁶ Additionally, in *Warmwater Shrimp from Thailand*, in conducting its LOT/CEP offset analysis, Commerce considered a respondent's selling expenses in combination with the analysis of selling functions to determine if the level of selling expenses substantiated the respondent's narrative explanation of selling functions.⁹⁷ Furthermore, in *ESB Rubber from Brazil*, Commerce declined to find the existence of different LOTs or grant a CEP offset when the record lacked sufficient quantitative evidence corroborating a respondent's LOT claims.⁹⁸

Moreover, even though Commerce began expressly requesting that respondents support their LOT claims with quantitative evidence in 2018, respondents have long borne the burden of establishing their eligibility for a LOT adjustment or CEP offset by demonstrating that different prices and selling expenses are caused by differences in LOT and not by other factors, such as volume sold or arbitrary pricing.⁹⁹

While Universal argues the numerical values assigned to the selling functions chart are its quantitative analysis, we find that the descriptions of the selling functions and the claimed levels of intensity are effectively qualitative in nature. Although qualitative information is helpful and relevant to the LOT analysis, reliance on this information alone limits Commerce's ability to analyze selling functions to determine if the LOTs identified by a party are meaningful and to evaluate whether a respondent's LOT claims are reasonable and accurate. Further, Universal failed to provide sufficient supporting documentation for its claims of the level and frequency of selling functions it performed through each channel during the POR.

⁹⁵ See *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) (*Corrosion Resistant Steel from Korea*), and accompanying IDM at Comment 4.

⁹⁶ *Id.* ("Further, Dongkuk's traceable expenses (*e.g.*, wages) for home market sales are seventy times of that for U.S. sales. A ratio derived from the traceable expenses is used to allocate indirect selling expenses to home market sales and CEP sales. As result, the indirect selling expense ratio for home market sales is more than two times of that for U.S. sales. Thus, we find that the quantitative analysis corroborated the reported level of intensity." (internal citation omitted)).

⁹⁷ 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 Thailand*, 69 FR 76918 (December 23, 2004) (*Warmwater Shrimp from Thailand*), and accompanying IDM at Comment 5.

⁹⁸ See *Emulsion Styrene-Butadiene Rubber from Brazil: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 38847 (June 29, 2020) (*ESB Rubber from Brazil*), and accompanying IDM at Comment 1.

⁹⁹ See *NSK Ltd. v. Koyo Seiko Co.*, 190 F.3d 1321, 1330 (Fed. Cir. 1999) ("Although NTN submitted evidence that merchandise at different {LOTs} had different prices and selling expenses, NTN did not provide evidence to prove that those differences were not caused by other factors, such as volume sold or arbitrary pricing practices. In other words, NTN did not present evidence to establish that the difference in the {LOT} caused the differences in price and selling expenses.")

The quantitative analysis Universal does provide is not sufficient for Commerce to find that Universal made sales at different levels of trade in its home market. In order to determine whether to grant a LOT adjustment, Commerce looks at selling activities in five categories: (1) provision of sales support (including sales forecasting, strategic/economic planning, advertising, sales promotion, sales/marketing support, and market research); (2) provision of training services (including personnel training/exchange and distributor/dealer training); (3) provision of technical support (including engineering services, technical assistance); (4) provision of logistical services (including inventory maintenance, post-sale warehousing, repacking, freight and delivery); (5) and performance of sales-related administrative activities (including order input/processing, rebate programs, warranty service).¹⁰⁰

As a first step in our home market LOT analysis, we examined the claimed differences in selling functions between the two distribution channels. According to Universal's selling expense chart, the Universal producers and affiliated resellers perform virtually the same selling functions for unaffiliated customers in the home market. Further, the differences in the level of activities performed in each of Universal's claimed channels are not sufficiently different to warrant a LOT adjustment. Where Universal claims the differences in selling functions are significant, this assertion is not supported by the documentation provided by Universal. For example, Universal reported a level "6" for sales promotion and advertising for their affiliated resellers in Channel 2. However, as support, Universal merely stated it annually advertises in the yellow pages and gives gifts to some customers.¹⁰¹ While Universal also identified that its producers and affiliated resellers sell to different types of customers, which results in different selling styles, the information on the record of this review is not sufficient to grant a LOT adjustment.¹⁰² The selling functions for the Universal producers and home market affiliated resellers are not sufficiently different nor are the home market affiliated resellers selling functions at a significantly more intense level than those of the Universal producers. Therefore, we continue to find that a LOT adjustment is not warranted.

Comment 4: Section 232 Duties

Universal's Arguments

- Commerce has determined that Section 232 duties should be treated as United States import duties for the purposes of Section 772(c)(2)(A) of the Act and, thus, deducted from U.S. price.¹⁰³ However, Commerce may deduct Section 232 duties as United States import duties only if the amount of the 232 duties are included in the price paid by Universal's U.S. customers.¹⁰⁴

¹⁰⁰ See Initial AD Questionnaire at A-15.

¹⁰¹ See Universal May 22, 2020 AQR at Exhibits A-5 and A-21-12.

¹⁰² See Universal February 18, 2020 SQR at Exhibits SAD-2 and SAD-4; *see also* Universal May 22, 2020 AQR at Exhibit A-21.

¹⁰³ See Universal Case Brief at 2-3 (citing *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 *Preliminary Results* PDM at 23).

¹⁰⁴ *Id.* (citing Section 772(c)(2)(A) of the Act).

- Contrary to statements in the *Preliminary Results*, the record establishes that Universal did not include the amount of Section 232 duties in the prices charged to its U.S. customers for a significant number of POR sales.¹⁰⁵ In such situations, Commerce has not deducted 232 duties from the gross unit price.¹⁰⁶
- Universal provided support to show that Section 232 duties were not always included in the price charged to the U.S. customer.¹⁰⁷
- Commerce should revise Universal's margin calculation program to include Section 232 duties in the calculation of U.S. price for sales where the Section 232 duties were not included in the price charged to the customer.¹⁰⁸

Commerce's Position: Commerce agrees with Universal and has revised Universal's margin calculation to not deduct Section 232 duties from U.S. price for sales where those duties were not included in the price to the customer.

Comment 5: Currency Conversion for Universal's Home Market Sales

Petitioner's Arguments

- For the *Preliminary Results*, Commerce made certain currency conversions to Universal's reported home market prices. However, the record shows that Universal reported all home market sales in United Arab Emirates Dirham (AED).¹⁰⁹ Therefore, Commerce should not convert the currency of any of the home market sales reported by Universal.

Commerce's Position: Commerce agrees with the petitioner and will revise Universal's home market calculation to not convert the currency on any home market sales.

Comment 6: Adjust Universal Surrogate Production Cost

Petitioner's Arguments

- In the *Preliminary Results*, Commerce enabled Section 1-E-iii-b of the Comparison Market SAS program, which finds surrogate costs for CONNUMs that were sold but not

¹⁰⁵ *Id.* at 3-4 (citing Universal's June 11, 2019 Initial Section C Questionnaire Response at C-53).

¹⁰⁶ *Id.* at 3-4 (citing *Steel Concrete Reinforcing Bar From Mexico: Preliminary Results of Antidumping Duty Administrative Review*, 85 FR 2702 (January 16, 2020), and accompanying PDM at Part D; and *Certain Corrosion-Resistant Steel Products from Taiwan: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 16613 (March 24, 2020); *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From Mexico, 2017-2018*, 84 FR 63610 (November 18, 2019), and accompanying PDM at Part D).

¹⁰⁷ *Id.* at 4-5 (citing Universal's December 20, 2019, Section C and Section D Supplemental Questionnaire response at SuppCD-3; Universal's February 18, 2020, Section A and Section D Supplemental Questionnaire response, at SuppAD-9 and Exhibit SAD-3H).

¹⁰⁸ *Id.* at 5-7.

¹⁰⁹ See Petitioner Case Brief at 2-4 (citing Memorandum, "Universal Preliminary Margin Calculations," dated January 31, 2020 at 2-3; and Universal's June 11, 2019 Sections B-E response at B-27).

produced during the POR. However, the results of that surrogate concordance process result in surrogate choices which Commerce has previously deemed to create distortions in the model match.¹¹⁰

- In *CWP Turkey 2015-16 Final*, Commerce recognized that, due to disparate costs for the various coating and end finishes (such as between black and galvanized surface finish), a surrogate choice that crosses weights within the coating or end finish physical characteristics “would result in an incorrect difference in the merchandise (difmer) adjustment in calculating a dumping margin.” As a result, Commerce abandoned its normal programming “because the home market program may select a match that has a different surface or end finish.”¹¹¹
- Universal’s preliminary surrogate cost models create the same distortions and inaccuracies Commerce addressed in *CWP Turkey 2015-16 Final*. Therefore, consistent with Commerce’s previous decision, Commerce should modify its standard surrogate matching programming to avoid these distortions.¹¹²

Universal’s Rebuttal

- The petitioners argue that Commerce should depart from its long-established CONNUM characteristic hierarchy and elevate the final two of five characteristics, coating and end finish, above all other characteristics. In fact, petitioners’ suggested revision to the programming would eliminate from potential surrogate cost consideration all products that do not have an identical match for both of the final two CONNUM characteristics.¹¹³
- As Commerce discussed in *Shrimp from Thailand Final*, Commerce issued the antidumping questionnaire in this case based on the same CONNUM characteristics and hierarchy used in the investigation and all prior administrative reviews, and the petitioners raised no objection prior to the issuance of the questionnaires or in the context of supplemental questionnaire responses.¹¹⁴
- The petitioners did not raise any issue with the product characteristics or surrogate costs in previous segments of this proceeding. By raising its proposed alteration to the surrogate cost selection hierarchy only at the briefing stage, the petitioners have not allowed either Commerce or interested parties sufficient time to develop a factual record of actual cost differences that would support or undermine its proposal.¹¹⁵
- Further, the petitioners did not provide any evidence on the record that the costs related to coating or to end finish have a greater overall impact on costs than the three physical

¹¹⁰ See Petitioner Case Brief at 5 (citing PDM at 16).

¹¹¹ *Id.* at 4-5 (citing *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 82 FR 49179 (October 24, 2017) (*CWP Turkey 2015-16 Final*), and accompanying IDM at Comment 3).

¹¹² *Id.* at 5-6.

¹¹³ See Universal Rebuttal Brief at 2.

¹¹⁴ *Id.* at 2-5 (citing *Certain Frozen Warmwater Shrimp from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47551 (September 16, 2009) (*Shrimp from Thailand Final*), and accompanying IDM at Comment 3).

¹¹⁵ *Id.* at 5.

characteristics that come before coating and end finish in the CONNUM hierarchy (*i.e.*, pipe specification, diameter, and wall thickness).¹¹⁶

- There are several reasons to maintain Commerce’s standard practice:
 - First, the goal of Commerce’s model match methodology is to select comparison sales that are “most similar” to U.S. sales based on the CONNUM hierarchy because prices are presumed to reflect costs of manufacturing. The same rationale applies to CONNUMs for merchandise sold but not produced in the POR.
 - Second, the petitioners’ proposed revisions to the programming language would lead to clearly erroneous results and the selection of surrogate costs of products that are quite dissimilar from the products to which the costs are assigned. The petitioners’ proposed methodology also does not account for situations where there were sales but no production of any merchandise with particular coating-end finish combinations.¹¹⁷
- In the final results, Commerce should maintain its approach from the *Preliminary Results* to select surrogate costs for CONNUMs sold but not produced during the POR.

Commerce’s Position: Commerce agrees with Universal that it would be inappropriate to make such a substantial change in the model-matching methodology for products that were sold but not produced during the POR at this late stage in the administrative review.

During the LTFV investigation in this proceeding, Commerce, in consultation with all parties, established the physical characteristics to be used in the model-matching hierarchy in all of the concurrent antidumping duty investigations involving CWP.¹¹⁸ In this administrative review, Commerce issued questionnaires based on the same model-matching hierarchy as in the investigation (and all prior administrative reviews), and the respondent parties fully responded to the questionnaire.¹¹⁹ The petitioners raised no objection to Commerce’s model-matching methodology either prior to the issuance of these questionnaires or in the context of supplemental questionnaire responses. Although the petitioners argue that re-examining the model-matching hierarchy is now warranted, such reexamination would be a fundamental change that would affect all parties participating in this proceeding and in the companion proceedings on CWP from the Sultanate of Oman and Pakistan.

Commerce’s practice is to address arguments for changes to the model-matching methodology when raised early in a proceeding so that all parties have sufficient opportunity to comment and

¹¹⁶ *Id.* at 5-6 (citing *Ferrosilicon From the Russian Federation: Final Determination of Sales at Less Than Fair Value*, 79 FR 44393 (July 31, 2014), and accompanying IDM at Comment 3; and *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 10673 (March 12, 2018), and accompanying PDM at 16).

¹¹⁷ *Id.* at 6-8 and Exhibit 1.

¹¹⁸ See *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 36881 (June 8, 2016) (noting that parties had filed comments on the scope resulting in a clarification to the scope language); see also *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 81 FR 75030 (October, 28, 2016) (noting no interested party filed scope comments for the final determination).

¹¹⁹ See Initial AD Questionnaire.

address any reporting issues which may result from such changes.¹²⁰ In order to modify the model-matching methodology, according to section 782(g) of the Act, Commerce must allow “reasonable opportunity” for interested parties to comment.¹²¹ By raising its proposed alterations to the model-matching methodology at the briefing stage of the review, the petitioners did not allow Commerce sufficient time to solicit comments from all parties to properly consider the issue and to make a reasonable determination on the basis of comments from all parties. Therefore, we have continued to rely on our established model-matching methodology for the final results.

We find the facts of this review to differ significantly from *CWP Turkey 2015-16 Final*. In that case, Commerce determined that the respondent had failed to properly report the cost of galvanizing the subject merchandise by accounting for the surface areas of the different galvanized pipes.¹²² Further, rather than change the model-matching portion of the programming, Commerce used surrogate costs of products as reported by the respondent for products sold, but not produced, during the POR that conformed to our matching criteria for products having the same surface and end finish physical characteristics. Thus, *CWP Turkey 2015-16 Final* is not persuasive in this instance, as it demonstrates that Commerce used a methodology that conformed to our model matching criteria.

¹²⁰ See, e.g., *Honey From Argentina: Final Results of Antidumping Duty Administrative Review*, 69 FR 30283 (May 27, 2004), and accompanying IDM at Comment 15 (declining to address arguments for changing the model-matching methodology raised for the first time in the case brief); see also *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part*, 70 FR 7237 (February 11, 2005), and accompanying IDM at Comment 10 (stating that arguments on the model-matching methodology should be presented early in the case); and *Structural Steel Beams from Korea: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 6837 (February 9, 2005), and accompanying IDM at Comment 1 (noting that parties were invited to comment early in the third administrative review on model-matching changes which initially had been raised too late in the second administrative review).

¹²¹ See *Koyo Seiko Co Ltd. v. United States*, 516 F. Supp. 2d 1323, 1333 (CIT 2007).

¹²² See *CWP Turkey 2015-16 Final* IDM at Comments 2 and 3.

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this administrative review in the *Federal Register*.



Agree



Disagree

11/23/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance