

United States Steel Corporation et. al. and Maverick Tube Corporation et. al., v. United States Court of International Trade Consolidated Court No. 14-00263

**FINAL RESULTS OF REDETERMINATION
PURSUANT TO REMAND**

A. Summary

The Department of Commerce (Department) prepared these final results of redetermination (Final Remand Results) pursuant to the opinion and remand order of the U.S. Court of International Trade (Court) issued on May 5, 2016.¹ These Final Remand Results concern the Department's final determination in the antidumping duty investigation on oil country tubular goods (OCTG) from India.² For these Final Remand Results, the Department continues to find that the sales of Jindal SAW Ltd. (Jindal SAW), and GVN Fuels Limited, Maharashtra Seamless Limited and Jindal Pipe Limited (collectively, GVN) during the period of investigation (POI) were made for less than normal value (NV).

B. Background

On July 18, 2014, the Department published the *India OCTG Final Determination*, which covered Jindal SAW and GVN, along with other exporters.³ The POI covers July 1, 2012, through June 30, 2013.

In its May 5, 2016 opinion, the Court remanded the *India OCTG Final Determination* to the Department as follows: (1) to explain further the Department's practice of excluding sales run through the Cohen's *d* test – in turn restricted from the numerator but not the denominator in the ratio test – and how this practice did not risk treating “the same behavior differently;” (2) to

¹ See *United States Steel Corporation et. al. and Maverick Tube Corporation et. al. v. United States*, Slip Op. 16-44, Consolidated Court No. 14-00263 (CIT 2016) (*U.S. Steel Remand*).

² See *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) (*India OCTG Final Determination*), and accompanying Issues and Decision Memorandum (India OCTG IDM).

³ *Id.*

consider further the indirect ownership and alleged close supplier relationship between Jindal SAW and two suppliers; (3) to explain why we relied upon Jindal SAW's yield loss data which allocated yield losses equally across all production stages despite distinct physical characteristics of the product, such as diameter and wall thickness; and (4) to explain our application of the highest L-80 grade cost for GVN's dual-grade products.

Pursuant to these instructions, we are providing further explanation and have addressed below the questions identified by the Court in the *India OCTG Final Determination*. As explained below, our further consideration of these issues has altered our determination with respect to Jindal SAW's yield loss and the cost assigned to dual-grade products. Besides a change to our position on Issue 3: Jindal SAW's Yield Loss Calculation, and minor grammatical and formatting changes, the following final analysis contains no other revisions to the Draft Remand Results. Our responses to all comments received on the Draft Remand Results are addressed below following the Final Remand Results. As a result of the adjustments discussed below, we have calculated an adjusted weighted-average dumping margin of 11.24 percent for Jindal SAW and an adjusted weighted-average dumping margin of 1.07 percent for GVN.

C. Final Analysis

1) Cohen's *d* and Ratio Tests

The Court instructed the Department to explain why the ratios, as applied in this case under the Department's differential pricing analysis, were reasonable despite the "significant value of respondents' sales {that} were excluded."⁴ In particular, the Court identified that in otherwise similar investigations "the results of Commerce's differential pricing analysis may

⁴ See *U.S. Steel Remand* at 16.

differ significantly” based upon the value of sales withheld from the numerator in the ratio test.⁵ The Court emphasized that, as in this case, the Department nonetheless uses as the denominator the value of all of respondents’ sales.⁶ Accordingly, the Court directed the Department to explain how this did not risk treating the same behavior differently depending upon the volume of sales which have not been included in the ratio test numerator following application of the Cohen’s *d* test.

As an initial matter, the Department notes that there is nothing in section 777A(d) of the Tariff Act of 1930, as amended (the Act), that mandates how the Department measures whether there is a pattern of prices that differs significantly. On the contrary, carrying out the purpose of the statute here is a gap filling exercise properly conducted by the Department.⁷ As explained in the *Preliminary Determination*,⁸ as well as in various other proceedings,⁹ the Department’s differential pricing analysis is reasonable, including the use of the Cohen’s *d* test as a component in this analysis, and it is in no way contrary to the law.

The Department now clarifies its application of the Cohen’s *d* and ratio tests and provides additional explanation supporting its methodology that sales passing the Cohen’s *d* test should be

⁵ *Id.*

⁶ *Id.*

⁷ See *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984) (*Chevron*) (recognizing deference where a statute is ambiguous and an agency’s interpretation is reasonable); see also *Apex*, 37 F. Supp. 3d at 1302 (applying *Chevron* deference in the context of the Department’s interpretation of section 777A(d)(1) of the Act).

⁸ See *Certain Oil Country Tubular Goods from India: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 79 FR 10493 (February 25, 2014) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum at 9-12.

⁹ See, e.g., *Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015), and the accompanying Issues and Decision Memorandum at Comment 1; see also *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32937 (June 10, 2015), and the accompanying Issues and Decision Memorandum at Comments 1 and 2; and *Welded ASTM A-312 Stainless Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 46647 (July 18, 2016), and accompanying Issues and Decision Memorandum at Comment 4.

compared against all sales in assessing the extent of the significant price differences. In applying the Cohen's *d* test, the Department seeks to determine whether evidence exists demonstrating a pattern of prices that differ significantly. Absent evidence that the proposition that prices differ significantly is true, the Department proceeds in accordance with the presumption that such price differences do not exist.¹⁰ The Department does not seek to prove that significant price differences do not exist. Therefore, when sales do not pass the Cohen's *d* test, either because the Cohen's *d* coefficient is less than 0.8 or because there are not two or more sales in the comparison or test group, the proposition of significant price differences has not been proven for those sales in the test group, and such differences are found not to exist. There is not a finding of "inconclusive" regarding the existence of significant price differences, nor are the sales deemed "untestable," which seems to be the view underlying the claims of United States Steel Corporation (U.S. Steel). In that regard, referring to sales that have not passed the Cohen's *d* test because there are fewer than two observations in the comparison group or the test group as having been "excluded" from the analysis is incorrect. Such observations have in fact been analyzed and the Department has found that there is no evidence of prices that differ significantly with the analytical tool it has employed, *i.e.*, the differential pricing analysis; however, the Department has not determined that they should be excluded from the analysis. The fact that the sales in the test group have not passed means that there is no evidence that the prices of the sales in the test group differ significantly from the prices of all other sales of the comparable merchandise. Thus, the Department properly does not include the value of these sales in the numerator of the ratio test, and does include the value of these sales in the denominator of the ratio test when measuring the extent of the prices that differ significantly.

¹⁰ See *India OCTG Final Determination* at 8 (citing section 777A(d)(1)(B) of the Act).

Moreover, as noted by the Court, the ratio test “assesses the extent of the significant price differences for all sales”¹¹ The purpose of a differential pricing analysis, including the Cohen’s *d* and ratio tests, is to determine whether the average-to-average (A-to-A) method, applied to all U.S. sales, is the appropriate comparison method to calculate a respondent’s weighted-average dumping margin.¹² A respondent’s weighted-average dumping margin is based on all of its U.S. sales, and, therefore, it is logical and reasonable that the basis for the ratio test, to evaluate the extent of prices that differ significantly in the U.S. market, also be based on all U.S. sales.

This is what the Department has done. Measuring the extent of significant price differences across all sales is achieved by including value of all sales in the denominator, making a determination as to whether significant price differences exist for all sales, and not excluding the value of sales from the ratio test as “untestable” or “inconclusive.” Calculating the ratio by comparing the value of sales passing the Cohen’s *d* test only to the value of sales with multiple observations in both comparison and test groups provides a result for only a subset of U.S. sales. If this result was applied to all sales, it would require the assumption that such a subset of sales is representative of the overall universe of a respondent’s sales, thus extrapolating the result from the subset of sales to the entire universe of sales. By contrast, as noted, the Department has designed a test that concludes there are no significant price differences absent evidence demonstrating the contrary proposition, evidence including multiple observations in both the test and comparison groups, and a Cohen’s *d* coefficient equal to or greater than 0.8.

Based upon the foregoing, the Department concludes that the use of all sales in the denominator does not lead to the arbitrary application of the average-to-transaction (A-to-T)

¹¹ See *U.S. Steel Remand* at 11 (quoting Preliminary Decision Memorandum at 11).

¹² See 19 CFR 351.414(c)(1).

method in some cases and the A-to-A method in other cases despite the identification of similar patterns of price differences. This could not happen. For example, in one situation there are multiple observations in all comparison and test groups and 75 percent of sales pass the Cohen's *d* test, leading to the consideration of the application of the A-to-T method for all U.S. sales. In another situation, however, there are very few comparison and test groups with multiple observations. Thus, 80 percent of sales do not pass the Cohen's *d* test, and the A-to-A method is applied to all U.S. sales. Among the limited number of groups with multiple observations, however, suppose 75 percent of the sales pass the Cohen's *d* test. This seems to be the type of fact pattern contemplated by the Court.¹³ In such situations, the different results are not arbitrary, because two very different patterns of prices that differ significantly have been identified. Clearly, the pricing behaviors of these two respondents differ by the fact that one has many sales of comparable merchandise to given purchasers, regions or time periods, and the other does not. Accordingly, in the first situation, the frequency of affirmative test results has validated the proposition of a very wide spread pattern of prices that differ significantly across all sales. In the second situation, there are only a very few affirmative test results and the proposition of a pattern of prices that differ significantly is not validated by the evidence before the Department. In the Department's view, it is not relevant to its analysis why, or under what circumstances, a pattern exists. Just as the Department has not considered why a pattern does exist,¹⁴ it likewise has not considered why a pattern does not exist. In this investigation, the evidence does not show that the extent of prices that differ significantly exists for GVN, and therefore, the Department has found that the A-to-A method is appropriate.

¹³ See *U.S. Steel Remand* at 15-16.

¹⁴ See *JBF RAK LLC v. United States*, 790 F.3d 1358 (Fed. Cir. 2015); see also *Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. v. United States*, 608 Fed. Appx. 948 (Fed. Cir. 2015).

2) Jindal SAW's Affiliation

The Court held that the Department did not adequately address record evidence concerning indirect ownership, management overlap, and close supplier relationships between Jindal SAW and two of its suppliers, Jindal Steel and Power Limited (JSPL) and []. On remand, the Court directs that the Department more fully address this evidence in explaining whether it was reasonable to conclude that Jindal SAW and its suppliers were not under the common control of the O.P. Jindal family.¹⁵

In the *India OCTG Final Determination*, the Department determined that Jindal SAW is a member of the O.P. Jindal group (an informal corporate grouping), but that the record did not support affiliation between Jindal SAW or its subsidiaries and any other member of the O.P. Jindal group, or of the other groups of companies associated with and partially owned by members of the Jindal family (*i.e.*, the D.P. Jindal group or the B.C. Jindal group).¹⁶ Specifically, we noted that neither Jindal SAW, nor its affiliates, owned more than five percent directly or indirectly of these other companies and there was no common control of Jindal SAW or any of its subsidiaries and these other companies.¹⁷

The Court directs the Department to evaluate evidence supplied by U.S. Steel that the O.P. Jindal family exercises control of Jindal SAW, JSPL and [] by way of direct and indirect stockholdings in all three companies, exceeding the five percent threshold established in the statute. At the outset, we must clarify the distinction between “affiliation” and “control.” Conflation of these two terms appears to underlie some of U.S. Steel’s arguments. Section 771(33)(E) of the Act states that two companies are affiliated if one owns five percent or more of

¹⁵ See *U.S. Steel Remand* at 20.

¹⁶ See *Preliminary Determination*, and accompanying Preliminary Decision Memorandum at 8, unchanged in *India OCTG Final Determination*.

¹⁷ *Id.*

the other. That does not mean that a company that owns six or seven percent of another company “controls” the latter company; rather, it means only that the two are affiliated. Thus, when applying section 771(33)(F) of the Act, the Department does not inquire as to whether two companies share “affiliation” with a third company. Rather, the question is whether the third company “controls” the two companies. By way of illustration, suppose that Warren Buffett owns nine percent of Coca-Cola and eight percent of IBM. Under section 771(33)(E) of the Act, that would mean Warren Buffett is affiliated with both companies. However, it does not mean that Coca-Cola and IBM are affiliated with each other under section 771(33)(F) of the Act, because Buffett’s single digit holdings in the two companies do not amount to “control,” which, according to 19 CFR 351.102(b)(3) requires power over operational decision making. Likewise, while a particular branch of the Jindal family (such as the O.P. Jindal family) might be affiliated with two or more companies because it owns directly or indirectly more than five percent of the shares of those companies, that does not mean the companies themselves are affiliated through their common affiliation with the O.P. Jindal family. It is only when the two companies are controlled by family grouping that they become affiliated. Thus, five percent is not the determinative threshold for this analysis.

Record evidence establishes that direct ownership by the Jindal families was extremely small.¹⁸ Under section 771(33) of the Act, “a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.” It is apparent that the small level of direct ownership by the Jindal families is not sufficient to exercise such legal or operational control.

¹⁸ See Letter from Jindal SAW, “OCTG from India: Cost & Sales Verification-Verification Exhibits,” March 25, 2014 (Jindal SAW Verification Exhibits), at Exhibit SV-4 at 4.

The Department next turns to indirect ownership—specifically, the Court’s questions regarding the determination that the Jindal family’s indirect holdings through promotor groups did not suffice to demonstrate control.¹⁹ Here, two means of investigating indirect ownership are available: (1) financial statements and other internal documents of the three companies indicating their shareholders; and (2) 24-AA forms, filed with Indian securities regulators. Both sets of documents have certain limitations. For example, a company’s financial statements will indicate its owners, but will not necessarily indicate the owners’ owners. Moreover, the company may or may not have information in its books and records stating ownership of its shareholders, especially for shareholders whose stake is relatively minor. As the Court notes, a number of shareholders in the three companies are holding companies, often with nondescript names, that offer no presumption of connection with members of the Jindal family.²⁰ The 24-AA forms indicate all holdings (private and publicly traded) of individual or corporate shareholders, but they do not indicate the holdings of the holdings (*e.g.*, a 24-AA for John Smith might indicate that he owns 10 percent of ABC Co., Ltd., but it would not indicate what ABC Co., Ltd. owns). These two sources provide alternative “top-down” and “bottom-up” methods of tracing ownership, but neither necessarily will provide a complete trace up and down the ownership tree. Nevertheless, pursuing these two methods, the Department satisfied itself through the review of questionnaire responses, of financial statements, of 24-AA forms, and of other documents at verification that the additional indirect ownership of the Jindal family members that might be added to the direct ownership numbers already calculated is minute and that the total of direct and indirect ownership would unlikely rise to the level of “control,”

¹⁹ See *U.S. Steel Remand* at 24-25.

²⁰ *Id.*, at 24; see also, *e.g.*, Letter from Jindal SAW, “OCTG from India: Response to Section A,” October 24, 2013 (Jindal SAW October 24 Response), at Exhibit A-4.

explained above. For example, during verification, the Department examined the 24-AA forms of P.R. Jindal and his family.²¹ The forms list companies in which P.R. Jindal and his family have more than two percent ownership, companies in which he and his family have less than two percent ownership, and the companies for which they serve as directors. We know from Jindal SAW's questionnaire response that [] owns [] of shares of Jindal SAW. From form 24-AA, we see that P.R. Jindal owns less than two percent of shares of [], as does his mother, Savitri Jindal, and []. From this example, the P.R. Jindal family indirectly owns, at most, [] of Jindal SAW through its shareholdings of [] (*i.e.*, []% x (2% + 2% + 2%) = []%). At verification, we selected additional 24-AA forms for examination, and also reviewed the shareholding pattern statement of [], because it was the [] single shareholder of Jindal SAW.²² We satisfied ourselves through the examination of this document and the 24-AAs that the Jindal family, through its ownership interests, is not in a position to exercise operational control over Jindal SAW, under section 777(33) of the Act, through its holding in [].

While this method of review does not result in a total, "bottom-line" figure for indirect ownership, the Department believes it is a reasonable sampling method by which to confirm Jindal SAW's own statements that neither itself, JSPL, or [] were controlled by any Jindal family grouping, at least not through direct and indirect ownership.²³ This analysis is akin

²¹ See Jindal SAW Verification Exhibits at Exhibit SV-3.

²² *Id.*

²³ This method is but one way the Department verifies the standard verification question: "Review the nature of any affiliations between Jindal SAW and other companies, including, but not limited to, all suppliers and customers, as reported in your submissions. Additionally, review the nature of the relationship between Jindal SAW and Jindal

to other types of sampling methods the Department relies on in examining and verifying other record information. For example, the Department does not verify every sale reported by a respondent in a database; it typically will trace only about a dozen sales out of databases of hundreds or thousands of sales. If the sales traces indicate inaccuracies, the Department would then trace additional sales to gain a better understanding of the breadth of the inaccuracies.

Likewise, if the Department’s examination of a sample of 24-AAs had indicated significant levels of indirect ownership, or disclosed any other discrepancies, the matter would have been pursued further. This is a reasonable use of the Department’s discretion to determine how best to allocate its resources during an investigation. The Department may pursue a particular issue—such as affiliation—more or less in one case than in another depending on its sense of the importance of the issue and whether initial examination of the record indicates a problem with accuracy or completeness.²⁴ In this case, as the verification report notes, the Department’s examination of sample documents yielded no discrepancies and the Department determined to move on to other issues.²⁵ While the Department will always prefer to confirm the “completeness” of information provided, in this instance, there was no apparent way to confirm or even calculate a bottom-line figure for indirect ownership, either through reconciliation with Jindal SAW’s books and records (which, as explained, do not track the “ownership of its owners,” information not publicly available) or through examining each and every form 24-AA that might possibly be relevant to the three companies at issue, which would have been

SAW USA LLC (Jindal SAW USA), as well as Jindal SAW’s U.S. Branch.” *See* Letter to Jindal SAW, “Antidumping Duty Investigation of Certain Oil Country Tubular Goods from India,” February 27, 2014, at 6.

²⁴ For example, in this case, dual-grade assignments were an issue during the verification of GVN, but not Jindal SAW. The verification reports reflect how the Department pursues some issues more than others during verification. *See* Memoranda, “Verification of the Sales Response of Jindal SAW Ltd. in the Antidumping Duty Investigation of Oil Country Tubular Goods from India,” (Jindal SAW Sales Verification Report) and “Verification of the Sales Response of GVN Fuels Ltd in the Antidumping Duty Investigation of Oil Country Tubular Goods from India,” (GVN Verification Report), both dated May 5, 2014.

²⁵ *See* Jindal SAW Sales Verification Report at 2-6.

extremely time consuming, limiting the Department’s opportunity to examine other issues under investigation. Upon further consideration, the Department continues to believe that it adequately examined indirect ownership through the means described above and that the information collected does not near the level that would indicate that any Jindal family grouping “controls” the companies at issue. Because of this lack of common control, we continue to find that direct and indirect ownership does not provide a basis to determine that these companies are affiliated.

Moreover, as noted in our verification report, we “found no evidence of the existence of an ‘O.P. Jindal Group,’” either as a formal entity or as some type of *de facto* business entity or association capable of exercising control, in Jindal SAW’s books and records.²⁶ During Jindal SAW’s five-day verification, Department officials analyzed numerous reports and official filings, and discussed with company officials the relationship between Jindal SAW and the so-called O.P. Jindal group. We were repeatedly informed that the name was a marketing term and not an actual legal entity. We found no evidence indicating the existence of any type of entity controlling Jindal SAW’s operations—strategic or day-to-day—beyond the management and directors reported to the Department by Jindal SAW in its questionnaire response.²⁷ We continue to find that nothing on the record contradicts these representations or our verification of these representations. It is important to note in this regard that once the Department determined that no Jindal family grouping controlled Jindal SAW (the mandatory respondent) through direct or indirect ownership or through the influence of an “O.P. Jindal Group,” it was not necessary to perform this same exercise with the other companies at issue (JSPL or []). Under section 771(33)(F) of the Act, “common” control must exist among these companies to find them affiliated. Thus, once we determined based upon the record evidence that control over Jindal

²⁶ *Id.*, at 2.

²⁷ *Id.*

SAW by the O.P. Jindal family did not exist, the possibility of finding affiliation between Jindal SAW and any other company through section 771(33)(F) of the Act became moot (at least under the theory that the common control rested with the family).

However, the Court directs the Department to provide further analysis regarding the direct and indirect holdings of the O.P. Jindal family members in either JSPL or [].²⁸ According to the form 24-AA provided for the P.R. Jindal family, Savitri Jindal is the only P.R. Jindal family member with an ownership stake in JSPL—[]—and no one in the P.R. Jindal family listed themselves as being a director of JSPL or [].²⁹ However, the record evidence suggests further analysis is not possible. Jindal SAW asserted in its initial questionnaire response that the information related to the operations of JSPL and other privately held companies such as [] is not available to Jindal SAW, claiming it only has access to publicly available information.³⁰ The Department identified no evidence to contradict this claim during its review of questionnaire responses or at the on-site verification of Jindal SAW (voluminous documents are examined at verification, many of which are randomly pulled by the Department; despite this volume of information, the Department found no indication that Jindal SAW shared documentation, accounting systems, or electronic record keeping systems with JSPL or [], or any evidence that the proprietary information of the other companies had been made available to Jindal SAW in the past).³¹ As a result, Jindal SAW was not able to access information regarding corporate structures, legal structures, or details of sales offices or production facilities maintained by JSPL or [].³² Therefore,

²⁸ See *U.S. Steel Remand* at 25-26.

²⁹ See Jindal SAW Verification Exhibits at Exhibit SV-3.

³⁰ See, e.g., Jindal SAW October 24 Response, at Exhibit A-2.

³¹ See Jindal SAW Sales Verification Report.

³² *Id.*

the record contains no additional evidence for the Department to maintain the proposition that the O.P. Jindal family controls these companies, through direct or indirect ownership or otherwise. The information that does exist, however, demonstrates that the family directly owns no more than [] of these companies.³³

Turning to other potential indicia of control besides direct and indirect ownership, a prospectus for [] submitted by Petitioners³⁴ shows that P.R. Jindal (*not* Jindal SAW) is listed as one of four promoters of [].³⁵ While P.R. Jindal is a director of Jindal SAW, this documentation and the form 24-AA discussed above confirm that P.R. Jindal is not a director of [].³⁶ The prospectus provided by Petitioners does not indicate the ownership of [], including the shares held by the promoters, nor does it include a breakdown of each promotor's holdings.³⁷ The record evidence therefore does not clearly indicate how much control P.R. Jindal, as a promotor,³⁸ has in this company. It is also unclear in the prospectus whether the "relatives of promotor" section is simply a list of relatives of the promotor, or is a list of stakeholders in the promotor group, as presumed by Petitioners.³⁹ Given that the other promoters are all companies, it appears this section merely lists relatives of the promotor, and does not imply that these members are part of a promotor group. While the record does appear to support Petitioners' claim that [], Jindal

³³ See, e.g., Jindal SAW Verification Exhibits at Exhibit SV-3.

³⁴ Boomerang Tube, Energex Tube, a division of JMC Steel Group, Maverick Tube Corporation, Northwest Pipe Company, Tejas Tubular Products, TMK IPSCO, U.S. Steel, Vallourec Star, L.P., and Welded Tube USA Inc. (collectively, the Petitioners).

³⁵ See Letter from Petitioners, "Oil Country Tubular Goods from India," February 14, 2014 (Petitioners' February 14 Comments), at Exhibit C.

³⁶ See Jindal SAW Verification Exhibits at Exhibit SV-3.

³⁷ See Petitioners' February 14 Comments, at Exhibit C.

³⁸ The Court noted that "promotor" includes: "(i) the person or persons who are in control of the issuer; (ii) the person or persons who are instrumental in the formulation of a plan or programme pursuant to which specified securities are offered to the public; or (iii) the person or persons named in the offer documents as promoters." See *U.S. Steel Remand* at 24.

³⁹ See Petitioners' February 14 Comments, at Exhibit C, at 180.

SAW's registered agent on the Indian Energy Exchange [], is a subsidiary of [], the record does not show that [] is affiliated with Jindal SAW. The fact that Jindal SAW employs the services of a subsidiary of [] does not demonstrate affiliation by itself or in combination with the apparently small common ownership of the Jindal family in the two companies.

This prospectus also notes that Jindal SAW's Indian promoters as of June 30, 2009, equaled [] of Jindal SAW's shares.⁴⁰ Petitioners argue that these promotor groups held significant percentages of total shareholdings in each entity relative to the non-promotor groups. First, based on the shareholding breakdown provided in the prospectus, it does not appear that promoters hold a majority of shares of Jindal SAW.⁴¹ But, as the Court notes, this information is prior to the POI.⁴² Second, Jindal SAW has provided a list of the ten shareholders with the highest ownership percentage of Jindal SAW during the POI.⁴³ Jindal SAW indicated on this list which companies were promotor companies.⁴⁴ From this list, it is evident that out of the top ten shareholders, promotor and non-promotor companies are split almost []. The record therefore does not support Petitioners' claim that promoters own significantly more shareholdings than non-promoters. While this prospectus breaks down JSPL's shareholding, and shows what appears to be promoters with a slightly greater shareholding, as demonstrated above, the information is out of date, and it is unclear, as demonstrated by the analysis of Jindal SAW, whether this was in fact the case during the POI. And, as noted above, it is not clear from the prospectus the shareholding percent held by promotor groups in [].

⁴⁰ *Id.*, at 186.

⁴¹ *Id.*,

⁴² *See U.S. Steel Remand* at 25.

⁴³ *See* Jindal SAW Verification Exhibits at Exhibit SV-4.

⁴⁴ *Id.*

Assuming that a promotor is an influential member of a corporation's structure, whether also a shareholder or not, the fact that some promotors belong to one family does not indicate that the family "controls" that corporation through its stake in particular promotors. By analogy, if a family holds one or two seats on a board of directors that would not necessarily mean the family controls the corporation. The family might still be at a disadvantage in terms of control vis-à-vis the three other members of the board.⁴⁵

The Court next found that although the Department traced the board memberships and management positions of the Jindal family members in Jindal SAW, JSPL and [], the Department failed to explain why it was reasonable to conclude that these memberships and positions did not create the potential to impact decisions regarding production, pricing, and cost of subject merchandise.⁴⁶ At verification, we reviewed the directors of Jindal SAW, JSPL, Jindal Stainless Limited and JSW Steel Limited, and noted that [

[], O.P. Jindal's wife, Savitri Jindal.⁴⁷ Based on the same evidence, we note that Savitri Jindal is not listed as a director of []. There is no evidence on the record that any P.R. Jindal family member is a director of [].

Regarding Jindal SAW, we stated in the verification report:

To determine the voting power of the Jindal family members in Jindal SAW, we reviewed Jindal SAW's articles of association. Article 119 explains that each director has an equal vote, and that the chairman can break a tie. Of the 11 directors of Jindal SAW listed in Jindal SAW's financial statements, four were Jindal family members (including Savitri Jindal, as indicated above, and three others), indicating that the Jindal family relatives do not have control of Jindal SAW's board. Of these four family members, two are listed as "non-executive,"

⁴⁵ The Department does not mean to imply that only one party can control a company. It is conceivable that two parties of roughly equal power might share control over an enterprise. In fact, section 771(33)(F) of the Act refers to two parties "controlling" a third party. Thus, shared control is contemplated by the Act. However, in the context of section 771(33) of the Act, control suggests more than having influence or a "voice" in corporate management, which would include virtually any board member, promotor, or large shareholder.

⁴⁶ See *U.S. Steel Remand* at 26-27.

⁴⁷ See Jindal SAW Sales Verification Report at 3.

meaning they do not work at the company. Company officials noted that this was in compliance with Indian law, which states that 50 percent of directors must be independent.

We next reviewed the management positions of O.P. Jindal's sons and descendants in each of the "O.P. Jindal Group" companies to see if the directors appear in more than one of the companies. We reviewed the financial statements of Jindal SAW, and under "positions and stock holdings of the relatives of P.R. Jindal," we found no other son of O.P. Jindal listed. We reviewed form 24-AA provided by company officials at our request for [

] . As part of this form, each person must state with which companies he or she serves as directors. Neither P.R. Jindal, his [] in Jindal Steel and Power Limited, Jindal Stainless Limited, or JSW Steel Limited. Savitri Jindal was listed as a director to both Jindal SAW and Jindal Stainless Limited, but had [] of paid up share capital in either company.⁴⁸

The Court observes that the Department did not investigate voting patterns or the existence of voting trust agreements that could affect the Jindal family's ability to take action notwithstanding its non-majority status on the board of Jindal SAW.⁴⁹ At verification, the Department examined voluminous reports, from financial statements to articles of association. Over the course of our examination, we specifically queried company representatives on the voting rights of directors. We note that no documentation or response indicated that there were separate "voting trust agreements" or other such "control" documents somehow giving the Jindal family control of the board, despite Jindal SAW's articles of association and Indian company law, which establish a conventional one-seat-one-vote arrangement, as indicated by the verification report excerpt quoted above. Nothing on the record prior to or after verification leads the Department to believe that any such documents exists.⁵⁰

⁴⁸ *Id.*

⁴⁹ *See U.S. Steel Remand at 27.*

⁵⁰ *See Jindal SAW Sales Verification Report at 2-6.*

In addition, the Court notes that the Department did not evaluate whether a buyer company has become reliant on the seller, or vice versa, when considering the supplier relationship between Jindal SAW and JSPL.⁵¹ As noted by the Court, while the Department finds that there is no evidence on the record, such as an exclusive sales contract, demonstrating such reliance exists, such contracts are not the only factor in determining whether a relationship has the potential to impact decisions concerning production, pricing or costs.⁵² As explained above, there is no record evidence showing that the Jindal family controls, through shareholdings or directorships, either company. The Department continues to find that the record supports finding that Jindal SAW and JSPL are not affiliated. The Court notes that, as demonstrated by *CORE from Korea*, the Department normally examines other factors to determine a close supplier relationship.⁵³ Here, the record shows that Jindal SAW has alternative sources of supply for [], and that it can and does purchase [] from abroad.⁵⁴ Likewise, there is no information on the record demonstrating a prohibition of JSPL selling its [] to other manufacturers of OCTG, pipe, and other downstream steel products that could serve as customers in India, if it was not satisfied with its relationship with Jindal SAW. The record contains no contract or documentation, whether formal or informal, requiring Jindal SAW to purchase [] from JSPL, or to limit its purchases from non-JSPL sources. Moreover, there is no other indication of leverage that one company might have over the other, e.g., it is doubtful the [] at issue involve proprietary technology not found elsewhere. Lastly, Petitioners have not demonstrated that imports are consistently more

⁵¹ See *U.S. Steel Remand* at 27-29.

⁵² *Id.*, at 28.

⁵³ See *U.S. Steel Remand* at 29 (citing *Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404, 18417 (April 15, 2007) (*CORE from Korea*)).

⁵⁴ See *U.S. Steel Remand* at 28; see also Letter from Jindal SAW, "OCTG from India: 1st & 2nd Supplemental Section D Response," January 6, 2014, at Exhibit D-16.

expensive for Jindal SAW than JSPL's materials. Thus, there is no indication that Jindal SAW is able to extract an unusually low price from JSPL. Therefore, following the criteria identified in *CORE from Korea*, the record does not indicate that Jindal SAW and JSPL have a relationship that is so significant that it could not be easily replaced.

Finally, Petitioners place great emphasis on the Hexa Information Memorandum, which primarily summarizes information already on the record elsewhere.⁵⁵ As such, the Department finds it does not indicate that any Jindal family grouping controls Jindal SAW for the reasons already given. It indicates several board members with the last name "Jindal." Even if all are members of the Jindal families at issue, they constitute just three out of ten members of Jindal SAW. The memorandum also lists 45 persons in "control."⁵⁶ Obviously, the term "control" in the context of the Hexa memorandum is distinguishable from "control" in the context of the Act and the Department's regulations. Specifically, under the Act and the Department's regulations, it would be illogical to find that 45 persons could control a single company. Each of the 45 persons could on average own little more than two percent (100 percent divided by 45 persons) of the company. Thus, absent evidence that the 45 act in unison or that they are under common control (which the Department believes does not exist in this case),⁵⁷ the ownership percentage is well below what would be considered a controlling ownership share by the Department. As indicated above, within the context of the AD/CVD laws, "control" indicates something close to the ability to act unilaterally in making company decisions, not merely being influential. Moreover, the individuals and companies listed as controlling in this memorandum are the same

⁵⁵ See Letter from Petitioners, "Oil Country Tubular Goods from India," December 6, 2013 (Petitioners' December 6 Comments), at Exhibit D.

⁵⁶ *Id.*, at 26 (44 persons listed in the table, plus Mr. Prithvi Raj Jindal, indicated as a "person in control" on the previous page).

⁵⁷ See *infra* at Department's response to Comment 2.

individuals and companies whose control over Jindal SAW the Department has already examined and verified (albeit through sampling) as discussed above. We note that the memorandum provides a separate list of promoters of Hexa numbering 45, indicating the position of “promotor” might also not be very significant or indicative of “control” within the meaning of the Department’s affiliation analysis.⁵⁸

The memorandum also indicates factors weighing against a finding of control by the Jindal family. For example, the memorandum clearly indicates that 54 percent of Jindal SAW is publicly traded on stock exchanges.⁵⁹ Thus, whatever role or influence the Jindal family has within the group of promotor shareholders, that group itself constitutes a minority, making the Jindal family only a division within the minority shareholding group. Of the publicly traded 54 percent, the majority is owned by mutual funds and other institutional investors.⁶⁰ Presumably, these are sophisticated investors capable of counteracting the undesirable decisions of a Jindal faction among the minority shareholders.⁶¹ The memorandum also confirms the small percentage owned by Jindal family members in Jindal SAW: 0.05 percent for Mr. Prithvi Raj Jindal, and 0.01 percent for Ms. Sminu Jindal.⁶² Petitioners rely upon this report to support their other assertions but overlook what it indicates regarding Jindal’s minimal ownership (the memorandum indicates “ownership,” not just direct ownership, but also indirect ownership). As with the [] prospectus discussed above, the Department reasonably chose to rely on verified primary information provided by the respondent rather than secondary information provided by Petitioners. While the Department relies on all information on the record of this

⁵⁸ Petitioners’ December 6 Comments, at Exhibit D, page 33.

⁵⁹ *Id.* at 32.

⁶⁰ *Id.* (section B of note 6, listing the public shareholders as mutual funds, financial institutions, banks, insurance companies, foreign institutional investors, and “bodies corporate”).

⁶¹ *Id.*

⁶² *Id.*

investigation to make its determination, specifically, in this investigation, primary information had already been collected and analyzed (and eventually verified), and the questions had already been asked. As noted, the Hexa memorandum largely corresponds to what was reported by Jindal SAW and verified by the Department—specifically, that it is not affiliated with the two suppliers.

3) **Jindal SAW’s Yield Loss Calculation**

In the *India OCTG Final Determination*, we stated that, during the investigation, Jindal SAW responded to the Department’s questionnaires with yield loss data included in Jindal SAW’s direct material cost (DIRMAT). Jindal SAW relied on the yield rates calculated in its normal books and records, and these yields in turn were used to adjust the reported costs for yield losses.⁶³ To calculate its yield rates, Jindal SAW [

].⁶⁴

The Department determined it unnecessary to require Jindal SAW to revise its yield methodology to calculate yield loss by production stage or to resort to adverse facts available (AFA) because Jindal SAW’s normal books and records show yield loss in this way.⁶⁵

Specifically, the Department found the approach contained in Jindal SAW’s books and records to be reasonable because it reflected Jindal SAW’s [

] and captured total yield loss [

].⁶⁶

⁶³ See Memorandum, “Cost of Production and Constructed Value Calculation Adjustments for the Final Determination - Jindal SAW Ltd.,” July 10, 2014 (Jindal SAW Final Cost Calculation Memo), at 7.

⁶⁴ *Id.*

⁶⁵ See India OCTG IDM at 40; see also Jindal SAW Final Cost Calculation Memo at 7.

⁶⁶ See Jindal SAW Final Cost Calculation Memo at 7.

In the *India OCTG Final Determination*, we considered Petitioners’ argument that the Department should have applied AFA to Jindal SAW because, by not calculating yield losses by production stage as advocated by U.S. Steel, Jindal SAW failed to supply necessary information or cooperate to the best of its ability. Based on the Department’s analysis of record evidence, including the verification of Jindal SAW’s reported data, the Department stated in the *India OCTG Final Determination*:

Jindal SAW relied on yield rates calculated in its normal books and records. These yield rates were subsequently used to adjust the reported costs for yield losses. Jindal SAW’s methodology of calculating yield is reasonable given that the total yield is captured through this methodology. Although yield is not calculated by production stage as advocated by petitioners, we do not find evidence that the reported yield is unreasonable. Further, we did not ask Jindal SAW to revise its yield methodology during the investigation.

The Court found that the Department inadequately explained its conclusion that the costs for CONNUMs with different characteristics would not generate different yield losses such that it was inappropriate to rely upon Jindal SAW’s reported yield loss data.⁶⁷ In particular, the Court found that the Department failed to demonstrate that the allocation of yield losses [] production stages—regardless of wall thickness or diameter—generated at most insignificant changes in reported costs. The Court observed that it “stands to reason that pipes of [] would lose [] amounts of material.”⁶⁸ The Court deferred any decision regarding the Department’s AFA determination but directed that the Department explain why, despite the fact that Jindal SAW’s reported yield loss data did not clearly track yield loss by production stage or physical characteristics, that data

⁶⁷ See *U.S. Steel Remand* at 34.

⁶⁸ *Id.*

nonetheless reasonably reflect the costs associated with the production and sale of the merchandise, as required by section 773(f)(1)(A) of the Act.⁶⁹

We have followed the Court’s instruction to explain why Jindal SAW’s reported yield loss data, which, the Court stated, “clearly did not track yield losses by production stage or physical characteristics of the merchandise, nonetheless did not distort Jindal SAW’s {cost of production (COP)} for specific CONNUMs of subject merchandise.”⁷⁰ The Department, based on the additional analysis and explanation below, determines that Jindal SAW’s cost reporting methodology did not allocate yield losses on a basis that reasonably reflected differences in the processing costs for merchandise with differing physical characteristics pursuant to section 773(f)(1)(A) of the Act.

As background, the Department generally “shall consider all available evidence on the proper allocation of costs...if such allocations have been historically used by the exporter or producer.”⁷¹ According to the statute:

Costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with generally accepted accounting principles of the exporting country...and reasonably reflect the costs associated with the production and sale of the merchandise.⁷²

If the Department determines that the records of the respondent cannot properly form an accurate basis upon which to calculate that respondent’s COP, then the Department may resort to other information, including the use of facts otherwise available, in reaching the determination.⁷³

The Department may apply an adverse inference in selecting from among the facts otherwise

⁶⁹ *Id.*, at 35.

⁷⁰ *Id.*

⁷¹ *See* section 773(f)(1)(A) of the Act.

⁷² *Id.*

⁷³ *See* section 776(a) of the Act.

available where it finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with its request for information.⁷⁴

The Department initially evaluates the respondent's COP data, as reported, to ensure that the reported COP methodology complies with generally accepted accounting principles (GAAP) of the exporting country.⁷⁵ Thereafter, the Department evaluates whether a respondent's COP data, as reported, reasonably reflects the costs associated with the production and sale of the merchandise.⁷⁶

The statute does not define what it means for reported cost information to reasonably reflect that party's COP.⁷⁷ The Court of Appeals for the Federal Circuit has broadly defined when costs "reasonably reflect the costs associated with the production and sale of the merchandise" to mean that the costs, as reported, would not distort the company's true costs.⁷⁸

Yield loss is a component of COP as raw materials are consumed in the production process and processing in several stages of production occurs in the creation of pipe that is known as OCTG.⁷⁹ As noted in the cost verification report, Jindal SAW calculated yield loss in its reported costs in the same manner as in its normal books and records.⁸⁰ Specifically, Jindal SAW reported its CONNUM-specific yield loss by [

].⁸¹ At the cost verification, we

examined the following preselected CONNUMs in detail: 1) [

⁷⁴ See section 776(b) of the Act.

⁷⁵ See section 773(f)(1)(A) of the Act.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ See *A. Silicon Techs. v. United States*, 261 F. 3d 1371, 1377 (Fed. Cir. 2001); see also section 773(f)(1)(A) of the Act.

⁷⁹ See Memorandum, "Verification of the Cost Response of Jindal SAW Limited in the Antidumping Duty Investigation of Oil Country Tubular Goods," May 12, 2014 (Jindal SAW Cost Verification Report), at 20-21.

⁸⁰ *Id.*

⁸¹ *Id.*

];⁸² 2) [

];⁸³ and, 3) [

].⁸⁴ Jindal SAW reported yields of [] percent, [] percent, and [] percent, respectively, for these CONNUMs, which correspond to yield losses of [] percent, [] percent, and [] percent.⁸⁵ At verification, we traced the CONNUM-specific [] and [] outputs to the company's books and records, and then recalculated the reported yields for each preselected CONNUM by dividing []. Based on our review of these CONNUMs, we concluded that the yields were CONNUM-specific. Upon further analysis of the record evidence, we now find that Jindal SAW calculates yield by [], rather than by CONNUM. Because each preselected CONNUM was produced from a [], each seemingly reflects a CONNUM-specific yield and direct material cost. However, where a [] was used to produce multiple CONNUMs, the CONNUMs have been

⁸² See Jindal SAW Verification Exhibits at Exhibit CV-7.

⁸³ *Id.*, at Exhibit CV-8.

⁸⁴ *Id.*, at Exhibit CV-9.

⁸⁵ *Id.*, at Exhibits CV-7, CV-8, and CV-9.

reported with identical direct material costs regardless of the processing undergone or the physical characteristics of the underlying products.

We agree with Petitioners that the reported yield should be based on yield factors that take into account the physical characteristics identified by the Department, including thickness and diameter. Our analysis for this final remand demonstrates that Jindal SAW's books and records do not reasonably reflect these physical characteristics. Consequently, because the reported yield losses are not CONNUM-specific, and in response to U.S. Steel comments, discussed below at Issue 3, we have adjusted Jindal SAW's yield loss based on partial adverse facts available.

4) Cost Assigned to GVN's Dual-Grade Products

In the *India OCTG Final Determination*, the Department stated that we were assigning to GVN sales that had a mill test certificate indicating a grade of N/L-80 a grade of L-80.⁸⁶ We found that in previous antidumping duty proceedings involving products with multiple grades, "when the customer orders a product to meet multiple specifications and grades in order to be suitable for a variety of applications, the strictest requirements of any of the standards must be satisfied."⁸⁷ In these cases, we assigned the product with the highest performance requirement as the most similar model match.⁸⁸ In the instant case concerning the products identified as N/L-80 dual grade, L-80 has the stricter requirements,⁸⁹ and therefore was assigned to all instances of

⁸⁶ See India OCTG IDM at Comment 12.

⁸⁷ See India OCTG IDM at Comment 12; see also *Notice of Final Results of Antidumping Duty Administrative Review: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Brazil*, 70 FR 7243 (February 11, 2005), and accompanying Issues and Decision Memorandum at Comment 1; 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 Issues and Decision Memorandum at Comment 13 .

⁸⁸ *Id.*

⁸⁹ See Letter from GVN, "Oil Country Tubular Goods from India; Supplemental Sections A, B and C Response of GVN Fuels Limited," January 23, 2014, at Exhibit S1-14.

dual grade N/L-80 sales on the record. Although the Court did not take issue with Commerce’s determination to assign “GVN’s dual-grade product costs associated with L-80 grade product because it met stricter performance requirements,”⁹⁰ it did instruct the Department to either explain why its assigning the highest cost for L-80 products from GVN’s cost database to its dual-grade products was reasonable in light of the characteristics of GVN’s dual-grade products or explain its application of an adverse inference by satisfying the legal prerequisites for doing so under section 776(b) of the Act.⁹¹

In GVN’s Final Analysis Memorandum, we stated:

As discussed at Comment 12 in the Issues and Decision Memorandum (IDM), for each U.S. sale of N/L-80 grade OCTG that GVN recoded as “N-80,” we are changing the grade to L-80. We identified the sales (*i.e.*, sequence number, “SEQU”) GVN had recoded on an invoice specific basis,⁹² and updated the CONNUMU for each sale so that the fields representing grade were changed from “080” to “130” (*i.e.*, from N-80 to L-80 using the codes provided in the initial questionnaire).⁹³

This threshold issue of selection of the L-80 grade for these CONNUMUs is not at issue in this remand.

We continued to explain in GVN’s Final Analysis Memorandum that some CONNUMUs once changed with respect to grade did not have a matching cost, and therefore, the Department assigned an alternate cost.⁹⁴ Pursuant to section 776(a)(1) of the Act, when “necessary information is not available on the record,” the Department must rely on facts available. In relying on facts available to assign the alternate cost to the re-coded products, however, the Department unintentionally overlooked its standard “proxy cost” methodology by selecting the

⁹⁰ See *U.S. Steel Remand* at 72.

⁹¹ *Id.*, at 72-73.

⁹² See Letter from GVN, “Oil Country Tubular Goods from India: Notification of Service of Sales Verification Exhibits,” March 28, 2014, at Exhibit 14.

⁹³ See Memorandum, “GVN Fuels Limited Final Determination Analysis Memoranda,” July 10, 2014 (GVN’s Final Analysis Memorandum), at 3.

⁹⁴ *Id.*

highest cost of L-80 grade. Specifically, in situations where the Department has to match CONNUMs with no corresponding costs, and there is no adverse inference applied, the Department determines cost values by reference to the most similar products, based on reported physical characteristics.⁹⁵ To determine the most similar products, we rely on the identical matching process used to determine the closest matches between products sold in the home market and the United States for dumping margin calculation purposes.⁹⁶ Once we identify the products that are most similar to the products for which no cost information was reported, we rely on the cost values reported for those products to replace the missing cost values.

We are now revising the cost assigned to the newly created L-80 grade CONNUMUs to follow our standard “proxy cost” methodology described above.⁹⁷ Because our newly assigned CONNUMU’s were [] L-80 costs, we first reduced the universe of [] L-80 costs in GVN’s cost database to determine the “proxy costs.” For each newly created L-80 grade CONNUMU, we determined the “proxy cost” by selecting the cost of the most similar L-80 product from this sub-set of GVN’s cost database based on the closest remaining reported physical characteristics as part of our application of facts available.⁹⁸ With these cost adjustments to GVN’s program, we calculated a *de minimis* rate of 1.07 percent for GVN.

⁹⁵ See, e.g., *Certain Stilbenic Optical Brightening Agents From Taiwan: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61368 (October 13, 2015) (*Stilbenic Optical Agents from Taiwan*), and accompanying Issues and Decision Memorandum at Comment 2; see also *Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 70 FR 12443 (March 14, 2005), and accompanying Issues and Decision Memorandum at Comment 5 (“We verified that Dongbu used the Department’s hierarchy to choose the most similar product produced during the POR as a surrogate and found no evidence of distortion in this methodology”).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*; see also Memorandum, “GVN Fuels Limited Draft Remand Analysis Memoranda,” August 8, 2016.

D. Comments on Draft Remand Results

Comment 1: Cohen's d and Ratio Tests

U.S. Steel's Comments

- The Department's basis for including "non-tested" sales in the denominator of the ratio test is a finding – based on nothing more than an assumption – that such sales do not contribute to a pattern of significant price differences. If sales are not tested, then they should not be included in either the numerator or the denominator of the ratio tests.
- By including non-tested sales in the denominator of the ratio and excluding them from the numerator of the ratio, the Department understates the extent of differential pricing. The ratio tests used by the Department are simply not an accurate measure of the extent of a respondent's U.S. sales that contribute to a pattern of differential pricing.
- The Department has failed to explain how the results of its ratio test are not arbitrary.

Department's Position: The Department disagrees with U.S. Steel's arguments, and continues to apply its differential methodology used in the underlying investigation. U.S. Steel commented on this methodology and requested that the Department revise the ratio test in its differential pricing analysis by excluding all "non-tested" sales from the denominator of the ratio calculated for each respondent. As discussed below, we do not find that the Department's approach warrants this revision.

According to U.S. Steel, "the Department's findings of fact must be supported by concrete evidence on the record and not improper speculation, conjecture, or unfounded assumptions."⁹⁹ As explained in the remand analysis above, our application of the Cohen's d

⁹⁹ See Letter from U.S. Steel, "Comments on the Draft Remand Redetermination in United States Steel Corporation v. United States, U.S. Court of International Trade Court No. 14-263, Slip Op. 16-44," August 17, 2016 (U.S. Steel Draft Remand Comments), at 15.

test consists of: 1) determining whether there are two or more sales in both the comparison and test groups, and 2) determining whether the coefficient is less than 0.8. When sales do not pass both prongs, the proposition of significant price differences has not been proven. Thus, despite U.S. Steel’s insistence in claiming the sales have not been tested, to the contrary, they have been tested and they have not passed. For this reason, there are no “non-tested” sales under our analysis.

Secondly, U.S. Steel is incorrect that the Department acts improperly by presuming that there are no significant price differences unless sales pass the test, either because of a low coefficient or because an inadequate number of sales exist to prove the hypothesis of significant differences. Section 777A(d)(1)(A) of the Act prescribes that the Department *shall* use either the A-to-A method or the T-to-T method. Nonetheless, if the two statutory conditions are met,¹⁰⁰ the Act permits, but does not require, the application of the A-to-T method:

The administering authority *may* determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transaction for comparable merchandise¹⁰¹

Accordingly, the Department reiterates that, given the framework of the statute, it is not required by the Act to move to an A-to-T method,¹⁰² and, therefore, by implication, there is an appropriate presumption of no differential pricing. Additionally, section 777A(d)(1)(B) of the Act is labeled as an “exception” to the general A-to-A method mandated by section 777A(d)(1)(A) of the Act, which the Department *may* apply only after the two requirements

¹⁰⁰ See sections 777A(d)(1)(B)(i) and (ii) of the Act.

¹⁰¹ See section 777A(d)(1)(B) of the Act (emphasis added).

¹⁰² See *The Timken Co. v. United States*, 968 F. Supp. 2d 1279, 1290 (February 27, 2014) (*Timken*) (noting “{t}he government additionally argues that Commerce’s sufficiency determination in this case was reasonable because Commerce is not obligated to justify relying on the default comparison methodology (*i.e.*, the A-A methodology) . . .”).

provided by the statute have been satisfied. The Act’s establishment of the A-to-A method as the default comparison methodology,¹⁰³ and the Department’s permissive authority in deciding if, and when, an alternative comparison methodology based on the A-to-T method should be applied, creates a presumption within the Act that there are typically no significant price differences warranting application of the A-to-T method. Furthermore, where such significant price differences do exist, the A-to-A method is not applicable unless the Department can explain why the A-to-A method cannot account for such differences. In the very least, it is reasonable for the Department to conclude that a presumption exists favoring the default A-to-A method, except where there are significant price differences and the A-to-A method can account for such differences.

Moreover, the Department’s use of a presumption in determining whether significant price differences exist is supported by the Court’s prior review of the Department’s targeted dumping practice. In examining the Department’s use of a “sufficiency determination” under the prior *Nails* test, the Court found such a determination “rooted in Commerce’s discretionary authority.”¹⁰⁴ The Court elaborated by explaining that the “sufficiency determination” “serves as a tool to guide Commerce’s exercise of its discretion in choosing whether to depart from its normal practice of using the A-A methodology.”¹⁰⁵ The “sufficiency determination,” like the ratio tests, included *all* sales in the denominator, even sales for which there were no matches in a comparison group.¹⁰⁶

¹⁰³ The Court has referred to the A-to-A method as the “default comparison methodology” and the “normal practice.” *Id.* at 1290. *See also* 19 CFR 351.414(c)(1).

¹⁰⁴ *See Timken* at 1288. The “sufficiency determination” under the *Nails* test sought to determine whether significant price differences were prevalent enough to establish a “pattern” warranting application of the A-to-T methodology. Thus, it is analogous to the “ratio test” under the current methodology.

¹⁰⁵ *Id.*, at 1291.

¹⁰⁶ *Id.*, at 1292.

Furthermore, the purpose of a differential pricing analysis is to determine whether the A-to-A method is an appropriate tool with which to gauge a respondent's dumping in the U.S. market.¹⁰⁷ In measuring a respondent's amount of dumping, and calculating the respondent's weighted-average dumping margin, the Department uses all of the respondent's sales in the U.S. market as the basis for its analysis. Accordingly, it is rational and reasonable that all U.S. sales be included in any analysis that questions the appropriateness of the comparison method that underpins the calculation of the weighted-average dumping margin. Conversely, as suggested by U.S. Steel, if the Department used a subset of respondent's U.S. sales (*i.e.*, those for which a Cohen's *d* coefficient was calculated) and subsequently used those results in determining, for all U.S. sales, whether a pattern of prices that differ significantly existed, then the Department would be, in effect, creating its own presumption that whatever is found for the subset of U.S. sales should apply to all U.S. sales. Only when the value of all U.S. sales is included in the denominator of the ratio test can the Department measure the true extent of prices that differ significantly as exhibited in the respondent's pricing behavior in the U.S. market.

Thus, the Department appropriately employs a presumption that a pattern of prices that differ significantly does not exist. Once that presumption is understood – as outlined above – it is clear that all sales, whether they pass or do not pass the Cohen's *d* test (for whatever reason), must be included in the denominator of the ratio test, as explained in the remand analysis above. Simply put, the Department has reached a conclusive determination for all U.S. sales, and there are no sales that remain “untested.”

¹⁰⁷ See 19 CFR 351.414(c)(1).

U.S. Steel offers, as an example of its concerns, a ratio test to determine the reading proficiency in a class of 100 students through the administration of a reading test.¹⁰⁸ In this example, 20 students miss the test and of the remaining 80 students, 60 pass. In U.S. Steel's view, it is inherently unreasonable to conclude that the literacy rate in the example is 60 percent (which would be the conclusion under the Department's ratio tests), rather than 75 percent (60 divided by 80). Once again, however, U.S. Steel argues the appropriateness of the presumption made by the Department: there is no evidence of significant price differences when sales do not pass the Cohen's *d* test. From U.S. Steel's example, 60 percent of the students have passed the test and may advance to the next level in their education. Likewise, as detailed above, the presumption that sales are not at prices that differ significantly unless shown otherwise is appropriate. Furthermore, this approach is consistent with the broader context of the Act, within the Department's discretion of interpreting the statute, and consistent with the Department's history of applying that section of the Act under the *Nails* test.¹⁰⁹

Additionally, U.S. Steel incorrectly argues that the Department did not completely follow the Court's request because it failed to explain how the results of the ratio test are not arbitrary. As explained above, however, the Department has addressed all of the Court's concerns.¹¹⁰ In the example we provided, we explained that the "different results are not arbitrary, because two very different patterns of prices that differ significantly have been identified.... In the Department's view, it is not relevant to its analysis why, or under what circumstances, a pattern

¹⁰⁸ See U.S. Steel Draft Remand Comments at 16.

¹⁰⁹ To extend U.S. Steel's analogy, under the reasoning of the Department's ratio test, the students would not take a "makeup exam." In accordance with the Department's presumption, the sale (or student) either passes or does not pass the test (if the student does not show up, he "fails"). There is no need to look for an alternative method of determining the student's literacy in lieu of the exam. Likewise, the Department sees no reason to seek an alternative method of determining whether significant price differences exist when there are inadequate sales in the comparison or test group. The presumption itself, for the reasons explained, is a perfectly reasonable and adequate means of making the determination.

¹¹⁰ See *supra* 5-6.

exists. Just as the Department has not considered why a pattern does exist, it likewise has not considered why a pattern does not exist.”¹¹¹

Furthermore, the Department’s analysis is not arbitrary simply because separate analyses based on different, independent record information conclude with different results. The framework for the Department’s analysis is consistent and known to all parties, with the proviso that if the factual situation for a given respondent warrants a change, then the Department will consider any such request.¹¹² For example, with respect to the Cohen’s *d* test, there must be two observations in each of the test and comparison groups, and the period of time is based on the quarter within the period under examination for each application. It is not two observations for one investigation and ten observations for another investigation, or quarterly time periods for one administrative review, and monthly time periods for another review. Such random variations, unsupported by record evidence, are unpredictable and arbitrary, and that is not the Department’s practice here, or elsewhere.¹¹³

Comment 2: Jindal SAW’s Affiliation

U.S. Steel’s Comments

- The Department has not followed the Court’s instructions to examine the significance of the indirect stock ownership of the O.P. Jindal family in Jindal SAW, JSPL, and [] and, in particular, the family’s indirect holdings through the promotor groups of these entities.

¹¹¹ *Id.*

¹¹² *See, generally*, Preliminary Decision Memorandum at 10-12. (“Interested parties may present arguments and justifications in relation to the above-described DP approach used in this preliminary determination, including arguments for modifying the group definitions used in this proceeding.”).

¹¹³ The Department notes that given the record evidence and arguments from parties, it has, in limited instances, changed the parameters of the Cohen’s *d* test. *See, e.g., Seamless Refined Copper Pipe and Tube From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 23324 (April 28, 2014) and the accompanying Issues and Decision Memorandum at Comment 6.

- While O.P. Jindal family’s shareholding in Jindal SAW is less than 50 percent, it owns the largest block of outstanding shares by far.
- The record does not support several of the claims made by the Department in the Draft Remand Results.
- Jindal SAW purchased at least [] of its steel billets from JSPL and is clearly reliant on JSPL as a [] source of supply for its billets, and would face [] disruptions to its operations if JSPL cut off that supply or started charging Jindal SAW []. These facts demonstrate that there is a close supplier relationship between Jindal SAW and JSPL, such that they are affiliated.

Department’s Position: The Department continues to find that Jindal SAW, JSPL and [] are not affiliated parties. Despite U.S. Steel’s concerns, the Department determines that the record supports our finding from the underlying investigation that these three companies are not affiliated.

U.S. Steel misconstrues the record by listing out the percentages owned by the promotor groups in each of these companies then equating the promotor groups with the O.P. Jindal Group or Jindal family. As explained in the remand analysis above, the direct and indirect ownership of Jindal family members in Jindal SAW through the promotors or other members of the promotor group is very small. For example, although one of these promotors, [], owns [] of Jindal SAW, U.S. Steel assumes the entire amount is attributable to the Jindal family. As explained in the remand analysis, however, the Department’s analysis indicates that three family members each own less than two percent of the shares of [], which makes their ownership in Jindal SAW through the Mansarover vehicle only [] (*i.e.*, []% x (2% + 2% + 2%)) = []%). This example is

indicative of the overall problem with U.S. Steel’s reasoning. Of the 53 promoters of Jindal SAW reported to the BSE, all but seven own less than one percent.¹¹⁴ Of the remaining seven, only one owns more than five percent. According to the Department’s analysis at verification, Jindal family members in turn own a similarly small percentage of the promoters (confirmed through the 24-AA forms examined by the Department at verification and discussed above in the remand analysis). Thus, family members own small percentages of companies that own small percentages of Jindal SAW, resulting in family members owning indirectly even smaller percentages of Jindal SAW itself.

Likewise, the Department’s examination of the Jindal family’s indirect ownership of Jindal SAW through [], indicates, not the [] total ownership assumed under U.S. Steel’s analysis, but a similarly small figure even using conservative estimates.¹¹⁵ Our examination of documentation at verification indicated that no member of the Jindal family was listed as a shareholder in [] and no family member owned more than []. In another instance, the Department’s verification team went so far as to call [] by phone in order to discuss her ownership in a third promotor, [].¹¹⁶ As explained in the remand analysis above, we also took similar steps to verify the Jindal family’s indirect ownership in Jindal SAW through the other promotor investment vehicles. The examination of this indirect ownership is discussed in detail on pages 9 through 12 and 19 through 20 of the remand analysis above. For these reasons, U.S. Steel is incorrect in

¹¹⁴ See Letter from Jindal SAW, “OCTG from India: 2nd Supplemental Section ABC Response.” March 7, 2014 (Jindal SAW March 7 SQR), at Exhibit A-29 (the last chart, which is labeled as “down-loaded from the website of the Bombay Stock Exchange Ltd.”).

¹¹⁵ See Jindal SAW Verification Exhibits at Exhibit SV-4.

¹¹⁶ See Jindal SAW Sales Verification Report at 3-4.

maintaining that the Department failed to examine indirect ownership through members of the promotor groups holding shares in Jindal SAW, JSPL, or [].

Moreover, there is little evidence on the record to support U.S. Steel’s conclusion that members of the relevant promotor groups all belong to the O.P. Jindal “group” or Jindal family in their entirety, or that each promotor group member is controlled by the family. As demonstrated in the remand analysis section above, the family’s direct and indirect ownership in the promoters and other promotor group members examined at verification is very small. Nothing on the record conclusively contradicts the Department’s analysis or supports U.S. Steel’s assertion that all “promoters” are members of the Jindal family or that they are controlled by that family. Accordingly, there is no compelling evidence on the record to prove that the promotor groups and the O.P. Jindal Group (or O.P. Jindal family) are one and the same.

As U.S. Steel notes, the Court referenced one piece of evidence in particular to suggest that the O.P. Jindal family controls the promotor group, thus warranting further examination by the Department of the family’s indirect ownership of Jindal SAW, JSPL, and [].¹¹⁷ While we have complied with the Court’s instructions to examine indirect ownership of Jindal SAW, we do not believe that the evidence highlighted by the Court warrants changing our prior conclusion that the promotor group members are not controlled by the O.P. Jindal Group or Jindal family. Specifically, the Court notes language in a Jindal SAW prospectus, provided by U.S. Steel, which defines “promoter(s)” as “Mr. P.R. Jindal, the Jindal Family, and persons or entities controlled by them”¹¹⁸ Although some Jindal family members are members of the

¹¹⁷ See *U.S. Steel Remand* at 25 (“In light of this record evidence indicating that O.P. Jindal family members controlled the promotor groups and the fact that the statute requires Commerce to look at indirect holdings, Commerce must explain why it was reasonable for it to conclude that O.P. Jindal’s indirect holdings through promotor groups were not significant enough to indicate control”).

¹¹⁸ See *U.S. Steel Remand* at 25 (citing to Petitioners’ December 6 Comments at Exhibit G).

promotor group and own shares, directly and indirectly, in Jindal SAW, this prospectus alone does not conclusively prove that the promotor group includes only Jindal family members or the corporations they control. Moreover, the Court’s statement referenced by U.S. Steel is made within a glossary of terms on page one of the prospectus. The lines above define “board of directors” as “the board of directors of the Company or a duly constituted committee thereof” and “articles of association” as “the articles of association of the Company.”¹¹⁹ This glossary is hardly an attempt to define a complete and accurate list of who sits on the board, what is in the articles of association, or who belongs to the promotor group. This conclusion is borne out by a nearly identical line on page ‘i’ of a [] prospectus, which defines “promoters” as “[

],”¹²⁰ but then includes a second line on page 180 of the prospectus noting “{i}n addition to the Promoters named above {in the glossary}, there are a number of companies that form part of the group which constitutes our Promoter Group.”¹²¹ Thus the glossary definition appears just to “hit the highlights,” naming possibly only the most important or well-known of the promoters.

As the Court notes, “promoter” is a “term of art” under Indian securities law.¹²² Neither the Department nor U.S. Steel has expertise in how that term should be applied in an Indian prospectus, especially an unregulated, so-called “red herring” prospectus.¹²³ Finally, it is unclear why, if the glossary definition is intended to be a complete and accurate summation of Jindal SAW’s promoters, Jindal SAW felt obligated to list dozens of other investment vehicles as

¹¹⁹ See Petitioners’ December 6 Comments at Exhibit G.

¹²⁰ See Petitioners’ February 14 Comments at Exhibit C.

¹²¹ *Id.*

¹²² See *U.S. Steel Remand* at 23, footnote 16.

¹²³ The prospectus notes that it is for a “private placement” of debentures, not a public offering, that it is being circulated to no more than 49 persons, and that it has not been filed with SEBI. See Petitioners’ December 6 Comments at Exhibit G (cover sheet and page 3 of prospectus). For that matter, the document disavows the fact that it is even a prospectus: “[T]his Disclosure Document is neither a prospectus nor a statement in lieu of prospectus.” *Id.*, at 3.

promoters elsewhere, such as in the shareholding pattern statement filed with the BSE.

Accordingly, the Department does not consider this short statement as conclusive proof that the Jindal family controls the promotor group or that the promotor group and the O.P. Jindal Group are one in the same. Furthermore, we do not consider that this prospectus contradicts the more specific evidence examined by the Department at verification.¹²⁴

U.S. Steel also incorrectly suggests that Jindal SAW admits that the promotor group members are one and the same as the O.P. Jindal Group. In fact, in its response to the Department's February 20 supplemental questionnaire asking Jindal SAW to report the total direct and indirect ownership of the Jindal family,¹²⁵ the respondent provided a complete listing of its promoters as reported to the BSE.¹²⁶ Jindal SAW also reported that the listing included Jindal family members.¹²⁷ Jindal SAW, however, did not indicate that all promoters were Jindal family members or that all promoters were controlled by Jindal family members.¹²⁸

While the record contains numerous references to Jindal SAW and other companies belonging to the "O.P. Jindal Group," the record does not indicate that this group is synonymous with any "promoter group" or that the O.P. Jindal Group controls the promoter groups at issue or their members. Jindal SAW also denies that members of the O.P. Jindal family control Jindal SAW,¹²⁹ and, as detailed above, the Department found no indication to contradict this claim through direct or indirect ownership, board memberships, or management positions.¹³⁰ The use of an informal title or "brand" such as the O.P. Jindal Group is not conclusive proof that

¹²⁴ See, e.g., Jindal SAW Verification Exhibits at Exhibit SV-4.

¹²⁵ See Letter to Jindal SAW, "Sections A, B, and C Supplemental Questionnaire in the Antidumping Duty Investigation of Certain Oil Country Tubular Goods from India," February 20, 2014.

¹²⁶ See Jindal SAW March 7 SQR at 18 and Exhibit A-29.

¹²⁷ As already noted, many Jindal family members are also members of the promotor group. Without exception, each individual member owns far less than []. *Id.* at Exhibit A-29.

¹²⁸ See Jindal SAW March 7 SQR at 18 and Exhibit A-29.

¹²⁹ See, e.g., Jindal SAW October 24 Response at Exhibit A-2.

¹³⁰ See Jindal SAW Sales Verification Report at 3-4.

“members” are affiliated. Affiliation as defined by 19 CFR 351.102(b)(3) includes both corporate and family groupings as *factors to be considered* in determining whether companies are under common control. Further, as the same regulation makes clear, consistent with section 771(33) of the Act, control rests ultimately on a person’s ability “legally or operationally ... to exercise restraint or direction over another person.”¹³¹ Given the corporate grouping’s lack of formality in this case, and the lack of shared or common ownership of the purported members, the Department has determined that this is not the type of corporate grouping indicative of affiliation. Likewise, the family grouping is not indicative of control, because, as already explained, the family’s direct and indirect ownership, board memberships, and executive positions are not—even when considered in conjunction—demonstrative of the necessary level of control to exercise restraint or direction.

Reference to the Indian law defining promotor and promotor group does not bolster U.S. Steel’s position. U.S. Steel argues that the law proves that the promotor group controls Jindal SAW and, therefore, if the promotor group and the O.P. Jindal Group are one and the same, then the O.P. Jindal Group controls Jindal SAW. First, as noted above, the promotor group owns at least 46 percent of Jindal SAW and the remainder is scattered widely over numerous other shareholders, making the promotor group the dominant block of shareholders. There is, however, no indication that the promotor group is controlled by the Jindal family.¹³² Moreover, there is no indication that the promotor group acts in unison. Each promotor by itself (with the possible exception of []) owns a very small share of Jindal SAW that alone is not controlling. The

¹³¹ See section 771(33) of the Act.

¹³² See, e.g., Jindal SAW Verification Exhibits at Exhibit SV-4.

Indian law on the record does not contradict this.¹³³ In fact, pursuant to that law, promoters include “the person or persons who are in control of the issue,” but also persons involved in the public offering (presumably, subscribers and underwriters), and other persons named in the prospectus as promoters.¹³⁴ Accordingly, the law does not support the notion that any single promoter controls Jindal SAW or that the members of the promoter group necessarily act in unison, as a single controlling body. More importantly, the law does not link the promoter group to the Jindal family or the O.P. Jindal Group in a manner that demonstrates control over Jindal SAW.¹³⁵

Given that the Department has determined the Jindal family does not control Jindal SAW, it is unnecessary to determine that family’s control over JSPL and []. Pursuant to 19 CFR 351.102(b)(3) and section 771(33)(F) of the Act, affiliation can be established through common control. Accordingly, if the Jindal family does not control Jindal SAW then its control over JSPL and [] is irrelevant to the question of affiliation between Jindal SAW and either of these two companies. Nevertheless, we note once again that U.S. Steel is conflating the term promoter group with the O.P. Jindal Group. The JSPL debenture prospectus indicates that 56 promoters own 59.02 percent of JSPL as of December 2012.¹³⁶ The “Hexa” document indicates that 58.58 percent of JSPL’s shares are owned by promoters and promoter groups as of December 31, 2011.¹³⁷ It also indicates that [] percent of [] is owned by promoter and promoter groups as of December 31, 2011.¹³⁸ The Department reviewed each source

¹³³ See Petitioners’ December 6 Comments at Exhibit G (including the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009).

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*, at Exhibit H at 48-50.

¹³⁷ *Id.*, at Exhibit D, at 71

¹³⁸ *Id.*, at 74.

document in its entirety, and found no instances of the promotor group or its members referred to as the O.P. Jindal Group or Jindal family.

Lastly, U.S. Steel argues that the Department did not consider the board memberships and executive positions held by the O.P. Jindal family, and did “not address the CIT’s instruction to ‘explain why it was reasonable to conclude that these memberships and positions did not create the potential to impact decisions regarding production, pricing, and cost of the subject merchandise.’”¹³⁹ It is clear from our remand analysis, however, that we viewed the board memberships as not having the potential to restrain or direct decisions within the companies because they did not constitute a majority in any company. Specifically, we stated that the four Jindal family board members of Jindal SAW were only four out of eleven, that each board member has only one vote, and that two of these four were non-executive board members.¹⁴⁰ U.S. Steel provides a history of the O.P. Jindal family outlining board membership and executive positions, which is consistent with what Jindal SAW reported.¹⁴¹ Prior to verification, we were aware of the various board seats held by the Jindal family, and, therefore, examined board memberships and executive positions at verification. Our examination is outlined in Jindal SAW’s sales verification report, where we state:

We then examined the individual Jindal family members who are members of Jindal SAW’s board of directors. In order to determine which individuals on the board of directors were members of the Jindal family, we reviewed the section of

¹³⁹ See U.S. Steel Draft Remand Comments at 29 (citing to *U.S. Steel Remand* at 26, “Moreover, although Commerce traced the board memberships and management positions of Jindal family members in Jindal SAW, JSPL, and [], Commerce failed to explain why it was reasonable to conclude that these memberships and positions did not create the potential to impact decisions concerning production, pricing, and cost of subject merchandise, or indicate that the O.P. Jindal family was not in a position to exercise restraint and direction over all of these entities”).

¹⁴⁰ The Court takes issue with the Department’s focus on Jindal SAW, and not JSPL or JSW Energy. See *U.S. Steel Remand* at 26. As we note above, once we determine the family does not control Jindal SAW, its control over JSPL and [] is irrelevant. The companies are only affiliated through common control. See also Jindal SAW Sales Verification Report at 3.

¹⁴¹ See U.S. Steel Draft Remand Comments at 25-26; see also Jindal SAW October 24 Response.

form 24-AA, which are filed by individuals, that lists family members of the filer. To determine the voting power of the Jindal family members in Jindal SAW, we reviewed Jindal SAW's articles of association. Article 119 explains that each director has an equal vote, and that the chairman can break a tie. Of the 11 directors of Jindal SAW listed in Jindal SAW's financial statements, four were Jindal family members (including Savitri Jindal, as indicated above, and three others), indicating that the Jindal family relatives do not have control of Jindal SAW's board. Of these four family members, two are listed as "non-executive," meaning they do not work at the company. Company officials noted that this was in compliance with Indian law, which states that 50 percent of directors must be independent.

We next reviewed the management positions of O.P. Jindal's sons and descendants in each of the "O.P. Jindal Group" companies to see if the directors appear in more than one of the companies. We reviewed the financial statements of Jindal SAW, and under "positions and stock holdings of the relatives of P.R. Jindal," we found no other son of O.P. Jindal listed. We reviewed form 24-AA provided by company officials at our request for [

]. As part of this form, each person must state with which companies he or she serves as a director. Neither P.R. Jindal, his [] in Jindal Steel and Power Limited, Jindal Stainless Limited, or JSW Steel Limited. Savitri Jindal was listed as a director to both Jindal SAW and Jindal Stainless Limited, but had [] of paid up share capital in either company.¹⁴²

In its totality of circumstances analysis, the Department weighs the cumulative effect of all facts indicative of control (including board memberships and executive positions) to determine whether that effect demonstrates the necessary level of restraint and direction, which enables a party to control. Although the Department does not intend to imply that board memberships, even minority board memberships, or executive positions have no "control significance," in the present case, combined with the small percentages of cumulative direct and indirect ownership discussed above, these minority board positions do not result in the restraint and direction necessary to demonstrate control under the Act. Similarly, the Department

¹⁴² See Jindal SAW Sales Verification Report at 3.

explained that the management positions held by the Jindal family are not enough to exhibit the level of control necessary to find affiliation.

U.S. Steel also claims that Jindal SAW and JSPL are affiliated through a close supplier relationship. In its analysis of this issue, the Department noted the factors discussed by the Court from the *CORE from Korea* proceeding, and explained that because these factors were not met in this investigation, the record did not support U.S. Steel’s claim of a close supplier relationship. U.S. Steel first calls into question our claim that Jindal SAW has alternative sources of supply for [], claiming that some of the alternative-source products were [] or were for []. While this may be the case, it is clear from the record that Jindal SAW did purchase [] from several sources, and thus this claim does not call into question our finding that alternative sources are available.¹⁴³ U.S. Steel next claims that Jindal SAW “would experience [] disruptions to its operations if JSPL cut off that supply or started charging Jindal SAW [].”¹⁴⁴ U.S. Steel does not point to a single piece of record information to support this claim; therefore, the Department cannot confirm its veracity. Lastly, U.S. Steel tries to claim that the prices Jindal SAW paid JSPL for [] were less than prices it paid for [] from other companies. This analysis fails to consider other factors that would affect price, such as the [] (consider the number of factors the Department must take into consideration before comparing prices to determine a dumping margin: several physical characteristics, level of trade, contemporaneity of sales, freight adjustments, rebates, direct selling expenses, etc.). Because U.S. Steel did not call

¹⁴³ See Letter from Jindal SAW, “OCTG from India: 1st & 2nd Supplemental Section D Response,” January 6, 2014, at Exhibit D-17.

¹⁴⁴ See U.S. Steel Draft Remand Comments at 31.

into question our determination based on record evidence, we continue to find that Jindal SAW and JSPL are not affiliated due to a close supplier relationship.

Based on the record, the Department is continuing to find that Jindal SAW, JSPL and [] are not affiliated.

Comment 3: Jindal SAW's Yield Loss Calculation

U.S. Steel's Comments

- The Department should reject Jindal SAW's reported yield losses in their entirety because they are not CONNUM-specific. The yield losses reported by Jindal SAW may [], but not because of differences in the physical characteristics identified by the Department as relevant for its model match methodology.
- Consistent with its decision to apply AFA to Jindal SAW's reported conversion costs, the Department should apply AFA to Jindal SAW's reported yield losses because they were not reported on a CONNUM-specific basis.

Department's Position: After further examination of the record, the Department agrees with U.S. Steel that Jindal SAW's reported direct material costs fail to reasonably account for product-specific yield losses. We found that while Jindal SAW's methodology captured total yield loss [], the yield losses have been calculated by [] rather than by production process or product.¹⁴⁵ Accordingly, the total consumption quantities for a []

¹⁴⁵ See Jindal SAW Final Cost Calculation Memo at 7.

regardless of the processing that the products produced []. Under this methodology, CONNUMs [] seemingly have a CONNUM-specific yield loss and have been reported with a unique per-unit direct material cost. Such was the case with the CONNUMs examined by the Department at verification. Each of the three pre-selected CONNUMs we verified [] and consequently each featured a unique yield loss and was reported with a unique per-unit direct material cost. However, as observed by U.S. Steel, CONNUMs [], regardless of the processing the products received and the other physical characteristics associated with the final products, were assigned the same yield loss and were reported with the same per-unit direct material cost. As a result, there are instances where CONNUMs that received additional processing, such as threading, coupling, upsetting or heat treatment – all physical characteristics defined by the Department – were reported with the same per-unit direct material cost as CONNUMs that did not receive the additional processing. For example, from Jindal SAW’s cost database, we noted that it reported the same direct material cost, and therefore, the same yield loss, for a large pool of CONNUMs with physical characteristics that encompass coupled, non-coupled, threaded, non-threaded, and couple- and pipe-length products of varying diameters and thicknesses. Considering the wide range of yields reported by Jindal SAW for the three preselected products reviewed at verification, it is not reasonable to assume that this broad mix of products would incur identical yield losses. Rather, the products were simply []. Thus, we find that Jindal SAW’s reported direct material costs do not appropriately reflect the costs associated with the physical characteristics of the products produced.

Furthermore, while Jindal SAW reported certain CONNUMs with unique direct material costs, it is not apparent that the yields it relied on to calculate these CONNUM costs reflect the unique processing that the CONNUMs received. For example, the CONNUMs may have consumed multiple [], which resulted in unique weighted-average yield losses and direct material costs. While Jindal SAW reported CONNUMs with a unique direct material cost, those direct material costs may be a weighted-average of the yield loss experience for a multitude of products produced with the same underlying [].

The Department normally requests CONNUM-specific costs. For example, the Department's December 19, 2013 supplemental section D questionnaire issued to Jindal SAW, specifically states:

please note again that it is imperative that you submit a Section D per-unit cost database by CONNUM that includes a unique cost for each CONNUM as defined by the physical characteristics listed by the Department's model match criteria at Appendix V of the antidumping duty questionnaire and at Sections B&C described in field numbers 3.1-3.10. CONNUMs should reflect cost differences for each physical characteristic identified by the Department.¹⁴⁶

In response, Jindal SAW stated that,

In calculating the cost of production for each CONNUM, Jindal SAW considered the physical characteristics that have an impact on the production costs. These include the following: steel grade of billet, threading, upsetting, heat treatment, and cooling. Accordingly, the unit cost of production will vary depending on these factors. Other physical characteristics such as wall thickness and diameter do not have an impact on the unit cost of production. Specifically, on a per-unit basis, the wall thickness and diameter does not have an effect on the quantity of steel consumed. Likewise, pursuant to the production process utilized by Jindal SAW, there is no additional processing based on the different wall thicknesses and diameters produced by Jindal SAW.¹⁴⁷

¹⁴⁶ See Letter to Jindal SAW, "Antidumping Duty Investigation of Oil Country Tubular Goods from India," December 19, 2013, at 3.

¹⁴⁷ See Letter from Jindal SAW, "OCTG from India: 1st & 2nd Supplemental Section D Response," January 6, 2014, at 33.

However, based on the analysis above with respect to yield losses and the resultant direct material costs, Jindal SAW did not provide unique yield losses and direct material costs for each CONNUM that reflect the CONNUM's unique physical characteristics. While Jindal SAW acknowledges that additional processing such as threading or heat treatment would impact production costs and accordingly reported additional conversion costs for these products, the reported direct material costs do not reflect the yield losses associated with the specific processing that the product received. Rather, the yield losses and direct material costs reported by Jindal SAW reflect the experience of multiple products produced with the [

] regardless of the processing received or the physical characteristics of those products. Accordingly, we find that an adjustment of the per-unit direct material costs for all reported CONNUMs is necessary. Further, we agree with U.S. Steel that partial facts available with adverse inferences is appropriate. Necessary information pertaining to CONNUM-specific yield losses is not available on the record within the meaning of section 776(a)(1) of the Act. Moreover, Jindal SAW failed to cooperate by not acting to the best of its ability in providing CONNUM-specific yield losses, and ultimately direct material costs. Therefore, the adjustment we are making will be partially adverse, in accordance with section 776(b) of the Act. As noted above, we issued Jindal SAW a supplemental section D question instructing it to provide CONNUM-specific costs that account for each of the Department's physical characteristics. Jindal SAW responded that it did consider the physical characteristics that have an impact on the reported production costs. However, per analysis of the reported material costs, it does not appear that they accounted for yield loss differences for the different products produced.

Therefore, for purposes of this final remand, the Department has recalculated Jindal SAW's direct material costs to mitigate the distortions created by the company's yield loss

methodology. We have adjusted the reported direct material costs based on partial adverse facts available.¹⁴⁸ Specifically, we have calculated an adjustment factor that represents the absolute difference between the highest yield loss and the simple average yield loss of the three pre-selected CONNUMs examined in detail by the Department at the cost verification.

Comment 4: Cost Assigned to GVN’s Dual-Grade Products

U.S. Steel’s Comments

- Given their [] characteristics, their [] costs, and the [] price at which they were sold, it is completely reasonable to assign dual-grade products the highest costs reported by GVN for its L-80 grade OCTG products.
- The “proxy cost” methodology used by the Department completely ignores the fact that the requirements of the dual-grade products [] those of L-80 grade products, making them [] costly to produce, and completely ignores the fact that the dual-grade OCTG was sold at a [] price than L-80 grade products.
- In the alternative, consistent with prior proceedings, because GVN did not cooperate to the best of its ability in responding to the Department’s requests for cost data for the dual-grade CONNUMs, and instead made unsolicited changes to its reported sales data to avoid having to report the costs, the application of AFA is warranted.

Department’s Position: U.S. Steel argues that the Department should either assign the highest L-80 grade product costs to these dual-grade products, as it did in the underlying investigation, or find that GVN did not act to best of its ability, thus warranting the application of AFA. We find that the record in this case does not support the options proposed by U.S. Steel. Accordingly, we continue to follow, as facts available, the Department’s “proxy cost” methodology in assigning a cost to GVN’s dual-grade products.

According to U.S. Steel, the [] specifications make dual-grade products [] to produce. The record also shows []

[]. In fact, according to U.S. Steel, []

¹⁴⁸ See Memorandum, “Jindal SAW Ltd. Final Remand Analysis,” August 31, 2016.

].¹⁴⁹ It is not the Department's practice, however, to consider prices when determining a proxy cost.¹⁵⁰ Moreover, U.S. Steel fails to cite to any case where the Department contemplated conducting the type of analysis it proposes.

As explained in the remand analysis above, the Department's practice is to rely on the costs reported for the products that are most similar to the products with missing costs using the same matching methodology used to match products sold in the United States with products sold in the home market.¹⁵¹ This methodology compares the physical characteristics of the products, not their price differences. Price differences may be the result of a number of factors other than cost differences, including customers, levels of trade, time period, region, etc. While the dual-grade products might have [] specifications than L-80 products, the Department's finding (at the behest of U.S. Steel) that these L-80 products should be reclassified as L-80 products in accordance with the Department's practice regarding dual-grade products has been affirmed by the Court.¹⁵² As previously explained, we require one set of cost values per CONNUM, not multiple costs for various products that might fall under one CONNUM. We also do not otherwise differentiate our analysis for physical variations within a CONNUM. Thus, adjustments for "inter-grade" differences in specifications between two groups of products with the same CONNUM would be inconsistent with the Department's practice.¹⁵³ Again, U.S. Steel fails to cite any precedent in support of its argument that we should make "inter-grade" adjustments for presumed cost differences attributable to different specifications within the same grade and CONNUM.

¹⁴⁹ See U.S. Steel Draft Remand Comments at 7.

¹⁵⁰ See, e.g., *Stilbenic Optical Agents from Taiwan*, and accompanying Issues and Decision Memorandum at Comment 2.

¹⁵¹ See *supra* at 27-28.

¹⁵² See *U.S. Steel Remand* at 73.

¹⁵³ See, e.g., Letter to GVN, "Antidumping Duty Investigation: Certain Oil Country Tubular Goods from India," August 27, 2013, at D-16 ("each CONNUM should be assigned only one cost").

Finally, U.S. Steel argues that, pursuant to the Court’s remand opinion, the Department should determine that AFA be applied to these costs. U.S. Steel notes that the Department requested that GVN provide costs for each relevant CONNUM. The Department reviewed the record, and notes that GVN submitted a revised U.S. sales database in a supplemental questionnaire response in which it made several updates based on the Department’s questions, and in the process, eliminated the CONNUMs in question by recoding them.¹⁵⁴ Accordingly, the continued need for these costs was no longer evident, so the Department did not request further information, and GVN did not provide any additional information regarding the costs. Based on our observations during verification regarding the documentation surrounding the dual-grade products, and information provided by GVN in its questionnaire responses, Petitioners requested in their case brief that we recode the CONNUMs of these dual-grade products once again. In response, the Department determined that, based on record evidence, it was appropriate to recode these dual-grade products to L-80 grade products. It was only evident after we recoded the CONNUMs that the costs for these dual-grade products were not on the record. Given how it was not evident that we needed these costs for the dual-grade products until the briefing stage of the proceeding, the assignment of AFA for when a party “has failed to cooperate by not acting to the best of its ability” is not warranted.¹⁵⁵ Therefore, as facts available, we are using our “proxy cost” methodology to assign cost to these dual-grade products.

E. Final Remand Results

Per the Court’s instructions, we provided further explanations supporting the determinations of the *India OCTG Final Determination*. We have explained further the Cohen’s

¹⁵⁴ See Letter from GVN, “Oil Country Tubular Goods from India; Second Supplemental Sections A, B and C Response of GVN Fuels Limited,” March 6, 2014, at 4.

d and ratios tests under our differential pricing analysis, detailed why the record continues to support our final determination that Jindal SAW is not affiliated with JSPL and [], adjusted the yield loss calculation for Jindal SAW, and adjusted our facts available decision regarding the costs assigned to GVN's dual-grade products. Accordingly, we have calculated an adjusted weighted-average dumping margin of 11.24 percent for Jindal SAW, and have calculated a *de minimis* rate of 1.07 percent for GVN. Because we have calculated a *de minimis* weighted-average dumping margin for GVN, consistent with section 735(c)(2) of the Act, we would terminate this investigation with respect to GVN only should the Court sustain the final results of redetermination pursuant to remand reaching the same conclusion.



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

31 AUGUST 2016

(date)