

June 4, 2008

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of
Antidumping Duty Administrative Review and Partial Rescission
of Antidumping Duty Administrative Review: Certain Hot-Rolled
Carbon Steel Flat Products from Thailand

Summary

We have analyzed the comments and rebuttals from interested parties in the administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products (“hot-rolled steel”) from Thailand for the period of review (“POR”), which is November 1, 2005, through October 31, 2006. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this review for which we received comments from interested parties:

- Comment 1: Use of Adverse Facts Available
- Comment 2: Affiliation
- Comment 3: Reseller Databases
- Comment 4: Clerical Errors
- Comment 5: Liquidation Instructions

Background

On December 7, 2007, we published the preliminary results of this antidumping duty administrative review. See [Certain Hot-Rolled Carbon Steel Flat Products From Thailand: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission](#), 72 FR 69187 (December 7, 2007) (Preliminary Results).

We invited parties to comment on our Preliminary Results. On January 7, 2008, we received case briefs from respondent G Steel Public Company Limited (G Steel) and domestic interested party Nucor Corporation (Nucor). Also on January 7, 2008, we received a letter from Nakornthai Strip Mill Public Company Limited (NSM) in support of the Department's preliminary determination to rescind the review with respect to NSM because it did not have any entries, exports, or sales of subject merchandise to the United States during the period of review. On January 11, 2008, we received rebuttal briefs from G Steel, Nucor, and U.S. Steel. No public hearing was held.

Discussion of the Issues

Comment 1: Use of Adverse Facts Available

Domestic Interested Party's Comments:

Nucor claims that, because G Steel failed to report key model match characteristics, despite having the ability to do so, the Department cannot calculate an accurate adverse facts available (AFA) rate using G Steel's data. Nucor argues that the Department's preliminary method for correcting G Steel's deficiency, by limiting normal value to a set of transactions with a similar control number (CONNUM), would still produce inaccurate results because the margin program relies upon an uncorrectable portion of the database to calculate and test the very data which the Department has preliminarily selected. Additionally, according to Nucor, the Department cannot determine which transactions are most similar because G Steel's reported costs of production database and the variable costs used to calculate a difference in merchandise (DIFMER) are also inaccurate. Therefore, according to Nucor, the Department should revise its choice of AFA for the final results. Specifically, Nucor proposes that the Department assign a new, higher margin of 8.84 percent because G Steel failed to properly report a home market CONNUM for these sales, and the Department does not have sufficient record evidence to correct the improper reporting.

Nucor argues that because G Steel failed to provide supporting documentation at verification, the Department cannot identify which individual sales were coded incorrectly. Nucor further argues that not only is the Department unable to identify which individual sales were incorrectly coded, there is no reasonable means by which the Department can choose the correct yield code for each sale. Nucor contends that although the Department can calculate an overall percentage for the total volume of sales that should be coded with certain numbers for yield strength, it cannot change the coding for individual sales for which there are no mill test certificates without resorting to massive speculation.

Nucor asserts that the courts have specifically held that the Department cannot make a determination that is based on speculation. See Asociacion Columbiana de Exportadores de Flores v. United States, 704 F. Supp. 1114, 1118 (CIT 1989), affirmed by 901 F.2d 1089 (Fed. Cir. 1990). Furthermore, according to Nucor, the Department is statutorily obligated to determine margins as accurately as possible. See Lasko Metal Prods., Inc. v. United States, 43 F.3d 1442, 1443 (Fed. Cir. 1994). Nucor maintains that due to G Steel's yield strength coding

errors, the Department would have to speculate, which would be a significant administrative burden and would be contrary to law and the Department's statutory obligations to determine accurate antidumping duties.

Nucor also asserts that G Steel failed to both report a cost database, and to report variable costs in its sales databases, that take into account the cost differences resulting from producing low, medium, and high strength steel. Specifically, according to Nucor, by reporting a cost system that relies on the erroneous assumption that all of its sales have a certain yield strength code, G Steel inappropriately aggregated its costs. Therefore, according to Nucor, the Department's test for below-cost sales will produce inaccurate results if the Department uses the costs for a model with one particular yield strength, and applies this to a home market sale that should have a different yield strength code. Nucor adds that there would also be inaccurate DIFMER adjustments as a result of the miscoding of yield strength.

According to Nucor, the damage caused by G Steel's failure to appropriately identify and support yield strength is not limited to the model match, the cost test, and the DIFMER test. Nucor argues that G Steel's errors also distort the results of the Department's arm's-length test because the test's comparison between affiliated and unaffiliated home market sales are made on a CONNUM-specific basis. Nucor further argues that because the Department can neither determine which individual transactions are correctly reported, nor which code would be proper for any incorrectly reported transaction, it cannot properly aggregate and calculate CONNUM-specific averages for the arm's-length test.

With regard to the arm's-length test and the DIFMER test, Nucor contends that the DIFMER analysis is conducted on similar arm's-length comparisons. Nucor argues that in this case, because the Department is unsure of whether the CONNUM itself is accurately aggregated and because it does not have the necessary costs for all of the CONNUMs, the Department cannot rely upon the accuracy of the arm's-length test. Moreover, according to Nucor, if the results of the arm's-length test are skewed or in doubt due to incorrect CONNUM reporting, the results of the cost test will also be skewed and inaccurate. Additionally, according to Nucor, the profit for constructed value (CV) will also be inaccurate because the starting point for CV profit is sales that have passed both the arm's length test and the below-cost test. As such, Nucor concludes that the Department cannot proceed to calculate an accurate margin in the absence of correct CONNUMs and their associated costs.

Nucor argues that because the Department cannot cure G Steel's reporting deficiencies with respect to its home market sales without resorting to speculation, the Department must use facts available to fill in the gaps in G Steel's reporting. Nucor further argues that because G Steel did not act to the best of its ability, the Department must use an adverse inference when selecting from among the facts otherwise available.

As noted above, Nucor argues that the Department's preliminary choice for AFA only addresses the distortions to the model match part of the program that resulted from G Steel's miscoding of yield strength. Nucor maintains that G Steel's errors also affected the arm's-length test, DIFMER test, and the cost test, etc., resulting in a margin program that produces an inaccurate

result. Therefore, Nucor argues that the Department should select an AFA methodology that creates more accurate results and deters future non-cooperative behavior.

According to Nucor, the model match hierarchy that results from the Department's choice of partial AFA selects the same CONNUM/month combination that would have been selected in the absence of any AFA. Nucor asserts that the difference in net price between the normal value without AFA and with AFA is so negligible that the Department would be allowed to ignore its own adverse adjustment under 19 CFR 351.413. Nucor argues that because the Department's current AFA strategy does not satisfy the statutory goals of the AFA process of increasing accuracy or creating an incentive for future cooperation, the Department should abandon its preliminary approach.

Nucor maintains that the margin program cannot produce accurate results without the correction of all CONNUMs and a complete cost of production database. Nucor argues that it is too late in the review for such information to be collected. Nucor further argues that G Steel, having failed verification, does not merit another opportunity to correct its data, and the Department must go outside of the margin program in choosing facts available. Consequently, Nucor contends that the Department should choose as AFA the highest normal value on any individual home market sale. Nucor argues that not only is this information relevant to G Steel, being a value derived from its own sales during the POR, but it is indicative of G Steel's own experience and is consistent with the Department's past practice. See Krupp Thyssen Nirosta GMBH et al v. United States, 25 CIT 793 (2001); and Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India, 71 FR 45,012 (August 8, 2006) and accompanying Issues and Decision Memorandum at Comment 15.

Nucor specifies one of G Steel's home market sequence numbers (SEQH) and argues that the Department should compare all U.S. sales to this normal value for the final results, bypassing the comparison market program. Nucor concludes that the value is not aberrational, and it would result in an adverse inference that would address G Steel's reporting failure, and would induce it to act to the best of its ability to comply with the Department's request in future proceedings.

Respondent's Comments:

G Steel argues that the Department improperly applied an adverse inference in its use of facts available in the Preliminary Results. G Steel cites 19 USC § 1677m and argues that U.S. antidumping law prevents the Department's punitive use of facts available to a firm that makes its best efforts to cooperate with the Department. See Borden, Inc. v. United States, 22 CIT 233, 262, 4 F. Supp. 2d 1221, 1245 (CIT 1998). G Steel contends that if the Department finds that a respondent failed to provide requested information by the deadline or in the form and manner requested, 19 USC § 1677m(e) requires that the Department consider deficient information if the respondent satisfies five criteria: (1) the information is submitted by the deadline established for its submission, (2) the information can be verified, (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting

the requirements established by the Department with respect to the information, and (5) the information can be used without undue difficulties.

G Steel contends that if the Department determines that facts available is warranted, after a respondent has been notified of the deficiency in the submitted data and is given an opportunity to remedy the deficiency, 19 USC § 1677m(e) permits the Department to apply an adverse inference if the Department finds that the respondent has failed to cooperate by not acting to the best of its ability. G Steel argues that the courts have consistently held that the finding of facts available with an adverse inference must be “reached by ‘reasoned decisionmaking,’ including... a reasoned explanation supported by a stated connection between the facts found and the choice made.” See Elec. Consumers Res. Council v. Fed. Energy Regulatory Comm’n, 241 U.S. App. D.C. 397, 747 F. 2d 1511, 1513 (D.C. Cir. 1984) (cited in China Steel Corp., et al. v. United States, 264 F. Supp. 2d 1339, 1359 (CIT 2003)). Additionally, G steel argues that in making a determination that an interested party did not act to the best of its ability, the Department cannot merely recite the relevant standard or repeat its facts available finding, but must provide an explanation that includes, at minimum, a determination that a respondent could comply, or would have had the capability of complying if it knowingly did not place itself in a condition where it could not comply. See Steel Auth. of India v. United States, Ltd., 25 CIT 482, 488, 149 F. Supp. 2d 921, 930; and Kawasaki Steel Corp. v. United States, 24 CIT 684, 689, 110 F. Supp. 2d 1029, 1034 (2000). See also Nippon Steel Corp. v. United States, 22 CIT 1158, 1171, 118 F. Supp. 2d 1366, 1378-79 (2000). Furthermore, according to G Steel, the Department exceeds the discretion under 19 USC § 1677e(b) if it imposes an unjustifiably high, punitive rate that is contrary to its own findings of fact. See F.Lii de Cecco di Filippo Fara S. Martino S.p.A. v. United States, 216 F.3d 1027, 1033 (Fed. Cir. 2000) (F.Lii de Cecco di Filippo).

G Steel contends that in its responses to sections B and C of the Department’s antidumping questionnaire, dated February 21, 2007 (“section B & C responses”), it reported yield strength as directed, but the Department found during verification that, for a sample of home market and U.S. sales, the coding of the yield strength in the databases was inconsistent with the yield strength reported in the mill certificates. G Steel argues that the Department found that G Steel failed to cooperate to the best of its ability because it possessed the necessary documents to report the complete and correct information in the necessary and requested manner and format, and that it did not put forth its maximum effort in reporting yield strength.

G Steel argues that the first time that it was notified of the Department’s position regarding yield strength was two days before the Preliminary Results were issued. G Steel further argues that the Department did not provide G Steel with the opportunity to remedy the problem, and that the notification and opportunity to remedy is required under the statute. According to G Steel, the Department’s decision was contrary to law and should be reversed in the final results.

G Steel asserts that if the Department continues to maintain that the application of facts available is warranted, then the Department should apply neutral facts available because an adverse inference is not warranted. G Steel argues that it is a first-time respondent that cooperated throughout the review, including during the sales and costs verifications. Therefore, according to G Steel, it is not warranted for the Department to conclude that G Steel has not acted to the best

of its ability in this administrative review. G Steel concludes that rather than applying facts available with an adverse inference by matching the net U.S. price to the highest individual home market normal value using a similar CONNUM to the CONNUM of the U.S. sale, the Department should, as neutral facts available, change the coding to one particular number for the yield strength fields in G Steel's U.S. and home market databases. See G Steel Public Company Limited's Case Brief, dated January 7, 2008, at 8.

Petitioner's Rebuttal Comments:

U.S. Steel argues that the Department should continue to use AFA in the final results. U.S. Steel contends that G Steel's argument that the Department did not inform G Steel of its responses' deficiencies and provide it with an opportunity to remedy or explain the deficiencies, pursuant to 19 USC § 1677m(d), is not applicable in this case because the Department determined that G Steel's reporting of yield strength was unacceptable due to inconsistencies uncovered at verification. According to U.S. Steel, 19 USC § 1677m(e)(2) instructs the Department to reject information, such as G Steel's yield strength data, that cannot be verified. See Porcelain-on-Steel Cooking Ware from China: Notice of Final Results of Antidumping Duty Administrative Review, 71 FR 24641 (April 26, 2006) and accompanying Issues and Decision Memorandum at Comment 2.

To refute G Steel's assertion that the Department should not apply AFA to G Steel because it has been fully cooperative, U.S. Steel cites multiple cases where the Department determined it was irrelevant whether a party generally cooperated with the Department when the Department applied AFA regarding a distinct issue. See Mannesmannrohren-Werke AG v. United States, 77 F. Supp. 2d 1302, 1314 (CIT 1999); see also Notice of Final Determination of Sales at Less Than Fair Value: Hot-rolled Flat-Rolled Carbon-Quality Steel Products from Japan, 64 FR 24329 (May 6, 1999); and Nippon Steel Corp. v. United States, 337 F.3d 1373, 1383. However, U.S. Steel maintains that G Steel did not act to the best of its ability to report yield strength, and argues that the Department is fully justified in applying AFA to G Steel and should continue to do so in the final results.

Domestic Interested Party's Rebuttal Comments:

Nucor argues that the Department properly applied facts available with an adverse inference to G Steel. Citing 19 USC § 1677e(b), Nucor argues that the Department can apply AFA to a respondent that does not act to the best of its ability in providing the requested data. Nucor notes that the Department did not discover until verification that G Steel did not accurately report its yield strength data. Therefore, according to Nucor, the Department did not have the opportunity to give G Steel a chance to remedy its deficiencies prior to verification. Nucor adds that the Department was justified in applying an adverse inference to G Steel because G Steel had the ability to provide the Department with correct and complete yield strength data, but instead provided data with errors that negatively impacted the administrative record.

Nucor contends, contrary to G Steel's assertions, that where a respondent fails verification, the Department is not required to give the respondent notice and an opportunity to remedy or explain

deficiencies. Citing 19 USC § 1677e(a)(2), Nucor argues that the Department may use “facts otherwise available” in reaching a determination where an interested party: (1) withholds information requested by the Department; (2) fails to provide information in a timely manner or in the form requested; (3) significantly impedes a proceeding; or (4) provides information that cannot be verified, subject to the requirements in 19 USC § 1677m(d).

Nucor contends that section 1677m(d) is primarily designed to allow respondents the opportunity to correct inaccuracies throughout the questionnaire phase of the review, and that opportunities to rectify the deficient information are to be offered only “to the extent practicable.” Nucor argues that in this case, the Department did not discover until verification that G Steel’s reported yield strength was misreported and that G Steel was unable to substantiate how it reported yield strength data in its U.S. and home market databases. Citing several cases, Nucor asserts that the Department’s consistent past practice favors the application of facts available and AFA for verification failures, without providing additional opportunities for remedying the reporting failures. See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India, 70 FR 54,023, 54,025 (September 13, 2005); Honey from the People’s Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review, 70 FR 38,873 (July 6, 2005) and accompanying Issues and Decision Memorandum at Comment 1; Certain Polyethylene Terephthalate Film, Sheet and Strip from India: Final Results of Antidumping Duty Administrative Review, 70 FR 8,072 (February 17, 2005) and accompanying Issues and Decision Memorandum at Comment 3; and Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review, 68 FR 41,303 (July 11, 2003) and accompanying Issues and Decision Memorandum at Comment 2. Nucor adds that the Court of International Trade has upheld the use of AFA in such circumstances. See, e.g., Yantai Timken Co. v. United States, Slip. Op. 2007-151 (CIT 2007); and Tatung Co. v. United States, 18 CIT 1137, 1142 n.3 (CIT 1994).

According to Nucor, even if G Steel could correct its information, the corrected information could not be verified after the fact, and this in itself would present a reason for applying AFA under 19 USC § 1677e(a)(2) and 19 USC § 1677m(e). Nucor argues that the Department itself has noted that “{i}t is a central tenet of Departmental practice that verification is not intended to be an opportunity for submitting new factual information.” See Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand: Final Results of Antidumping Duty Administrative Review, 68 FR 6409 (February 7, 2003) and accompanying Issues and Decision Memorandum at Comment 1.

Additionally, according to Nucor, G Steel classified yield strength as the same for all of its models, despite having the documents necessary to report complete information, and thus has not demonstrated that it acted to the best of its abilities. Nucor adds that any recalculations based on revised yield strength data, at this late stage of the review, would be unduly burdensome to effectuate in terms of the Department’s model match, cost test, DIFMER test, and arm’s-length test.

Nucor further argues that G Steel did not act to the best of its abilities but the Department did not have any reason to consider G Steel’s information deficient prior to verification. Nucor contends

that the Department provided clear instructions in its antidumping questionnaire for reporting yield strength, and G Steel, in its questionnaire response, stated that it had reported yield strength as requested by the Department. See G Steel's section B & C responses at B-6. Nucor maintains G Steel was issued numerous supplemental questionnaires during the review, and thus had ample opportunity to correct any deficiencies prior to verification, regardless of whether these deficiencies had been identified by the Department. Therefore, Nucor contends that the Department was justified in applying AFA without giving G Steel an opportunity to remedy the deficiencies uncovered at verification.

Regarding G Steel's argument that it is a first time respondent and has been very cooperative throughout this administrative review, Nucor asserts that compliance to the best of one's ability does not merely mean providing answers. Nucor argues that G Steel inaccurately classified its yield strength as the same for all models, and must have known that this was factually inaccurate. Nucor further argues that G Steel had full access to, and control of, its own yield strength data, but failed to correct the significant inaccuracies in this reported data, assuring the Department that it had correctly and completely reported yield strength data. Nucor maintains that G Steel failed to act to the best of its ability to provide full and accurate data, a factor that justified the application of AFA.

Citing Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil, 65 FR 5554, 5567 (February 4, 2000), Nucor argues that AFA is often found to be appropriate where the respondent provides inaccurate and incomplete data that significantly hinders calculation of an accurate dumping margin. Nucor maintains that G Steel made crucial and problematic errors in its reporting of yield strength, and this misreporting affected G Steel's model match characteristics and resulting CONNUMs, both of which are fundamental to the margin calculation. Moreover, Nucor contends that G Steel's failure to appropriately identify and support its yield strength data had an effect on other parts on the Department's programs and skewed the remainder of the Department's normal margin calculations. Therefore, Nucor maintains that the Department's determination to apply AFA was justified and warranted, and the application of neutral facts available, as G Steel suggests, would be inappropriate in this review.

Respondent's Rebuttal Comments:

G Steel contends that Nucor's proposed partial facts available methodology, which would result in a margin of 8.84 percent, is based on immaterial matching designed to be punitive and distortive. Citing 19 USC § 1677e(b) and F.Lii de Cecco di Filippo, G Steel further argues that the Department does not have the discretion to impose an unjustifiably high, punitive rate that ignores the facts in the course of its own investigation. G Steel maintains that it has complied with all of the Department's requests, and passed both the sales and cost verifications. G Steel argues that applying a rate that is effectively total AFA is contrary to the record of G Steel's cooperation throughout this review.

G Steel contends that the Department incorrectly found it necessary to alter G Steel's data for miscoding only one of eleven CONNUM characteristics by using partial AFA. G Steel asserts

that Nucor is requesting a rate that is well above what the Department determined in the Preliminary Results, and disagrees with Nucor's justification for such a high margin. G Steel argues that, contrary to Nucor's statement that G Steel failed verification and has an uncorrectable database, the evidence in the administrative record indicates that the Department had only minor findings and found no discrepancies during verification. See Sales Verification Report at 2. Furthermore, according to G Steel, its verified data on the record can and should be used to calculate G Steel's margin.

G Steel disagrees with Nucor's argument that G Steel's data produce inaccurate results because the margin program relies upon an uncorrectable portion of the database, and that the cost database is also inaccurate. G Steel refers to the sales verification report and argues that the Department found that only one CONNUM characteristic, yield strength, was miscoded in the U.S. and home market database and found no discrepancies in the other CONNUM characteristics. See Sales Verification Report at 36 and 39-47. G Steel further argues that Nucor's proposed AFA methodology does not take into account the fact that yield strength is the lowest characteristic in the relevant CONNUM hierarchy. Additionally, according to G Steel, Nucor's proposed matching sale does not comply with the Department's efforts to create a weighted-CONNUM, based on a hierarchical order of steel characteristics, in order to properly match similar home market transactions with U.S. transactions for an accurate margin.

G Steel further contends that the cases which Nucor cites, regarding the use of highest normal value on any individual sale as AFA, are mostly inapplicable to this administrative review. See G Steel's Rebuttal Brief, dated January 11, 2008, at 12. G Steel alleges that Nucor's proposed home market sales matches did not occur during the POR, and are not appropriate according to the Department's established practice of using only three months prior and two months after for similar matching. Additionally, G Steel argues that Nucor's proposed matching sales are aberrational in terms of price and their representation of the type of sales in the databases.

G Steel contends that the Department correctly identified the most similar matching home market sale CONNUM to the U.S. sale CONNUM, based on the verified CONNUM characteristics and the verified mill certificates. Therefore, according to G Steel, the Department should continue to use home market sales of the particular CONNUM in the nearest month to the U.S. sale to calculate normal value for G Steel's U.S. margin calculation in the final results. G Steel adds that the Department's methodology is punitive in that it increases the normal value.

G Steel maintains that if the Department determines that the use of facts available is warranted, the Department should not apply an adverse inference. G Steel maintains that it has been a fully cooperative first-time respondent that "acted to the best of its ability" in this administrative review. Therefore, G Steel maintains that the Department should instead apply neutral facts available to G Steel by coding the yield strength fields with the same code in both the U.S. and home market databases.

Department's Position:

We agree with Nucor and U.S. Steel that, pursuant to section 776(b) of the Act, the application of partial AFA is warranted for G Steel. As AFA, we will compare the CONNUM with the highest cost to home market sales, for purposes of the cost test. Those sales that pass the cost test will then be used in the margin analysis. Additionally, as discussed below, we will not run the arm's-length test in the comparison market program and we will only use sales to unaffiliated home market customers in the NV calculation.

Pursuant to section 776(a)(2)(D) of the Act, the Department finds that the application of partial facts available is warranted because G Steel provided information in its sales and cost databases that could not be fully verified. Section 776(a)(2)(D) of the Act provides that, if an interested party or any other person provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title. Section 782(d) of the Act provides that if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the review.

We find that the application of partial FA is warranted pursuant to section 776(a)(2)(D) of the Act because during the Department's sales verification in Thailand, the Department was unable to verify G Steel's yield strength information. In sections B and C of the Department's antidumping duty questionnaire, dated January 3, 2007, we requested that G Steel report the yield strengths (STRENGTH/U) in its U.S. and home market databases based on the minimum specified yield strength for the particular specification/grade. Furthermore, we requested that for sales to a particular specification/grade in which there is no minimum specified yield strength, G Steel classify the product in an appropriate yield strength category based on some reasonable methodology incorporating chemistry (*i.e.*, carbon level), heat treatment, *etc.*, and for G Steel to explain the methodology it used. In its section B and C responses, G Steel stated that it reported yield strength as directed. See G Steel's section B and C responses, dated February 21, 2007, at B-6. We noted that in both the home market and U.S. sales databases, G Steel coded all of its sales observations the same way. In other words, it reported that all products sold were of the same yield strength.

During the sales verification, we took a sample of G Steel's home market and U.S. sales and when testing the yield strength of these sales using the appropriate mill certificates, we found that yield strength was incorrectly reported for a majority of the sample sales. See Memorandum to the File, through Angelica Mendoza, Program Manager, and Richard O. Weible, Office Director, regarding the Yield Strength Analysis for the Pre-selected and Surprise Home Market and U.S. Sales Reviewed During the Sales Verification of G Steel Public Company Limited, dated November 28, 2007 (Yield Strength Memo to the File). G Steel claimed that it reported a theoretical yield strength based on the product specifications. See G Steel Sales Verification Report at page 35. However, based on our findings at verification, and in reviewing the record,

we find that G Steel's reporting of yield strength, which it claimed was on a theoretical basis, is not consistent with the minimum yield strength specified by the grade specifications (where applicable) for a majority of its home market and U.S. sales. See Yield Strength Memo to the File, dated November 26, 2007. Therefore, it was not possible to verify this aspect of the product characteristic information that we had identified as part of our examination in the verification agenda, dated August 28, 2007.

As a result of our verification findings, we determined in the Preliminary Results that G Steel's misreporting of yield strength information impacted the model matching in the margin calculation programs. After considering additional information after the Preliminary Results, we determine that G Steel's misreporting of yield strength information also impacts the arm's-length test and the cost test parts of the margin calculation programs. In the arm's-length test, the Department compares the weighted-average price to each affiliate for each product to the weighted-average price of the same or a similar product to all unaffiliated customers. Because the yield strength was coded the same for all products, we cannot accurately compare G Steel's prices to affiliated and unaffiliated customers. Moreover, G Steel's misreporting of yield strength causes the cost database, in addition to the sales database, to be unreliable. As mentioned above, we know from our sales verification testing that individual sales had different yield strengths. See Yield Strength Memo. Therefore, we know that costs have not been reported correctly for CONNUMs with varying yield strengths because costs have been reported for all sales using the same yield strength code.

Accordingly, pursuant to section 776(a)(2)(D) of the Act, partial FA is justified to remedy this reporting deficiency. Further, section 782(d) of the Act does not apply because G Steel did not fail to comply with a request for information. In fact, it did provide the yield strength information, but that information could not be verified. In any event, it is not practicable at verification to accept new information (e.g., new databases), and G Steel did not attempt to do so.

Further, the Department finds that the application of an adverse inference is warranted pursuant to section 776(b) of the Act because G Steel's actions in this proceeding, regarding the reporting of yield strength information, meet the standards required for the Department to make an adverse inference when selecting from among the FA. Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting from among the facts otherwise available. In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1, at 870 (1994) (SAA), establishes that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate to the best of its ability than if it had cooperated fully." A showing of bad faith is not required for imposition of an adverse inference. Rather, the question is whether the respondent put forth its maximum effort to produce the information requested. Inattentiveness or carelessness can be a basis for use of an adverse inference. See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

As we stated in the Preliminary Results, G Steel possessed the necessary documents to report complete and correct information in the necessary and requested manner and format. We find that G Steel did not perform to the best of its ability in reporting the yield strength characteristics for products sold and produced during the POR. Rather, it simply classified all yield strengths the same for all products. While G Steel is a new respondent, the statute does not condone carelessness, especially the type of carelessness where a respondent merely codes all products as being identical with respect to a particular characteristic, when clearly they may not be identical with respect to that product characteristic. Accordingly, we find that G Steel did not act to the best of its ability in reporting certain necessary and accurate information. Moreover, G Steel did not meet all the criteria of section 782(e) of the Act (e.g., the information cannot be verified, and G Steel has not demonstrated that it acted to the best of its ability). Therefore, in remedying this reporting deficiency, we find it appropriate to use an inference that is adverse to G Steel's interest in selecting from among the facts otherwise available.

We disagree with Nucor that we should compare all of G Steel's U.S. net prices with the highest individual NV in the POR. As noted above, even though G Steel's reported yield strengths were unverifiable, we were able to verify G Steel's reporting of all other, and more significant, model matching product characteristics.

For the aforementioned reasons, we determine, within the meaning of section 776(b) of the Act, that the application of partial AFA is warranted because the Department was unable to verify G Steel's yield strength data and G Steel did not act to the best of its ability in reporting necessary and accurate information. Accordingly, as partial AFA for the final results, for purposes of the cost test, we are using the highest cost CONNUM to perform the cost test for all of G Steel's home market sales. We feel that this is the most appropriate application of partial AFA because applying this adverse inference in the cost test ensures that only sales passing this cost test with this adverse inference will be considered. This application of partial AFA carries forward in other aspects of the Department's margin analysis in that only those sales that pass this cost test will be used in the Department's margin analysis programs.

Additionally, because the misreporting of yield strength also impacts our arm's-length test, and thus our universe of home market sales, we will not run the arm's-length test or use G Steel's sales to the affiliated resellers in the NV calculation, as explained below in Comment 3. Rather, we will only use sales to unaffiliated home market customers in the NV calculation (i.e., G Steel's direct sales to unaffiliated customers and sales from G Steel's affiliated resellers to end-users). Thus, for the final results we will combine G Steel's database and the reseller databases into a single database and will eliminate G Steel's sales to its affiliated resellers from the database. For a detailed analysis of the Department's application of partial AFA in its margin calculations, see the Analysis Memorandum for the Finals Results of the Administrative Review of the Antidumping Duty Order on Certain Hot-Rolled Carbon Steel Flat Products from Thailand, dated June 4, 2008 (Final Analysis Memo).

Comment 2: Affiliation

Domestic Interested Party's Comments:

Nucor argues that the Department should fully address the issue of affiliation between G Steel and NSM. After addressing the issue fully for the final results, Nucor argues that the Department should find that G Steel and NSM are affiliated and collapse the two companies. Nucor contends that there is record evidence demonstrating that G Steel and NSM are affiliated, that they produce similar merchandise on similar machines, and there is a significant potential for manipulation of price or production in the absence of collapsing. Therefore, Nucor maintains that the Department should collapse G Steel and NSM and obtain Section B and D responses for NSM prior to publication of the final results.

Nucor contends that pursuant to 19 USC § 1677(33), the Department should find that G Steel and NSM were affiliated through an equity relationship during the POR (prior to date of affiliation that occurred at the end of the POR). According to Nucor, under 19 USC § 1677(33), G Steel and NSM are affiliated because G Steel owns over five percent of NSM's outstanding voting stock. Nucor argues that although G Steel's equity investment did not officially take place until September 2006, G Steel's board of directors committed to make the investment in NSM as early as June 2006. See G Steel's section A questionnaire response, dated February 7, 2007 ("section A response"), at A-12. Nucor asserts that G Steel engaged in transactions with NSM and shared common customers prior to September 2006. See G Steel's first supplemental questionnaire response, dated July 11, 2007 ("first sections A through C supplemental response"), at S1-7; and G Steel's second supplemental questionnaire response, dated August 27, 2007, at S2-1. Nucor contends that this evidence, combined with G Steel's eventual right to appoint directors to sit on NSM's board and represent G Steel's interest, demonstrate that G Steel was "operationally in a position to exercise restraint or direction over" NSM well before G Steel's formal equity acquisition. Therefore, Nucor concludes that G Steel and NSM were affiliated throughout the POR.

Nucor argues that the Department should undertake a collapsing analysis prior to the issuance of the final results. Citing 19 CFR 351.401(f), Nucor contends that the Department will collapse companies when: (1) the companies are affiliated pursuant to 19 USC § 1677(33); (2) the companies produce similar merchandise on similar machines and; (3) there is significant potential for the manipulation of price or production in the absence of collapse. Nucor argues that if the Department finds that the first prong of the affiliation criteria is met, the Department should conduct a collapsing analysis pursuant to 19 CFR 351.401(f)(1).

According to Nucor, the Department collapses companies to prevent future manipulation and that without collapsing, two affiliated companies, which have disparate duty deposit rates, would shift production or sales to the company with the lower deposit rate. Citing the Preamble to the Regulations, Nucor argues that while collapsing is performed retrospectively, the Department's

goal in collapsing two or more companies is directed at future entries. See Preamble to the Regulations, 62 FR 27296, 27346 (May 19, 2007) (Preamble to the Regulations).

Nucor argues that in this review, where interaction between G Steel and NSM increased throughout the POR and culminated in a substantial equity investment, the possibility of future manipulation is greatly enhanced. Nucor adds that a collapsing inquiry is entirely appropriate to prevent future manipulation of price and production. Nucor alleges that the relationship between G Steel and NSM meets all of the requirements for collapsing of 19 CFR 351.401(f), and urges the Department to seek out the information to conduct a proper collapsing examination prior to the issuance of the final results.

With regard to the collapsing requirements under 19 CFR 351.401(f), Nucor argues that G Steel and NSM are affiliated through an equity relationship pursuant to 19 USC § 1677(33)(E). Regarding the second requirement, under 19 CFR 351.401(f), Nucor argues that NSM is a producer of the subject merchandise, which G Steel has acknowledged in its first sections A through C supplemental response, dated July 11, 2007, at S1-9. Nucor argues that G Steel's statement at S1-9 that it "could not shift production of hot-rolled steel from its plant to NSM's plant, or vice versa, because the two companies do not coordinate production, do not share managers, and otherwise have no authority or power to direct or influence each other's production decisions" is not relevant to this inquiry. Nucor avers that the Department collapses with the intention of preventing future manipulation and is concerned with potential, rather than actual, retooling or production. See Preamble to the Regulations. Therefore, according to Nucor, the second requirement of the Department's collapsing analysis is met.

Regarding the third collapsing requirement under 19 CFR 351.401(f), Nucor states that in identifying a significant potential for the future manipulation of price or production, the Department considers: (1) the level of common ownership; (2) the extent to which managerial employees or board members of one firm can sit on the board of directors of an affiliated firm, and; (3) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. See 19 CFR 351.401(f)(2)(i)-(iii). Nucor argues that as a result of G Steel's equity investment in NSM, G Steel has the right to appoint directors to sit on NSM's board, and represent and control the interests of both companies. See G Steel's first sections A through C supplemental response at S1-7. Thus, according to Nucor, G Steel and NSM have a considerable level of common ownership enabling both companies to manipulate price and production decisions.

With respect to the third collapsing requirement of 19 CFR 351.401(f)(2), Nucor asserts that in a collapsing analysis, the Department is concerned with the future potential for shifting production, not with evidence that actual shifting has taken place. Nucor further asserts that shifting production does not require shared managers, only common goals, and that the current lack of information sharing does not prevent the companies from sharing information in the future. According to Nucor, there is additional evidence of intertwined operations, including transactions between G Steel and NSM during the POR, shared customers, and the Operation Services Agreement ("OSA") between Oriental Access, a G Steel subsidiary, and NSM. Nucor

contends that the OSA includes a provision for consulting services on raw material procurement, production, maintenance, sales, marketing and promotion, and distribution of the subject merchandise in the Thai and export markets. See G Steel's section A response at A-13.

Nucor maintains that the above-mentioned evidence demonstrates a significant potential for price and production manipulation, and that G Steel and NSM are affiliated and have similar production facilities. Nucor argues, therefore, that the Department should collapse G Steel and NSM for the final results of this review. Nucor asserts that given this evidence supporting both affiliation and the need to collapse the two companies, the Department should obtain Section B and D questionnaire responses from NSM prior to the issuance of the final results. Nucor further asserts that these responses will allow the Department to combine NSM's home market sales and cost of production data with G Steel's data, which could affect the margin outcome.

Respondent's Rebuttal Comments:

G Steel argues that Nucor has not provided any evidence that G Steel and NSM were affiliated throughout the POR and that the two companies should be collapsed. G Steel contends that, as stated in the Preliminary Results, the record confirms that G Steel and NSM became affiliated only at the end of the POR. Therefore, according to G Steel, the Department should come to the same conclusion in the final results.

G Steel states that there is no evidence in the administrative record to support Nucor's claim that the equity relationship between G Steel and NSM was a merger (see Nucor's Case Brief, dated January 7, 2008, at 5). Additionally, G Steel asserts that in considering Nucor's allegations, the Department should consider two relevant dates, which are the undisputed date of the U.S. sale, as reported by G Steel in its Section C questionnaire response, and the date of affiliation between G Steel and NSM. G Steel states that upon completing two share transfers in September 2006, its ownership in NSM was 19.08 percent, and on September 19, 2006, Thailand Securities Depository Co., Ltd., registered G Steel as an NSM shareholder. Therefore, according to G Steel, it was not considered affiliated with NSM under Thai law prior to September 19, 2006 (i.e., six weeks prior to the end of the POR).

Regarding Nucor's argument that G Steel's earlier commercial transactions with NSM are indicative of affiliation, G Steel argues that these transactions occurred more than six months prior to September 2006 and five months prior to the U.S. sale. G Steel contends that as it discussed in its July 11, 2007, first sections A through C supplemental response, it had two arm's-length transactions with NSM during the POR and was not affiliated with NSM at the time of the transactions.

Additionally, G Steel disputes Nucor's assertion that the fact that G Steel and NSM share some customers is an indication of affiliation between the two companies. G Steel argues that Thailand has only three hot-rolled steel producers, which can lead to some overlap in customers. G Steel concludes that the Department was correct in concluding that G Steel and NSM could only have been affiliated during the last six weeks of the POR, and should conclude the same in the final results.

Regarding whether G Steel and NSM should be collapsed for purposes of this administrative review, G Steel states that under 19 CFR 351.401(f), the Department will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production. See 19 CFR 351.401(f)(2). G Steel also states that in determining whether there is a significant potential for the manipulation of price or production, the Department may consider the following factors: (i) level of common ownership, (ii) extent to which managerial employees or board members of one firm sit on the board of directors of another affiliated firm, and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

G Steel argues that there is no evidence in the administrative record to support Nucor's allegations that the Department should collapse G Steel and NSM. G Steel contends that the record evidence demonstrates that G Steel and NSM have been affiliated under U.S. antidumping law only since September 19, 2006, which is when G Steel obtained 19.8 percent ownership in NSM. According to G Steel, it is from this date that the Department must begin its collapsing analysis.

G Steel states that NSM is capable of producing subject merchandise, but G Steel and NSM do not have similar product lines. G Steel argues that it did not have the capability to produce skin-passed hot-rolled steel, and does not produce pickled and oiled hot-rolled steel and hot-rolled steel of API grades for sale, while NSM did have the capability or does produce these types of steel. Additionally, according to G Steel, it produces hot-rolled coil of cold-rolling grades and gas cylinder grades for sale to the domestic and export markets, while NSM does not. G Steel argues that based on the combination of limited product overlap and capacity utilization requirements, it would be virtually impossible for G Steel to shift production to NSM, or vice versa, without requiring G Steel to cancel all of its own customer's orders at a prohibitive cost. G Steel adds that it could not shift production of hot-rolled steel from its plant to NSM's plant, or vice versa, because the two companies do not coordinate production, do not share managers, and otherwise have no authority or power to direct or influence each other's production or sales decisions. See Sales Verification Report at 18.

G Steel notes that as the Department found during verification, NSM is in bankruptcy and only a court appointed manager, Maharaj Planning, can make binding decisions for NSM. Id. G Steel refers to NSM's rehabilitation plan at Exhibit 6 of the sales verification report, and argues that G Steel could only obtain a controlling interest in NSM with court approval, which G Steel states has not happened. Furthermore, G Steel maintains that it is not in a position to control the sales or production operations of NSM through Oriental Access, G Steel's subsidiary. Referring to G Steel's supplemental questionnaire response, G Steel asserts that Oriental Access does not have the power to direct management or the policies of NSM either directly or indirectly. G Steel further asserts that it cannot compel NSM to follow its advice, nor can G Steel control Maharaj Planning. See G Steel's first sections A through C supplemental at Exhibit S1B-6. Therefore,

according to G Steel, G Steel does not have the ability to manipulate prices or the production of NSM, either by itself or through Oriental Access, and, therefore, the Department cannot collapse G Steel and NSM in the final results.

Department's Position:

Section 771(33)(E) of the Act provides that “any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization” shall be considered to be affiliated. Pursuant to section 351.401(f) of the Department's regulations, the Department will collapse producers and treat them as a single entity where 1) those producers are affiliated, 2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and 3) there is a significant potential for manipulation of price or production. In determining whether a significant potential for manipulation exists, the regulations provide that the Department may consider various factors, including 1) the level of common ownership, 2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, and 3) whether the operations of the affiliated firms are intertwined. See Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review, 63 FR 12764, 12774 (March 16, 1998) (Cement and Clinker from Mexico) and Final Determination of Sales at Less Than Fair Value: Collated Roof Nails from Taiwan, 62 FR 51427, 51436 (October 1, 1997). Based on a totality of the circumstances, the Department will collapse affiliated producers and treat them as a single entity where the criteria of section 351.401(f) of the Department's regulations are met.

Six weeks before the end of the POR (i.e., September 19, 2006), G Steel acquired a 19.08 percent ownership interest in NSM. Pursuant to section 771(33)(E) of the Act, companies are deemed to be affiliated if one company owns five percent or more of the outstanding voting stock or shares of the other company. Therefore, G Steel and NSM became affiliated at the end of the POR pursuant to section 771(33)(E) of the Act, and thereby satisfy the first collapsing criterion under section 351.401(f)(1) of the Department's regulations, as discussed in the Preliminary Results. We agree with G Steel that September 19, 2006, is the date that G Steel became affiliated with NSM, and it is from this date that the Department should begin its collapsing analysis.

The record does not indicate whether the companies, after September 19, 2006, could restructure manufacturing priorities without substantial retooling. In any event, this is a moot point because, with regard to the third criterion of section 351.401(f), we do not find that there was a significant potential for the manipulation of price or production during the POR. We found during verification that G Steel and NSM were competitors until G Steel purchased an interest in NSM. See Verification Report at 7 and 18. While G Steel provides NSM with guidance and knowledge of steel production as it recovers from bankruptcy, through its subsidiary Oriental Access, we found no evidence of production coordination between G Steel and NSM during the POR. See Verification Report at 7.

Moreover, the Department found during verification that, after September 19, 2006, the companies did not share employees or directors. See Verification Report at 18. In addition, the companies did not share sales information, were not involved in each other's production and pricing decisions, and did not conduct significant transactions between them. See Verification Report at 18 and 19. G Steel's only interaction with NSM during the POR included two arm's-length transactions six months prior to the date of affiliation.

At verification, we reviewed documentation pertaining to G Steel's relationship with NSM, including NSM's rehabilitation plan which is included in Verification Exhibit 6, and interviewed officials from both companies. We found no evidence that the companies at issue coordinated their activities with respect to the subject merchandise, or acted in concert in any way during the POR. Therefore, based on the totality of the circumstances, including the fact that, after September 19, 2006, the date of affiliation, these companies did not have overlapping management or board members, or intertwined operations, we conclude that the criteria for collapsing have not been met for this POR. However, with regard to petitioner's argument regarding future potential for manipulation of price or production, while we did not find sufficient grounds for collapsing the two companies for this POR, we may, if necessary, revisit the collapsing issue in any subsequent reviews of G Steel or NSM.

Comment 3: Reseller Databases

Respondent's Comments:

G Steel states that the Department improperly used the resale databases of G Steel's unaffiliated customers in the margin calculation. Specifically, G Steel states that in the Preliminary Results, the Department used the resales made by certain G Steel customers for sales that did not pass the arm's-length test, thereby, in effect, making a determination that G Steel is affiliated with these customers.

G Steel argues that as the statute applies to G Steel, there is no family, officer, partner, employer/employee, or ownership interest between G Steel and the customers/resellers. Furthermore, according to G Steel, the only applicable basis for affiliation between G Steel and the reselling customers is an alleged close supplier relationship. G Steel asserts that there are no laws, regulations, directives, or contractual provisions that limit the customers'/resellers' ability to source from other suppliers, and the Department found during verification that there are no restrictions on whom the customers can sell to or supply. See Sales Verification Report at 13. Additionally, G Steel states that in its section A questionnaire response, these customers/resellers are listed as part of a "loose and informal" business alliance of G Steel, rather than related companies, and that G Steel does not treat these companies as affiliated parties even under Thai law. See G Steel's section A response at Exhibit A-12.

G Steel states that the Department interprets 19 CFR 351.102(b) to mean that for there to be affiliation based on a supply relationship, the buyer must be in a situation where it is, in fact, reliant on the seller, or vice versa. See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol from the Republic of South Africa, 62 FR 61084,

61086 (November 14, 1997); and Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review, 62 FR 18404, 18417 (April 15, 1997). G Steel further cites TIJID, Inc. v. United States, 366 F. Supp. 2d 1286, 1297 (CIT 2005), and claims that the potential for one entity to control another must be “linked to a present and actual ability to exercise control,” and that absent such evidence, the Department must conclude that the companies are not affiliated.

G Steel concludes that the record evidence demonstrates that it does not influence, or have the potential to influence, its resellers regarding the resale of hot-rolled steel in Thailand. Therefore, according to G Steel, the Department should determine that there is no basis for affiliation between G Steel and these customers, and should use only the sales from G Steel to these customers in its margin calculation for the final results.

Petitioner’s Rebuttal Comments:

U.S. Steel argues that G Steel’s resellers are clearly affiliated with G Steel based on their common membership in a business alliance and a close supplier relationship between G Steel and the companies. Therefore, according to U.S. Steel, the Department should continue to treat G Steel’s resellers as affiliated with G Steel.

U.S. Steel states that 19 USC § 1677(33)(F) & (G) provide that parties are affiliated where one party exercises restraint or direction over another party. U.S. Steel further states that for purposes of establishing affiliation under 19 CFR 351.102(b), the Department will consider, inter alia, the following specific factors: corporate or family groupings, franchise or joint venture agreements, debt financing, and close supplier relationships. According to U.S. Steel, the Department will take into account all factors which either by themselves or in combination may indicate control by one company over another. See e.g., Stainless Steel Wire Rod from Korea, 63 FR 40404 (July 29, 1998) (Stainless Steel Wire Rod from Korea) and accompanying Issues and Decision Memorandum at Comment 2. U.S. Steel states that pursuant to 19 USC § 1677(33), “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.” U.S. Steel argues that the administrative record shows that G Steel is in an operational position to exercise control over these resellers based on the near-exclusivity of its supply relationship with them.

U.S. Steel cites the sales verification report to support its assertion that the resellers purchase most of their hot-rolled coil from G Steel, and one reseller only buys from G Steel. See “Memorandum to the File from Stephen Bailey and Dena Crossland, Verification of the Sales Response of G Steel Public Company Limited,” dated October 15, 2007, at 13 and 15-16. U.S. Steel argues that in similar circumstances, the Department has found that when one company’s business operations are almost exclusively dependent on its supplier, that a close supplier relationship exists for purposes of determining affiliation. See Stainless Steel Wire Rod from Korea and accompanying Issues and Decision Memorandum at Comment 2.

U.S. Steel argues that there are three factors in the administrative record that provide evidence of affiliation among G Steel and its resellers. First, U.S. Steel notes that G Steel states in its 2005

Annual Report that it is in a business alliance with certain resellers in question (see G Steel's section A response at 38 and Exhibit A-12). U.S. Steel contends that such corporate groupings are a factor that demonstrate affiliation among members of the group pursuant to 19 CFR 351.102(b). See Oil Country Tubular Goods from Japan: Preliminary Results, 64 FR 48589, 48592 (September 7, 1999); and Oil Country Tubular Goods from Japan: Final Results, 65 FR 15305 (March 22, 2000). Second, citing Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review, 70 FR 19418 (April 13, 2005) (Silicomanganese from Brazil) and the accompanying Issues and Decision Memorandum at Comment 1, U.S. Steel states that G Steel disclosed the connections between itself and its resellers during verification, and argues that Silicomanganese from Brazil demonstrates that these connections are a significant factor demonstrating affiliation between companies. See Final Analysis Memo, dated June 4, 2008, for proprietary information. Third, U.S. Steel argues that G Steel and its resellers are part of a coordinated business alliance rather than a "loose and informal" alliance. Further, U.S. Steel contends that the fact that G Steel holds itself out publicly as allied with these resellers is further evidence of their affiliation. See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review, 63 FR 55578 (October 16, 1998) and accompanying Issues and Decision Memorandum at Comment 4.

U.S. Steel concludes that based on the three factors above, whether considered separately or in combination, the Department should continue to treat the resellers in question as affiliated with G Steel.

Domestic Interested Party's Rebuttal Comments:

Nucor claims that in addition to the difficulties caused by G Steel's reporting failures, the arm's-length test in this review has been flawed by an error in the Department's treatment of G Steel's sales to resellers in the home market. Nucor notes that the Department used a SAS program, *i.e.*, the "Home Market DB Combo Program," to merge "downstream" sales with G Steel's home market sales in the Preliminary Results. Nucor argues that the data-merging was not necessary because the downstream resellers passed the arm's-length test. Nucor adds that the Department's narrative explanation of the merging does not clarify the Department's reason for doing the merging, nor does it accurately reflect the actual programming.

Nucor contends that eliminating intercompany transactions is standard practice for companies that are collapsed into a single entity. Nucor argues that the Department has not determined to collapse any companies in this review, including G Steel's affiliated resellers, nor did the upstream sales to the resellers fail the arm's-length test. Nucor states that as a result of the Department's programming error, the pool of sales found to be below cost shifts dramatically. In fact, according to Nucor, so many sales end up failing the below cost test that the Department's preliminary choice for partial facts available is never used in the margin program, and the margin ends up being based on constructed value. Therefore, Nucor concludes that the Department should correct the programming errors to accurately reflect the position of G Steel's affiliated downstream resellers.

Department's Position:

We do not agree with G Steel that there is no basis for affiliation between G Steel and its reseller customers, and as explained above in Comment 1, the Department will include the sales from G Steel's resellers to the end-users in its margin calculation for the final results. Section 351.403 of the Department's regulations clarifies when the Department may use sales to or through an affiliated party as a basis for NV. Specifically, section 351.403(d) of the Department's regulations states that "{i}f an exporter or producer sold the foreign like product through an affiliated party, the Secretary may calculate normal value based on the sale by such affiliated party. However, the Secretary normally will not calculate normal value based on the sale by an affiliated party if sales of the foreign like product by an exporter or producer to affiliated parties account for less than five percent of the total value (or quantity) of the exporter's or producer's sales of the foreign like product in the market in question or if sales to the affiliated party are comparable as defined in {section 351.403(c) of the Department's regulations}." Section 351.403(c) of the Department's regulations states that "{i}f an exporter or producer sold the foreign like product to an affiliated party, the Secretary may calculate normal value based on that sale only if satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller."

The Department's conclusion that G Steel was affiliated with certain resellers is based on G Steel's section A response, where it stated that it was affiliated with nine companies involved in the production, sale, and distribution of the subject merchandise in the home market. See G Steel's section A questionnaire response at A-13. G Steel identified the particular affiliates that purchased and resold subject merchandise in the Thai market, and provided the percentages of G Steel's sales to and by these affiliates. See G Steel's section A questionnaire response at A-31 and Exhibit A-1. Additionally, G Steel provided databases of the sales from the resellers to the end-users. For calculating NV in the Preliminary Results, the Department used both G Steel's home market sales databases, consisting of G Steel's sales to its customers and resellers, and the reseller sales databases, consisting of the downstream sales from the resellers to end-users. For the Preliminary Results, we combined all databases into a single database and eliminated those G Steel transactions that were also reported in the reseller sales databases.

Because of G Steel's misreporting of yield strength data, we do not have accurate information for purposes of the arm's-length test. Therefore, pursuant to section 351.403(c) of the Department's regulations, we are not satisfied that G Steel sold the foreign like product merchandise to affiliated parties at prices that were comparable to prices that G Steel sold the foreign like product to an unaffiliated customer. Accordingly, we are excluding all sales to G Steel's affiliated resellers from the NV calculation and are including the downstream sales from G Steel's resellers to the end-users in the NV calculation. See Final Analysis Memo.

Comment 4: Clerical Errors

G Steel claims that the Department's comparison market program contains three data errors that should be corrected in the final results. Regarding the first error, G Steel states that in its comparison market program, the Department incorrectly used gross quantity (QTYH) instead of

net quantity (NETQTYH), which is quantity net of returns (RETQTYH). G Steel states that the Department should use NETQTYH in its comparison market program for G Steel's home market sales. G Steel adds that the Department should only use G Steel's home market sales database for the margin calculation, but if the Department continues to use G Steel's unaffiliated reseller databases, NETQTYH should be used for these databases. G Steel states that not all of its unaffiliated resellers had partial returns. Therefore, according to G Steel, the Department should add the following programming language to account for resellers that did not include the NETQTYH field in their databases: $NETQTYH = QTYH$.

Regarding the second error, G Steels states that in the comparison market program, the Department incorrectly excluded all of G Steel's home market sales by improperly calculating G Steel's net price used in the cost test. G Steel contends that because the Department did not set the indirect selling expense (INDIRS1H and INDIRS2H) to zero for the sales with no INDIRS1H and INDIRS2H reported, these sales ended up with missing values and, as a result, no net price was calculated. G Steel explains that these sales were then excluded from G Steel's home market sales database as below cost sales because they had no calculated price.

Therefore, G Steel states that the Department should include the following program language at line 2034 of the comparison market program: `IF INDIRS1H = "." THEN INDIRS1H = 0; IF INDIRS2H = "." THEN INDIRS2H = 0`. G Steel further states that if the Department uses G Steel's home market database, and not both the home market and unaffiliated reseller databases, for the margin calculation, the error will not occur, since INDIRS1H and INDIRS2H are not reported in G Steel's home market database. Therefore, according to G Steel, if the Department uses both G Steel's home market and unaffiliated reseller databases, it should remove INDIRS1H and INDIRS2H from the net price calculation at line 2151 of the comparison market program.

Regarding the third data error, G Steel claims that the Department incorrectly overwrote costs of hot-rolled coil purchased from one company with G Steel's costs. G Steel argues that it correctly reported the costs and manufacturer for sales of merchandise produced by this same company but sold by G Steel, and that the Department verified the purchase price and the related variable cost of manufacturing expenses (VCOMH). G Steel states that the Department should correct this second data error by removing the following programming language from the comparison market program at line 2030: `MFRH = "GSTEEL."` G Steel further states that the Department should add certain programming language to the comparison market program at lines 2126 through 2128. See G Steel Public Company Limited's Case Brief, dated January 7, 2008, at 13, for proprietary information.

Nucor and U.S. Steel did not comment on this issue.

Department Position:

With respect to G Steel's first clerical error argument, we agree with G Steel that NETQTYH should be used in the comparison market program for G Steel's home market sales. The NETQTYH field includes the quantity of merchandise that was returned during the POR, which

G Steel reported in the RETQTYH field, while the QTYH field does not. Therefore, we have corrected the comparison market program as follows: QTYH = NETQTYH. See Analysis Memo for further details.

As explained above in Comment 1, the Department has determined that for the final results, it will use part of G Steel's database (consisting of direct sales from G Steel to unaffiliated customers) and all of G Steel's reseller databases for the margin calculation. Accordingly, the Department is adding programming language in the comparison market program to account for partial returns (NETQTYH) in the reseller databases. Additionally, regarding G Steel's second clerical error argument pertaining to the INDIRS1H and INDIRS2H fields in the reseller databases, we agree with G Steel. Therefore, for the reseller databases that will be included for the calculation of NV, we will change the missing values in the INDIRS1H and INDIRS2H fields to zeroes.

Regarding G Steel's third clerical error argument, we do not agree with G Steel that the Department should remove programming language from the comparison market program that specifies that G Steel was the manufacturer. Rather, we determine for the final results that the hot-rolled coil that G Steel purchased from one company during the POR should be removed from the home market database. Section 773(a)(1)(B)(i) of the Act directs the Department to calculate NV based on the sale of the foreign like product, and section 771(16) of the Act defines foreign like product as merchandise that was produced in the same country by the same person as the subject merchandise.

In the instant review, G Steel identified in its home market database the hot-rolled coil purchased from one company and reported the corresponding purchase prices and VCOMH. Because section 773(a)(1)(B)(i) and section 771(16) of the Act do not include sales of merchandise produced by persons other than the respondent in the calculation of NV, we are removing the sales from G Steel's home market sales database of merchandise that G Steel purchased from another company as it is not relevant to our analysis in this review. See Final Analysis Memo for proprietary information.

Comment 5: Liquidation Instructions

G Steel asserts that the Department's draft liquidation instructions contained an error that should be corrected before the Department issues the final liquidation instructions to U.S. Customs and Border Protection ("CBP"). G Steel notes that in the draft liquidation instructions, the Department listed the U.S. customer as the importer of record. G Steel states that it was the importer of record, as shown in Box 11 of the Customs Form 7501 of G Steel's section A questionnaire response. See G Steel's section A response at Exhibit A-7 (page 2 of Document L).

Nucor and U.S. Steel did not comment on this issue.

Department Position:

We agree with G Steel that it was the importer of record, as shown in Exhibit A-7 of G Steel's section A questionnaire response. Therefore, we will issue final liquidation instructions to CBP that specify G Steel, rather than the U.S. customer, as the importer of record.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the margin calculation accordingly. If these recommendations are accepted, we will publish the final results of this administrative review and the final dumping margins in the Federal Register.

AGREE _____ DISAGREE _____

David M. Spooner
Assistant Secretary
for Import Administration

Date