

December 3, 2009

MEMORANDUM TO: Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

FROM: John M. Andersen  
Acting Deputy Assistant Secretary  
for Import Administration, Operations

SUBJECT: Issues and Decision Memorandum for the Final Results 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) of November 1, 2007, through October 31, 2008. We recommend 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: Collapsing of G Steel and G J Steel  
Comment 2: Application of Adverse Facts Available to G Steel and G J Steel  
Comment 3: Selection of Adverse Facts Available Rate for G Steel and G J Steel

### **Background**

On August 5, 2009, 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, 74 FR 39047 (August 5, 2009) (Preliminary Results).

We invited parties to comment on our Preliminary Results. On September 4, 2009, we received a case brief from the sole respondent, G Steel Public Company Limited (G Steel) and G J Steel Public Company Limited (G J Steel). On September 11, 2009, we received rebuttal briefs from petitioner United States Steel Corporation (U.S. Steel) and domestic interested party Nucor Corporation (Nucor). No public hearing was requested, so none was held. On September 14, 2009, the Department returned G Steel and G J Steel's case brief to the company's legal counsel as the brief contained new factual information. On September 15, 2009, G Steel and G J Steel timely refiled the case brief, omitting the new factual information.

## **Discussion of the Issues**

### **Comment 1: Collapsing of G Steel and G J Steel**

G Steel and G J Steel (respondent) cites to the Department's determination in the Preliminary Results, in which the Department determined that G Steel and G J Steel constitute a single entity and applied the same antidumping margin to both companies. The respondent insists this determination was based on the partial facts contained in the company's section A questionnaire response, and on an erroneous analysis about the intertwining of G Steel and G J Steel's operations. G Steel and G J Steel believe the Department has not properly analyzed the facts and has misinterpreted the factual information. In particular, the respondent argues that the third criterion identified in the Department's regulations as a requirement for collapsing, *i.e.*, a significant potential for manipulation of price or costs of production, has not been met.

The respondent cites to the trade accounts receivable and payable in its financial statements, which show a relationship between G Steel and G J Steel as "supplier and customer" in the normal course of business. The respondent argues the Department incorrectly presumed that there was sharing of sales information or intertwined operations by examining the trade accounts payable and receivable. The respondent argues the trade accounts that were identified in the Department's Preliminary Results are irrelevant to the Department's analysis for two reasons. First, respondent maintains the accounts referenced cover a period of three months ending March 31, 2008, which is before G J Steel became a subsidiary of G Steel. Second, the Department mistakenly referenced the results as "Financial Statements for the year ending March 31, 2008," when in fact the results were for an interim period of three months ending March 31, 2008.

The respondent argues that in the 2005-2006 administrative review, the Department correctly analyzed and verified the relationship between G Steel and G J Steel. In that review, respondent insists, the Department treated G Steel and G J Steel as affiliates where the requirements for collapsing had not been met. The respondent claims the situation is unchanged from the 2005-2006 review, even though G J Steel is now a subsidiary of G Steel.

The respondent claims the Department misinterpreted the companies' statements on selling each other's merchandise as a sharing of sales information. Respondent acknowledges that G Steel and G J Steel sell each other's merchandise in the home market. However, the respondent asserts the Department has erred in concluding that such sales indicate a significant potential for manipulation of prices or costs, which is necessary to collapse the companies.

While acknowledging that G Steel and G J Steel are affiliated, the respondent notes each company is listed separately on the Stock Exchange of Thailand. The respondent states the manipulation of prices or costs of production is strictly prohibited for companies listed on the Thai Stock Exchange. The respondent avers the Department has not provided a detailed analysis of the production costs of both companies and therefore the Department should not presume that both companies manipulated their prices and production costs. Thus, the respondent believes the Department should not conclude that G Steel and G J Steel have intertwined operations.

In conclusion, the respondent maintains the operations of G Steel and G J Steel are not intertwined through sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between each other. The respondent argues the significant potential for manipulation of prices or production is the most important criterion. As this criterion has not been met, the respondent concludes the Department should not treat G Steel and G J Steel as a collapsed entity, but leave G J Steel unaffected by the rate assigned to G Steel as an uncooperative respondent.

In its rebuttal brief, domestic interested party Nucor claims that the respondent has conceded that G Steel and G J Steel now share board members, that one company is a subsidiary of the other and that they consolidate financial statements. Nucor asserts the respondent in its arguments has ignored the relevant fact that the Department's collapsing analysis is forward-looking and meant to prevent the manipulations of prices or production after the final results. Nucor avers G Steel and G J Steel have not disputed that one company now controls the other, both operationally and financially, and as such the two companies could take advantage of a disparity in their dumping margins. Nucor states that, in fact, any inter-company transfers prior to the formalization of the owner-subsidiary relationship underscores the close relationship between the companies and supports a finding that they are intertwined.

Nucor asserts that whether G Steel and G J Steel's inter-company sales involved the sharing of sales information is irrelevant. The existence of such inter-company sales demonstrates, according to Nucor, a growing identification of one company's interest and operations with those of the other, even in the absence of information sharing. Nucor believes such commonality of interests and operations became overwhelming upon the June 2, 2008 takeover of G J Steel by G Steel. Thus, in Nucor's opinion, the respondent's brief supports, rather than detracts from, the Department's determination that the two companies have intertwined operations.

Nucor disputes the respondent's claim that the relationship between G Steel and G J Steel has not changed since the 2005-2006 administrative review when the Department determined collapsing was unwarranted. Nucor contrasts the respondent's own admissions in this review to the situation in the 2005-2006 review. As examples of the current situation, Nucor cites to G Steel now owning a significant portion of G J Steel and that G Steel treats G J Steel as a subsidiary. Nucor also notes the two companies' consolidated their financial statements and shared board members. In the 2005-2006 review, Nucor avers G Steel had only recently obtained a small stake in G J Steel's predecessor company. Nucor asserts there were no common

directors or inter-company transactions nor any common identification of operational or financial interests in the prior review. In contrast, Nucor notes the current situation in which the interests and operations of the two companies are highly aligned. Nucor cites to joint operational and financial control, the production of identical products, the sales of these products to the same affiliated customer base and the fact that either company can easily absorb each other's export production as grounds to warrant the Department's continued finding of a significant potential for manipulation.

Nucor rejects the respondent's contentions regarding the Department's alleged failure to take into account the companies' production costs or their status as publicly traded companies. Nucor notes the respondent failed to provide any cost information to the Department and therefore the Department could not reasonably be expected to conduct a detailed analysis of the respondent's cost of production. Indeed, the only information submitted by the companies is the public version of the section A response in which G Steel and G J Steel held themselves out as a single entity that should be granted a single margin. With respect to respondent's claims that they are publicly traded companies on the Thai Stock Exchange and are therefore prohibited from the manipulation of costs of production or prices, Nucor suggests there is potential for such manipulation. Nucor believes this is inherent in the companies' common ownership, directors and intertwined operations. In summary, Nucor believes the Department was amply justified in treating G Steel and G J Steel as a single entity, as they are affiliated, produce subject merchandise, and present a significant potential for manipulation of prices or production. Citing that G Steel is in complete control over G J Steel, the common board members, the selling of merchandise between one another and to the same customers, and the ease with which they could absorb each other's export sales, Nucor believes the Department should continue to collapse G Steel and G J Steel in the final results.

In its rebuttal brief, petitioner U.S. Steel argues that the Department appropriately based its decision to collapse G Steel and G J Steel on the significant potential for manipulation of prices or costs of production rather than a claim that G Steel and G J Steel actually manipulated their prices and production costs during the POR. The Department based its decision, according to U.S. Steel, on the significant ownership stake of G Steel and its affiliate G J Steel, the sharing of common board members and the intertwined nature of G Steel's and G J Steel's operations. With respect to the respondent's claims that each company is listed on the Thai Stock Exchange and, therefore, manipulation of prices or costs of production is prohibited, U.S. Steel argues the respondent has provided no information that such laws are relevant to the collapsing analysis nor provided any other support for its claims.

With respect to the respondent's arguments that the two companies' operations are not intertwined, U.S. Steel dismisses such claims based on the analysis provided in the Department's Preliminary Results. The Department in its Preliminary Results stated the companies' financial statements show significant trade accounts receivable and payable between the two companies. G Steel and G J Steel claimed these transactions are irrelevant because they reflect transactions occurring prior to G J Steel being included in G Steel's consolidated financial statements. U.S. Steel counters that such accounts are relevant because such accounts occurred during the POR, and that the Department's regulations allow the Department to examine significant transactions

between the affiliated producers in determining whether the two companies' operations are intertwined. As such accounts existed during the POR, U.S. Steel believes these accounts are relevant to the question at hand. U.S. Steel insists the respondent has not provided any explanation as to why these transactions are irrelevant or distorted.

U.S. Steel also highlights a number of the Department's other preliminary conclusions to support its claim that the Department correctly identified the operations of G Steel and G J Steel as being intertwined:

- Both G Steel and G J Steel sell subject merchandise to the same affiliated customers, who resell such merchandise in the home market;
- G Steel and G J Steel sell each other's merchandise in the home market;
- G Steel and G J Steel's U.S. sales of subject merchandise do not constitute a large percentage of their home market sales of hot-rolled steel, which indicates the two companies have the capacity to absorb the other's export sales, were they to shift export sales to the company with a lower margin.

With respect to G Steel's and G J Steel's reliance on the Department's determination in the 2005-2006 administrative review not to collapse, U.S. Steel argues such reliance is misplaced as the facts are very different in the instant review. In that review, the Department determined that G Steel and G J Steel's predecessor, Nakornthai Strip Mill Public Company Limited (Nakornthai), did not share board members, were not involved in each other's production and pricing decisions, and did not conduct significant transactions between each other. In contrast, in the instant review, G Steel increased its ownership stake in G J Steel from 23.5 to 49.66 percent, G Steel's management "was granted authority over the operations" of G J Steel, Nakornthai changed its name to G J Steel, and G J Steel and G Steel began sharing board members and conducting significant transactions between each other. U.S. Steel argues such changes are fundamentally different from the prior review and led the Department to properly collapse the two companies based on the facts in the instant review.

U.S. Steel therefore concludes that all the criteria necessary for collapsing G Steel and G J Steel have been satisfied. The Department should, therefore, reject respondent's claims and continue to collapse G Steel and G J Steel, treating them as a single entity in its final results.

#### Department's Position:

In its Preliminary Results, the Department set out its reasoning on each of the criteria necessary for the Department to determine whether to collapse, or treat, two or more producers as a single entity. These criteria are governed by the Department's regulations at 19 CFR 351.401(f)(1), which states the Department will treat two or more producers as a single entity where three conditions are satisfied: (1) the producers are affiliated; (2) the 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 (3) there is a significant potential for the manipulation of price or production. We preliminarily determined that each of these criteria had been satisfied in the case of G Steel and G J Steel.

G Steel and G J Steel do not challenge the Department's conclusions with respect to the first two criteria. Rather, G Steel and G J Steel claim that the Department misinterpreted the facts with respect to the third criterion, namely, a significant potential for manipulation of price or production.

The Department believes there is a significant potential for manipulation of price or production based on the record of the case. Specifically, both G Steel and G J Steel sell subject merchandise to the same affiliated customers, and the companies sell each other's merchandise in the home market. G Steel and G J Steel's U.S. sales of subject merchandise do not constitute a large percentage of their home market sales of hot-rolled steel, meaning the two companies potentially have the capacity to absorb the other's export sales, in the event they were to shift export sales to the company with a lower margin. Preliminary Results, at 39050-51. Respondent's case brief provides no reason to depart from this analysis.

As Nucor correctly pointed out in its rebuttal brief, the Department's collapsing analysis is forward-looking and meant to prevent the manipulation of prices or production decisions after the final results. See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27346 (May 19, 1997) (Final Rule) (“{A} standard based on the potential for manipulation focuses on what may transpire in the future.”); see also Dongkuk Steel Mill Co. v. United States, 29 C.I.T. 724, 733 (2005) (“In examining these factors, Commerce considers both actual manipulation in the past and the possibility of future manipulation, which does not require evidence of actual manipulation during the period of review.”) Accordingly, the Department's analysis looked for evidence of a significant potential for manipulation of prices or production.

With respect to G Steel and G J Steel's claim that the significant potential for manipulation is the most important criterion in a collapsing analysis, we note that the Department must be satisfied that each criterion is met before it will collapse one producer of subject merchandise with another affiliated producer. As stated above, no party disputes the Department's determination with respect to the first two criteria, and the Department refutes the respondent's claims with respect to the third.

In addition, we disagree with G Steel and G J Steel's suggestion that the Department misinterpreted the transactions between these affiliated parties. First, the existence of such inter-company sales demonstrates a growing linkage between G Steel and G J Steel's interests and operations. Such sharing of interests and operations became even clearer upon the June 2, 2008 takeover of G J Steel by G Steel, although they existed during the period of review, even prior to the formal takeover. Thus, the Department agrees with Nucor that the respondent's arguments support the Department's determination that the two companies' operations are intertwined. With respect to respondent's claims that the Department mistakenly referenced such trade accounts as being drawn from the financial statements with the year ending March 31, 2008, rather than for the quarter ending March 31, 2008, the Department acknowledges its inadvertent

error in the Preliminary Results. However, this inadvertent error is immaterial to the Department's overall analysis. The fact remains that there were trade accounts payable and receivable between G Steel and G J Steel during the POR.

With respect to the respondent's claims that there are no differences between the status of G Steel and G J Steel in this review and in the fifth administrative review, the Department finds that the evidence indicates otherwise. In G Steel and GJ Steel's combined response to the Department, the combined companies stated that "{o}n June 2, 2008, G Steel's management was granted authority over the operations of {G J Steel}. G Steel now treats {G J Steel} as its subsidiary and has prepared consolidated financial statements that include the operations of {G J Steel} from June 2, 2008 forward." See February 18, 2009 Sec. A Response at A-14. See also G Steel and G J Steel's Case Brief at 5. G Steel and G J Steel further concede that, after the first quarter of 2008, the companies shared board members and had consolidated financial statements. Id. at 4. Moreover, the record of the instant review shows that there were significant transactions between the two companies. See Response of G Steel and G J Steel to Section A of the Department's Questionnaire at Exhibit A-12 (Public Version) (February 18, 2009) (Joint Section A Response). The record also shows the production of identical products, the sales of these products to the same affiliated customer base, and the fact that either company can easily absorb the other's export productions. Id. at Exhibit A-1. Taken together, these facts demonstrate to the Department's satisfaction that significant potential for manipulation exists between these companies and thus that collapsing the two companies is warranted in this review. Moreover, we find that the facts in this review present a very different fact pattern from the prior (fifth) review in which the Department decided not to collapse the two entities. In the fifth administrative review, G Steel had only recently obtained a 19.08 percent stake in G J Steel's predecessor company (Nakornthai), whereas, in the current review, the ownership stake in G J Steel held by G Steel and its affiliated company increased from 23.5 percent to 49.6 percent. See Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 73 FR 33396 (June 12, 2008) at Comment 2; Joint Section A Response at A-13, A-14, and Exhibit A-5. Moreover, in the fifth administrative review, there were no common directors or inter-company transactions, or common identification of operational or financial interests. See Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 73 FR 33396 (June 12, 2008) at Comment 2. Therefore, the fact pattern of the 2005-2006 administrative review was substantially different than the fact pattern in the instant review, and the conclusions drawn by the Department are based upon those very different fact patterns.

Finally, despite originally requesting that the Department collapse the two companies for antidumping purposes, G Steel and GJ Steel make the argument that the Department cannot presume that both companies manipulated their prices and production costs nor that they have intertwined operations because the companies are listed in the Stock Exchange of Thailand whereby the manipulation of prices or costs of production is strictly prohibited. First, the Department makes no presumption about whether the companies manipulated prices in the past. Rather, this criterion is forward looking and thus is based on whether significant potential exists for the companies to do so in the future. Second, the companies provide no citation, evidence or support for their claim concerning the stock market listing, nor do they explain the meaning of the term manipulation in this context. We note that while stock exchanges may prohibit the kind

of price or production cost manipulation that would lead investors astray, the Department's reference to manipulation in this context pertains to potential behavior that is not necessarily unlawful, but rather is designed to avoid paying higher dumping duties. Significant potential exists where the companies can, with relative ease, switch production from one company to the other to take advantage of a lower duty rate. G Steel and GJ Steel have not explained how this behavior would violate any particular rule of the stock exchange in Thailand. Thus, as Nucor pointed out in its rebuttal brief, this fact alone (i.e., the listing of the firms) is not relevant in the antidumping context, as the potential for manipulation is inherent in the companies' common ownership, directors and intertwined operations. Respondent has provided no evidence or support for its claims regarding how the rules of the Thai Stock Exchange reduce the potential for manipulation.

The respondent also avers the Department has not provided a detailed analysis of the production costs of both companies, and therefore, should not presume that both companies manipulated their prices and production costs. However, the only information submitted by the companies is the public version of the section A response in which G Steel and G J Steel explicitly held themselves out as a single entity that should be granted a single margin. It is unreasonable for G Steel and G J Steel to claim that the Department has not properly analyzed the prices and production of the companies when they themselves refused to provide such information. See G Steel and G J Steel's letter, dated March 12, 2009, in which G Steel and G J Steel informed the Department they would not respond to the Department's requests for information. The Department notes that G Steel and G J Steel failed to submit any response to sections B, C and D of the Department's questionnaire.

In conclusion, given that the regulatory criteria for collapsing have been satisfied, and based upon the respondent's prior requests to be treated as a single entity during their limited participation in this review, we conclude that the companies should be collapsed for antidumping purposes. Now that G Steel controls G J Steel both operationally and financially, the two companies could take advantage of a possible disparity in their dumping margins if the Department neglected to collapse them. Based on the record evidence of this case, and as determined in the Preliminary Results, the Department will continue to collapse G Steel and G J Steel in the Final Results of this review.

## **Comment 2: Application of Adverse Facts Available to G Steel and G J Steel**

Respondent argues the Department improperly selected and applied adverse inferences in its use of facts available with respect to G Steel and G J Steel. Respondent acknowledges the need to use facts available in this review, but insists only neutral facts available should be applied in this instance.

In its rebuttal brief, Nucor claims that under 19 U.S.C. § 1677e(a)-(b), application of adverse facts available with respect to the respondent would be appropriate. Nucor argues that G Steel and G J Steel refused to respond to the Department's section B-D questionnaires, leaving the Department without the information necessary to calculate a dumping margin. Nucor argues the respondent does not indicate how the Department can calculate a dumping margin on the

basis of information provided by the respondent. The information on the record of this proceeding failed to include the merchandise produced and sold in either the home or United States markets or the costs of production for such merchandise. Nucor cites to the Department's uniform practice to apply adverse inferences to companies that refuse to provide a response to one or more sections of the Department's questionnaire and insists the Department should continue to apply adverse inferences in this case.

In its rebuttal brief, U.S. Steel characterizes as absurd the respondent's arguments that the Department should have applied "neutral" facts available based upon the financial statements submitted by the respondent. U.S. Steel cites to the antidumping statute which specifically authorizes the Department to rely on secondary information, including information derived from the petition, in calculating an adverse facts available (AFA) rate. U.S. Steel argues the documents on the record of the proceeding would not allow the Department to calculate a neutral rate, and furthermore, any attempt to do so would treat G Steel and G J Steel as if it had cooperated with the Department in this review. If a respondent fails to cooperate, U.S. Steel argues, the petition rate is appropriate to use as total AFA.

#### Department's Position:

The Department disagrees with G Steel and G J Steel's assertions that the application of AFA is not warranted in this case. G Steel and G J Steel refused to respond to the Department's section B-D questionnaires. Having requested a review, and then withdrawing from the review, G Steel and G J Steel should have been well aware that its failure to provide the required information left the Department without the information necessary to calculate a dumping margin.<sup>1</sup> In such cases, the Department normally applies an AFA rate to the unresponsive company in order to ensure that a respondent cooperates in future proceedings. See, e.g., Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review, 66 FR 56272 (November 7, 2001).

Section 776(a)(2) of the Act provides that if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. We find G Steel and G J Steel's failure to cooperate with the Department's requests for information in the administrative review constitutes a refusal to provide information necessary to conduct the antidumping analysis pursuant to sections 776(a)(2)(A) and (B) of the Act. Moreover, G Steel and G J Steel's withdrawal significantly impeded conduct of the administrative review. See Section 776(a)(2)(C) of the Act. Therefore, we continue to find that we must base the margin for G Steel

---

<sup>1</sup>G Steel and G J Steel were aware that a review of G Steel had also been requested by petitioners and therefore should have been aware that withdrawal from a review would not result in the automatic termination of the review.

and G J Steel on facts otherwise available pursuant to sections 776(a)(2)(A), (B), and (C) of the Act.

Moreover, when a respondent is uncooperative, such as the case here with G Steel and G J Steel, we find it appropriate to assume that if G Steel and G J Steel could have demonstrated that its dumping margin is lower than the highest prior calculated margin, it would have provided information showing the margin to be less. See Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (Rhone Poulenc). Furthermore, the courts have found that in the case of uncooperative respondents, the statute allows the Department to select among a variety of secondary sources as a basis for its adverse factual inferences. See section 776(b) of the Act. For example, in cases where the respondent fails to provide Commerce with the most recent pricing data, it is within Commerce's discretion to presume that the highest prior margin reflects the current margins. See Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330, 1339 (Fed. Cir. 2002) (Ta Chen).

In the absence of a complete response from G Steel and G J Steel the Department is left with no choice but to apply an AFA rate. To attempt to calculate a neutral rate in accordance with the respondent's argument would treat G Steel and G J Steel as if it had cooperated with the Department in this review. Moreover, because the respondent has refused to cooperate with the Department's requests for information, there is simply insufficient information on the record to calculate a rate. Indeed, any such calculations would be purely speculative and not based upon substantial evidence. Therefore, the Department will continue to apply an AFA rate to G Steel and G J Steel in the Final Results of this review.

### **Comment 3: Selection of Adverse Facts Available Rate for G Steel and G J Steel**

In determining the rate to be applied as AFA, respondent claims the Department should have used the submitted documentation from respondent's section A response and not relied on information derived from the most recent segment of the proceeding i.e., the changed circumstances review of Sahaviriya Steel Industries Public Co., Ltd. (Sahaviriya). Respondent argues that Sahaviriya's production and cost structure are dissimilar to G Steel's production and cost structure, and that the Department knows this fact based on previous reviews involving Sahaviriya. Respondent further believes the Department chose to ignore the financial statements of G Steel and G J Steel, which the Department could use in determining normal value, as required by the Department's regulations.

As an alternative, respondent believes the Department could have used the most relevant company-specific information from the 2005-2006 administrative review, which was provided by G Steel itself during the course of that review. Respondent claims this information has greater probative value than the information provided by Sahaviriya in the changed circumstances review, and argues the Department is required to consider this information, as it is on the record of the proceeding. Respondent believes the information from the Sahaviriya changed circumstances review is "adverse but irrelevant" to G Steel and G J Steel and that the Department should therefore re-determine its corroboration and use of adverse inferences in line with subsections 351.308(c) and (e) of the Department's regulations. The respondent believes

the Department should not apply the highest rate in the history of the order, while disregarding the more relevant factual information submitted by G Steel and G J Steel.

Respondent contends that even if adverse inferences are warranted, the Department should rely upon neutral and relevant facts available. Citing to the Department's regulations and the Statement of Administrative Action, respondent argues that the use of adverse inferences is to "ensure that the party does not obtain a more favorable result by failing to cooperate, than if it had cooperated." See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 (1994), at 870 (SAA). Respondent avers the highest applicable rate is not appropriate for use here and that such a rate from the investigation is not necessary to encourage participation in future segments. Respondent contends the rate is irrational and was only chosen to encourage full cooperation in the review. Finally, respondent notes the AFA rate used by the Department was derived from the investigation, which took place nine years ago. Respondent claims the world steel market has changed since that time and that the Department should not ignore changes in the market place.

Respondent contends a proper dumping rate with adverse inferences should not be contrary to the Department's regulations or normal practice. In respondent's opinion, the Department should use a weighted-average dumping margin rather than the highest rate of any individual sales transaction. Respondent also suggests the Department should assign a different rate in the final results based on the results in the 2005-2006 administrative review and/or the submitted section A response in this review under 19 C.F.R. § 351.402(d), which concerns the special rule for determining profit by using financial reports. Respondent argues the Department should not rely on the Sahaviriya information used in the Preliminary Results, as it is G Steel and G J Steel believe that Sahaviriya's costs are different and not probative of the margin of dumping which should be assigned to the respondent.

In its rebuttal brief, Nucor cites to the Act for guidance on how adverse rates should be determined and corroborated. According to Nucor, the Act states the Department should corroborate secondary information, such as information from a prior review, to the extent practicable in determining whether such information is or remains reliable and relevant.

Nucor refers to the Preliminary Results in which the Department selected the rate of 20.30 percent as an adverse rate. Nucor notes how this rate was derived from information provided in the petition and during the investigation by one of the companies. Nucor asserts the Department's selection of the highest available margin is appropriate because were the respondent's actual margin lower, it would have provided the necessary information.

Nucor suggests the Department corroborated the information taken from the investigation by referring to information from the most recently completed segment. Respondent has claimed, according to Nucor, that the use of information from a different producer in the investigation cannot be relevant to G Steel and G J Steel. Nucor counters that respondent has cited to no record information to substantiate this claim. Moreover, according to Nucor, there is no legal bar that prohibits the Department from using information from another company in the development of an adverse rate. Moreover, Nucor stresses the respondent did not cooperate in this review by

failing to provide any sales or cost information. In so doing, respondent has, in Nucor's opinion, made it impossible for the Department to determine any rate based on the company's own information. Therefore, Nucor insists, respondent has no grounds for suggesting that another company's information is not relevant.

With respect to the use of the 20.30 percent rate rather than the use of information submitted by G Steel in the 2005-2006 review, Nucor argues the Department was correct in its use of the 20.30 percent as a balance between providing an incentive for cooperation and imposing a rate that is reasonably related to the respondent's prior commercial activity. Nucor cites to the broad discretion given to the Department in selecting an adverse rate and the lack of rationale by the respondent in using a rate derived from information submitted by G Steel in a prior review.

In terms of using the respondent's financial statements to calculate a rate, Nucor argues this information does not meet the Department's requirements as it is so incomplete that it cannot permit the Department to calculate any kind of margin. With respect to respondent's claims that the 20.30 percent is unreliable, Nucor contends such arguments are without merit. Nucor notes that respondent made a conscious decision to end its participation in the review, thereby knowing the rate it would have received would be equal to or higher than the 20.30 percent. Nucor also notes the Department corroborated the 20.30 percent rate by reference to the most recent data submitted by a Thai steel producer in this proceeding, namely the information provided by Sahaviriya in the changed circumstances review.

As to respondent's arguments that the Department has ignored more reliable and relevant information submitted by G Steel in the 2005-2006 administrative review, Nucor asserts the Department's discretion in selecting an adverse rate is necessarily broad, and suggests G Steel and G J Steel provided no rational basis for limiting the information used to select a rate to information previously submitted by one of the now collapsed respondents. Turning to G Steel's and G J Steel's belief that by using an adverse rate determined from the petition, the Department is using information that is outdated and no longer reflects market conditions, Nucor claims that the respondent's public financial statements do not meet the regulatory requirements for use in this review, as the information is so incomplete that it cannot permit the Department to calculate a margin. Finally, Nucor rejects the respondent's arguments that by using an adverse rate, the Department ignores its regulations at 19 CFR § 351.402(c)(3). Nucor points out this regulatory provision addresses the special rules that may be used when constructing export price where the merchandise is imported by an affiliate and the value added by the affiliate in the United States is likely to exceed the value of the imported merchandise. Nucor claims the regulation is irrelevant to the selection of an AFA rate and that the respondent has failed to show how this regulation applies in this case. Nucor concludes that the 20.30 percent rate is sufficiently adverse to ensure cooperation in future reviews while still being reasonably related to respondent's prior commercial activity. As it has been corroborated for both the investigation and this review, the Department should, according to Nucor, continue to apply the 20.30 percent rate to the collapsed G Steel/G J Steel entity.

In its rebuttal brief, U.S. Steel addresses the respondent's arguments that it was inappropriate for the Department to select the "highest" petition rate. U.S. Steel counters that the Department's well established practice is to use the highest previously determined margin – including a petition rate that has previously been applied as total AFA – to ensure the respondent does not benefit from its failure to cooperate. U.S. Steel emphasizes the conclusion of the Federal Circuit in Rhone Poulenc that the highest previously determined margin is the most probative evidence of current margins, otherwise the respondent would have produced current information showing the margin to be less.

With respect to respondent's contention that the petition rate is irrelevant because it was calculated nine years ago, U.S. Steel notes the Department's corroboration of the petition rate by comparing it to individual transaction margins recently calculated in the changed circumstances review of the same antidumping order. U.S. Steel argues these individual transaction margins reflect the recent world market and economic conditions and demonstrate the relevancy of the 20.30 percent rate.

Furthermore, U.S. Steel asserts the use of individual transaction margins to assess the relevancy of petition rates is entirely consistent with the Department's practice, which has been upheld by both the CIT and the Federal Circuit. Thus, the use of the 20.30 percent rate by the Department was, in U.S. Steel's view, consistent with both the statute and the Department's established practice, as upheld by both the CIT and the Federal Circuit.

#### Department Position:

The Department disagrees with G Steel and G J Steel's assertions that the application of the 20.30 percent AFA rate for G Steel and G J Steel is not warranted. G Steel and G J Steel's arguments indicate a misunderstanding of how this rate was established. G Steel and G J Steel claim that the 20.30 percent rate was selected by the Department based on the changed circumstances review of Sahaviriya. See G Steel and G J Steel's case brief at 6. However, the AFA rate, as explained in the Preliminary Results, was assigned as AFA to G Steel's predecessor, Siam Strip Mill Public Co., Ltd. The rate was corroborated by the Department for its preliminary determination in the investigation. See Preliminary Results, 74 FR at 39052-53. This AFA rate is the highest rate determined for any respondent in the history of this proceeding, and is therefore applicable in this case.

Respondent's claim the Department may not rely on information derived from the most recent segment of this proceeding (i.e., the changed circumstances review of Sahaviriya) is also misplaced. The respondent has failed to provide any information supporting its claim that Sahaviriya's production and cost structure are dissimilar from G Steel's structure. Moreover, even if this claim is accurate, the Department is not precluded from using information from another company in the determination of an adverse rate, particularly with respect to corroboration of the rate. Indeed, the Department did not use Sahaviriya's information to establish the AFA rate but, rather, to assess the relevancy of the petition rate in this review. Thus, as U.S. Steel indicated in its rebuttal brief, the Department's conclusions in the Preliminary Results were entirely consistent with the Department's practice of using individual

transaction margins to corroborate an AFA rate, a practice which has been upheld by both the CIT and the Federal Circuit. See, e.g., PAM S.p.A. v. United States, 577 F. Supp. 2d 1318, 1321 (CIT 2008), aff'd 2009 U.S. App. LEXIS 21118 (Fed. Cir. 2009); NSK Ltd. v. United States, 346 F. Supp. 2d 1312 (CIT 2004), aff'd 481 F.3d 1355 (Fed. Cir. 2007); Ta Chen, 298 F.3d at 1339 (Fed. Cir. 2002); Gallant Ocean (Thailand) Co., Ltd. v. United States, 602 F. Supp. 2d 1337, 1347 (CIT 2009).

With respect to respondent's suggestion that we use the financial statements of G Steel and G J Steel as the basis for the collapsed entity's margin, this information is insufficient for the calculation of an antidumping margin. In fact, the record is so incomplete that we cannot calculate a margin without resorting to facts available. Respondent does not attempt to show how a margin can be calculated by using such limited data, nor does respondent point to an instance where the Department has previously relied upon this approach.

With respect to G Steel and G J Steel's claims that the Department should have used company-specific information from the fifth administrative review to evaluate the AFA rate, the Department is not persuaded by this argument. The changed circumstances review is a more recent review than the fifth administrative review; thus the changed circumstances review provides a better basis to determine the reliability and relevance of the AFA rate. Moreover, the statute allows the Department "to select among an enumeration of secondary sources as a basis for its adverse factual inferences." See F.Lii de Cecco di Filippo Fara S. Martino S.p.A. v. United States, 216 F.3d 1027, 1032 (Fed. Cir. 2000).

With respect to respondent's assertions that the highest applicable rate is not the criterion that should be used, the Department believes the rate it has selected is both rational and appropriate to ensure the future cooperation of the respondent in this order. As Nucor noted, the respondent made a conscious decision to terminate its participation in this review, thereby knowing the rate it would most likely receive would be equal to or higher than the 20.30 percent. The Department concurs with Nucor that the 20.30 percent rate is sufficiently adverse to ensure cooperation in future reviews while still being reasonably related to respondent's prior commercial activity. As it has been corroborated for both the investigation and this review, the Department will continue to apply the 20.30 percent rate to G Steel and G J Steel for the Final Results of this review. See Preliminary Results, 74 FR at 39052-53; Memorandum to John M. Andersen, entitled Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Corroboration of Total Adverse Facts Available for G Steel Public Company Limited (G Steel) and G J Steel Public Company Limited (formerly Nakornthai Strip Mill Public Company, Ltd.), dated July 29, 2009.

Respondent claims the AFA rate used by the Department was derived from the investigation, which took place nine years ago, and therefore does not reflect changes in the world steel market since that time. However, the Department has corroborated the petition rate by comparing it to individual margin transactions that were recently calculated in the changed circumstances review of the same antidumping order. These individual transaction margins reflect recent world market and economic conditions, and demonstrate the continued relevance of the petition rate of 20.30 percent. Preliminary Results, 74 FR at 39052-53.

With respect to respondent's reliance upon section 351.402(c)(3) of the Department's regulations, the respondent is citing to special rules that may be used when constructing export price where the merchandise is imported by an affiliate and the value added by the affiliate in the United States is likely to exceed substantially the value of the imported merchandise. This regulation is not relevant in this situation. Respondent is mistaken in its statement that the Department should calculate a dumping margin in accordance with this regulation. In fact, this regulation only applies in circumstances where merchandise has been imported by an affiliate and the value added in the United States exceeds substantially the value of the imported merchandise. This instant review does not involve this regulation because there is neither an affiliated importer nor substantial value added to the merchandise imported. Accordingly, the regulation has no applicability in the instant review.

In conclusion, the Department determines that the respondent has provided no evidence or legal precedent as to why the 20.30 percent rate should not be applied to the collapsed G Steel/G J Steel entity. G Steel and G J Steel's failure to respond to the Department's questionnaires in full means the Department is unable to calculate any margin for the collapsed entity. As demonstrated above, the Department's reliance upon the 20.30 percent rate as AFA is entirely consistent with the governing statute, court precedent, and the Department's administrative practice.

### **Recommendation**

Based on our analysis of the comments received, we recommend adopting all of the above positions and making no changes to the Preliminary Results. 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 \_\_\_\_\_

\_\_\_\_\_  
Ronald K. Lorentzen  
Deputy Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date