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Investigation  
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August 4, 2016

MEMORANDUM TO: Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

FROM: Christian Marsh *CM*  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative  
Determination in the Less than Fair Value Investigation of Certain  
Hot-Rolled Steel Flat Products from the United Kingdom

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## I. SUMMARY

The Department of Commerce (the Department) determines that certain hot-rolled steel flat products (hot-rolled steel) from the United Kingdom is being, or is likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2014, through June 30, 2015.

We analyzed the comments of the interested parties. As a result of this analysis and based on our findings at verification, we made certain changes to the margin calculations for the mandatory respondent, Tata Steel UK Ltd. (TSUK). The estimated weighted-average dumping margin is shown in the "Final Determination" section of the accompanying *Federal Register* notice. We recommend that you approve the positions in the "Discussion of the Issues" section of this memorandum.

Below is the complete list of the issues in this investigation on which we received comments from parties.

- Comment 1: Total Adverse Facts Available
- Comment 2: Level of Trade
- Comment 3: Home-Market Freight Revenue
- Comment 4: CEP Credit Expense
- Comment 5: Restructuring and Impairment Costs
- Comment 6: Raw Material Costs
- Comment 7: Energy Costs



Comment 8: Partial Adverse Facts Available for Certain Sales  
Comment 9: Verification Correction

## II. BACKGROUND

On March 22, 2016, the Department published its preliminary determination of sales at LTFV in the antidumping duty investigation of certain hot-rolled steel flat products from the United Kingdom.<sup>1</sup> The Department conducted sales and cost verifications of TSUK.<sup>2</sup> On April 21, 2016, AK Steel (one of the petitioners)<sup>3</sup> and TSUK requested that the Department conduct a hearing, which the Department conducted on June 21, 2016.<sup>4</sup>

We invited parties to comment on the *Preliminary Determination*. We received case<sup>5</sup> and rebuttal<sup>6</sup> briefs from the petitioners and TSUK in June 2016. Based on our analysis of the comments received, as well as our findings at verification and pre-verification corrections, the weighted-average dumping margins determined in this final determination differ from those in the *Preliminary Determination*.

In the *Preliminary Determination*, we did not modify the scope language as it appeared in the *Initiation Notice*.<sup>7</sup> No interested parties submitted scope comments in case or rebuttal briefs; therefore, the scope of this investigation remains unchanged for this final determination.

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<sup>1</sup> See *Certain Hot-Rolled Steel Flat Products From the United Kingdom: Affirmative Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 81 FR 15244 (March 22, 2016) (*Preliminary Determination*).

<sup>2</sup> See Memorandum to the File entitled, “Certain Hot-Rolled Steel Flat Products from the United Kingdom: Home-Market and Export-Price Sales Verification of Tata Steel UK Ltd.,” dated April 12, 2016, (HM sales verification report), Memorandum to the File entitled, “Certain Hot-Rolled Steel Flat Products from the United Kingdom: Constructed-Export-Price Sales Verification of Tata Steel UK Ltd.,” dated May 18, 2016, (CEP sales verification report), and Memorandum to the File entitled, “Verification of the Cost Response of Tata Steel UK Ltd. in the Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the United Kingdom,” dated May 31, 2016, (cost verification report).

<sup>3</sup> AK Steel Corporation (AK Steel), ArcelorMittal USA LLC, Nucor Corporation, SSAB Enterprises, LLC, Steel Dynamics, Inc., and United States Steel Corporation (collectively, the petitioners).

<sup>4</sup> See Hearing Transcript dated June 26, 2016.

<sup>5</sup> See Letter from the petitioners, “Certain Hot-Rolled Steel Flat Products From The United Kingdom/Petitioner's Case Brief” (June 8, 2016); and Letter from TSUK, “Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the United Kingdom: Case Brief of Tata Steel UK Ltd. and Tata Steel International (Americas) Inc.” (June 8, 2016).

<sup>6</sup> See Letter from the petitioners, “Certain Hot-Rolled Steel Flat Products From The United Kingdom/Petitioner's Rebuttal Brief” (June 13, 2016); and Letter from TSUK, “Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the United Kingdom: Rebuttal Brief of Tata Steel UK Ltd. and Tata Steel International (Americas) Inc.” (June 13, 2016).

<sup>7</sup> See *Preliminary Determination* and accompanying Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled “Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Hot-Rolled Steel Flat Products from the United Kingdom” at page 4. See also *Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan, the Republic of Korea, the Netherlands, The Republic of Turkey, and the United Kingdom: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 54261, 54262 (September 9, 2015) (*Initiation Notice*).

We have conducted this investigation in accordance with section 735 of the Act.

### III. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain hot-rolled steel flat products from the United Kingdom. For a complete description of the scope of this investigation, *see* the “Scope of the Investigation,” in Appendix I of the *Federal Register* notice.

### IV. MARGIN CALCULATIONS

For TSUK, the Department calculated export price (EP), constructed export price (CEP), and normal value (NV) using the same methodology stated in the *Preliminary Determination*.<sup>8</sup> Further, we made the following changes to our calculations based on findings at verification<sup>9</sup> and our analysis of case and rebuttal briefs:

1. We used the revised home-market (HM) sales and U.S. sales databases TSUK submitted on March 25, 2016, in order to incorporate the pre-verification corrections from the HM and EP sales verification.
2. We incorporated the pre-verification corrections from the CEP sales verification.
3. We used the revised cost database TSUK submitted on March 22, 2016, with its supplemental response of the same date.
4. We used the reported HM freight revenue as an offset of all freight charges incurred on the sales.
5. We recalculated imputed credit expenses for CEP sales to use the date of shipment instead of the date of invoice. We also set the ocean transport period (DINVCAR2U) to zero for CEP sales in order to avoid double counting.
6. We denied the reported billing adjustment for one HM sale because it was not supported by source documents.
7. We revised the international freight expense for one EP sale to match the amount we verified.
8. We revised the quantity for one EP sale to match the quantity we verified.
9. We revised the domestic brokerage expense for one EP sale to match the amount we verified.

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<sup>8</sup> *See Preliminary Determination.*

<sup>9</sup> *See* HM sales verification report, CEP sales verification report, and cost verification report.

10. We adjusted TSUK's reported total cost of manufacture (TOTCOM) for raw material and energy (electricity and natural gas) inputs in accordance with the transactions disregarded rule at section 773(f)(2) of the Act. To calculate the market price of electricity, we applied partial adverse facts available (AFA) within the meaning of sections 776(a)(2)(A) and (C), 776(a)(1), and 776(b) of the Act.
11. We revised TSUK's reported general and administrative (G&A) expenses to include restructuring and impairment costs.

## V. COMPARISONS TO FAIR VALUE

In the *Preliminary Determination*, the Department applied a differential pricing analysis to determine whether application of the average-to-transaction method is appropriate to calculate TSUK's weighted-average dumping margin, pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act. For TSUK, we preliminarily applied the average-to-average method for all U.S. sales to calculate the weighted-average dumping margins. For this final determination, based on results of the differential pricing analysis, for TSUK we are continuing to apply the average-to-average method to TSUK's U.S. sales.

For TSUK, based on the results of the differential pricing analysis, the Department finds that 80.04 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>10</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. However, the Department determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales.<sup>11</sup> Thus, for this final determination, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for TSUK.

## VI. DISCUSSION OF ISSUES

### Comment 1: Total Adverse Facts Available

AK Steel argues that the Department should base TSUK's margin on total adverse facts available (AFA), applying the higher of the highest transaction-specific margin calculated for TSUK in the preliminary determination and the highest margin alleged in the petition.

According to AK Steel, TSUK's "minor correction" revisions presented at the beginning of verification are so extensive that they cannot be considered "minor corrections" but untimely filed new factual information and as such, the HM and cost databases incorporating the "minor correction" should be rejected and removed from the record pursuant to 19 CFR 351.302(d). AK

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<sup>10</sup> See Memorandum to the File from Catherine Cartos, "Less-Than-Fair-Value Investigation of Certain Hot-Rolled Steel Flat Products from the United Kingdom: Final Determination Analysis Memorandum for Tata Steel UK Ltd.," dated August 4, 2016 (TSUK Final Analysis Memorandum) at margin program output.

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

Steel, citing *Wooden Bedroom Furniture*<sup>12</sup> and *Tapered Roller Bearings*,<sup>13</sup> argues that the Department does not allow wholesale revisions to the sales file under the guise of minor corrections presented at the beginning of verification. AK Steel claims that TSUK's alleged minor corrections are revisions to the yield strength, quality, and cost for a large amount of its reported sales and, thus, amount to major changes to the sales and cost databases. AK Steel also argues that, assuming the Department rejects TSUK's revised databases, TSUK's unrevised databases remaining on the record are incomplete and erroneous because several HM sales have at least one wrong physical characteristic and several HM and U.S. sales have erroneous reported costs. AK Steel argues that the Department cannot use these incomplete and erroneous databases to calculate a correct and accurate margin and, therefore, the Department must resort to facts available to calculate TSUK's margin.

AK Steel argues that TSUK failed to cooperate by not acting to the best of its ability to provide the correct yield strength and costs in its questionnaire responses, justifying the application of an adverse inference. AK Steel, citing *Nippon Steel*,<sup>14</sup> claims that the threshold for the application of an adverse inference is that the respondent did not "do the maximum it is able to do," that "inattentiveness, carelessness, or inadequate record keeping" is adequate, and that 776(b) "does not by its terms set a willfulness or reasonable respondent standard, nor does it require findings of motivation or intent." AK Steel contends that TSUK acknowledges that the errors it described as a formulaic error in Excel arose from its own negligence, that TSUK had multiple earlier opportunities to identify and correct the errors in its responses to supplemental questionnaires, but did not do so until verification, and that TSUK had the necessary records to provide accurate strength and quality characteristics in its responses to the initial and supplemental questionnaires and its failure to do so was, at a minimum, the result of "inattentiveness" or "carelessness."

TSUK argues that the Department should accept TSUK's revised sales databases and use them to calculate TSUK's final margin. TSUK claims it discovered the necessary minor corrections when preparing for verification, presented the minor corrections on the first day of verification, in accordance with the verification agenda, and submitted revised sales files incorporating the minor corrections by March 25, 2016, as directed by the Department. TSUK, citing *Refrigerators*,<sup>15</sup> which in turn cites *Brake Manufacturers*,<sup>16</sup> claims that the Department's standard on whether a correction is minor is not solely based on the quantity of affected transactions from the correction but that the Department is required to also examine the nature of the correction and whether the correction calls into question the reliability of TSUK's reported

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<sup>12</sup> See *Wooden Bedroom Furniture from the People's Republic of China*, *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review* 73 FR 49162 (August 20, 2008) and accompanying Issues and Decision Memorandum at Comment 27 (*Wooden Bedroom Furniture*).

<sup>13</sup> See *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Review*, 56 FR 65228 (December 16, 1991) (*Tapered Roller Bearings*).

<sup>14</sup> See *Nippon Steel Corp. v. United States*, 337 F.3d 1373 (Fed. Cir. 2003).

<sup>15</sup> See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea*, 77 FR 17410 (March 26, 2012) and accompanying Issues and Decision Memorandum (*Refrigerators*) at Comment 6.

<sup>16</sup> See *Brake Manufacturers v. United States*, 44 F.2d 229, 236 (CIT 1999).

data. TSUK claims that its corrections to yield strength and quality qualify as minor corrections because the price, quantity, pool of sales, and nearly all the price adjustments in the sales files have not changed, the errors were clerical in nature, and the errors were made for transactions originating only from one of several reporting TSUK entities, *i.e.*, “Distribution.” TSUK further argues that the Department accepted TSUK’s minor corrections at verification and verified the reliability and accuracy of the revisions during both sales and cost verifications, and that the petitioners are attempting to have the Department ignore correct data and use files that all parties know to be incorrect.

Department’s Position: Pursuant to the instructions in the verification agenda, at the beginning of verification, TSUK presented an error in reporting the yield strength as a minor correction, claiming it had discovered the error when preparing for verification. We verified how TSUK made the reporting error and agree that the error was the result of TSUK’s conversion of the yield strength from pascal, the unit of measure as recorded in its source documents and records, to psi, the unit of measure the Department required in its questionnaire.<sup>17</sup> We also verified that the revised data submitted as minor corrections were accurate and supported by source documents.<sup>18</sup> Further, we verified that the data that was not revised was also accurate and supported by source documents.<sup>19</sup> As such, we concluded that the reporting error, while it affected many transactions and cascaded into other fields in TSUK’s databases, was due to a clerical error and, thus, was an acceptable verification correction. Because the correction involved many reported transactions, we instructed TSUK to submit revised databases that incorporated the yield strength corrections and all necessary revisions to other fields affected by the yield strength corrections.

In *Tapered Roller Bearings*, the Department rejected extensive corrections at verification. The fact pattern in *Tapered Roller Bearings*, however, is distinguishable from the fact pattern in the current case. In *Tapered Roller Bearings*, the respondent had not reported to the Department 60 percent of its HM sales of subject merchandise and attempted to report them as a minor correction at verification to introduce them for the first time to the record of the proceeding. The Department did not accept the additional sales as a minor correction. In the current case, while the correction may have affected several transactions and other reported information, it was not completely new information that had never been reported to the Department, but a correction to information that was already on the record.

In *Wooden Bedroom Furniture*, the Department rejected some extensive corrections at verification, but also accepted other extensive corrections at verification. The fact pattern in *Wooden Bedroom Furniture* is distinguishable from the fact pattern in the current case in regards to the corrections that were rejected, but similar to the fact pattern in regards to the corrections that were accepted. In *Wooden Bedroom Furniture*, the respondent provided revised factors of production data as minor corrections at verification because it had originally understated the surface and mass of furniture components used to calculate the consumption rate of many factors

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<sup>17</sup> See questionnaire to TSUK dated October 1, 2015 (Questionnaire), at B-11 and C-9.

<sup>18</sup> See HM sales verification report at 2 and Exhibit VEHR-1.

<sup>19</sup> *Id.*

of production *i.e.*, glue, parquet tape, labor hours, and energy.<sup>20</sup> The Department did not accept these corrections at verification because, after reviewing how the presented error had been made, determined that the error was not inadvertent, the revisions were extensive across several factors of production databases, and the respondent could not provide a detailed explanation and supporting documentation for several of the revisions that were randomly selected to verify the accuracy of the revised information. In other words, there were several factors leading to the rejection of the correction, in addition to the extent of the corrections, namely that the errors were not inadvertent, not clerical, and the accuracy of the revisions could not be verified. In *Wooden Bedroom Furniture*, at the verification of the same respondent, the Department accepted several corrections that, similar to the fact pattern in the current case, while they affected many transactions, were decidedly inadvertent and clerical. Specifically, the Department accepted the respondent's corrections to incorrectly reported data due to programming errors in which the respondent used the electricity consumption ratio instead of the water consumption ratio to calculate the water consumption, and the fuel consumption ratio instead of the electricity ratio to calculate the electricity consumption.<sup>21</sup>

In conclusion, TSUK's revised databases are merely corrections of inadvertent clerical errors that TSUK found in preparation for verification and we verified the accuracy of the corrections. Further, we requested that TSUK submit the revised databases and TSUK simply complied with our request. Therefore, there is no basis to reject the revised databases from the record as untimely new information. We also verified the revised database at both the sales and cost verifications and found that the revised information was correct and accurate and, therefore, the information is the appropriate basis to use to calculate TSUK's dumping margin for the final determination.

#### Comment 2: Level of Trade

AK Steel argues that all of TSUK's HM sales should be found to be at a single level of trade (LOT). According to AK Steel, the differences in selling activities observed by the Department are insufficient to justify finding two different HM LOTs.

Citing 19 CFR 351.412(c)(2), AK Steel contends that the Department will determine that sales are made at different LOTs if they are made at different marketing stages (or their equivalent) and that substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Citing *Silicomanganese from Venezuela*, AK Steel contends that different LOTs are characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them and that separate channels of distribution alone do not qualify as separate LOTs particularly when the selling functions performed for each channel are similar.<sup>22</sup>

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<sup>20</sup> See Memorandum from Edward Yang entitled, "Verification of the Factors Response of Teamway Furniture (Dong Guan) Ltd. and Brittomart Incorporated (collectively, "Teamway") in the Second Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture ("WBF") from the People's Republic of China," dated July 3, 2008, at 2 and 3.

<sup>21</sup> *Id.*

<sup>22</sup> See *Notice of Final Determination of Sales at Less Than Fair Value; Silicomanganese from Venezuela*, 67 FR 15533 (April 2, 2002) (*Silicomanganese from Venezuela*) and accompanying Issues and Decision Memorandum at

According to AK Steel, the differences in selling activities between TSUK's two home-market channels of distribution are insubstantial. AK Steel asserts that TSUK performs six of the twelve selling activities at the identical degree of intensity for customers in both channels and that, for the six selling activities where there are purported differences, the differences are slight or non-existent. With respect to market research, engineering/Research and Development (R&D)/product development services, inventory maintenance, and warehousing expenses, AK Steel contends that, although these functions were only performed at one channel of distribution, they were performed only at a low level for that channel. Moreover, with respect to warehousing, AK Steel alleges that TSUK has acknowledged that it also performs a low level of warehousing for both channels. With respect to procurement services, AK Steel asserts that this activity is performed primarily for non-subject merchandise, which means there is little difference between the distribution channels for sales of subject merchandise. Finally, AK Steel contends that the difference in the level of activity of rebates between the two channels by TSUK is contradicted by TSUK's sales database.

AK Steel also argues that, even if the differences in selling activities were substantial, TSUK has not demonstrated that the sales in TSUK's two HM channels of distribution are made at different marketing stages. AK Steel contends that it is relevant that the slight differences in selling functions are inconsistent in terms of their direction; as the Department found, some activities are performed only within one HM channel, whereas other activities are performed only within the other HM channel. Citing the preamble to the Department's regulations, AK Steel asserts that, if the sales in one channel were truly made at a more remote marketing stage than the other, where TSUK is effectively taking "on a role comparable to that of a reseller," those sales should reflect consistently greater selling activities, but that is not the case here.<sup>23</sup>

Moreover, AK Steel contends, TSUK's two channels do not service purchasers at different stages in the chain of distribution and there is no relationship between the reported sales channels and the marketing stages at which TSUK's customers operate. AK Steel alleges that TSUK acknowledges that it sells to end users, distributors, and processors through both channels of distribution and that the selling activities it performs when selling to end users, distributors, and processors within each channel are functionally the same. Moreover, AK Steel claims that TSUK reported sales to certain consolidated customer codes in both channels of distribution.

In addition, AK Steel argues that, even if there are two HM levels of trade, the Department should re-examine the existence of a pattern of consistent price differences between TSUK's two HM channels of distribution, in light of the revisions TSUK made to its sales and cost databases. According to AK Steel, under the Department's regulations, a LOT adjustment is appropriate only when the difference in the LOT has an effect on price comparability. In order to find such an effect, AK Steel avers, the Department must determine that there is a pattern of consistent price differences between the LOTs. According to AK Steel, there is no pattern of consistent price differences between TSUK's two HM channels of distribution. Therefore, AK Steel concludes, no LOT adjustment should be made.

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Comment 8.

<sup>23</sup> See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27371 (May 19, 1997) (*Preamble*).

TSUK argues that the Department correctly found two LOTs in the HM. TSUK asserts that it sells in two different channels of distribution in the HM: (1) sales directly from TSUK's mills to customers and (2) sales through TSUK's distribution centers to customers. According to TSUK, these two channels of distribution correspond to two different LOTs in the HM, as justified by the fact that they are at different marketing stages with substantially different selling activities performed in each channel.

TSUK contends that AK Steel's arguments do not pass muster. According to TSUK, AK Steel argues only that the differences in market research, engineering/R&D/product development services, and inventory maintenance are slight. TSUK avers that AK Steel does not take into account that each of these selling activities is performed at one channel but not the other. With respect to warehousing, TSUK claims that the record shows that there is a difference in the level of activity between the two channels of distribution. TSUK further alleges that the Department's regulations state that some overlap in selling activities is permissible and will not preclude a determination that two sales are at different stages of marketing. TSUK also contends that AK Steel misconstrues what it has said and what the Department found at verification with respect to procurement services; according to TSUK, it offers procurement services with respect to both subject and non-subject merchandise. With respect to rebates, TSUK alleges that rebates were not one of the selling activities upon which the Department's *Preliminary Determination* was based.

TSUK argues that the Department has made clear in its Antidumping Manual and decisions that nominal differences in customer categories do not, in themselves, establish a difference in LOT. Citing *SS Bar from Brazil*, TSUK claims that the Department found two LOTs in a case where there was one HM channel servicing distributors and large end-users with mill-direct sales and a second HM channel servicing smaller end users through a distribution system consisting of two local warehouses despite the overlap in customer categories.<sup>24</sup> TSUK contends that, where there are significant differences in selling activities between the two channels of distribution, the fact that there are or are not nominal differences in customer categories between the two channels is inconsequential.

TSUK acknowledges AK Steel's observation that it reported sales to certain consolidated customer codes in both channels of distribution, but contends that this does not mean there can only be one LOT. According to TSUK, at the consolidated level, a customer may consist of customers in both channels of distribution. Moreover, TSUK asserts that it sells to the vast majority of its consolidated customers in only one channel of distribution.

TSUK further argues that the Department correctly made a LOT adjustment. According to TSUK, the percentage of all models sold for which the weighted-average price was greater at each LOT and the percentage of total quantity of sales of all models for which the weighted-average price was greater at each LOT have not changed materially since the *Preliminary*

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<sup>24</sup> See *Stainless Steel Bar From Brazil: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 79 FR 75789 (December 19, 2014) (*SS Bar from Brazil*) and accompanying Preliminary Decision Memorandum at 8.

*Determination.* Because of this, TSUK argues, the Department should continue to conclude that there exists a pattern of consistent price differences between the two LOTs in the home market and make a LOT adjustment.

Department's Position: Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will determine NV based on sales at the same LOT as the U.S. sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>25</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>26</sup> Some overlap in selling activities will not preclude a determination that two sales are at different stages of marketing.<sup>27</sup> Finally, the Department "will determine that a difference in LOT has an effect on price comparability only if it is established to the satisfaction of the Secretary that there is a pattern of consistent price differences between sales in the market in which normal value is determined: (i) at the LOT of the export price or constructed export price (whichever is appropriate); and (ii) at the LOT at which normal value is determined."<sup>28</sup>

In this case, TSUK reported that it sold hot-rolled steel in the comparison market through two channels of distribution: 1) sales from TSUK directly to distributors or end-users/processors (Channel 1), and 2) sales from TSUK through wholly-incorporated TSUK distribution centers to distributors or end-users/processors (Channel 2).<sup>29</sup> In the *Preliminary Determination*, we found that these two channels of distribution constituted two LOTs.<sup>30</sup>

We continue to find that TSUK's HM channels of distribution constitute two different LOTs. It is our view that direct sales from the mill and sales through a distribution center represent two different stages in the marketing process. We have made similar determinations in other cases with similar fact patterns.<sup>31</sup>

In this case, we do not agree with AK Steel that the differences in selling functions are slight. With respect to market research, TSUK reported that it "periodically conducts market research for its internal use" which "includes both broad studies of developments in TSUK's markets, as well as studies of particular market opportunities, such as new products and geographical markets," but that "distribution centers do not conduct market research in this manner."<sup>32</sup> Thus, although TSUK reported the level of activity at Channel 1 to be "low,"<sup>33</sup> the fact remains that

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<sup>25</sup> See 19 CFR 351.412(c)(2).

<sup>26</sup> *Id.*; see also *Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010) and accompanying Issues and Decision Memorandum at Comment 7 (*Orange Juice from Brazil*).

<sup>27</sup> See 19 CFR 351.412(c)(2).

<sup>28</sup> See 19 CFR 351.412(d).

<sup>29</sup> See Letter from TSUK, "Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the United Kingdom: TSUK's Section A Questionnaire Response" (October 29, 2015) (QRA) at 15.

<sup>30</sup> See TSUK Final Analysis Memorandum at 2-3.

<sup>31</sup> See, e.g., *SS Bar from Brazil*, 79 FR 75789 and accompanying Preliminary Decision Memorandum at 8 (unchanged in final; 80 FR 12805 (March 11, 2015)).

<sup>32</sup> See QRA at 17.

<sup>33</sup> *Id.*, at Exhibit A-8.

this selling function is performed at one channel but is not performed at all at the other channel. We determine that this difference is more than slight with respect to this selling function.

With respect to engineering/R&D/product development services, for HM Channel 1 sales, TSUK sends engineers to customers to help them develop uses for TSUK products and also to resolve any complaints, whereas this does not happen for HM channel 2 sales.<sup>34</sup> Thus, although TSUK reported the level of activity at Channel 1 to be “low,”<sup>35</sup> the fact remains that this selling function is performed at one channel but is not performed at all at the other channel. We determine that this difference is more than slight with respect to this selling function.

With respect to inventory maintenance, for Channel 1 sales, TSUK produces its merchandise to order, does not sell from inventory, and does not maintain inventory stocks but, for Channel 2 sales, it does maintain a certain level of inventory consistent with its business activities and customer demands in those centers.<sup>36</sup> Thus, although TSUK reported the level of activity at Channel 2 to be “low,”<sup>37</sup> the fact remains that this selling function is performed at one channel but is not performed at all at the other channel. We determine that this difference is more than slight with respect to this selling function.

With respect to procurement services, for Channel 1 sales, TSUK does not engage in this selling activity but, for Channel 2 sales, it does engage in this selling activity, primarily with regard to non-subject merchandise.<sup>38</sup> TSUK explained at verification that, for HM Channel 2 sales, it will offer to procure non-subject merchandise or merchandise it does not produce (*e.g.*, aluminized products) for customers who want such products in addition to the subject merchandise.<sup>39</sup> Thus, contrary to AK Steel’s claim that this only happens with respect to non-subject merchandise, this selling activity can occur either with respect to subject merchandise or in conjunction with sales of subject merchandise. Accordingly, this selling function is performed at one channel but is not performed at all at the other channel. We determine that this difference is more than slight with respect to this selling function.

With respect to warehousing, for Channel 2 sales, because the warehouses are located away from the manufacturing locations, TSUK does incur a warehousing charge.<sup>40</sup> For Channel 1 sales, TSUK does sometimes incur warehouse expenses.<sup>41</sup> Although we cited differences in warehousing as forming part of the basis for our preliminary finding that there were two LOTs, we have reconsidered that determination with respect to warehousing. TSUK reported warehousing expenses for its HM sales for both Channel 1 and Channel 2 sales.<sup>42</sup> Because we

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<sup>34</sup> See HM sales verification report at 4.

<sup>35</sup> See QRA at Exhibit A-8.

<sup>36</sup> *Id.*, at 18-19.

<sup>37</sup> *Id.*, at Exhibit A-8.

<sup>38</sup> *Id.*, at 21.

<sup>39</sup> See HM sales verification report at 4.

<sup>40</sup> See QRA at 19.

<sup>41</sup> See letter from TSUK, “Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the United Kingdom: TSUK’s Sections A through C Supplemental Questionnaire Response,” (January 15, 2016) (SQ1) at 27.

<sup>42</sup> See letter from TSUK, “Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the

are adjusting for warehousing expenses directly in our calculation of NV, we are not considering differences in warehousing for purposes for this final determination. For the same reason, we did not, and continue to not consider, the levels of activity TSUK reported with respect to rebates, freight and delivery, or warranty services in making our LOT determination.

Accordingly, we determine that there are significant differences between Channel 1 sales and Channel 2 sales with respect to market research, inventory maintenance, procurement services, and engineering/R&D/product development services. The regulations state that there must be differences in selling functions, not that the differences must be all larger or smaller in one channel. The regulations also permit some overlap in selling functions. Accordingly, because we determine that Channel 1 sales and Channel 2 sales represent two different stages in the marketing process and that there are significant differences in the selling functions involved with these two channels of distribution, we continue to determine that TSUK's two HM channels of distribution constitute two different LOTs.

In the *Preliminary Determination*, we found the existence of a pattern of consistent price differences between TSUK's two HM channels of distribution. Because TSUK submitted revised sales and cost databases, we re-examined the existence of a pricing pattern using the revised sales and cost databases and concluded that there is a pattern of consistent price differences between the two HM LOTs that has an effect on price comparability. Because our analysis with respect to this point is proprietary, please see the TSUK Final Analysis Memorandum for further detail.<sup>43</sup> Because there is a pattern of consistent price differences between the two HM LOTs, we have made a level-of-trade adjustment.

### Comment 3: Home-Market Freight Revenue

AK Steel argues that the cap on TSUK's HM freight revenue should be removed or, at the very least, increased. AK Steel contends that it is appropriate to add the full amount of freight revenue to HM prices without caps because, whereas TSUK reported freight revenues on a transaction-specific basis, it reported freight expenses for many sales on an average basis. AK Steel asserts that it is distortive to cap revenues by expenses reported on a different basis. AK Steel provides a hypothetical example where total freight revenue and total freight expenses were equal for every sale (but different from sale to sale) to demonstrate that capping freight revenues reported on a transaction-specific basis at the amount of freight expenses reported on an average basis can cause a situation where all freight expenses are deducted, but only a portion of freight revenue will be added. AK Steel asserts that, in this case, all freight revenue should be added without being subject to a cap because TSUK cannot show that the transaction-specific freight revenue exceeded the transaction-specific freight expense.

AK Steel further argues that, at a minimum, HM freight revenue should be capped at the sum of all HM movement expenses. According to AK Steel, although TSUK reported expenses associated with inland freight from the factory to warehouse, warehousing, inland freight from

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United Kingdom: TSUK's Sections B through D Questionnaire Response" (November 23, 2015) (QRB-D) at B-33 and B-34.

<sup>43</sup> See TSUK Final Analysis Memorandum.

the warehouse to customer, and inland insurance, the Department capped freight revenues at the amount of inland freight from the warehouse to customer only. AK Steel asserts that TSUK acknowledged at verification that freight revenue covered all delivery charges, including inland freight to warehouse, warehousing expense, and inland freight to the customer. AK Steel contends that freight revenue should be capped at the sum of all HM movement expenses for the final determination.

TSUK argues that the Department correctly capped HM freight revenue. TSUK asserts that most of its freight expenses were reported on a transaction-specific basis. With respect to sales from distribution centers, TSUK contends that the reported freight was not based on gross overall averages but on a profit-center specific basis. TSUK alleges that these profit centers are located throughout the United Kingdom and are used to ship merchandise to customers within a relatively close proximity and, thus, reflect freight costs to ship merchandise within a given geographic area.

TSUK argues that most of its warehousing expenses were reported on a transaction-specific basis. TSUK further argues that, because insurance charges were calculated based on value - the same basis upon which they were incurred - they are reported on a transaction-specific basis.

TSUK also contends that AK Steel's suggestion that it is appropriate to cap TSUK's freight revenue at TSUK's movement expenses is contrary to the Department's practice of capping a respondent's freight revenue by its freight expenses when they are linked directly to its freight revenue.

Department's Position: With respect to freight-related revenues, our practice is to treat such revenues as an offset to the specific expenses for which they were intended to compensate.<sup>44</sup>

We continue to find that it is appropriate to cap TSUK's freight revenues at the amount of freight expenses. Because of the proprietary nature of our analysis, see the TSUK Final Analysis Memorandum for our analysis.<sup>45</sup>

We agree with TSUK's argument that the Department caps a respondent's freight revenue by its freight expenses when they are associated directly to its freight revenue.<sup>46</sup> However, at verification, we found that TSUK's reported freight revenues "covered all delivery charges, including inland freight to warehouse, warehousing expense, and inland freight to the customer."<sup>47</sup> Because the freight revenues were associated directly with all delivery charges incurred on the sale, we have capped the freight revenues at the sum of all delivery charges incurred on the sale.

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<sup>44</sup> See *Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 46584 (August 11, 2008) and accompanying Issues and Decision Memorandum at Comment 7.

<sup>45</sup> See TSUK Final Analysis Memorandum.

<sup>46</sup> See *Large Power Transformers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 14087 (March 16, 2016) and accompanying Issues and Decision Memorandum at Comment 3 ("record evidence supports the conclusion that Hyosung's reported domestic inland freight expenses are associated directly with its reported inland freight revenue alone.").

<sup>47</sup> See HM sales verification report at 10.

Comment 4: CEP Credit Expense

AK Steel argues that TSUK's credit expenses should be recalculated for CEP sales. According to AK Steel, TSUK calculated credit based on the number of days from TSUK's U.S. affiliate's invoice to the customer until receipt of payment. Citing *Line Pipe from Korea*, AK Steel contends that the credit period should run "from the time the merchandise leaves the port in the foreign country to the date of payment."<sup>48</sup> Accordingly, AK Steel avers, the Department should recalculate credit expenses for CEP sales based on a credit period beginning with the date of shipment from the United Kingdom for the final determination.

TSUK argues that the Department should not recalculate credit expenses for CEP sales. TSUK claims that the Department was aware of the methodology used to compute credit expenses for CEP sales and used the reported credit expenses in the *Preliminary Determination* and should continue to use it for the final determination.

TSUK asserts that the invoice date, rather than date of shipment from the United Kingdom, is appropriately used to determine the credit period for computing credit expenses for CEP sales. According to TSUK, the invoice date reflects the point at which the terms of the sale to the final customer are established and the date when the goods are removed from the U.S. affiliate's inventory accounts. TSUK alleges that the Department observed instances where the terms of sale, including price, quantity and even the customer changed between the original order date and invoice date. Moreover, TSUK claims that it reported the ocean transport period (the number of days between the invoice date and the shipment date) as domestic inventory carrying costs. TSUK contends that, if the Department changes its methodology and recalculates credit expenses based on the period between shipment date and payment date, then the Department should set the domestic inventory carrying costs to zero to avoid double counting the period between shipment date and invoice date.

Department's Position: Our questionnaire instructed TSUK that credit expenses "should be calculated and reported on a transaction-by-transaction basis using the number of days between date of shipment to the customer and date of payment."<sup>49</sup> Moreover, the glossary of the questionnaire defines credit expense as "the interest expense incurred (or interest revenue foregone) between shipment of merchandise to a customer and receipt of payment from the customer."<sup>50</sup> This is also our normal practice with respect to CEP sales when the subject merchandise is shipped directly from the foreign country to the U.S. customer.<sup>51</sup> Thus, because TSUK's CEP sales were shipped directly from the United Kingdom to the unaffiliated customer, it is appropriate to base the credit expenses for these sales on the period between the date of

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<sup>48</sup> See *Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) and accompanying Issues and Decision Memorandum (*Line Pipe from Korea*) at Comment 19.

<sup>49</sup> See Questionnaire at C-28.

<sup>50</sup> *Id.*, at I-5.

<sup>51</sup> See, e.g., *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 70 FR 69512 (November 16, 2005) and accompanying Issues and Decision Memorandum at Comment 2.

shipment from the United Kingdom until payment by the customer and we have recalculated TSUK's credit expenses, accordingly.

As TSUK observes, it reported imputed expenses associated with the period between the date of shipment and the date of invoice as domestic inventory carrying costs associated with ocean transport in the DINVCAR2U field. Therefore, we have set the DINVCAR2U field to zero for CEP sales in order to avoid double counting.

#### Comment 5: Restructuring and Impairment Costs

TSUK argues that for the final determination, the Department should exclude restructuring and impairment costs<sup>52</sup> from the headquarters (HQ) G&A expense rate calculation. TSUK acknowledges that the Department's general practice is to classify restructuring and impairment costs as G&A expenses because they relate to general operations of the company. However, TSUK contends, the Department has an important and longstanding exception to this general practice, which is to exclude closure costs if the respondent can provide evidence that the facility no longer exists or is permanently closed.<sup>53</sup>

TSUK asserts that it submitted evidence to demonstrate that the vast majority of the impairment costs that the Department included under the HQ G&A expenses were incurred for the shutdown and sale of the Long Products business. According to TSUK, the Long Products facilities manufactured only non-subject merchandise and were geographically separate from those facilities manufacturing the merchandise under consideration. TSUK claims that it entered into negotiations with a third-party buyer to sell the Long Products business and, in anticipation of the sale, impaired its assets and transferred them to a newly created subsidiary. According to TSUK, the impairment of the Long Products business' assets was done in anticipation of the shutdown and sale of the entire Long Products business. TSUK explains that these impairment costs were not part of its normal business operations or its general operations and, as such, the Department should consider them extraordinary and exclude them from the HQ G&A expenses.

TSUK argues that its situation is similar to that in *Softwood Lumber from Canada*, where a respondent submitted evidence showing that it closed its mill after the review period and the Department held that the costs related to the idling of the mill, that were incurred during the review period, may not be included in the G&A expenses on the grounds that the Department "cannot ignore record evidence that significant facts changed subsequent to the period of investigation or review."<sup>54</sup> TSUK claims that it has similarly submitted evidence showing that significant facts changed subsequent to the POI. Therefore, TSUK concludes, impairment costs

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<sup>52</sup> Impairment costs relate to a permanent reduction in the value of a company's assets when there is a decline in the fair value of an asset below its carrying amount on the company's balance sheet.

<sup>53</sup> See *Chlorinated Isocyanurates from Spain: Final Results of Antidumping Duty Administrative Review*, 74 FR 50774 (October 1, 2009) (*Chlorinated Isocyanurates from Spain*) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>54</sup> See *Notice of Final Results of Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73437 (December 12, 2005) (*Softwood Lumber from Canada*) and accompanying Issues and Decision Memorandum at Comment 8.

incurred during the POI that are related to the closure and sale of the Long Products business after the POI must be excluded from the HQ G&A expenses.

TSUK adds that the Department has a longstanding practice of excluding restructuring and impairment costs of subsidiaries.<sup>55</sup> TSUK alleges that the fact that the Long Products business' assets were impaired before transferring them to Longs Steel UK, Ltd., a separate legal subsidiary, should not be relevant. TSUK argues that, in the alternative, the Department should exclude the impairment costs because they relate to assets that were transferred to a separate legal subsidiary during the POI. In addition, TSUK argues that, for purposes of the final determination, the Department should also exclude the impairment costs that it verified were related to separate legal entities.

AK Steel argues that the Department should continue to include the impairment costs for the Long Products business in the HQ G&A expenses. However, AK Steel agrees with TSUK that the Department should exclude the impairment costs related to separate legal entities from the HQ G&A expenses. According to AK Steel, the Department considers an expense to be extraordinary only if the event that gave rise to it is both unusual in nature and infrequent in occurrence, and that impairment losses are regularly recognized by companies in the normal course of business upon the recognition by management that the historical value of an asset is no longer recoverable through future use. AK Steel asserts that neither restructuring costs nor impairment losses can be considered unusual or infrequent, and the Department routinely includes these items in G&A expenses along with other commonly recognized period costs. Moreover, AK Steel notes that, in TSUK's profit and loss statement, the restructuring and impairment costs are not classified as extraordinary expenses, but included in ordinary activities before finance charges.

AK Steel contends that TSUK's assertion that the Long Products business' impairment costs relate solely and directly to the shutdown and sale of the business is not supported by record evidence. According to AK Steel, the Long Products business was neither shut down nor sold, was in operation throughout the POI, and was still in operation at the time of the Department's verification in April 2016. AK Steel argues that the Long Products business' impairment costs resulted from the routine annual review of TSUK's fixed assets. AK Steel alleges that the Department verified that the impairment losses for the Long Products business unit were recognized because the present value of estimated future cash flows is less than the book value of the assets. According to AK Steel, regardless of its plans to sell the business, TSUK was required to recognize the Long Products business' impairment costs in accordance with generally accepted accounting principles (GAAP). Therefore, AK Steel contends that, unlike *Softwood Lumber from Canada*, the Long Products business' impairment cannot be considered to be a "closing cost" or a "loss on the sale of the business."

AK Steel further argues that the impaired assets were held in TSUK's Long Products division during the POI. According to AK Steel, the Department verified that the assets of the Long

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<sup>55</sup> See *Stainless Steel Bar from France: Final Results of Antidumping Duty Administrative Review*, 70 FR 46482 (August 10, 2005) (*Stainless Steel Bar from France*) and accompanying Issues and Decision Memorandum at Comment 1.

Products division were segregated and transferred to Longs Steel UK, Ltd. after the POI and after the close of TSUK's fiscal year for which G&A expenses were calculated.

With respect to TSUK's argument that it should not matter whether the assets were impaired before or after they were transferred to a separate entity, AK Steel contends that in *Stainless Steel Bar from France* the Department excluded impairments related to subsidiaries from the numerator of the G&A expense ratio because the COGS denominator did not include costs from those same subsidiaries. According to AK Steel, this policy is intended to avoid a mismatch. AK Steel avers that there is no such mismatch in the instant case because the costs of the Long Products business are included in the COGS denominator.

Department's Position: For the final determination, we have continued to include the total restructuring and impairment costs, recorded in TSUK's fiscal year ended March 31, 2015, (FY 2015) audited financial statements, in TSUK's HQ G&A expense ratio calculation. However, we reduced the total restructuring and impairment costs by the impairment costs related to separate legal entities.

We agree with TSUK that the Department's established practice with respect to impairment losses is to treat them as general expenses and to include the total amount recorded in the respondent's financial statements in the G&A expense ratio calculation.<sup>56</sup> Further, we agree with TSUK that the Department's practice is to exclude the closure costs if the respondent can provide evidence that the facility no longer exists or is permanently closed.<sup>57</sup> However, in the instant case, we have neither closure costs, nor do we have facilities that no longer existed or were permanently closed.

TSUK's assertions (*i.e.*, that the impairment of the Long Products business' assets was done in anticipation of the shutdown and sale of the entire Long Products business; and, that these impairment costs were not part of its normal business operations or its general operations and should be considered extraordinary) are not supported by record evidence. As discussed in TSUK's cost verification report, according to company officials, the impairment losses are recognized when the present value of estimated future cash flows is less than the book value of the assets.<sup>58</sup> Further, as noted by AK Steel, according to TSUK's FY 2015 audited financial statements and in accordance with GAAP in the United Kingdom: "At each reporting period end, the Company reviews the carrying amounts of its tangible fixed assets and intangible assets (including goodwill) to determine whether there is any indication that the carrying amount of those assets may not be recoverable through continuing use. If any such indication exists, the recoverable amount of the asset is reviewed in order to determine the extent of the impairment loss (if any). An impairment loss is recognized as an expense immediately."<sup>59</sup> Furthermore, we agree with AK Steel that the Department considers an expense to be extraordinary only if the event that gave rise to it is both unusual in nature and infrequent in occurrence.<sup>60</sup> As such,

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<sup>56</sup> See *Chlorinated Isocyanurates from Spain* at Comment 1.

<sup>57</sup> *Id.*

<sup>58</sup> See cost verification report at 23.

<sup>59</sup> See QRA at Exhibit A-13, page 13 of TSUK's FY 2015 audited financial statements.

<sup>60</sup> See *Chlorinated Isocyanurates from Spain* at Comment 1.

neither restructuring costs nor impairment losses can be considered unusual or infrequent, and the Department, therefore, routinely includes these items in the G&A expense along with other commonly recognized period costs.<sup>61</sup> Finally, as discussed in TSUK's cost verification report: 1) the assets and division giving rise to the impairment losses were still in operation during the POI; 2) although Longs Steel UK, Ltd. was set up as a wholly-owned subsidiary on February 13, 2015, in anticipation of the sale of the company, the assets of the Long Products division were not segregated from those of TSUK during the fiscal year for which G&A expenses were calculated and were not transferred to this subsidiary until August 2, 2015, which is after the POI; and, 3) the Long Products business unit was still in operation during the POI and its financial results were part of TSUK's financial results and included in its FY 2015 audited financial statements.

TSUK's reliance on *Softwood Lumber from Canada* is misplaced for the following reasons. We agree with AK Steel that the Long Products business' impairment cannot be considered to be a "closing cost" or a "loss on the sale of the business." As discussed above, these impairment costs were a result of an assessment performed annually as prescribed by GAAP in the United Kingdom, in the normal course of business, where impairment losses are recognized when the present value of estimated future cash flows is less than the book value of the assets. Further, we disagree with TSUK's assertion that, because significant facts changed subsequent to the POI, the impairment costs incurred during the POI that are related to the closure and sale of the Long Products business after the POI must be excluded from the HQ G&A expenses. Unlike *Softwood Lumber from Canada* where the mill assets were idled (*i.e.*, temporarily not in operation), as discussed above, in the instant case the assets and division giving rise to the impairment losses were still in operation during the POI, and there is no record evidence that the assets were permanently shut down after the POI. Further, in *Softwood Lumber from Canada*, we distinguished impairment costs, as we have here, from costs related to the shutdown and sale of a facility.<sup>62</sup> Thus, we disagree with TSUK that the impairment losses are related to the closure and sale of the Long Products business unit.

We agree with TSUK that the Department's practice is to exclude impairment costs attributed to subsidiaries.<sup>63</sup> However, as discussed above, although the Longs Steel UK, Ltd. was set up as a wholly-owned subsidiary on February 13, 2015, in anticipation of the sale of the company, the assets of the Long Products division were not segregated from those of TSUK and transferred until August 2, 2015, after the POI. Therefore, for the final determination, the Department has continued to include the total restructuring and impairment costs, recorded in TSUK's FY 2015 audited financial statements, in TSUK's HQ G&A expense ratio calculation. However, we reduced the total restructuring and impairment costs by the impairment costs related to separate legal entities.

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<sup>61</sup> *Id.*

<sup>62</sup> See *Softwood Lumber from Canada* at Comment 8.

<sup>63</sup> See *Stainless Steel Bar from France* at Comment 1.

## Comment 6: Raw Materials Costs

TSUK argues that, for the final determination, the Department should use TSUK's reported transfer prices it paid to an affiliate for purchases of ore, coal, and coke in the cost of manufacturing calculation. According to TSUK, for the *Preliminary Determination*, the Department compared TSUK's reported transfer prices to "facts-available" market prices and adjusted them, in accordance with the transactions disregarded rule. Citing *Chlorinated Isocyanurates from Japan*, TSUK asserts that the Department has found that the transactions disregarded rule does not apply when the affiliate involved is not acting as a supplier of an input.<sup>64</sup> According to TSUK, if the respondent company controlled all aspects of the input purchases, the Department considers these purchases to be transactions between the respondent and unaffiliated suppliers despite the presence of an affiliated party in the transactions. TSUK avers that, in this case, the Department verified that TSUK controlled all aspects of the input purchases for the transactions in question. Further, TSUK argues that the Department now has the necessary information on the record to use a market price based on actual market purchases for ore, coal, and coke.

In addition, TSUK argues that a certain business proprietary expense item should not be added to the reported transfer prices because this results in double counting. Further, TSUK argues that an amount for selling, general and administrative (SG&A) expense based on the affiliate's reported SG&A expense rate should not be added to the market price, because the affiliate's acquisition cost reflects the actual market price paid for these raw materials.

AK Steel argues that, for the final determination, the Department should continue to adjust the ore, coal, and coke costs, in accordance with the transactions disregarded rule. AK Steel contends that this case is distinguishable from *Chlorinated Isocyanurates from Japan* because that case involved an affiliated buyer's agent and the actual transactions were directly between the respondent and its unaffiliated suppliers. In this case, the affiliate from which TSUK purchased these inputs is a reseller, not a buyer's agent. AK Steel also asserts that the Department applies the transactions disregarded rule to all purchases through affiliated resellers, even when the respondent negotiates its purchases with the unaffiliated supplier directly and the affiliate's services are limited to document handling and acting as a payment intermediary.<sup>65</sup>

AK Steel also claims that the cost verification report demonstrates that the Department's adjustments do not result in double counting as alleged by TSUK. AK Steel further contends that using TSUK's reported transfer price would not capture all the costs attributable to these transactions.

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<sup>64</sup> See *Chlorinated Isocyanurates from Japan: Final Determination of Sales at Less Than Fair Value*, 79 FR 56059 (September 18, 2014) (*Chlorinated Isocyanurates from Japan*) and accompanying Issues and Decision Memorandum at Comment 4.

<sup>65</sup> See *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 77 FR 17422 (March 26, 2012) (*Bottom Mount Combination Refrigerator-Freezers from Mexico*) and accompanying Issues and Decision Memorandum at Comment 28.

Department's Position: For the final determination, we have continued to analyze the affiliated purchases of ore, coal, and coke in accordance with the transactions disregarded rule, provided at section 773(f)(2) of the Act. Further, we have adjusted TSUK's reported ore, coal, and coke transfer prices to include a certain business proprietary expense item. In addition, we have calculated the market price for the transactions disregarded analysis using the affiliate's acquisition cost (*i.e.*, the purchase price paid to the unaffiliated suppliers) plus an amount for SG&A expense based on the affiliate's reported SG&A expense rate. As much of the information relating to this issue is business proprietary in nature, please refer to the TSUK Final Cost Memorandum for further discussion.<sup>66</sup>

TSUK's reliance in *Chlorinated Isocyanurates from Japan* is misplaced. Under section 773(f)(2) of the Act, the Department's established practice is to value the input at the higher of the transfer price or the market price for the input when a respondent purchases inputs from an affiliated supplier.<sup>67</sup> We agree with AK Steel that, unlike *Chlorinated Isocyanurates from Japan*, where the affiliated party was a commissioned sales agent, in the instant case, the affiliated party is a reseller which also provided procurement services to TSUK.<sup>68</sup> Further, for all affiliated purchases, the payment is made through the affiliated reseller and TSUK incurs a certain business proprietary expense.<sup>69</sup> In any event, as noted by AK Steel, we have applied the transactions disregarded rule in instances where the affiliated reseller's services were limited to document handling and acting as payment intermediary.<sup>70</sup>

We also disagree with TSUK that a certain business proprietary expense item should not be added to the reported transfer prices because this results in double counting. TSUK's transfer prices, as reported, do not capture the full amount paid to the affiliate. The proprietary additional expense is not already captured by TSUK and its inclusion in the reported transfer prices paid to its affiliate for inputs does not result in the double counting of costs. As much of the information relating to this expense item is business proprietary in nature, please refer to the TSUK Final Cost Memorandum for further discussion.<sup>71</sup>

Finally, we disagree with TSUK that an amount for SG&A expense should not be added to the market price because the affiliate's acquisition cost reflects the actual market price paid for these raw materials. The Department's established practice when the respondent purchases inputs from an affiliated reseller is to value the input at the higher of the transfer price or the adjusted market price for the input (*i.e.*, the affiliate's average acquisition cost from the unaffiliated supplier plus the affiliate's selling, general, and administrative costs).<sup>72</sup> Because the affiliated reseller is providing a service related to the acquisition of the input, as well as the input itself, the SG&A expenses of the affiliate must be included.<sup>73</sup> The Department must ensure that the market price it uses for comparison incorporates the activities related to both the service and the input.<sup>74</sup>

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<sup>66</sup> See TSUK Final Cost Memorandum at 1-2.

<sup>67</sup> See *Chlorinated Isocyanurates from Japan* at Comment 4.

<sup>68</sup> See cost verification report at 20.

<sup>69</sup> *Id.*, at 20.

<sup>70</sup> See *Bottom Mount Combination Refrigerator-Freezers from Mexico* at Comment 28.

<sup>71</sup> See TSUK Final Cost Memorandum at 1-2.

<sup>72</sup> See *Bottom Mount Combination Refrigerator-Freezers from Mexico* at Comment 28.

<sup>73</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags from*

## Comment 7: Energy Costs

TSUK argues that, for the final determination, the Department should use TSUK's reported transfer prices paid to Tata Steel Europe (TSE) for electricity and natural gas in the cost of manufacturing calculation. According to TSUK, for the *Preliminary Determination*, the Department compared TSUK's reported transfer prices to "facts-available" market prices, in accordance with the transactions disregarded rule. Further, TSUK argues that the Department now has the necessary information on the record to use a market price based on actual market purchases for electricity and natural gas.

In addition, TSUK argues that certain business proprietary expense items should not be added to the reported transfer prices because this results in double counting. Further, TSUK argues that adding an amount for TSE's SG&A expense to the market prices would also result in double counting because a portion of TSE's SG&A is allocated to TSUK in the normal course of business.

AK Steel argues that TSUK's electricity costs should be based on partial AFA. According to AK Steel, after the *Preliminary Determination*, the Department issued an additional questionnaire to TSUK allowing the company another opportunity to provide the necessary information regarding market price, but TSUK elected not to provide the requested information. AK Steel contends that, in response to the Department's supplemental questionnaire, TSUK acknowledged that it purchases electricity from an unaffiliated supplier but declined to report the purchase price, because the quantities purchased were small and the rates paid were, according to TSUK, similar to residential usage rates and, as such, not comparable to its purchases from TSE. AK Steel claims that TSUK's detailed written agreement with the unaffiliated supplier is hardly akin to a residential supply arrangement and undermines TSUK's assertions.

AK Steel argues that the fact that TSUK's purchases from the unaffiliated supplier were smaller is not an excuse to disregard the Department's request for the unaffiliated suppliers' pricing information. According to AK Steel, TSUK's cites to various non-market economy cases, where the Department selected a surrogate value for electricity based on the category of user, fails to support TSUK's decision to withhold the requested information. According to AK Steel, rather than report the information requested by the Department, TSUK provided information regarding electricity it resold to companies that provide on-site services to TSUK. AK Steel claims that this information does not demonstrate that the transfer price paid by TSUK to the affiliate reflects a market price. In any event, AK Steel avers, TSUK failed to comply with the Department's request to report the purchase prices paid to unaffiliated suppliers. AK Steel contends that, because TSUK withheld information requested by the Department, the information needed to apply the transactions disregarded rule is not on the record.

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*Thailand*, 69 FR 34122 (June 18, 2004) (*Polyethylene Retail Carrier Bags from Thailand*) and accompanying Issues and Decision Memorandum at Comment 6.

<sup>74</sup> *Id.*

AK Steel argues that, because TSUK has failed to cooperate by not acting to the best of its ability to provide information requested by the Department, the Department should use an adverse inference in assigning the facts available with respect to electricity. AK Steel proposes that, for the final determination, in addition to the electricity cost increases made in the *Preliminary Determination*, the Department should make additional increases to the electricity component of the total TOTCOM.

In response to AK Steel's arguments, TSUK contends that it has fully complied with the Department's requests for information. Moreover, TSUK asserts that full market price information is on the record and was thoroughly verified by the Department. TSUK also claims that the use of any of the unaffiliated supplier's rates would be contrary to the verified facts of this investigation and the overwhelmingly detailed market price information on the record.

In response to TSUK's arguments, AK Steel argues that for the final determination the Department should continue to adjust the electricity and natural gas costs, in accordance with the transactions disregarded rule. AK Steel further contends that using TSUK's reported transfer prices would not capture all the costs attributable to these transactions.

Department's Position: For the final determination, we have continued to analyze the affiliated purchases of electricity and natural gas, in accordance with the transactions disregarded rule, section 773(f)(2) of the Act. Further, we have adjusted TSUK's reported electricity and natural gas transfer prices to include certain business proprietary expense items. In addition, we have calculated the market price of natural gas for the transactions disregarded analysis using TSE's acquisition cost (*i.e.*, the purchase price paid to the unaffiliated suppliers) plus an amount for SG&A expense based on TSUK's SG&A expense rate. Finally, we have determined that the use of partial facts otherwise available with an adverse inference is appropriate for the final determination with respect to electricity because of TSUK's repeated failure to provide requested information that is necessary to this investigation. As some of the information relating to this issue is business proprietary in nature, please refer to the TSUK Final Cost Memorandum for further discussion.<sup>75</sup>

For both the natural gas and electricity transfer prices, we disagree with TSUK that certain business proprietary expense items should not be added to the reported transfer prices because this results in double counting. TSUK's transfer prices, as reported, do not capture the full amount paid to the affiliate. The proprietary additional expenses are not already captured by TSUK and their inclusion in the reported transfer prices paid to its affiliate for electricity and natural gas purchases do not result in double counting of costs. As much of the information relating to these expense items is business proprietary in nature, please refer to the TSUK Final Cost Memorandum for further discussion.<sup>76</sup>

We also disagree with TSUK that adding an amount for TSE's SG&A expense in determining the market prices for natural gas would result in double counting because a portion of TSE's SG&A expense is allocated to TSUK in the normal course of business. The Department's

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<sup>75</sup> See TSUK Final Cost Memorandum at 2-5.

<sup>76</sup> *Id.*

established practice when the respondent purchases inputs from an affiliated reseller is to value the input at the higher of the transfer price or the adjusted market price for the input (*i.e.*, the affiliate's average acquisition cost from the unaffiliated supplier plus the affiliate's SG&A costs).<sup>77</sup> Because the affiliated reseller is providing a service related to the acquisition of the input as well as the input itself, the SG&A expenses of the affiliate must be included.<sup>78</sup> The Department must ensure that the market price it uses for comparison incorporates the activities related to both the service and the input.<sup>79</sup> TSUK's allocated amount of TSE's SG&A expenses accounts only for a portion of TSE's total SG&A expenses. The additional portion of TSE's total SG&A expenses is allocated to the other business units it benefits. Therefore, by allocating TSE's remaining SG&A expenses to the market price for natural gas purchases from TSE, there is no double counting as the amounts allocated down to TSUK in the normal course of business is not a part of the SG&A costs included in the market price computation. However, because we are not able to isolate TSE's SG&A expenses, we have used TSUK's SG&A expense rate as a facts available gap filler in order to calculate a market price for the affiliated purchases of natural gas.

In performing the transactions disregarded analysis for the affiliated purchases of natural gas, we compared TSUK's adjusted transfer price (*i.e.*, TSUK's reported transfer price plus certain business proprietary expense items) to the calculated market price (*i.e.*, TSE's acquisition cost price plus an amount for SG&A expense based on TSUK's selling and G&A expense rates), and used the calculated market price which exceeded TSUK's adjusted transfer price.<sup>80</sup>

For the affiliated electricity purchases, we disagree with TSUK that it has fully complied with the Department's request for information and that full market price information is on the record. Under section 773(f)(2) of the Act, the "transactions disregarded" rule, the Department's established practice is to value the input at the higher of the transfer price or the market price for the input when a respondent purchases inputs from an affiliated supplier.<sup>81</sup> In its response to the section D, TSUK explained that TSE purchases electricity from unaffiliated suppliers and resells it to TSUK.<sup>82</sup> In the first supplemental section D questionnaire, we requested TSUK to provide a market price for its affiliated purchases (*i.e.*, its purchases from unaffiliated suppliers or, in the absence of unaffiliated purchases, the affiliate's COP (in the case of electricity purchases, TSE's acquisition cost plus an amount for SG&A expense)). In its response to our request, TSUK provided the prices it paid TSE for purchases of electricity.<sup>83</sup> TSUK did not, however, provide a market price for these purchases and explained that its prices were at arm's length in compliance with U.K. tax law and the inputs were minor.<sup>84</sup> In the second supplemental section D questionnaire, we again requested TSUK to provide a market price for the electricity purchases, but did not receive a response in time for the *Preliminary Determination*. Thus, for the

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<sup>77</sup> See *Bottom Mount Combination Refrigerator-Freezers from Mexico* at Comment 28.

<sup>78</sup> See *Polyethylene Retail Carrier Bags from Thailand* at Comment 6.

<sup>79</sup> *Id.*

<sup>80</sup> See TSUK Final Cost Memorandum at 2-5.

<sup>81</sup> See *Chlorinated Isocyanurates from Japan* at Comment 4.

<sup>82</sup> See TSUK's section D questionnaire response dated November 23, 2015 (section D) at 10.

<sup>83</sup> See TSUK's supplemental section D questionnaire response dated January 27, 2016 (first supplemental section D) at 43-45.

<sup>84</sup> *Id.*, at 46-47.

*Preliminary Determination*, we used information on the record as facts available to calculate a market price for use in the transactions disregarded analysis. In its second supplemental section D response, which we received subsequent to the *Preliminary Determination*, in reference to unaffiliated purchases of electricity, TSUK explained that it purchased small quantities of electricity for some of its sites from an unaffiliated supplier.<sup>85</sup> TSUK did not, however, provide any information related to these purchases (*i.e.*, quantity and value) and explained that the rates TSUK paid to the unaffiliated supplier were not comparable to the rates TSUK paid to TSE because these rates were similar to residential usage rates.<sup>86</sup> Instead, TSUK stated that it sold some of the electricity purchased from TSE to unaffiliated parties that provide on-site services to TSUK.<sup>87</sup> TSUK explained it invoices these companies for the energy that they consume.<sup>88</sup> As discussed in TSUK's cost verification report, instead of sales to unaffiliated parties, these transactions appear to be reimbursements from the unaffiliated parties for electricity consumed in providing on-site services to TSUK.<sup>89</sup>

Section 776(a)(2) of the Act provides that, “if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.”

Further, 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 the facts otherwise available.

Accordingly, we agree with AK Steel that by not providing the requested market price for its affiliated purchases of electricity, despite numerous attempts by the Department to gather this information, TSUK withheld information requested of it and significantly impeded the proceeding, within the meaning of sections 776(a)(2)(A) and (C) of the Act. Without the requested information, we are unable to properly analyze whether TSUK's affiliated purchases of electricity represent arm's-length transactions, as required by the statute. Accordingly, we also find that necessary information is missing from the record, within the meaning of section 776(a)(1) of the Act. Therefore, because TSUK failed to cooperate by not acting to the best of its ability to provide information we requested, we have determined that application of partial adverse facts available, within the meaning of section 776(b) of the Act, is appropriate with respect to TSUK's purchases of electricity. As partial AFA, we calculated a higher market price

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<sup>85</sup> See TSUK's second supplemental section D questionnaire response dated March 22, 2016 (second supplemental section D) at 15.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*, at 16.

<sup>88</sup> *Id.*

<sup>89</sup> See cost verification report at 21.

than that at the *Preliminary Determination* for the affiliated purchases of electricity based on the sum of TSE's acquisition cost, SG&A expenses, and electricity supply contract information obtained from record evidence.<sup>90</sup>

#### Comment 8: Partial Adverse Facts Available for Certain U.S. Sales

AK Steel argues that the Department should apply adverse facts available to the U.S. sale with sequence number 473, because TSUK allegedly reported the upstream sale to its affiliate, Tata Steel International (Singapore) Pte. Ltd., rather than the resale from its affiliate to the first unaffiliated customer in the United States, as is required by section 772(b) of the Act.

AK Steel also argues that the Department should apply adverse facts available to the U.S. sale with sequence number 685 because, at verification, the Department determined that it could not verify several of the reported fields because the relevant documents were in Hong Kong.

TSUK argues that, contrary to AK Steel's assertion, for the U.S. sale with sequence number 473, TSUK reported the sale from its U.S. affiliate Tata International Metals (Americas) Limited to its first unaffiliated customer. TSUK argues that, therefore, there is no basis to apply adverse facts available to this sale.

TSUK argues that, for the U.S. sale with sequence number 685, it provided at the verification in the United Kingdom all of the information that was available in the United Kingdom, *i.e.*, the invoice from TSUK to Tata Steel International Asia (TSIAsia), product technical information, and logistics and transportation details. TSUK argues that, as indicated in its responses and as the Department was reminded at the HM and EP verification in the United Kingdom and the CEP verification in the United States, the Department could have reviewed documents generated and maintained by TSIAsia at TSIAsia's offices in Hong Kong. TSUK argues that, therefore, the Department should use the information as reported for the U.S. sale with sequence number 685.

Department's Position: For the U.S. sale with sequence number 473, we verified that TSUK reported the sale to its first unaffiliated customer in the United States.<sup>91</sup> Therefore, there is no basis to apply adverse facts available to this sale and we will use the information that TSUK reported for this U.S. sale.

For the U.S. sale with sequence number 685, TSUK complied with all of our requests for information regarding this sale within the confines of the information available in TSUK's records maintained in the United Kingdom. TSUK has also provided for the record sales documentation generated by TSIAsia for sales that were made employing the same invoicing chain through TSIAsia.<sup>92</sup> Therefore, we do not find a basis to apply adverse facts available to this sale and we will use the information that TSUK reported for this U.S. sale.

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<sup>90</sup> See TSUK Final Cost Memorandum at 2-5.

<sup>91</sup> See CEP sales verification report at 4.

<sup>92</sup> See Letter from TSUK "Antidumping Duty Investigation of Certain Hot-Rolled Steel Flat Products from the United Kingdom: TSUK's Sections A through C Supplemental Questionnaire Response," dated January 15, 2016 (SQR1) at Exhibit SA-14 and Letter from TSUK "Antidumping Duty Investigation of Certain Hot-Rolled Steel

Comment 9: Verification Correction

AK Steel argues that the Department should disregard TSUK's billing adjustments for the HM sale with the sequence number 59292 because the Department could not verify them.

TSUK did not comment on this issue.

Department's Position: We could not verify the billing adjustments for the HM sale with the sequence number 59292.<sup>93</sup> Therefore, for the final determination, we have disregarded the billing adjustments for this HM sale.

**VII. RECOMMENDATION**

We recommend applying the above methodology for this final determination.

✓  
\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

*Ronald K Lorentzen*

\_\_\_\_\_  
Ronald K. Lorentzen  
Acting Assistant Secretary  
for Enforcement and Compliance

*August 4, 2016*  
\_\_\_\_\_  
(Date)

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Flat Products from the United Kingdom: TSUK's Sections A through C Second Supplemental Questionnaire Response," dated February 18, 2016 (SQR2) at Exhibit SA-24.

<sup>93</sup> See HM sales verification report at 2 and 15.