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July 10, 2014

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

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

SUBJECT: Certain Oil Country Tubular Goods from the Socialist Republic of  
Vietnam: Issues and Decision Memorandum for the Final  
Determination

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## SUMMARY

The Department of Commerce (the Department) has analyzed the comments submitted by the United States Steel Corporation (petitioner)<sup>1</sup> and the mandatory respondent<sup>2</sup> in the less-than-fair-value investigation of certain oil country tubular goods (OCTG) from the Socialist Republic of Vietnam (Vietnam). Following issuance of the Preliminary Determination,<sup>3</sup> verification, and the analysis of the comments received, we made changes to the margin calculation for the final determination. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a complete list of issues for which we received comments from parties.

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<sup>1</sup> The petitioners for this investigation are United States Steel Corporation, Maverick Tube Corporation, Boomerang Tube, Energex Tube, a division of JMC Steel Group, Northwest Pipe Company, Tejas Tubular Products, TMK IPSCO, Vallourec Star, L. P., and Welded Tube USA Inc. (collectively “petitioners”).

<sup>2</sup> SeAH Steel VINA Corporation (SSV). A second mandatory respondent, Hot Rolling Pipe Co., Ltd., Vietnam, informed the Department on September 20, 2013, of its decision not to participate in the investigation.

<sup>3</sup> See Certain Oil Country Tubular Goods From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination, 79 FR 10478 (February 25, 2014) (Preliminary Determination), and the accompanying Issues and Decision Memorandum, dated concurrently with the Preliminary Determination.

## **BACKGROUND**

The Department published the Preliminary Determination in the Federal Register on February 25, 2014.

The period of investigation (POI) is January 1, 2013, through June 30, 2013. Between March 31, 2014, and April 4, 2014, the Department conducted a verification in Vietnam of SSV's sales and factors responses. Between April 29, 2014, and May 1, 2014, it conducted a verification of the sales response of SSV's U.S. affiliate, Pusan Pipe America (PPA).

In accordance with 19 CFR 351.309(c)(1)(i), we invited parties to comment on our Preliminary Determination. On June 6, 2014, we received case briefs from petitioner U.S. Steel Corporation and SSV. On June 13, 2014, we received rebuttal briefs from the petitioner and SSV. We held a public hearing on June 20, 2014.

### **Case Issues:**

- Comment 1: Surrogate Value for Domestic Brokerage and Handling
- Comment 2: Financial Statements
- Comment 3: Surrogate Value for Labor
- Comment 4: Surrogate Value for Water
- Comment 5: Whether to Exclude "Limited-Service" Pipe from the Margin Calculation
- Comment 6: Differential Pricing
- Comment 7: Valuation of Hot-Rolled Coil
- Comment 8: Adjusting the Price of SSV's Hot-Rolled Coil to Reflect Arm's-Length Transactions
- Comment 9: Whether to Revise the Reported Yield Rates
- Comment 10: Adding Brokerage and Handling and Port Fees to SSV's Market-Economy Purchases of Hot-Rolled Coil
- Comment 11: Domestic Inland Insurance
- Comment 12: Whether to Revise Further Manufacturing Costs to Include Interest Expenses
- Comment 13: Import Duties on Varnish

### **Discussion of the Issues:**

#### **Comment 1: Surrogate Value for Domestic Brokerage and Handling**

##### **SSV's Arguments**

SSV argues the Department erred in two ways in its valuation of domestic brokerage and handling (B&H) expenses. First, SSV alleges that by using data obtained from the report "Doing Business India: 2014" ("Doing Business"), the Department used an inappropriate

surrogate value. Second, SSV argues the Department used an incorrect computational methodology.

With respect to the correct surrogate value, SSV bases its argument on several considerations.

First, SSV argues that some of the costs included in the “Doing Business” report as B&H costs are not legitimate B&H costs. For example, it states that many of the documents that comprise the “documents preparation” line item in the “Doing Business” report reflect documents that are not related to customs brokerage services, are either prepared by SSV itself or by SSV’s customer, or are not relevant to OCTG exports. Furthermore, because OCTG is shipped in bulk, SSV argues, the “Doing Business” report overstates the handling charges because they include costs for “procedures {that} range from packing the goods *into the container* at the warehouse to their departure from the port of export.”<sup>4</sup>

Second, SSV argues there is no way to confirm that the “Doing Business” figures reflect the actual prices that would be charged for exports of steel products. The “Doing Business” report, SSV alleges, contains no documentation or breakdown for the reported costs other than to say that its analysis was adopted from a 2010 paper by Djankov, Freund and Pham.<sup>5</sup>

Third, SSV states that the B&H expenses reported in the “Doing Business” report are aberrational. It bases this argument on the public version B&H figures from the concurrent LTFV investigation of OCTG from India.<sup>6</sup> In the OCTG from India investigation, the public version B&H figures of two respondents, after conversion into U.S. dollars, were roughly \$5.42/MT and \$15.12/MT. In contrast, the surrogate B&H value the Department calculated in the Preliminary Determination of the OCTG from Vietnam investigation was \$77/MT.

Based on the above considerations, SSV argues that in the final determination the Department should value B&H using the published price lists from the Orient Overseas Container Line (OOCL) website.<sup>7</sup> SSV asserts that the data from these price lists are the most detailed and accurate data on the record for valuing B&H because they represent actual fees charged by OOCL for various export and import services at each major port in India. SSV states that because it was selling on an f.o.b. foreign port basis, the only charges it incurred for B&H were documentation fees and terminal handling fees. Assuming a maximum cargo weight for a 20-foot contain as 21.727 MT<sup>8</sup>, SSV states that its B&H costs calculated from using the OOCL data as the surrogate value would be roughly \$5.80/MT. SSV concludes that the B&H surrogate value the Department used in the Preliminary Determination was roughly thirteen times higher than its actual B&H charges would have been had the Department used the OOCL data.

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<sup>4</sup> See “Doing Business” report found in the petitioner’s January 17, 2014, submission at Tab H, Attachment 3 and in SSV’s June 6, 2014, submission at Attachment 3 (emphasis added).

<sup>5</sup> Id.

<sup>6</sup> See SSV’s January 27, 2014, submission at Attachments 2C through 2F.

<sup>7</sup> See SSV’s January 17, 2014, submission at Attachment 7.

<sup>8</sup> Id. at 38.

Next, SSV argues the Department performed the per-unit calculation for B&H incorrectly. In the Preliminary Determination the Department calculated the per-unit B&H cost under the assumption that each container contained 10 MT of OCTG. SSV argues that this methodology is inconsistent with the Department's past practice in which it used the maximum capacity of a container, which, as indicated above, is 21.727 MT.

However, SSV argues that in the final determination the Department should use neither 10 MT nor 21.727 MT as the denominator in the per-unit calculation, but should instead follow the ruling of the Court of International Trade (CIT) in CS Wind.<sup>9</sup> In CS Wind, the CIT held that the per-unit B&H calculation should not be based on the quantity of merchandise shipped in a container when the evidence indicated that a single set of export documents covered a quantity much greater than the weight that could be held in a single container, and that the document processing costs should be allocated over the total quantity of merchandise shipped under the relevant export document. SSV concludes that the Department should use SSV's POI average shipment quantity as the denominator in calculating the per-unit B&H costs.

#### Petitioner's Rebuttal Arguments

Petitioner argues that SSV's arguments are without merit. First, petitioner states that, contrary to SSV's assertion, the documents included in the cost calculation of the "Doing Business" report are all documents plainly related to exporting merchandise. In support of this assertion, petitioner cites Wooden Bedroom Furniture from the PRC where the Department determined that the costs included in the "Doing Business" report did not involve any costs beyond those necessary to prepare the export-related documents listed in the report.<sup>10</sup>

With respect to SSV's argument that some of the documents are prepared by SSV's customer, petitioner notes that the Department has previously found that while the "Doing Business" report may not be perfectly symmetrical to the respondent's experience, given its broad country-wide base, it constitutes the best available information.<sup>11</sup> With respect to documents that SSV itself prepares, petitioner argues that the preparation of these documents is still a cost of export that must be recognized. As support, it cites Fresh Garlic from the PRC, where the Department found that regardless of whether the respondent purchased water or collected water itself, the cost must be included in the Department's calculations.<sup>12</sup>

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<sup>9</sup> CS Wind Vietnam Co., Ltd., v. United States, 971 F.Supp. 2d 1271 (CIT 2014) (CS Wind).

<sup>10</sup> See Wooden Bedroom Furniture From the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews, 76 FR 9747 (February 22, 2011) (Wooden Bedroom Furniture from the PRC) and accompanying Issues and Decision Memorandum at Comment 3.

<sup>11</sup> See Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination, 78 FR 13019 (February 26, 2013) (Drawn Stainless Steel Sinks from the PRC) and accompanying Issues and Decision Memorandum at Comment 5.

<sup>12</sup> Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 69 FR 58392 (September 30, 2004) (Fresh Garlic from the PRC).

With respect to SSV's argument that there is no way to confirm that the "Doing Business" figures reflect the actual prices that would be charged for services relating to steel products, petitioner argues that the "Doing Business" report sets forth the assumptions that have been made with respect to the nature of the goods to be shipped, and these assumptions are applicable to steel products. These assumptions are: (i) the goods are not hazardous and do not involve military items; (ii) they do not require refrigeration or other special environment; (iii) they do not require any special phytosanitary or environmental safety standards; and (iv) they are one of the exporting nation's (i.e., India's) leading export products.<sup>13</sup>

Petitioner also states that SSV's argument fails with respect to comparing costs in the "Doing Business" report with the ranged data on the record from Indian producers. Petitioner states that one of the reasons the Department chooses the "Doing Business" reports as a source for surrogate data is that the costs in the "Doing Business" reports represent broad market averages, and such averages are superior to the costs reported by individual companies. That concern is borne out here where the record shows, for example, that one of the two Indian exporters reported its brokerage and handling charges incurred at only one port of exportation.<sup>14</sup> Petitioner states it is clear that the ranged data from the two companies at issue with their own highly individual export experiences are hardly superior to the broad country-wide averages contained in the "Doing Business" report.

Petitioner also disputes SSV's characterization of the OOCL data as the "most detailed and accurate" source of surrogate data for brokerage and handling on the record. Petitioner states that the data in question are from one container transport company from one day - December 18, 2013 - which is not even a date within the POI (i.e., January 1, 2013 through June 30, 2013). Given the limited nature of these data, petitioner states, and the fact that they post-date the POI by almost six months, they clearly do not meet the statutory requirement for the Department to use the "best available" information. Indeed, petitioner states, in Circular Welded Carbon-Quality Steel Pipe from Vietnam, the Department selected and clearly preferred to use data from the "Doing Business" report when the only alternative on the record was the "costs from only three brokerage firms."<sup>15</sup>

Finally, petitioner argues there is no basis to SSV's contention that the Department should use the maximum cargo weight for a container (i.e., 21.727 MT) and not the survey weight of 10 MT to determine the per unit B&H expense. Petitioner states the Department has repeatedly held that when it uses the "Doing Business" data, it should base its calculations on the weight of the

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<sup>13</sup> See U.S. Steel Surrogate Values Submission (Jan. 17, 2014) at Tab H, Attachment 3.

<sup>14</sup> See SSV's January 27, 2014, rebuttal surrogate value submission at attachment 2-D, p. C-31 (referring to the company's "port of exportation").

<sup>15</sup> See Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value, 77 FR 64483 (October 22, 2012) (Circular-Welded Pipe from Vietnam).

container used by the “Doing Business” survey, which is 10 MT.<sup>16</sup> Petitioner notes that in CS Wind, the CIT remanded the determination in Wind Towers from Vietnam to the Department for further consideration, and that the Department’s remand redetermination has not yet been released.

**Department’s Position:** We disagree with SSV that the “Doing Business” report does not represent the best information available on the record for the valuation of B&H costs, and with its assertion that we should value B&H using the OOCL data.

In prior cases where parties have challenged our reliance on the “Doing Business” report we have consistently found it to be reliable, and determined that it meets all of the Department’s criteria for selection of surrogate values.

For the final results, we find that the World Bank/International Finance Corporation (“IFC”)’s publication “Doing Business 2011: Economy Profile Indonesia,” (“Doing Business 2011 Indonesia”) offers the best available information for valuing B&H in this administrative review because the data are based on broad market averages, are publicly available, are tax and duty exclusive, and are contemporaneous. The Department has consistently relied on this source to value B&H.<sup>17</sup>

For the reasons explained below, we make the same determination here with respect to the “Doing Business” report from India that was made in PET Film from the PRC with respect to the “Doing Business” report from Indonesia.<sup>18</sup>

With respect to SSV’s argument that many of the expenses included in the “Doing Business” report are not relevant to its own experience, we have reviewed the list of documents (listed as “Documents to Export”) the processing of which is listed in the “Doing Business” report as

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<sup>16</sup> See Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013) and accompanying Issues and Decision Memorandum at Comment 6-B; Utility Scale Wind Towers From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value, 77 FR 75984 (December 26, 2012) and accompanying Issues and Decision Memorandum at Comment 11.

<sup>17</sup> See Certain Oil Country Tubular Goods From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 77 FR 74644 (December 17, 2012), and accompanying Issues and Decision Memorandum at Comment 3 (OCTG from the PRC 2010-2011); See also Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 77 FR 55800 (September 11, 2012), and accompanying Issues and Decision Memorandum at 2.D; Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the New Shipper Review, 77 FR 27435 (May 10, 2012), and accompanying Issues and Decision Memorandum at Comment II.G; Polyethylene Terephthalate Film, Sheet, and Strip From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 35245 (June 12, 2013) and accompanying Issues and Decision Memorandum at Comment 7 (PET Film from the PRC).

<sup>18</sup> The Department has previously determined that the methodology employed in reporting prices in Doing Business India is the same as that employed in Doing Business Indonesia. See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2011-2012, 78 FR 56211 (September 12, 2013) and accompanying Issues and Decision Memorandum at Comment 5.

included in the B&H costs, and determined that they are all export documents. Moreover, the Department has previously determined, in response to a similar argument with respect to a comparable set of documents used in the B&H calculation in Doing Business 2011: The Philippines, that the expenses at issue reflected “the documents required to export goods from the Philippines.”<sup>19</sup> Thus, in this instance, we determine that the documents at issue are legitimately included in the calculation. The Department will sometimes make an adjustment to surrogate value data to reflect an individual exporter’s experience, including to B&H surrogate value data, but normally only when the item’s amount is clearly identified in the “Doing Business” report<sup>20</sup> and the factors of production for self-preparation are accounted for. Such is not the case here with respect to the individual items SSV has identified because the costs for each item are not indicated in the “Doing Business” report; however, we do not find this to be a sufficient reason to disqualify the “Doing Business” report under Department practice.<sup>21</sup> Moreover, the Department has previously noted that using broad market averages (such as the “Doing Business” report) means that “actual brokerage and handling costs will be higher for some customers and lower for others due to various factors.”<sup>22</sup>

Moreover, we are not persuaded that there is reason to doubt that the “Doing Business” figures reflect the prices that would be charged for exports of steel products. As petitioner has noted, the “Doing Business” report clearly states the assumptions made with respect to the nature of the goods to be shipped, and these assumptions are fully applicable to steel products. Those assumptions are: (i) the goods are not hazardous and do not involve military items; (ii) they do not require refrigeration or other special environment; (iii) they do not require any special phytosanitary or environmental safety standards; and (iv) they are one of the exporting nation’s (i.e. India’s) leading export products.<sup>23</sup>

As stated above, we do not agree with SSV that the OOCL data are the best data on the record for valuing B&H. The OOCL information SSV submitted is reflective of the prices charged by only one shipping company on only one date, which postdates the POI. As such, the OOCL data do not constitute the contemporaneous, broad market average we seek when considering

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<sup>19</sup> See Wooden Bedroom Furniture from the PRC and accompanying Issues and Decision Memorandum at Issue 3. The Department has previously determined that the methodology employed in reporting prices in Doing Business in India and Doing Business in the Philippines is the same. See Certain Activated Carbon From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 70533 (November 26, 2013) (Activated Carbon from the PRC 2011-2012) and accompanying Issues and Decision Memorandum at Comment 10A.

<sup>20</sup> See Drawn Stainless Steel Sinks from the PRC at Comment 5.

<sup>21</sup> Id.

<sup>22</sup> See Frontseating Service Valves From the People’s Republic of China; 2010-2011 Antidumping Duty Administrative Review; Final Results, 77 FR 67334 (November 9, 2012) and accompanying Issues and Decision Memorandum at Comment 5; see also Hand Trucks and Certain Parts Thereof From the People’s Republic of China: Final Results and Final Rescission in Part, of Antidumping Duty Administrative Review, 76 FR 36083 (June 21, 2011) and accompanying Issues and Decision Memorandum at Comment 8.

<sup>23</sup> See petitioner’s surrogate values submission (Jan. 17, 2014) at Tab H, Attachment 3.

potential surrogate values.<sup>24</sup> Thus, the Department has consistently chosen the “Doing Business” report over data obtained from individual brokerage companies when selecting B&H data.<sup>25</sup>

Furthermore, the public-version figures from the OCTG from India investigation that SSV put on the record do not undermine the data reported in the “Doing Business” report. For one of the companies there is nothing on the record of this investigation explaining how those public-version figures were calculated or what costs were included, leaving unclear the extent to which those figures are representative of an Indian exporter’s B&H expenses. The other company did provide some information about what costs it included in its reported B&H figure, but costs from one company do not constitute a “broad market average.” In prior cases where public version B&H figures of respondents in other cases were placed on the record, the Department has chosen to use the “Doing Business” report as more representative of a broad market average.<sup>26</sup>

Therefore, in this final determination we have continued to use the “Doing Business” report to value B&H.

With respect to the per-unit calculation of B&H, we find that it is appropriate to continue using 10 MT as the denominator. We have explained our reasoning for this methodology in numerous other cases:

“The Department finds that it should continue to use the weight of 10 MT for a standard container because this is the weight used in the *Doing Business* publication and thus the SV calculation must be internally consistent with the original data’s reporting basis. The Department finds that mixing different sources of data in the B&H calculation would add inconsistency to the ratio calculation, which would yield a distorted result.”<sup>27</sup>

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<sup>24</sup> See, e.g., OCTG from the PRC 2010-2011 at Comment 1 (“The Department’s practice when selecting the best available information for valuing {factors of production}, in accordance with section 773(c)(1) of the Act, is to select surrogate values which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and free of taxes and duties”).

<sup>25</sup> See e.g., PET Film from the PRC at Comment 7; Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012 and accompanying Issues and Decision Memorandum at Comment XIX; Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 2011-2012, 79 FR 31298 (June 2, 2014) and accompanying Issues and Decision Memorandum at Comment 5; Circular-Welded Pipe from Vietnam at Comment 6.

<sup>26</sup> See Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010, 78 FR 11143 (February 15, 2013) and accompanying Issues and Decision Memorandum at Comment 10; Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 26712, (May 9, 2014) and accompanying Issues and Decision Memorandum at Comment 4 (Multilayered Wood Flooring from the PRC).

<sup>27</sup> See Certain Steel Threaded Rod From the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review; 2011-2012, 78 FR 66330 (November 5, 2013) and accompanying Issues and Decision Memorandum at Comment 7.

“Using 10 MT in the per-unit calculation maintains the relationship between cost and quantity from the survey (which is important because the numerator and the denominator of the calculation are dependent upon one another), makes use of data from the same source, and is consistent with the Department's practice.”<sup>28</sup>

The analysis in the above cases is applicable to the correct calculation methodology here. Changing the denominator, as SSV would have us do, would not align the calculation closer to the reality of shipping OCTG; it would render the surrogate value meaningless by divorcing the assumptions underlying the numerator from the denominator.

Finally, we note that while SSV is correct that this issue was recently remanded to the Department in CS Wind, the remand is currently pending with the Department, and there is no final court decision. Therefore, consistent with the above analysis, in this final determination we have continued to use 10 MT as the denominator.

## **Comment 2: Financial Statements**

### SSV's Arguments

SSV argues the Department erred in its Preliminary Determination by calculating the financial ratios (*i.e.*, overhead, selling, general and administrative expenses (G&A), and profit) using the financial statements of, *inter alia*, Bhushan Steel Limited (Bhushan) and Welspun Corporation Limited (Welspun). SSV states that including the financial statements of these companies in the calculation of financial ratios was an error because their production experience is much different from that of SSV. Specifically, Bhushan and Welspun produce OCTG from steel coils that they themselves produce – Bhushan by rolling slabs that it produces in an integrated steel production operation from raw materials like iron ore and coke, and Welspun by rolling steel slabs that it purchases from outside suppliers. In contrast, SSV states, SSV obtains the steel coils used in its production by purchasing the steel coils from outside suppliers.

SSV argues that several factors substantiate its contention. First, using the financial statements of Bhushan and Welspun violates the Department's practice of not using the financial statements of integrated steel producers when calculating financial ratios for non-integrated producers. For example, the Department recently stated, “The Department...rejects financial statements of

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<sup>28</sup> See Certain Steel Nails From the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review, 2010-2011, 78 FR 16651 (March 18, 2013) and accompanying Issues and Decision Memorandum at Comment 5; see also Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2011-2012, 78 FR 56211 (September 12, 2013) (Shrimp from the PRC) and accompanying Issues and Decision Memorandum at Comment 5; Activated Carbon from the PRC 2011-2012 at Comment 10; Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013) and accompanying Issues and Decision Memorandum at comment 10.

surrogate producers whose production process is not comparable to the respondent's production process when better information is available.”<sup>29</sup>

Moreover, SSV states the Department has not cited any justification for departing from its well-established precedent in this case.

Second, SSV states that analytically it is incorrect to use the financial statements of integrated producers and slab re-rollers to calculate financial ratios for non-integrated producers because it double counts the overhead, selling, general, and administrative expenses (SG&A), interest, and profit.

Specifically, because it produces OCTG from purchased steel coil, SSV incurs only the overhead, G&A and interest expenses, and receives only the profit, attributable to the production of steel pipe from steel coils. SSV does not itself incur any of the overhead, G&A and interest expenses incurred in the production of slabs or steel coils, and it does not earn any of the profit that manufacturers of steel slabs and coil earn when they sell those products. Instead, the overhead, G&A, and interest expenses, and profit attributable to steel slab and coil production are included in the price (or surrogate value) for the coils SSV purchases.

In contrast, a fully-integrated producer like Bhushan incurs overhead, and general and administrative, and interest expenses in order to transform iron ore into steel slabs. Producers like Bhushan and Welspun also incur additional overhead costs, G&A, and interest expenses when they transform those steel slabs into steel coil. Bhushan and Welspun also incur selling expenses and earn profits when they sell those self-produced items – or else they derive a cost advantage if they transform the self-produced items internally to subsequent productions processes without a profit. As a result, the numerator of the financial-ratio calculation for Bhushan and Welspun includes overhead, selling, general, and administrative expenses, interest, and profit amounts relating to coil-making (and, in Bhushan's case, slab-making) operations, while the denominator does not. If those ratios are then applied to SSV's coil costs, they double-count the overhead, G&A, and interest expenses, and profit attributable to raw-steel and coil production that are already included in the price that SSV pays for coils.

SSV states that because of the double-counting a distortion results that is obvious and immense. It claims that the overall “financial ratios” for Bhushan and Welspun were 66.64 percent and 31.27 percent, respectively. The overall financial ratio for APL Apollo Tubes, Ltd. (Apollo) (a

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<sup>29</sup> See OCTG from the PRC 2010-2011 at comment 4. See also Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 Fed. Reg. 14514 (March 31, 2009), and accompanying Issues and Decision Memorandum at Comment 13; See Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Final Results of Antidumping Duty Administrative Review, 68 Fed. Reg. 12672 (March 17, 2003), and accompanying Issues and Decision Memorandum at Comment 2; Notice of Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China, 67 Fed. Reg. 36570 (May 24, 2002) (Circular-Welded Pipe from the PRC), and accompanying Issues and Decision Memorandum at Comment 5.

company whose production process is similar to SSV's, and whose financial statement the Department used in the Preliminary Determination of this investigation) was only 8.18 percent. Thus, the overall financial ratio for Welspun was almost four times greater than the ratio for Apollo, and the overall ratio for Bhushan was more than eight times higher than Apollo's ratio.

Based on the above considerations, SSV argues that instead of using the financial statements of Bhushan and Welspun in the final results, the Department should use the financial statement of Apollo together with the financial statements of six other companies.<sup>30</sup> With respect to these six financial statements, SSV acknowledges that available information does not state whether these companies produce pipe that is certified to the American Petroleum Institute (API) standard for OCTG. Nonetheless, SSV makes the following points:

First, the scope of the investigation is explicitly defined by product's physical characteristics, not API specifications. As a result, even if these companies do not explicitly certify the products to meet particular API specifications, it is possible that they may produce pipe with the same physical characteristics as OCTG that fall within the defined scope of this investigation.

Second, all of these six companies produce welded-pipe merchandise that is "comparable" to the OCTG manufactured by SSV, which is all the statute and the Department's past practice require. This practice has been upheld by the CIT.<sup>31</sup> Furthermore, record evidence indicates that all of these companies manufacture welded pipe products for the oil and gas industry or for "down-hole" applications in water wells. Thus, all of these companies produce merchandise that is "comparable" to tubes used in oil and gas wells under any reasonable definition.

#### Petitioner's Rebuttal Arguments

Petitioner argues the Department should not use Apollo's financial statement in the final determination, but should continue to rely on the financial statements of Bhushan and Welspun. Additionally, petitioner argues the Department should use the financial statements of three additional companies to calculate the surrogate financial ratios in the final determination: Maharashtra Seamless Limited (Maharashtra), Oil Country Tubular Limited (OCTL), and Ratnamani Metals and Tubes, Ltd. (Ratnamani). Petitioner states that the financial statements of each of these companies meet the Department's criteria to be used in determining surrogate financial ratios. Specifically, the companies are Indian producers of OCTG, their financial statements are contemporaneous with the POI, and the financial statements of these companies do not reflect a significant portion of revenue from unrelated non-steel products.

With respect to Apollo, petitioner states the record shows that Apollo is not a producer of OCTG. In fact, according to petitioner, SSV has acknowledged that there is no evidence that Apollo produces "pipe that is certified to the API standard for OCTG." Rather, petitioner states, that

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<sup>30</sup> See SSV's January 17, 2014, submission at Appendices 8-A through 8-F.

<sup>31</sup> See Yantai Xinke Steel Structure Co., Ltd., v. United States, Slip Op. 2014-38 (CIT April 9, 2014) at 31-36.

Apollo is a producer of welded pipe, a product that, at best, can only be considered comparable to OCTG. Petitioner argues it is the Department's clearly stated practice not to use the financial statements of companies that produce only comparable merchandise when, as here, the financial statements of companies that produce identical merchandise are on the record.

Petitioner states that the record also demonstrates that Apollo has received countervailable subsidies under India's Duty Entitlement Passbook (DEPB) program.<sup>32</sup>

The other six companies SSV has proposed, petitioner argues, are similarly unsuitable. Petitioner states that, as in the case of Apollo, those companies do not produce OCTG. They produce only welded pipe, which at best is merchandise that is merely comparable to OCTG. In addition, petitioner maintains, one of the six companies, Surya Roshni, derives a full 30 percent of its sales revenue from the manufacture of lamps and lighting products, which are not even remotely related to OCTG or any other type of pipe production or steel manufacturing.

Furthermore, petitioner states that SSV's attempts to discredit the use of the financial statements of Bhushan and Welspun in the calculation of the surrogate financial ratios are without merit. Despite the differences in the source of the coils, petitioner states, SSV, Bhushan, and Welspun all produce OCTG from hot-rolled coil that is welded to form OCTG. Moreover, petitioner states that Bhushan and Welspun are not disqualified as surrogates because they have production processes that are more integrated than those of SSV. According to petitioner, the Department has recognized that it is not required to find surrogates that duplicate the exact production experience of the respondent, and that such exact symmetry is rarely even possible.<sup>33</sup>

Furthermore, petitioner states that in a prior case involving OCTG, the Department used the financial statements of surrogates that were at different levels of integration than that of the respondent. Specifically, petitioner cites to the LTFV investigation of OCTG from the People's Republic of China.<sup>34</sup> Petitioner explained that there the Department concluded it was proper to use the financial statement of Indian producer Tata Steel, a fully-integrated company, to value the financial ratios of a less-integrated Chinese OCTG producer.

Furthermore, petitioner states that contrary to SSV's contentions, the level of integration is not the determining factor in the size of a company's financial ratios. It states that the size of a company's financial ratios depends on many factors, including the type of merchandise sold, the product mix, the company's production efficiencies, and the manner in which the company

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<sup>32</sup> See SSV's January 17, 2014, submission at Attachment 8-C, p. 77.

<sup>33</sup> See Shrimp from Vietnam 2011-2012 at Comment 2; Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results of Administrative Review: 2011-2012, 78 FR 15696, (March 12, 2013), and accompanying Decision Memorandum at 23.

<sup>34</sup> Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010) (OCTG from the PRC Investigation), and accompanying Issues and Decision Memorandum, at Comment 13.

maintains and reports its costs. In the instant case, petitioner states, a critical factor is that some companies, like Bhushan and Welspun, produce and sell OCTG, whereas others, such as the ones SSV has proposed, do not. As the ITC has expressed, the demanding nature of OCTG compared to other pipe products means that the profit margins and costs of the companies producing OCTG will be greater. This, in turn, means that those companies are likely to have higher financial ratios regardless of the level of integration. Furthermore, petitioner points to the financial statements of OCTL, Bhushan, and Welspun that are on the record of this investigation as evidence that the level of integration is the determining factor driving the magnitude of the financial ratios.

### Petitioner's Arguments

Petitioner argues the Department should not use Apollo's financial statement in calculating financial ratios, and should instead use the financial statements of Bhushan, Maharashtra, OCTL, Ratnamani, and Welspun.

With respect to Apollo, petitioner argues that Apollo does not produce OCTG, and receives countervailable subsidies. Petitioner further states that of the four entities represented in the Apollo financial statement (i.e., Apollo and its three subsidiaries), only one, Lloyds Line Pipe Products (Lloyds), is API 5CT certified. Petitioner states though that there is no record evidence that Lloyds produced OCTG during the POI, and there is record evidence that its production is geared toward other pipe products.

Petitioner argues that, in addition to using the financial statements of Bhushan and Welspun to calculate the financial ratios, the Department should also use the financial statements of Maharashtra, OCTL, and Ratnamani. It bases this contention on the allegation that each of these financial statements meets the Department's three criteria for use in that they: (i) are contemporaneous with the POI; (ii) reflect the production of OCTG that has been made using the electric-resisted-welded (ERW) production process; and (iii) do not reflect a significant portion of revenue from unrelated non-steel products. Petitioner notes too that the Department prefers to use financial data from more than one surrogate producer to reflect the broader experience of the surrogate industry.

Petitioner also argues that Ratnamani's financial statement ought not be disqualified because Ratnamani derives a portion of its revenues from stainless steel products and tolling. In fact, petitioner argues, because stainless steel pipes are a higher value-added pipe product, Ratnamani's financial ratios will more closely approximate the experience of the production and sale of OCTG than financial ratios that are based on a company whose sales are dominated by lower value-added pipe products such as standard and structural pipe. In this regard petitioner notes that the Department does not require or expect that a company have the exact same product mix or production experience as the respondent in order for its financial statements to be usable for the calculation of surrogate financial ratios. Petitioner notes that the Department recently used the financial statement of Ratnamani to determine the surrogate financial ratios in the LTFV

investigation of circular welded carbon-quality steel pipe (circular-welded pipe) from Vietnam with respect to the very same respondent at issue in this case, i.e., SSV.<sup>35</sup>

Petitioner also argues that Maharashtra's and Ratnamani's receipt of subsidies should not, by itself, be a bar to using their financial statements. Petitioner states that although the Department generally prefers to use the financial statements of companies that have not received actionable subsidies, it has done so in some cases, including those involving OCTG and Indian producers. Petitioner notes that one such case was the investigation of circular welded carbon-quality steel pipe from Vietnam, where the Department used the financial statement of Ratnamani.<sup>36</sup> Thus, petitioner states, Maharashtra's and Ratnamani's receipt of subsidies, standing alone, should not preclude use of their financial statements in this investigation for purposes of calculating surrogate financial ratios. Use of their financial statements here, petitioner states, is appropriate because Maharashtra and Ratnamani meet all three of the Department's criteria for use of a financial statement. It is this fact, petitioner states, that sets Maharashtra and Ratnamani apart from Apollo, which does not produce OCTG. Petitioner states that if the Department declines to use the financial statements of Maharashtra and Ratnamani on grounds that they received countervailable subsidies, consistency requires that it also decline to use the financial statement of Apollo.

#### SSV Rebuttal Arguments

SSV argues the Department should continue to use the financial statement of Apollo in the calculation of financial ratios, and should not use the financial statement of Ratnamani or Maharashtra.

With respect to Apollo, SSV argues that petitioner's contention that Apollo does not produce OCTG is contrary to petitioner's statements in the antidumping petition. SSV states that "APL Apollo Tubes Ltd." is the second Indian company identified in petitioner's list of "Producers/exporters of OCTG from India."<sup>37</sup> SSV states that this information was certified by petitioner and its counsel to be accurate, and that petitioner has provided no evidence to support its current claim that the information provided in the petition was untrue.

Furthermore, SSV states that petitioner's exclusive focus on Apollo's financial statements is misplaced. SSV states that it placed on the record a copy of pages from Apollo's website describing its product offerings, and that those pages list "API 5CT Plain End Casing Pipes," as among them. Furthermore, SSV argues, even if Apollo did not produce OCTG, the other products it produced, and the production processes it used, were clearly comparable to SSV's.

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<sup>35</sup> See Circular-Welded Pipe from Vietnam at Comment 2.

<sup>36</sup> See Id.

<sup>37</sup> See Petition, Exhibit I-5.

Moreover, SSV states that record evidence does not support petitioner's claim that Apollo received subsidies under the DEPB scheme. SSV states that the note in Apollo's consolidated financial statement to which petitioner cites is a "detail of related party transactions." It concerns an "intra-group transaction" that involves "transfer of DEPB" with "associates." SSV states the note does not indicate which "associates" transferred that amount or how the transfer was affected.

Furthermore, SSV points out that in a recent determination in the LTFV investigation of OCTG from India, the Department found that the "Duty Entitlement Passbook Scheme (DEPS)... program was terminated effective October 1, 2011," and that "there could have been no residual benefits during the POI because the DEPS benefit is earned at the time of export." Accordingly, SSV concludes whatever DEPB benefits were transferred among Apollo affiliates could not have represented countervailable subsidies during Apollo's 2012-13 fiscal year.

With respect to Maharashtra, SSV argues that its financial statement should be excluded from the calculation of the financial ratios because it shows evidence of having received benefits under India's Export Promotion Capital Goods (EPCG) program. SSV states that the Department has previously held that the EPCG program constitutes a countervailable subsidy, and has therefore excluded the financial statements of companies that reported benefits under that program from its calculation of surrogate financial ratios in at least some prior non-market economy (NME) cases.<sup>38</sup> Furthermore, SSV argues, in its previous investigation of circular-welded pipe from Vietnam, the Department rejected Maharashtra as a source for surrogate financial ratios because, *inter alia*, of the subsidies Maharashtra received under the EPCG program.<sup>39</sup> Moreover, SSV notes that in the Preliminary Determination of the concurrent countervailing duty investigation of OCTG from India, the Department found that Maharashtra had received a countervailable subsidy of 3.5 percent.<sup>40</sup>

With respect to Ratnamani, SSV argues the Department should reject this financial statement for several reasons. First, SSV states that Ratnamani's financial statement shows that it received export packing credits.<sup>41</sup> SSV also points out that, in a recent LTFV investigation the Department disregarded Ratnamani's financial statement because it determined that Ratnamani had received packing credits, which the Department had previously found to be countervailable.<sup>42</sup>

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<sup>38</sup> See e.g., Fresh Garlic from the People's Republic of China: Final Results of the 2009-2010 Administrative Review of the Antidumping Duty Order, 77 FR 34346 (June 11, 2012) (Garlic from the PRC 2009-10) and accompanying Issues and Decision Memorandum at 44.

<sup>39</sup> See Circular-Welded Pipe from Vietnam at Comment 2.

<sup>40</sup> See Certain Oil Country Tubular Goods from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Determination, 78 FR 77421, 77422 (Dec. 23, 2013).

<sup>41</sup> See Ratnamani's 2012-13 financial statement at 70.

<sup>42</sup> See Welded Stainless Pressure Pipe From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value, 79 FR 31092, May 30, 2014 (WSPP from Vietnam) and accompanying Issues and Decision Memorandum at Comment 1.

In response to petitioner's argument that the Department should include Ratnamani's financial statement in the calculation of financial ratios because the Department used it in the LTFV investigation of circular welded pipe from Vietnam, SSV states that this argument is disingenuous at best. SSV states that in the circular welded pipe investigation, SSV did not claim that Ratnamani had received subsidies because Ratnamani's 2010-11 financial statement did not contain evidence that Ratnamani had received subsidies. SSV states that, in contrast, the Ratnamani financial statement for the 2012-13 fiscal year that are under consideration in this case contain clear evidence that Ratnamani did, in fact, receive subsidies.

Second, SSV argues that use of Ratnamani's financial statement would result in significant distortions. These distortions would result from the fact the majority of Ratnamani's sales revenues derive from the sale of stainless steel pipes. SSV alleges that the cost of materials constitutes a much smaller proportion of the total sales value for stainless-steel products than for carbon-steel products. As a result, the combined ratio of fabrication costs, overhead, SG&A, interest, and profit to material costs for stainless products is much higher than the ratio of those items to material costs for carbon steel products of the type SSV produces and sells.

Third, SSV notes that a substantial portion of Ratnamani's net profit arises from operations other than steel pipe sales. SSV states that Ratnamani's financial statement shows that 38 percent of Ratnamani's reported income was derived from sales of services and electricity, which do not have direct material costs. Thus, SSV argues, using the Ratnamani financial statement figures that include sales of services and electricity would distort the ratios of overhead, SG&A and interest expenses, and profit to direct costs.

With respect to OCTL, SSV argues that petitioner's argument is highly disingenuous. SSV states that OCTL does not actually produce pipe itself. Instead, it performs processing operations on welded pipes purchased from others. Thus, SSV argues, because OCTL's operations are limited to processing pipe produced by others, its overhead, SG&A and interest, and profit have no relevance to SSV, which rolls its own pipes, but does not itself perform any of the processing operations on OCTG that OCTL performs.

SSV also argues that there is a difference between OCTL's operations and SSV's operations that would cause OCTL's financial ratios to be distortive if applied to SSV. Specifically, OCTL derives a substantial portion of its income from performing processing on pipes produced by other companies on a tolled basis, and thus incurs little direct material costs. SSV, in contrast, purchases the material that it processes. SSV states that because the direct costs of a company that performs processing on a tolled basis do not include any material costs, the "financial ratios" for such a company are absurdly high, and bear no relation to the "financial ratios" for a company (like SSV) that performs equivalent processing on pipe that it has purchased.

**Department's Position:** In our Preliminary Determination, we used the financial statements of Apollo, Bhushan, and Welspun to calculate SSV's surrogate financial ratios. We used these financial statements because they were contemporaneous, publicly available, representative of a broad market average, and the only financial statements on the record of companies who produced OCTG during the POI, exclusive of those who received subsidies from Indian programs we have found to be countervailable.<sup>43</sup> In this final determination we have used the same criteria in selecting financial statements as we used in the Preliminary Determination, but have also considered parties' comments summarized above. As a result, we have modified our selection of financial statements for use in this final determination.

With respect to Apollo, the pages from the API website submitted by petitioner do not list Apollo as a company certified to produce to API specification, which is looked to by the Department as the generally accepted technical guide for OCTG producers. Furthermore, although Apollo's website lists OCTG among Apollo's product offerings, the website (as well as Apollo's financial statement) also indicates it is only Apollo's subsidiary, Lloyds, that is API certified. Apollo's website and financial statement both state, "As a strategic initiative, the Company acquired Lloyds Line Pipes, Ltd., having ready-to-use API certified, manufacturing lines."<sup>44</sup> Neither Apollo's website nor its financial statement claim API certification for either Apollo or any of its subsidiaries other than Lloyds. The financial statement we have on the record for Apollo is a consolidated financial statement incorporating data from Apollo and its three subsidiaries, including Lloyds. This financial statement does not include the balance sheet, profit and loss statement, or any other documents for Lloyds. Given the consolidated nature of this financial statement, we are unable to determine whether financial ratios calculated from it would be representative of the financial ratios of an Indian OCTG producer.

Five other Indian pipe producers whose financial statements SSV argues the Department should use in calculating surrogate financial ratios (*i.e.*, Rajasthan Tube Manufacturing Company, Ltd., JTL Infra Limited, Crimson Metal Engineering Company Limited, Good Luck Steel Tubes Limited, and Shri Lakshmi Metal Udyog Limited) appear to be producers of only comparable merchandise. SSV itself has acknowledged that available information does not indicate whether any of the five companies produce pipe that is certified to the API standards for OCTG.<sup>45</sup> There is also no evidence on the record that any of them did produce OCTG, whether or not conforming to API specifications. Although these five companies (and Apollo) produce comparable merchandise, the Department prefers to use the financial statements of producers of identical merchandise. Thus, it has stated that "there is no need to consider using a company that

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<sup>43</sup> See Memorandum to the File dated February 13, 2014, at 7 (Surrogate Values Memorandum).

<sup>44</sup> See Apollo's financial statement (at 32) and the section "Documents from the Company Website" contained in SSV's January 17, 2014, submission, vol. II, attachment 8-C.

<sup>45</sup> See SSV's June 6, 2014, case brief at 26.

makes only comparable merchandise when there are usable financial statements on the record from companies that produce identical merchandise.”<sup>46</sup>

Moreover, the Department’s preference for using the financial statements of producers of identical merchandise is especially strong here because of the unique nature of OCTG among the wide range of pipe products. Specifically, it is among the most expensive and profitable of all types of pipe products. Thus, the International Trade Commission has noted that, “of all the tubular products that can be produced in {pipe production} facilities, OCTG commands among the highest price in the market,” and that “casing and tubing are among the highest valued pipe and tube products, generating among the highest profit margins.”<sup>47</sup>

Because of our preference for using the financial statements of producers of identical merchandise, and the distinction between OCTG and non-OCTG products, we have determined it appropriate to continue to use only the financial statements of producers of identical merchandise as we did in the Preliminary Determination. Thus, we find that the financial statements of Apollo<sup>48</sup> and five of the other six pipe producers are disqualified from consideration. For this same reason, we also find the financial statement of OCTL disqualified from consideration because it is a processor of OCTG products, and does not itself produce OCTG.

The sixth company whose financial statement SSV argues we should use is that of Surya Roshni Limited (Surya Roshni). Its financial statement claims it produces OCTG, and petitioner has acknowledged that it might.<sup>49</sup> A company with a similar name does appear on the list of Indian API-certified OCTG producers. However, even if Surya Roshni does produce OCTG, this financial statement is disqualified because it evidences receipt of countervailable subsidies.<sup>50</sup> It is the Department’s practice to disregard financial statements of companies that evidence receipt of countervailable subsidies and where there are other usable data on the record.<sup>51</sup>

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<sup>46</sup> See Certain Steel Nails From the People’s Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review, 79 FR 19316 (April 8, 2014) (Steel Nails from the PRC AR4) and accompanying Issues and Decision Memorandum at Comment 2. See also Persulfates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 6836, (February 9, 2005) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>47</sup> See Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico, USITC Pub. 3434, Inv. Nos. 701-TA-364 and 731-TA-711 and 713-716 (Review) (June 2001) at 16 and 19. Casing and tubing are the only types of OCTG that SSV produces. See SSV’s product brochure at 4 found in SSV’s September 24, 2013, section A response at Appendix A-7.

<sup>48</sup> As explained above, we do not find Apollo’s consolidated financial statement to represent adequately the production of an OCTG producer because only one of its subsidiaries is API-certified.

<sup>49</sup> See petitioner’s June 13, 2014, rebuttal brief at 19-20.

<sup>50</sup> See Surya Roshni’s financial statement at 41 and 73 found in SSV’s January 17, 2014, submission at Attachment 8-G. Pages 41 and 73 both indicate that Surya Roshni received benefits under the EPCG Scheme.

<sup>51</sup> See, e.g., Certain Steel Threaded Rod from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 8907, (February 27, 2009) and accompanying Issues and Decision Memorandum at Comment 1; OCTG from the PRC Investigation at Comment 13.

With respect to the financial statements of Maharashtra and Ratnamani, we also find these financial statements to be disqualified because of their receipt of subsidies that we have found to be countervailable.<sup>52 53</sup> As explained above, under the Department's practice, these subsidies disqualify the financial statements of Maharashtra and Ratnamani from consideration because there is other usable information on the record.

With respect to Bhushan, we find this financial statement disqualified because its production process is not sufficiently similar to SSV's. Bhushan, unlike SSV, is a fully integrated producer. It is the Department's practice to reject "financial statements of surrogate producers whose production process is not comparable to the respondent's production process when better information is available."<sup>54</sup> In analyzing the comparability of the production process, we agree with SSV that the level of integration is one factor in particular that the Department considers. We have stated:

"As a general matter, the Department agrees with Petitioners that the degree of integration is a relevant factor that can affect overhead rates, as a fully integrated producer will have an overhead to raw material input ratio that is higher than the same ratio for a non-integrated producer, other things being equal. Accordingly, the Department has previously found the level of integration to be an important distinction among the potential surrogate steel companies' financial statements."<sup>55</sup>

As petitioner has noted, under some circumstances the Department may use the financial statement of an integrated producer to calculate the surrogate financial ratios of a non-integrated producer. However, those circumstances are not present here where the record also contains a financial statement of a producer whose production process is closer to the respondent's own production process. Thus, under similar circumstances the Department has rejected the financial statement of an integrated producer where there were other financial statements on the record whose production experience more closely approximated the respondent's experience.<sup>56</sup>

Having disqualified the financial statements of the companies noted above, we are left with the financial statement of Welspun. Welspun is a producer of OCTG, and its financial statement is contemporaneous, publicly available, and evidences no receipt of countervailable subsidies. SSV objects to the use of Welspun's financial statement because it is at a higher level of integration than SSV. That is, whereas SSV produces OCTG from purchased steel coils,

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<sup>52</sup> See Maharashtra's financial statement at 60 (found in petitioner's January 17, 2014 submission at Tab F3), which indicates receipt of subsidies under the EPCG scheme, which the Department has found to be countervailable. See Garlic from the PRC 2009-10 at Comment 1.

<sup>53</sup> See Ratnamani's financial statement at 70 (found in petitioner's January 17, 2014, submission at Tab F5) which indicates receipt of "export packing credits," which the Department has found to be a countervailable subsidy. Note that for this same reason the Department rejected the financial statement of Ratnamani in the antidumping investigation of welded stainless pressure pipe from Vietnam. See WSPP from Vietnam at Comment 1.

<sup>54</sup> See OCTG from the PRC 2010-2011 at Comment 4.

<sup>55</sup> See OCTG from the PRC Investigation at Comment 13.

<sup>56</sup> See Circular-Welded Pipe from the PRC at Comment 5.

Welspun produces OCTG from purchased steel slabs. However, we find that while SSV's and Welspun's production processes are not identical, they are closer than that of Bhushan because they both begin with a purchased steel product, whereas Bhushan produces its own basic steel from raw material. Furthermore, the Department has stated in the past, and the CIT has affirmed, that the Department is not required to duplicate the exact production experience of the respondent.<sup>57</sup> Because the Department is not required to select financial statements of companies whose production process duplicates exactly that of the respondent, and because it meets all other criteria and has not been otherwise disqualified, we find Welspun's financial statement to be adequate for calculating surrogate financial ratios. Furthermore, because all other financial statements of other companies on the record have been disqualified by virtue of countervailable subsidies, level of integration, or because those companies did not produce OCTG, we find Welspun's financial statement to be the best available information on the record. Therefore, in this final determination we have used only the financial statement of Welspun to calculate surrogate financial ratios.

### **Comment 3: Surrogate Value for Labor**

#### SSV's Arguments

SSV argues the Department erred in the Preliminary Determination by valuing labor using sub-category 27 of the International Labor Organization's (ILO) Indian labor costs. SSV states that sub-category 27 reflects "manufacture of basic metals," which is not what SSV does. SSV states that it fabricates steel coils that it purchases from suppliers that manufacture basic metals. Therefore, SSV states, the Department should value labor using ILO sub-category 28, which corresponds to "manufacture of fabricated metal products, except machinery and equipment."

#### Petitioner's Rebuttal Arguments

Petitioner argues that sub-category 27 is the correct sub-category for valuing SSV's labor. Petitioner maintains that notwithstanding the heading, the explanatory notes for this sub-category explicitly state that this category includes the "manufacture of welded tubes by cold or hot forming and welding," which is the exact production process that SSV employs. Petitioner states that sub-category 28 deals with the manufacture of structural metal products, such as tanks, reservoirs, and steam generators that are completely different from the merchandise SSV produces. Petitioner also notes that the Department addressed this issue in the LTFV investigation of circular welded carbon-quality steel pipe from Vietnam, and determined that sub-category 27 was the correct category to value the welded pipe product manufactured by SSV.<sup>58</sup>

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<sup>57</sup> See OCTG from the PRC Investigation at Comment 13; Nation Ford Chem. Co. v. United States, 166 F.3d 1373, 1377 (Fed. Cir. 1999) citing Nation Ford Chem. Co. v. United States, 985 F. Supp. 133, 137 (CIT 1997).

<sup>58</sup> See Circular-Welded Pipe from Vietnam at Comment 5.

**Department’s Position:** We disagree with SSV that we should calculate labor using the ILO’s sub-category 28 classification. As petitioner has noted, the Department addressed this issue previously in Circular-Welded Pipe from Vietnam. There we stated:

Despite its title, Division 27 includes more than just the manufacture of basic iron and metals. The U.N. Classifications Registry states that class 2710 (“Manufacture of basic iron and metal”) includes “Manufacture of primary iron and steel products, i.e., production of:”... (inter alia) “pipes and hollow profiles of iron or steel.”<sup>59</sup>

In this investigation the wording of sub-category 27 has changed slightly, but it is still clear that OCTG would fall under that category. Specifically, the “Detailed Structure and Explanatory Notes” for sub-category 27 (carried out to the level of 2710) states that it includes “manufacture of seamless tubes, by hot rolling, hot extrusion or hot drawing, or by cold drawing or cold rolling” and “manufacture of welded tubes by cold or hot forming and welding, by forming and cold drawing, or by hot forming and reducing.”<sup>60</sup> Because “seamless tubes” and “welded tubes” include OCTG, we determine that sub-category 27 is the correct category for valuing labor. Therefore, in this final determination we have continued to value labor using the ILO’s sub-category 27.

#### **Comment 4: Surrogate Value for Water**

##### SSV’s Arguments

SSV argues the Department erred by counting water as a direct cost. SSV states that water is not incorporated in the subject merchandise during the production process, and that water is normally considered a part of factory overhead. Thus, because the cost of water is likely to be included in the factory overhead rates calculated from the financial statements of Indian producers of comparable merchandise, the inclusion of a value for water as a direct cost double counts the cost of water.

Furthermore, SSV argues that even if the Department decides to include water as a direct expense, it should revise its computation from that used in the Preliminary Determination. In the Preliminary Determination the Department valued water using data downloaded from the website of Maharashtra Industrial Development Corporation (MIDC). The downloaded information included separate figures for water for “Inside Industrial Area for Industrial Use” and for “Outside Industrial Area for Industrial Use.” The Department took the average of the two.

SSV argues that the computation described above was an error because of SSV’s location in an industrial area. The information obtained from MIDC confirms that the cost of water provided

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<sup>59</sup> Id.

<sup>60</sup> See petitioner’s January 17, 2014, submission at Tab E, Attachment 3.

for industrial zones is lower than the cost in other areas, presumably because such zones can have dedicated infrastructure and other economies of scale that reduce the supplier's costs. SSV states that there is no reason to believe the industrial zones in Vietnam do not benefit from equivalent efficiencies. Consequently, to the extent that it is necessary to assign a value to the water SSV uses, SSV argues the Department should use the figures for usage "Inside Industrial Area for Industrial Use."

#### Petitioner's Rebuttal Arguments

Petitioner argues that the Department correctly determined water to be a direct production input. It states that the record is clear that OCTG requires hydrostatic testing, and is thus a key element of the production process. As such, petitioner states, it is properly treated as a production input. Petitioner also notes that in previous cases the Department has determined that water is a production input and must be valued separately from factory overhead.<sup>61</sup>

With respect to the surrogate value itself, petitioner argues the Department correctly calculated the surrogate value by including both of the categories "Inside Industrial Area for Industrial Use" and "Outside Industrial Area for Industrial Use." It states that even if SSV is located entirely within an industrial zone, there is no evidence on the record that facilities in this zone are entitled to a lower water usage rate. Petitioner also points out that in the countervailing duty investigation of circular welded carbon-quality steel pipe from Vietnam, the Department specifically found that SSV "paid the applicable tariff rates for their water {charged by the provider}" and that "there was no separate tariff rate for companies located within the industrial zones."<sup>62</sup>

**Department's Position:** We disagree with SSV that water should not be valued as a direct input in this case. Although water may sometimes be classified as overhead, the Department has stated, "Normally, the Department values water directly and not in factory overhead when water is used for more than incidental purposes, is required for a particular segment of the production process, or appears to be a significant input in the production process."<sup>63</sup> Here, water is used on OCTG for hydrostatic testing.<sup>64</sup> Furthermore, although SSV stated in its case brief that water "is not incorporated in the subject merchandise during the production process,"<sup>65</sup> SSV had earlier

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<sup>61</sup> See Malleable Iron Pipe Fittings From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 71 FR 37051 (June 29, 2006) and accompanying Issues and Decision Memorandum at Comment 18; Automotive Replacement Glass Windshields From the People's Republic of China: Final Results of Administrative Review, 69 FR 61790 (October 21, 2004) (Windshields from the PRC) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>62</sup> See Circular Welded Carbon-Quality Steel Pipe From the Socialist Republic of Vietnam: Final Negative Countervailing Duty Determination, 77 FR 64471 (October 22, 2012) and accompanying Issues and Decision Memorandum at 3-4.

<sup>63</sup> See Windshields from the PRC at Comment 1.

<sup>64</sup> See SSV's October 30, 2013, section D submission at Appendix D-4-D.

<sup>65</sup> See SSV's June 6, 2014, case brief at 31.

explicitly stated that it “uses electricity and water in its production of subject OCTG products.”<sup>66</sup> SSV has also said that it, “uses water in the production process for all products, including subject and non-subject merchandise.”<sup>67</sup> Therefore, because water is an integral part of the production process for OCTG, we have included water as a direct input.

Furthermore, we disagree that the surrogate value for water should be limited to only the category “Inside Industrial Area for Industrial Use.” Although Vietnamese companies located within industrial areas may benefit from economies of scale that reduce the supplier’s costs, there is no record evidence that Vietnamese producers located entirely within industrial areas are charged lower water consumption rates. Therefore, in this final determination we have not revised our calculation of the surrogate value for water.

### **Comment 5: Whether to Exclude “Limited-Service” Pipe from the Margin Calculation**

#### SSV’s Arguments

SSV argues the Department erred in the Preliminary Determination by including in the margin calculation the sale of “limited-service” OCTG made by its U.S. affiliate PPA. SSV bases this argument on two considerations. First, SSV states that even though its normal records do not allow it to trace the limited-service pipe to the actual import from which it was made, it is almost certain that the pipe was not produced by SSV or imported from Vietnam. SSV states that the description of the merchandise in PPA’s sales documents suggests that the pipe in question was produced by SeAH Steel Corporation in Korea. Furthermore, PPA’s general manager explained at verification that the limited-service pipe PPA sold during the POI was a size that PPA did not import from SSV until after the POI.

Second, SSV argues it has been the Department’s longstanding practice to exclude U.S. sales of damaged or defective merchandise from its analysis in LTFV investigations.<sup>68</sup> It states that the evidence demonstrates that the limited-service pipe sold by PPA consisted of pipe that was rejected during the inspection by the outside processor employed by PPA for defects, and that was therefore sold by PMT as “limited service tubing” with “no warranties expressed or implied.”<sup>69</sup>

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<sup>66</sup> See SSV’s October 30, 2013, section D response at 20.

<sup>67</sup> See SSV’s February 5, 2014, submission at 18.

<sup>68</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Live Swine from Canada, 70 FR 12181 (Mar. 11, 2005) (Swine from Canada), and accompanying Issues and Decision Memorandum, at Comment 51.

<sup>69</sup> See PPA verification exhibit 28 at 6-7, 9-10, 12, and 14.

## Petitioner's Rebuttal Arguments

Petitioner argues the Department should continue to include the limited-service merchandise in the margin calculation. First, petitioner argues there is no merit to SSV's argument that the sale should be excluded because it seems almost certain that it was not produced in Vietnam. Petitioner states the merchandise was labeled "SeAH," which plainly does not exclude SSV as its source. Petitioner argues that it was SSV's burden and responsibility as the party who controls the information to create a proper record. Here SSV has failed to do that, petitioner states, because there is no evidence on the record to show that the merchandise in question was not sourced from its plant in Vietnam.

Second, petitioner states that the scope of the merchandise under investigation in this proceeding specifically includes "limited service OCTG products."<sup>70</sup> Thus, petitioner argues, the fact that in other cases the Department has seen fit to exclude damaged or defective merchandise has no relevance here. In this case, petitioner states, limited-service pipe constitutes a specific product category that is explicitly identified in the scope of the case as constituting merchandise to be investigated.

**Department's Position:** We disagree with SSV that the limited-service pipe should not be included in the margin calculation. First, although SSV states in its case brief that it is "almost certain" that the limited pipe at issue was not produced by SSV or imported from Vietnam, SSV has been unable in either its case brief or its previous submissions to state categorically that the limited service pipe PPA sold during the POI was from Korea, and not from SSV. In a previous submission SSV stated, "It is not possible for PMT<sup>71</sup> to trace the limited-service OCTG to the actual import from which it was derived and, as a result, it cannot be proved that the limited-service OCTG sold in the transaction {was} actually derived from Korean-made pipe."<sup>72</sup> Given SSV's inability to trace the limited-service pipe to its supplier, it is not unreasonable for the Department to allocate a portion of it to SSV in its margin calculation as it did in the Preliminary Determination.<sup>73</sup>

Furthermore, we do not agree with SSV that the limited-service pipe should be excluded from the calculation because of the Department's discretion to disregard some sales in an investigation. While we sometimes disregard "unusual transactions when they represent a small percentage" of sales in an investigation,<sup>74</sup> here the scope of the investigation specifically includes "limited-service OCTG products." Because limited-service pipe is expressly included in the scope of the investigation, we have not omitted sales of this pipe from the margin calculation.

<sup>70</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Live Swine from Canada, 70 FR 12181 (March 11, 2005) (Swine from Canada), and accompanying Issues and Decision Memorandum at Comment 51.

<sup>71</sup> PMT is the division within PPA that sells OCTG. See SSV's September 24, 2013, section A response at 7.

<sup>72</sup> See SSV's January 9, 2014, submission at 34.

<sup>73</sup> The portion we allocated to SSV was PPA's total known volume of OCTG purchases from SSV to its total volume of OCTG purchases from all sources. See February 13, 2014, SSV analysis memorandum, at 3.

<sup>74</sup> See Swine from Canada at Comment 51.

## Comment 6: Differential Pricing

### SSV's Arguments

SSV argues there are serious legal objections to the Department's differential pricing analysis that was used in the Preliminary Determination in this case.<sup>75</sup> More importantly, SSV states, the differential pricing analysis that the Department used in its Preliminary Determination is mathematically unsound.

With respect to the legal basis of the differential pricing methodology, SSV argues the Department has not met the legal standards for use of the various bright-line thresholds used throughout the analysis (e.g., the 0.8 cut-off for "passing" the Cohen's *d* test, and the 33 percent and 66 percent thresholds used to select the comparison methodology). It argues that such bright-line tests must be promulgated as regulations in accordance with the procedural requirements of the Administrative Procedures Act (APA), and the Department has not done that here. Alternatively, SSV argues, in the absence of such regulations, the Court of Appeals for the Federal Circuit has ruled that the application of a rule in a particular case may be sustained only if (1) "the {International Trade Administration (ITA)} explains the basis for its decision," and (2) "the record contains substantial evidence supporting the ITA's calculation of the dumping margin and ... the record contains substantial evidence supporting the ITA's basis for its application of the ... rule."<sup>76</sup> Thus, SSV argues, in the absence of regulations, any assumptions and numerical thresholds that are used in connection with the differential pricing analysis must be justified in light of the specific facts of each case. Because the Department has presented no such justification in this case, SSV states, the Department cannot find that a pattern of prices that differ significantly exists for SSV's U.S. sales.

SSV also argues the differential pricing methodology violates the Department's 1997 regulations,<sup>77</sup> which stated that the Department would normally conduct a "targeted-dumping" analysis only in response to a timely allegation by the petitioner.<sup>78</sup> SSV states that because the petitioner did not submit a timely allegation of "targeted dumping" in this investigation, the regulations adopted in 1997 do not permit the Department to conduct a targeted dumping analysis. Furthermore, the Department's 1997 regulations provided that the Department would "use, among other things, standard and appropriate statistical techniques in determining whether

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<sup>75</sup> In its Preliminary Determination in this investigation, the Department found that there was a pattern of price differences in SSV's U.S. sales by customer, region or time period. However, because the dumping margins calculated using the average-to-transaction methodology did not differ meaningfully from those calculated using the normal average-to-average methodology, the Department based its Preliminary Determination for SSV on the dumping margins calculated using the normal average-to-average methodology.

<sup>76</sup> Washington Red Raspberry Commn. v. United States, 859 F.2d 898,903 (Fed. Cir. 1988).

<sup>77</sup> SSV notes although the Department attempted to withdraw the "targeted dumping" provisions of its regulations in December 2008, the CIT held that the purported withdrawal of those regulations was invalid. See Gold East Paper (Jiangsu) Co., Ltd. V. United States, 918 F.Supp. 2d 1317, 1327 (CIT 2013). Thus, SSV states, the 1997 regulations remain in effect.

<sup>78</sup> See 19 CFR 351.414(f)(3).

there is a pattern of prices that differ significantly.”<sup>79</sup> SSV states that because the statistical techniques utilized in the Department’s analysis are not “appropriate” they do not provide a basis for making an affirmative “targeted dumping” determination under those regulations.

SSV also argues the Department’s methodology violates section 777A(d)(1)(B) of the Tariff Act of 1930, as amended (the Act). SSV explains that under the Act, the Department’s methodology must, *inter alia*, identify whether “there is a *pattern* of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, periods, or periods of time”.<sup>80</sup> SSV argues that that criterion is not met where, as here, the methodology is not capable of distinguishing between patterns and random fluctuations. To demonstrate its point, SSV states that it created an alternative database that has the same structure (customer, destination, and date of sale) as SSV’s actual U.S. sales, but replaced the actual net prices with ten sets of random price data. When SAS performed the differential pricing analysis on each set of random price data, it generated five “passing” results. Thus, SSV states, there is roughly a 50 percent chance that purely random data – which by definition have no pattern in them – will nevertheless be found by the “differential analysis” to have a “pattern of export prices...that differ significantly among purchases, regions, or periods of time.” SSV argues that if the differential analysis generates positive results in data that are known to have no patterns in them (*i.e.*, random data), then it is possible that any positive results it generates for other data may be equally spurious. In sum, SSV argues, a positive result from the differential analysis provides no evidence that an actual pattern of prices that differ significantly exists within the meaning of the antidumping statute.

SSV then notes four mathematical/statistical shortcomings of the Department’s differential pricing analysis. It summarizes them as follows:

*1. Absence of Conditions Needed to Permit Use of Cohen’s d Test Analysis*

As a matter of statistics, the Cohen’s *d* test used in the Department’s “differential analysis” can be used only when certain fundamental conditions are met. Most importantly, the data being analyzed must constitute a “normal” (or, more precisely, “Gaussian”) distribution, with random, mutually independent, and identically distributed data. If those conditions are not met, then the results generated by the Cohen’s *d* test are, in the words of the National Institute for Standards and Technology (an agency within the Department of Commerce), “meaningless” and “invalid.” Because the evidence in this case demonstrates that the conditions required for applying the Cohen’s *d* test do not (and, indeed, cannot) exist, the results of that test do not provide a basis for the Department to find “targeted dumping.”

*2. Use of Thresholds that Are Satisfied by Normally-Distributed Price Data as Well as by Prices that Follow an Ordinary Random Walk*

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<sup>79</sup> See 19 CFR 351.414(f)(1)(i).

<sup>80</sup> See Section 777A(d)(1)(B)(i) of the Act (emphasis added).

Even if the conditions for applying the Cohen's *d* test had been met, the Cohen's *d* test results would not provide a reasonable basis for finding that there was a "pattern" of prices that differ significantly within the meaning of the statute. As a matter of mathematics, even in ideal circumstances, the odds that any given customer will "pass" the Cohen's *d* test just by chance, due to random variation, are greater than 42 percent. When prices follow a random walk from day to day, the odds of a positive Cohen's *d* test result for any quarterly time period are around 72 percent. In these circumstances, the fact that more than 33 percent of an exporter's sales are found to "pass" the Cohen's *d* test provides no indication that the apparent price differences represent a "pattern" within the meaning of the statute. Purely random data would be expected to surpass that threshold in virtually every case.

### *3. Inability of the Cohen's d Test to Distinguish Significant from Insignificant Price Differences*

The Cohen's *d* test values used in the Department's differential analysis are calculated by dividing the difference between the means of the "test" and "base" groups by the "pooled" standard deviation of the two groups. When price variability is low, the "pooled" standard deviation will also be low, and the Cohen's *d coefficient* will be relatively high. By contrast, when price variability is high, the "pooled" standard deviation will also be high, and the Cohen's *d coefficient* will be relatively low. As a result, the outcome of the Department's "differential analysis" will depend in large measure on the variability of the prices in the "test" and "base" groups. When variability is low, even insignificant price differences (such as those due to rounding) could generate a positive Cohen's *d* test result. By contrast, when variability is high, even clear and consistent price differences (for example, where a seller always sells at a lower price to one customer on any given day) might generate a negative Cohen's *d* test result. In these circumstances, the Cohen's *d* test simply does not provide a reasonable basis for determining whether patterns of significant price differences actually exist.

### *4. Failure to Account for Co-Linearity in the Data*

Where prices are a function of quantities or level of trade, but the sales in larger quantities or at each level of trade are not evenly distributed among customers, time periods and regions, the Department's "differential analysis" may find an apparent correlation between prices and the groups of customers, time periods and regions — even though the prices for sales in the same quantities or at the same level of trade were consistent across all of these groups. The use of quantity-weighted prices exacerbates this problem because it gives excessive weight to sales in larger quantities that have lower prices precisely because they are made in larger quantities. A finding of "targeted dumping" that is driven entirely by different distributions of quantities or levels of trade across groups of customers, time periods or regions would not be consistent with the statutory provisions concerning "targeted dumping" (which require differences in prices across groups). Such a finding would also be inconsistent with the provisions of the statute that specifically recognize the potential impact of quantities and level of trade on prices, and direct

the Department to make appropriate adjustments to avoid finding dumping simply due to the fact that sales at different quantities or at different levels of trade have different prices.

### Petitioner's Rebuttal Arguments

Petitioner states that SSV's challenges to the Department's use of the Cohen's *d* test as a tool to establish whether there exists a pattern of prices that differ significantly have been presented to the Department in other proceedings, and the Department has consistently rejected such challenges, finding that the Cohen's *d* test is a valid approach that is consistent with the Department's statutory obligations.<sup>81</sup> It argues that in keeping with those decisions, the Department should reject all of SSV's arguments here as well.

Petitioner also states that SSV's point regarding random data is not valid. It states that it is of no consequence whether random data do or do not demonstrate a pattern. The critical point, petitioner states, is that when the Department applies the Cohen's *d* test to U.S. sales data it is applying the test to data that are not random. Petitioner notes that the Department addressed this issue in another proceeding in a similar effort by SSV to discredit the differential pricing analysis, and stated:

We find unpersuasive SeAH VINA's argument that {the test used in that case} is flawed because it allegedly generated findings of false positives in random data. The premise of SeAH VINA's argument is that random data are an appropriate proxy for actual sales data exhibiting no pattern of prices that differ significantly by purchaser, region, or time period. The Department consider{s} that exporters will typically have a more regularized price- setting mechanism than a random-number generator. Accordingly, the Department disagrees that random data constitute a useful yardstick by which to assess the merits of a test designed for the analysis of actual export prices set by actual exporters to actual purchasers, regions and time periods ... What {the test} may or may not uncover with respect to random data is irrelevant.<sup>82</sup>

Furthermore, petitioner points out that the Department has already rejected SSV's argument that a "normal" distribution of prices is a necessary predicate to the application of the Cohen's *d* test. The Department stated that "there is no requirement for the Department to first find that a respondent's data is normally distributed before applying {its differential pricing test}."<sup>83</sup>

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<sup>81</sup> See, e.g., Steel Nails from the PRC at Comment 7; Multilayered Wood Flooring from the PRC at Comment 1; Activated Carbon from the PRC 2011-2012 at Comment 4.

<sup>82</sup> See Circular-Welded Pipe from Vietnam at Comment 4.

<sup>83</sup> See Seamless Refined Copper Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 35244 (June 12, 2013) and accompanying Issues and Decision Memorandum at Comment 1.

Moreover, petitioner argues the Department has also already rejected SSV's contention that the price differences found in the test be statistically significant. Petitioner cites to Steel Nails from China, where the Department stated:

{T}he Cohen's *d* test is a generally recognized measure of the significance of the differences of two means, and the Department has set a threshold of "large" to provide the strongest indication that there is a significant difference between the means of the test and comparison groups. If Congress had intended to require a particular result be obtained with a level of "statistical significance" of price differences as a condition for finding that there exists a pattern of prices that differ significantly, then Congress presumably would have used language beyond the stated requirement and more precise than "differ significantly" as it did, for example, with respect to enacting the sampling provision for respondent selection in section 777 A(c)(2)(A) of the Act.<sup>84</sup>

In short, petitioner states, the Department has already determined that challenges of the type raised by SSV here have no validity.

**Department's Position:** For this final determination, the Department has found that the average-to-average method, applied to all U.S. sales, is the appropriate comparison method to use to calculate the weighted-average dumping margins for SSV. Accordingly, this issue is moot.

## **Comment 7: Valuation of Hot-Rolled Coil**

### Petitioner's Arguments

Petitioner argues the Department should apply adverse facts available (AFA) to value SSV's hot-rolled coil input. Petitioner bases this argument on the allegation that SSV withheld information about the types of coil it uses in its production of OCTG. Petitioner provides the following information by way of factual background:

In its initial antidumping questionnaire, the Department instructed SSV to list all factors of production that were used in the production of the subject merchandise. With respect to its raw materials, the Department specifically instructed SSV to "{d}escribe each type and grade of material used in the production process." In response, SSV stated that it consumed only one type and grade of hot-rolled coil to produce the subject merchandise - *i.e.*, API J55. Later, less than two weeks before the Department issued its Preliminary Determination, SSV disclosed for the first time in a supplemental questionnaire response that it had also used "a different type of steel coil" to produce "upgradeable pipe." SSV called this steel J55-H, and explained that whereas J55 coil has a carbon content of 13 percent, J55-H coil has a carbon content of 25 percent.<sup>85</sup>

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<sup>84</sup> See Steel Nails from China AR4 at Comment 7.

<sup>85</sup> See SSV's February 5, 2014, submission at 10.

SSV also stated that the price of J55-H coil is higher than the price of J55 coil. Later, at the SSV verification, the Department obtained documentation for two purchases of J-55H coil that SSV had made prior to the POI. One was in June 2012, and the other in September 2012. Petitioner alleges that the purchase prices of these two purchases of J55-H were greater than the average purchase price of J55. Furthermore, petitioner alleges, SSV failed to respond adequately to a question about its sales of OCTG made from upgradeable pipe. Specifically, petitioner states that the Department asked whether any of its U.S. sales involved pipe which, when shipped to the United States, were upgradeable merchandise. SSV responded, petitioner states, by providing the volume of sales that had been upgraded, but not the volume of sales made from upgradeable pipe.

Furthermore, petitioner alleges that evidence obtained at verification shows that yet another form of steel was used in the production of some of SSV's U.S. sales of OCTG, which SSV describes as having a slightly elevated chromium content.<sup>86</sup> At the verification SSV explained that when it ordered steel coil for the production of OCTG, it never ordered high-chromium coil, but a supplier sometimes shipped this type of coil to SSV despite SSV's having ordered regular J55 coil. Consequently, because this high-chromium coil met all requirements needed for producing OCTG, SSV accepted it. Petitioner says this alleged information is belied by documentation obtained at verification that demonstrates that SSV did order high-chromium coil from its suppliers, and that it happened more frequently than just "sometimes." Moreover, petitioner claims that because of this higher chromium content, high-chromium coil is more properly termed alloy steel, rather than carbon steel. As support, petitioner cites to chapter 72 of the Indian Harmonized Tariff System.

Petitioner argues that given SSV's misrepresentation regarding the different types of hot-rolled coil it consumes, the statute's requirements for applying AFA have been met here. Specifically, petitioner argues:

- SSV failed to provide information regarding the upgradeable J55-H coil within the deadlines the Department established, and failed to identify all the subject merchandise that was produced using upgradeable J55-H coil. These failures impeded the Department's ability to adjust the value of the hot-rolled coil to reflect the differences in price between J-55 hot-rolled coil and upgradeable J55-H hot rolled coil.
- SSV withheld information regarding the high-chromium coil it consumes. This withholding of information impeded the investigation because there is now no suitable information on the record to calculate a surrogate value for high-chromium coil.

Moreover, petitioner states that SSV did not act to the best of its ability to comply with the Department's requests for information because it clearly knew it had consumed different types and/or grades of hot-rolled coil, but instead maintained that it consumed only one type and grade

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<sup>86</sup> See SSV's June 13, 2014, rebuttal brief at 24. Because of SSV's request for proprietary treatment of the name of this coil, we will refer to this coil as "high-chromium coil."

of hot-rolled coil. Thus, petitioner argues, an adverse inference is justified here. Petitioner states that as AFA, the Department should use the highest market-economy purchase price of hot-rolled coil on the record to value all of the hot-rolled coil that SSV consumed in the production of the subject merchandise.

Petitioner argues further that if the Department decides not to apply AFA in valuing SSV's price of hot-rolled coil, it should at least value separately the three types of hot-rolled coil SSV consumed in the production of the subject merchandise as each of them has a unique chemical composition along with other characteristics.

### SSV's Rebuttal Arguments

SSV states that record evidence does not support petitioner's contention that the Department should increase the value assigned to the hot-rolled coils to reflect allegedly higher costs for purchases of upgradeable J-55H coils and high-chromium coil.

With respect to the purchase price of J55-H coil, SSV states that petitioner's argument is based on a faulty comparison. That is, it compares June 2012 and September 2012 prices of J-55H to the POI price of J55. SSV claims that this comparison is absurd because record evidence confirms that market-economy prices for steel coils fluctuated significantly from one month to the next. SSV contends that there is no price difference between J55 and J55-H. As support, it points to the commercial invoice from the September 2012 shipment, which included a purchase of both J55 and J55-H coil and shows that the purchase prices for the two types of coil was identical.<sup>87</sup>

SSV also states that there is no basis to petitioner's argument that the Department should apply AFA to SSV's purchase price of hot-rolled coil because SSV was allegedly unable to identify the PPA sales of non-upgraded OCTG that were made with upgradeable coil. SSV states that at the U.S. verification PPA provided extensive documentation (1) identifying all of its purchases of OCTG from SSV that had been manufactured with upgradeable coil, and (2) tracing those purchases to PPA's actual sales of upgraded or non-upgraded pipe. SSV also points out that PPA explained at the verification that there were no sales of OCTG made from upgradeable coil that had not been upgraded.<sup>88</sup>

SSV also contends there is no merit to petitioner's argument that a higher value should be assigned to high-chromium coils. It states that all of the coil SSV purchased for use in the production of OCTG during the investigation period — including high-chromium coil — had chemical characteristics that conformed to the requirements of API specifications for J55 grade OCTG. Furthermore, it states that none of the coil that SSV purchased had sufficient chromium

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<sup>87</sup> See SSV verification exhibit 25 at 25-28.

<sup>88</sup> See PPA verification report, dated May 30, 2014, at 13.

content to qualify under grades that specify a minimum chromium content (such as L80 Type 9Cr, L80 Type 13Cr, T95, or C110). SSV states that because all of the coils that SSV purchased and used during the period were J55 grade, the issue before the Department is to determine a surrogate value for J55 grade coil. Under the Department's regulations, SSV states, its purchases of J55 grade coil from a market-economy supplier must be used as the basis for determining that value.

SSV also notes that petitioner has not contended that the high-chromium coil was not J55 coil under the relevant specifications. Instead, SSV states, petitioner has asserted only that the Indian tariff classifications treat steel coils with chromium content higher than 0.3 percent as an alloy product, and not as a carbon-steel product. SSV contends that, contrary to petitioner's suggestion, the Indian Customs authorities are not a recognized standard-setting body for the steel industry, and they certainly do not determine whether a particular coil does or does not meet the API's specifications for J55 grade OCTG. In this regard, SSV notes that for U.S. antidumping purposes hot-rolled steel coils from the PRC that have a chromium content in the range of 0.3 to 0.4 percent are considered "carbon steel." Thus, the antidumping order on certain hot-rolled carbon steel flat products from the PRC includes steel coils with chromium content up to 1.25 percent as "carbon steel" — "regardless of definitions in the Harmonized Tariff Schedule of the United States."<sup>89</sup>

**Department's Position:** We agree with SSV that there is no reason to resort to AFA in valuing SSV's hot-rolled coil, as the record does not support such a determination.

The Department issued its standard questionnaire on August 23, 2013, in which it asked SSV to "describe each type and grade of material used in the product process."<sup>90</sup> In response, SSV identified only grade J55. The Department asked no follow-up questions until it issued a supplemental questionnaire on January 28, 2014, in which it asked SSV if any of its U.S. sales have been made from upgradeable pipe.<sup>91</sup> SSV submitted its response on February 5, 2014, in which it answered in the affirmative, and stated that its upgradeable coil is called J55-H.<sup>92</sup> The Department asked no further questions about J55-H coil until the verifications of SSV and its U.S. affiliate, at which time company officials answered all of the verifier's questions.<sup>93</sup>

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<sup>89</sup> See Notice of the Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China, 66 FR 59561 (November 29, 2001).

<sup>90</sup> See August 23, 2013, questionnaire at D-8.

<sup>91</sup> See January 28, 2014, supplemental questionnaire at 4.

<sup>92</sup> See SSV's February 5, 2014, submission at 10. In its case brief, petitioner states, "Instead of identifying all merchandise that was upgradeable in its response as requested by the Department, {SSV} only identified the merchandise that had been upgraded after importation in the United States." See petitioner's case brief at 15. We disagree that SSV failed to answer our question. The question did not ask SSV to identify all merchandise that was upgradeable. It asked, "Indicate if any of your U.S. sales involved pipes which, when shipped to the United States, were upgradeable merchandise (e.g., upgradeable J55 that actually meets all the requirements of the API 5CT specification, such as stenciling/markings, etc.) If so, for each upgradeable grade, explain what it is about each that allows it to be upgraded to another grade." See January 28, 2014, supplemental questionnaire at 4.

<sup>93</sup> See May 7, 2014, SSV verification report at 23 and May 30, 2014, PPA verification report at 11.

With respect to high-chromium coil, petitioner states that SSV did not disclose its consumption about this coil until “well after the deadline for submitting surrogate value information” and that SSV did not “disclose that it had used this type of hot-rolled coil until asked about it at verification.”<sup>94</sup> These statements are incorrect. The information that SSV had used this type of coil is contained in the sales documents included in SSV’s January 13, 2014, submission at Appendix SD-10, whereas the deadline for submitting surrogate value information was January 17, 2014, and the SSV verification began on March 31, 2014. The Department asked SSV no follow-up questions about the high-chromium coil until it verified SSV’s response, at which time SSV provided answers to all of the verifier’s questions.<sup>95</sup> Accordingly, we find that SSV’s responses to the Department’s inquiries were provided on a timely basis.

Given these facts, we determine that SSV did not withhold requested information or fail to provide information within the established deadlines. While petitioner is correct that the August 23, 2013, questionnaire asked SSV to “describe each type and grade of material used in the product process,” we do not agree that because the Department issued a supplemental questionnaire requesting more detailed information about the various forms of J55 SSV withheld requested information or failed to provide information within the deadlines established by the Department.

We are also not persuaded that SSV impeded the investigation. Petitioner has argued that SSV’s failure to identify all the subject merchandise that was produced using upgradeable J55-H coil<sup>96</sup> impeded the Department’s ability to adjust the value of the hot-rolled coil to reflect the difference in prices between regular J55 and J55-H. However, the record does not substantiate that there is a price difference between the two types. As SSV has argued, the record evidence of a price difference to which petitioner has pointed (*i.e.*, the price difference shown in a June 2013 invoice and a September 2013 invoice) can be explained as a function of price fluctuations that occurred between the two purchase dates. Furthermore, there is evidence that when regular J55 and J55-H were purchased on the same date, the prices were identical.<sup>97</sup> Thus, there is no need, as petitioner has argued, to “adjust the value of the hot-rolled coil to reflect the differences in prices” between the two types.

Furthermore, with respect to high-chromium coil, we do not agree with petitioner that SSV’s behavior unfairly precluded parties from submitting suitable surrogate value information on the record to value high-chromium coil. As previously stated, SSV provided all information that we requested within the established deadlines. In any event (and as explained below), we have determined that there is no need to value high-chromium coil separately from SSV’s other coil.

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<sup>94</sup> See petitioner’s case brief at 16 and 23, respectively.

<sup>95</sup> See May 7, 2014, SSV verification report at 23.

<sup>96</sup> As explained above, the Department did not ask SSV to provide this information until it verified PPA. PPA explained that there were no U.S. sales of OCTG made from upgradeable coil that had not been upgraded. See May 30, 2014, PPA verification report at 13.

<sup>97</sup> See SSV verification exhibit 25 at 25.

Therefore, based on the above review of the record, we disagree with petitioner that SSV either withheld requested information, failed to provide information within the deadlines established or in the form and manner requested, or significantly impeded this proceeding. Thus, we have determined not to use AFA on SSV's purchases of hot-rolled coil.

Furthermore, we disagree with petitioner that we should value separately each of the three types of hot-rolled coil that SSV consumed. Here SSV has met all of the requirements for valuing its coil using the market-economy prices SSV reported. Harmonized Tariff Schedule numbers (which petitioner cites in support of its argument that the coil it believes to be alloy steel should be valued differently from the carbon steel coil) are not determinative when valuing inputs using market-economy prices. Here, it is undisputed by petitioner that all three of the types at issue are grade J55 steel. The differences between the three types of J55 are not so substantial so as to make them different products requiring separate valuations. Therefore, because all of the coil that SSV purchased and used during the POI was J55 coil, and because the requirements for valuing coil using market-economy prices have been met, in this final determination we have valued SSV's coil using its average market-economy purchase price of coil during the POI, as we did in the Preliminary Determination.

### **Comment 8: Adjusting the Price of SSV's Hot-Rolled Coil to Reflect Arm's-Length Transactions**

#### Petitioner's Arguments

Petitioner argues the Department should adjust the prices of hot-rolled coil that SSV reported as purchased from an unaffiliated market-economy producer through its affiliated trading company SeAH Japan Co., Ltd. (SeAH Japan) because the prices from SeAH Japan to SSV do not reflect an arm's-length transaction. Petitioner's basis for the allegation is that the percentage mark-up from SeAH Japan to SSV is less than SeAH Japan's SG&A expense ratio for the POI. Petitioner states that the Department's practice in circumstances where, as here, a respondent purchases a material input from an affiliated reseller who "functions as a middleman between the respondent and the unaffiliated producer," 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 plus the affiliate's SG&A costs)."<sup>98</sup> Petitioner argues therefore that the Department should value SSV's purchases of hot-rolled coil from SeAH Japan using the adjusted market price for the input.

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<sup>98</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers From the Republic of Korea, 77 FR 75988 (December 26, 2012) and accompanying Issues and Decision Memorandum at Comment 21.

Petitioner also makes two additional points with regard to performing the calculation:

Petitioner states that the Department should not be swayed by the argument that SeAH Japan's SG&A should not include foreign exchange transaction losses. SSV based this argument on the fact that SeAH Japan both bought and sold hot-rolled coil in U.S. dollars. Petitioner counters that the Department's well-established practice is to treat gains and losses on foreign exchange transactions as part of a company's SG&A expenses regardless of the source of such gains and losses.<sup>99</sup> Furthermore, the Department has recognized that net gains and losses on foreign currency transactions are the result of a company's overall management of its financing activity and, as such, should be attributed to the general operations of the company.<sup>100</sup> Petitioner argues that the fact that SeAH Japan may have bought and sold hot-rolled coil from the producer in the same currency is just one small part of the company's overall strategy of hedging against losses due to foreign exchange transactions, and of managing its financing activity in general. Thus, including all of the foreign exchange gains and losses incurred by SeAH Japan in the calculation of its SG&A expenses better reflects the results of the company's foreign exchange management.

Petitioner also argues that export expenses should not be excluded from the calculation of SeAH Japan's SG&A expenses. Petitioner state that because SSV did not place any information on the record showing the nature of these expenses, SSV has not offered any explanation as to why this line item should be excluded from the calculation of SeAH Japan's financial statements. Given that SSV has the burden of showing that its purchases from affiliates were made at arm's-length prices, this absence of evidence should not be construed in SSV's favor by excluding the export expenses from SeAH Japan's SG&A expenses.

#### SSV's Rebuttal Arguments

SSV argues the Department should not adjust the value assigned to SSV's purchases of coil through SeAH Japan. It states that, contrary to petitioner's assertion, the mark-up earned by SeAH Japan was greater than the SG&A expenses incurred by SeAH Japan.

With respect to petitioner's argument that exchange gains and losses should be included in SeAH Japan's SG&A, SSV states that because SeAH Japan purchased the coils from its Japanese supplier in U.S. dollars and resold the coils to SSV in U.S. dollars, it did not have any exposure to actual exchange rate fluctuations on these transactions. Thus, SeAH Japan as a separate company would not have incurred any exchange gains or losses in connection with its purchase and resale of the coils. Furthermore, SSV states that the Department's longstanding practice is to analyze exchange gains and losses and other financial expenses on a consolidated basis, and not

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<sup>99</sup> See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order, 76 FR 77772 (December 14, 2011) and accompanying Issues and Decision Memorandum at Comment 10.

<sup>100</sup> See Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination, 77 FR 63291 (October 16, 2012) and accompanying Issues and Decision Memorandum at Comment 10.

at the level of individual subsidiaries. Thus, SSV argues, because SeAH Steel Corporation (parent of both SSV and SeAH Japan) had a net exchange gain on a consolidated basis, there is no basis for increasing SeAH Japan's costs for any net exchange loss recorded in its individual unconsolidated statements.

With respect to petitioner's argument that export expenses should not be excluded from the calculation of SeAH Japan's SG&A, SSV states that it purchased the coils from SeAH Japan on a CFR Ho Chi Minh City basis, and SeAH Japan, in turn, purchased the steel coils from its Japanese supplier on the same CFR Ho Chi Minh City basis. This means that it was the Japanese supplier's responsibility to transport the merchandise from Japan to Vietnam. Any expenses incurred in connection with these exports would, therefore, have been borne by the Japanese supplier, and not by SeAH Japan. Accordingly, SSV states, SeAH Japan would not, could not, and did not incur any export expenses in connection with its sales of these coils to SSV.

**Department's Position:** We disagree with petitioner that there is any need to make an adjustment to the transactions between SeAH Japan and SSV. The basis for petitioner's argument is that by deducting the categories "export expenses" and "gains/losses on foreign currency transactions" from the calculation, SSV has understated SeAH Japan's SG&A ratio. We find that SSV was correct in excluding them from the total SG&A.

With respect to "export expenses," information SSV previously placed on the record shows that because of the terms of sale, SeAH Japan did not incur export expenses for the coils at issue. Therefore, this category of expense should be excluded from the SG&A calculation.<sup>101</sup>

With respect to "gains/losses on foreign currency transactions," SSV is correct that it is the Department's practice to calculate this category at the highest level of consolidation. Here, the highest consolidated level is SeAH Steel Corporation. The financial statement of SeAH Steel Corporation shows that this entity's exchange gains and losses resulted in a net gain.<sup>102</sup>

Given that SSV correctly performed the SG&A calculation, the SG&A ratio is less than the markup charged by SeAH Japan. Thus, the transfer price is higher than the adjusted market price of the input (i.e., SeAH Japan's average acquisition cost plus SeAH Japan's SG&A costs), and we determine that the transfer price was an arm's-length transaction. Therefore, there is no need to make an adjustment to SSV's purchase price of coils bought from SeAH Japan.

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<sup>101</sup> See SSV's January 13, 2014, submission at 11-12.

<sup>102</sup> See SSV's September 24, 2013, Section A response at Appendix A-5-E, note 24.

## **Comment 9: Whether to Revise the Reported Yield Rates**

### Petitioner's Argument

Petitioner argues the Department should revise SSV's reported steel usage rates to account for yield loss for which SSV had not accounted in its calculations. Petitioner also argues that because SSV calculated the usage rates for each of its factors based on its steel usage rates, the Department should make a corresponding adjustment to the usage rates for all other factors.

Petitioner bases these arguments on how SSV calculated its usage rate for steel coil. SSV calculated the usage rate for steel coil by first calculating the cumulative yield rate based on the ratio of the quantity of hot-rolled coil it consumed to the total quantity of finished product. It then calculated the hot-rolled coil usage rate as the inverse of the cumulative yield rate. However, petitioner points out that the total finished production quantity that SSV used in the calculation of its cumulative yield rate was the weight of the pipe that is shipped from the packing area. Petitioner argues that using this weight in the computation was an error because it does not account for the fact that some of the packed pipe had defects, and ultimately got sold in the United States as scrap. Petitioner argues that in other cases where a respondent has underreported the total amount of scrap generated in the production process, the Department has adjusted the respondent's yield loss to reflect the amount of scrap that was not reported.<sup>103</sup> Petitioner states that information on the record of this investigation enables the Department to make a conservative estimate of the yield loss that SSV experienced, and that the Department should use that estimate to recalculate the yield loss for both steel coil and all other factors whose usage rate was derived from the steel coil usage rate.

### SSV's Rebuttal Arguments

SSV states that its U.S. affiliate, PPA, had only one sale of scrap derived from SSV-produced OCTG during the period, and that when the volume of that sale is divided by the total volume of SSV-produced OCTG that PPA sold in the United States during the POI, the volume of that scrap sale is extremely small. Thus, SSV states, any adjustment for that loss would be insignificant.

Furthermore, SSV asserts that petitioner's suggested recalculated yield loss is unpersuasive for several reasons. First, it is based solely on two sales of upgradeable J55 OCTG. SSV states there is no reason to limit the analysis to only upgradeable products. Furthermore, SSV states, there is no reason to expect that scrap inventory would turn over at the same rate as prime-

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<sup>103</sup> See Antidumping: Oil Country Tubular Goods from Canada; Final Determination of Sales at Less Than Fair Value, 51 FR 15029 (April 22, 1986) at Comment 19; Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Canada, 63 FR 9182 (February 24, 1998) at Comment 6; Stainless Steel Bar From India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review, 65 FR 48965 (August 10, 2000) at Comment 6.

product inventory. Moreover, record evidence confirms that items initially classified as “rejects” in PPA’s inventory records were, in some cases, re-worked and sold as prime OCTG products.<sup>104</sup>

Finally, SSV notes it tested the pipe it shipped to PPA prior to exporting it, and certified it to meet the relevant standards. The flaws in the rejected pipe were identified by the processors after they received the merchandise, but before they performed any processing. It follows, then, that any flaws that led the processors to “reject” the pipe must have occurred during transit, and not during production in Vietnam (since flaws caused by production in Vietnam would have been identified by SSV’s testing before export) or during processing in the United States (since flaws caused during processing would not have been identified by preprocessing inspection). Thus, SSV concludes, because the damage that caused the pipe to be rejected did not occur during the production process, there is no basis for adjusting the reported production-yield figures for such damage.

**Department’s Position:** We agree with petitioner that because there is additional loss following the packing stage at SSV’s plant, the usage rate calculation must account for that yield loss. It is not relevant, as SSV has argued, that the amount sold as scrap is small because yield loss can occur regardless of whether any of it is sold as scrap. Nor does it matter that the merchandise was inspected prior to shipment from Vietnam, and that any yield loss would have occurred either during shipment or during further processing. Yield loss can occur when the semi-finished product is shipped to or further processed by a further processor. The correct yield loss calculation must account for any loss that occurs prior to shipment to the ultimate customer in order for the normal value calculation to correctly capture all costs. Therefore in this final determination we have recalculated the yield loss and the usage rate for each input affected by the recalculation.<sup>105</sup>

### **Comment 10: Adding Brokerage and Handling and Port Fees to SSV’s Market-Economy Purchases of Hot-Rolled Coil**

#### Petitioner’s Arguments

Petitioner argues the Department should recalculate SSV’s reported cost of ME purchases of steel coil to include B&H and port fees that SSV did not include in the reported ME price. Petitioner states that in other NME cases where respondents have incurred B&H and port fees on their imports of market-economy inputs, the Department has increased the reported prices by such fees.<sup>106</sup> Petitioner states the Department should do so here as well.

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<sup>104</sup> See Pusan Pipe America Verification Report, dated May 30, 2014, at 13.

<sup>105</sup> See the final determination analysis memorandum dated, July 10, 2014, for details of the calculation.

<sup>106</sup> See Hand Trucks and Certain Parts Thereof from the People's Republic of China; Preliminary Results, Partial Intent to Rescind and Partial Rescission of the 2005-06 Administrative Review, 73 FR 2214, 2221 (January 14, 2008), unchanged in final results, Hand Trucks and Certain Parts Thereof from the People's Republic of China; Final Results of 2005-2006 Administrative Review, 73 FR 43684 (July 28, 2008).

Furthermore, petitioner states that the Department should use the “Doing Business” report as the source for the surrogate value to make these adjustments. It says the Department has used this source in numerous prior proceedings to value the expenses at issue because they are publicly available, contemporaneous, and consist of a broad market average.

Petitioner states that based on earlier comments by SSV, SSV does not dispute that it incurred B&H and port fees on its imports of steel coil. Instead, petitioner states, SSV has argued two points by way of rebuttal:

- SSV has argued that such fees could potentially be captured by the surrogate financial ratios as “materials overhead.” Petitioner argues in reply that SSV has failed to point to any evidence in any of the detailed financial statements on which the Department relied that indicates that B&H and port fees have been treated as materials overhead.
- SSV has argued that even if it is appropriate to value the expenses at issue, using the “Doing Business” report would drastically overstate such fees because the data are based on shipments in containers rather than bulk shipments. Petitioner argues in reply that the Department has addressed and rejected such arguments in numerous prior cases.<sup>107</sup> In the latter case, petitioner states, the Department continued to use Doing Business in Indonesia as the source of the surrogate value because the respondent “had not demonstrated that {brokerage and handling} charges based on a container rate are distortive relative to rates for bulk shipment of subject merchandise.” Petitioner states the Department should reach the same conclusion here.

#### SSV’s Rebuttal Arguments

SSV argues the Department should not add B&H costs to the reported price of purchased steel coils. SSV states that when a company’s records do not allow materials handling to be identified specifically with particular raw material items in inventory, the costs may be classified as overhead. For such companies the handling costs would already be captured in the relevant financial ratios as part of factory overhead, which means that adding them to direct material costs would result in double counting. Here, SSV states, petitioner has cited to no evidence that import B&H costs are not part of the calculated overhead figures. In fact, SSV states, as a matter of basic accounting, and in the absence of any evidence to the contrary, it is reasonable to assume that the import charges are classified as materials overhead.

SSV states though that if the Department does decide to add a B&H surrogate value to the cost of purchased steel coil, it should not use the “Doing Business” report for the source of the surrogate value. It states (as discussed under Comment 1) that the reported B&H costs in the “Doing Business” report include costs for preparation of various documents that are not part of B&H

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<sup>107</sup> See e.g., Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273, (September 23, 2013) and accompanying Issues and Decision Memorandum at 10; PET Film from the PRC and accompanying Issues and Decision Memorandum at 7.

services under any reasonable definition. Furthermore, SSV states, there is no way to confirm that the “Doing Business” figures reflect the actual prices that would be charged for services relating to imports of steel products. Moreover, SSV argues that because the export B&H costs reported in the “Doing Business” report are exaggerated, it is likely the import B&H costs are unreliable as well.

As an alternative to the “Doing Business” report, SSV argues the Department should use the OOCL price list to value B&H. This resource, SSV states, gives the actual fees charged by OOCL for various import, export, and shipping-related services at each major port in India. SSV states, however, that some of the items are not relevant to SSV’s shipments, and provides a proposed alternative calculation. Furthermore, SSV states that in performing this calculation the Department should use as the denominator the total quantity of merchandise shipped under the relevant export document in accordance with the CIT’s ruling in CS Wind. While CS Wind addressed only export B&H charges, SSV states that the same logic would be applicable to import charges.

**Department’s Position:** We agree with petitioner that we should add B&H and import fees to the market-economy purchase price of the hot-rolled coils because the record indicates that SSV incurred cost for B&H and SSV does not dispute this cost. SSV has presented no evidence that the B&H costs are included in the overhead reported on any of the financial statements on the record. Furthermore, our analysis of the best source to use to value B&H for imports is the same as that given in Comment 1 for exports because there is nothing in the “Doing Business” report to suggest that its cost methodology for import B&H is any different from its cost methodology for exports. Thus, for the reasons explained under Comment 1, we have determined that the “Doing Business” report constitutes the best available information on the record with which to value this expense. Moreover, consistent with our determination regarding the correct calculation methodology described under Comment 1, we have calculated the per-unit amount using 10 MT as the denominator.

## **Comment 11: Domestic Inland Insurance**

### Petitioner’s Arguments

Petitioner argues the Department should calculate a surrogate value to represent domestic inland insurance on SSV’s shipments of OCTG to the United States, and should deduct it as a movement expense from U.S. price. Petitioner bases this argument on the allegation that the record shows that SSV paid for and received insurance associated with transporting subject merchandise from the plant to the Vietnamese port of exportation. Petitioner states that record evidence shows that the inland freight provider is insuring the merchandise during its transit from the plant to the port against all damage. Therefore, petitioner argues, the Department should not be swayed by SSV’s assertions that it does not incur inland freight insurance costs. As evidence to the contrary, petitioner cites to SSV’s contract with its inland freight provider,

which states that, “If there is any accident or any damage to cargoes, Party B {freight forwarder} has responsibility to compensate Party A {SSV} 100% of the invoice amount.”<sup>108</sup>

Petitioner also states that there is no reason to think the surrogate value the Department used in the Preliminary Determination to value inland freight (i.e., data from the website <http://www.infobanc.com>) included insurance. It points out that in prior cases the Department has used data obtained from <http://www.infobanc.com> to value inland freight expenses while simultaneously valuing inland freight insurance using a separate surrogate value.<sup>109</sup>

### SSV’s Rebuttal Arguments

SSV argues that petitioner has not shown that any insurance services were purchased by or for SSV on shipments within Vietnam. It states that the fact that trucking companies took responsibility for any losses during transit does not in any way imply that the shipper actually purchased insurance for the benefit of SSV. In fact, SSV states, it is quite common for trucking companies to bear the risk of loss on the shipments they handle without charging the owner of the merchandise for insurance. As an example, it states that PPA does not purchase inland insurance covering losses during transport within the United States.<sup>110</sup> Thus, SSV states, it is likely that the surrogate inland freight rates assign the risk of loss to the transport companies, and not to the companies whose products are being transported. SSV states that petitioner has not provided any evidence that the surrogate freight values assign that risk in a different manner, or that Indian transport companies routinely purchase insurance on behalf of their customers.

**Department’s Position:** We disagree with petitioner that the Department should deduct a surrogate value from SSV’s U.S. price to represent domestic inland insurance. As SSV has noted, it is not uncommon for trucking companies to bear the risk of loss on the shipments they handle. We do not find that the bearing of such risk constitutes an “insurance contract” that would require a separate surrogate value. Furthermore, because the bearing of such loss by a trucking company is a common practice, it is quite possible it is included in the surrogate value we used in the Preliminary Determination, as many of the freight forwarding contracts used in the survey may reflect the same terms SSV experienced with its freight forwarder. For these reasons, we remain unconvinced that SSV incurred any marine insurance costs. Therefore, for this final determination, as in the Preliminary Determination, we have not deducted a surrogate value from U.S. price to represent domestic inland insurance.

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<sup>108</sup> See May 4, 2014 SSV verification report at 16-17.

<sup>109</sup> See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip From the People’s Republic of China: Preliminary Results of the 2009-2010 Antidumping Duty Administrative Review, 76 FR 68140, (November 3, 2011); unchanged in final, Polyethylene Terephthalate Film, Sheet, and Strip From the People’s Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order, 77 FR 14493 (March 12, 2012).

<sup>110</sup> See SSV’s October 30, 2013, section C response at 34.

## **Comment 12: Whether to Revise Further Manufacturing Costs to Include Interest Expenses**

### Petitioner's Arguments

Petitioner argues the Department should revise its calculation of U.S. further manufacturing (USFURMANU) to include interest expenses associated with the threading, heat-treating, and end-upsetting of the subject merchandise by unaffiliated processors. Petitioner argues that the failure to include interest expenses in USFURMANU in the Preliminary Determination violated the Department's long-standing practice. It cites to OCTG from Korea, where the Department stated, "It is the Department's long-standing practice to include all interest expenses related to further manufacturing in the calculation of USFURMANU."<sup>111</sup> It argues that, consistent with the methodology employed in OCTG from Korea, the Department should calculate the interest expenses using the audited fiscal-year financial statement at the highest level of consolidation which corresponds most closely to the POI. In this case, petitioner states, the relevant financial statement is the 2012 consolidated financial statement of SeAH Steel Corporation. Using that financial statement, petitioner proposes what it believes to be the correct percentage rate to represent the relevant interest expenses.

### SSV's Rebuttal Arguments

SSV argues that under the unique facts of this case it would be inappropriate to add the amount of interest expenses petitioner has calculated, and would result in the double counting of interest expenses. It states that the sum of total imputed credit and total inventory as a percent of PPA's cost of goods sold is greater than the rate that petitioner calculated to represent the interest expenses. Accordingly, SSV states, all actual interest expenses have been captured in the imputed amounts for credit and inventory carrying costs.

**Department's Position:** We disagree with petitioner that we should add interest expenses to SSV's reported further manufacturing cost. SSV reported the cost for the purchase of the further-manufacturing raw materials, and the fee paid to its unaffiliated further-manufacturing processors.<sup>112</sup> Furthermore, it also reported all costs incurred subsequent to completion of the further manufacturing under the fields for inventory carrying costs and imputed credit expenses. Therefore, we have determined that SSV's reporting accounts for all costs associated with the further manufacturing, and there is no need to add an additional cost for interest expenses.

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<sup>111</sup> See Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Final Results of Antidumping Duty Administrative Review, 72 FR 9924 (March 6, 2007) and accompanying Issues and Decision Memorandum at Comment 8 (OCTG from Korea).

<sup>112</sup> See SSV's October 30, 2013, section C response at 44-45.

## Comment 13: Import Duties on Varnish

### Petitioner's Arguments

Petitioner argues the Department should increase SSV's reported market-economy purchase price of the input varnish by ten percent to reflect an import duty on varnish levied by the government of Vietnam. Petitioner states that SSV did not include this import duty in its reported purchase price for varnish.

### SSV's Rebuttal Brief Comment

SSV argues the Department should not include import duties on its purchase price of varnish. First, SSV notes that petitioner has not cited to any precedent adding import duties to a market-economy purchase price in an NME case.

Second, SSV notes that the Department's past decisions make clear that surrogate values should be determined on a duty-exclusive basis. It cites to Rail Tie Wire from the PRC, where the Department stated, "when selecting surrogate values for use in NME proceedings, it will select to the extent practicable, surrogate values which are publicly available, product-specific, representative of a broad market average, *tax- and duty-exclusive* and contemporaneous with the POI."<sup>113</sup> SSV notes that given this methodology, it is not surprising that the Department's standard questionnaire for NME investigations does not even ask respondents to provide information on taxes or duties on inputs imported by the NME country.

Third, SSV argues that adding import duties to varnish would be counter to the rationale behind the Department's NME methodology. SSV states that the entire reason for using surrogate values in an NME proceeding is to avoid distortions caused by the NME government's interference through, *inter alia*, its tax and duty regimes. For the Department to add the NME country's tax and duty rates to the surrogate values would re-introduce the distortions that the NME methodology is intended to avoid.

**Department's Position:** We disagree with petitioner. As with surrogate values noted by SSV, the normal value that the Department constructs based on a respondent's factors of production, to the extent practicable, should be tax and duty exclusive. Further, with regard to import duties, the Department's underlying presumption is that prices incurred by a NME economy producer/exporter for market economy purchases will be import duty free once the final product is exported unless contradictory record evidence has been provided. As there is no evidence on the record to contradict this presumption for SSV's market-economy purchases of varnish, the Department has not adjusted SSV's market-economy purchase prices for varnish by an amount for Vietnamese import duties as argued by petitioner.

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<sup>113</sup> See Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire From the People's Republic of China, 79 FR 25572 (May 5, 2014) (Rail Tie Wire from the PRC) and accompanying Issues and Decision Memorandum at Comment 6 (emphasis added).

**RECOMMENDATION**

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final determination and the final dumping margins in the Federal Register.

AGREE  \_\_\_\_\_

DISAGREE \_\_\_\_\_

*Ronald K. Lorentzen*

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Ronald K. Lorentzen  
Acting Assistant Secretary  
For Enforcement and Compliance

*July 10, 2014*  
\_\_\_\_\_  
Date