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September 6, 2016

**MEMORANDUM TO:** Christian Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**FROM:** Gary Taverman   
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Issues and Decision Memorandum for the Final Results of  
Antidumping Duty Administrative Review and New Shipper  
Review of Certain Cut-to-Length Carbon-Quality Steel Plate  
Products from the Republic of Korea

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### Summary

We analyzed the comments filed in the administrative review and concurrent new shipper review of the antidumping duty order on certain cut-to-length carbon-quality steel plate products (CTL plate) from the Republic of Korea (Korea) for the periods of review (POR) February 1, 2014, through January 31, 2015. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues for which we have received comments and rebuttal comments from the interested parties:

- Comment 1: Recalculation of Conversion Costs (New Shipper Review)
- Comment 2: Reported Costs (New Shipper Review)
- Comment 3: Finished Goods Inventory (New Shipper Review)
- Comment 4: Scrap Offset (New Shipper Review)
- Comment 5: Major Input Adjustment (Administrative Review)

### Background

On March 11, 2016, the Department of Commerce (the Department) published the preliminary results of these reviews.<sup>1</sup> On May 11, 2016, we issued a memorandum extending the time limit

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<sup>1</sup> See *Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative and New Shipper Reviews and Rescission of Administrative Review, in Part; 2014-2015*, 81 FR 12870 (March 11, 2016) (*Preliminary Results*).



for the final results of these reviews to September 7, 2016.<sup>2</sup> We invited interested parties to comment on the *Preliminary Results*. We received case and rebuttal briefs from interested parties.<sup>3</sup>

## **Discussion of the Issues**

### *A. New Shipper Review*

#### Comment 1: Recalculation of Conversion Costs

Hyundai Steel argues that the Department should not smooth costs as Hyundai Steel's reported costs properly take into account differences in physical characteristics. Hyundai Steel asserts that it is the Department's longstanding practice to rely on a company's normal books and records, as long as those records are kept in accordance with generally accepted accounting principles (GAAP) and reasonably reflect the costs associated with the production and sales of the merchandise under consideration.

Hyundai Steel claims that it properly reported its actual costs, as recorded in its normal books and records, on a control number (CONNUM)-specific basis and that the Department noted only a handful of CONNUMs for which it found that this reporting potentially required adjustment. Hyundai Steel also asserts that it provided explanations and supporting documentation demonstrating that any fluctuations in costs were attributable to actual cost differences resulting from the production process.

Hyundai Steel contends that the Department did not identify any other CONNUMs for which it thought costs varied more than was attributable to differences in physical characteristics, yet, in its preliminary results, the Department for the first time stated that it had identified other, unspecified, CONNUMs where the fluctuation in costs between similar CONNUMs cannot be wholly explained by the differences in the physical characteristics of those CONNUMs. According to Hyundai Steel, nowhere did the Department identify which CONNUMs it thought were impacted by unacceptable cost fluctuations, nor did it explain how it determined the fluctuations were not explained by physical differences.

Hyundai Steel argues that, because it properly reported its costs, the Department's adjustments were in error. Hyundai Steel claims that it submitted the data from its normal cost accounting system that it uses to compile its yearly audited report and that, in this system, some items that require more time to manufacture will have a higher total cost. Hyundai Steel contends that the Department's averaging of some costs causes the ultimate cost reporting to differ from both the cost recorded in Hyundai Steel's books and records and from the actual costs required to manufacture a particular item. Hyundai Steel alleges that this distortion of Hyundai Steel's

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<sup>2</sup> See Memorandum from Thomas Schauer, Senior International Trade Compliance Analyst, Office I, Antidumping and Countervailing Duty Operations to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Duty Administrative and New-Shipper Reviews," dated May 11, 2016.

<sup>3</sup> See the case and rebuttal briefs from Nucor Corporation (Nucor), Dongkuk Steel Mill Co., Ltd. (DSM), and Hyundai Steel Company (Hyundai Steel) dated April 11, 2016, and April 20, 2016, respectively.

actual costs violates antidumping law, which requires that the costs reasonably reflect the costs of producing the items and that just because the costs of producing each item vary, it does not mean that the actual costs do not reasonably reflect the cost of production (COP).

Hyundai Steel claims that the Department's applied methodology would likely result in more serious distortions. For example, Hyundai Steel asserts that smoothing conversion costs simply by reference to product characteristics may result in erroneously averaging costs in different production lines that are not capable of processing the entire range of products.

Hyundai Steel concludes that the Department should accept Hyundai Steel's reported actual costs in its forthcoming final results. Hyundai Steel argues that, to the extent that the Department does decide to apply cost smoothing, to limit such distortions, the Department should restrict its cost smoothing to paired CONNUMs where production volumes are low.

Nucor argues that the plain language of the statute indicates that the Department does not have to rely on a respondent's books and records, especially when the respondent's accounting records are distortive. According to Nucor, while the Department's questionnaire states that the starting point for cost calculations must be the product specific costs as recorded in the respondent's normal cost accounting system, the Department's instructions also explain that the reported costs should be reflective of the product's physical characteristics. Nucor contends that, where a respondent's normal books and records do not track the physical characteristics identified by the Department, the agency will use the respondent's records as the starting point, but remedy the cost distortions by using a reasonable method based on available company records.

In this new shipper review, Nucor asserts, the costs recorded in Hyundai Steel's normal books and records are grossly distorted and the physical characteristics of subject merchandise are not fully reflected in its costs data. As a result, Nucor states that the Department's instructions required that Hyundai Steel use any additional records that were available to correct these distortions, but the respondent failed to do so.

Nucor argues that the Department correctly determined that Hyundai Steel's costs were unrelated to the physical characteristics of the production of subject merchandise in the preliminary results. In other words, Nucor asserts, the Department found that Hyundai Steel's reported costs did not reasonably reflect the costs associated with the production and sale of the subject merchandise. According to Nucor, the statute authorizes the Department to use an alternative method to calculate a respondent's costs in this situation.

In addition, Nucor argues that the Department properly notified Hyundai Steel that its cost data were unusable, because significant cost differences existed between similar CONNUMs. According to Nucor, over the course of two supplemental questionnaires, the Department asked no less than eight questions regarding the significant fluctuations in Hyundai Steel's reported costs and their disconnect from the physical characteristics of the products, identifying numerous examples of CONNUMs that needed to be remedied. Thus, Nucor contends, Hyundai Steel's claims that the Department did not provide it with sufficient notice that the company needed to eliminate the effect of production quantities on its per unit costs are wholly unsupported by the record.

According to Nucor, in response to the Department's supplemental questions concerning this issue, Hyundai Steel provided essentially two answers: 1) the differences are caused by production slow-downs; and 2) the direct materials of similar CONNUMs differ because their total cost of manufacturing (COM) differs. With respect to Hyundai Steel's first answer, Nucor avers, the Department has explained that production volume is not a product characteristic of subject merchandise. As a result, Nucor claims, varying production volume cannot be a legitimate or adequate explanation of the significant cost differences between similar CONNUMs. Additionally, Nucor asserts, Hyundai Steel's second response is wholly deficient because it does not provide an actual explanation but, rather, is a circular statement, which essentially asserts that direct material costs change when production costs change.

Nucor claims that the Department provided Hyundai Steel with multiple opportunities to remedy its deficient cost data. According to Nucor, the agency even provided Hyundai Steel with examples of CONNUMs that needed to be remedied and specific instructions on how to do so. Yet, Hyundai Steel refused to comply with the Department's instructions. Thus, Nucor concludes that the Department provided sufficient notice throughout this proceeding to Hyundai Steel that its reported costs were severely deficient and that the agency would adjust the respondent's production costs.

Finally, Nucor argues that the Department should apply adverse facts available (AFA) to Hyundai Steel's reported costs. According to Nucor, the Department's minor adjustment to Hyundai Steel's reported cost in the preliminary results does not reflect the degree of non-cooperation by the respondent and encourages Hyundai Steel to continue reporting distorted product costs in future reviews.<sup>4</sup>

Department's Position: Pursuant to section 773(f)(1)(A) of the Tariff Act of 1930, as amended (the Act), "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise."

Accordingly, we are instructed to rely on a company's normal books and records if two conditions are met: 1) the books are kept in accordance with the home country's GAAP; and 2) the books reasonably reflect the cost to produce and sell the merchandise. In the instant case, the unadjusted per-unit costs are derived from Hyundai Steel's normal books and records, which are kept in accordance with Korean GAAP.<sup>5</sup> Therefore, the question facing the Department is whether the per-unit costs from Hyundai Steel's normal books reasonably reflect the cost to produce and sell the merchandise under consideration.

At the outset of a case, we identify the physical characteristics that are the most significant in

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<sup>4</sup> Nucor's arguments with respect to Comment 1 are from Nucor's rebuttal brief. Nucor also argued that the Department should apply AFA to Hyundai Steel's costs in its case brief. Nucor's case brief arguments are summarized and responded to in Comment 2, below.

<sup>5</sup> See Letter from Hyundai Steel, "Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Section A Questionnaire Response," dated April 29, 2015 at A-27.

differentiating products. These are the physical characteristics that define unique products, *i.e.*, the CONNUMs, for sales comparison purposes. The level of detail within each physical characteristic (*e.g.*, the multiple different grades or sizes of a product) reflects the importance, with price-to-price comparisons, that we place on establishing normal values based on comparison market sales of the identical, or the most similar, foreign like product. Thus, under sections 773(f)(1)(A) and 773(a)(6)(C)(ii) and (iii) of the Act, a respondent's reported product costs should reflect meaningful cost differences attributable to these different physical characteristics. This ensures that the product-specific costs we use for the sales-below-cost test, constructed export price profit, constructed value, and the difference-in-merchandise adjustment, accurately reflect the distinct physical characteristics of the products whose sales prices are used in the Department's dumping calculations.

The physical characteristics identified in this case are whether or not the plate is painted, quality, specification and grade, heat treatments, and standard thickness.<sup>6</sup> For the reasons below, we continue to find that the differences in costs between CONNUMs are not explained by the differences in the physical characteristics of those CONNUMs.

When we analyzed Hyundai Steel's cost database, we observed instances where the costs of manufacture Hyundai Steel reported for certain CONNUMs varied considerably even though the only difference in physical characteristics is the product thickness.<sup>7</sup> Accordingly, we asked Hyundai Steel for an explanation of cost differences we observed for a number of CONNUMs.<sup>8</sup> Hyundai Steel reported that the difference in product-specific costs for the products we cited in our supplemental questionnaire was the result of differences in processing, which involved "relatively high processing costs at the pre-rolling production stage. Higher processing costs at the pre-rolling production step occur when production slows down -- for example, because Hyundai Steel needs to heat treat products or change the rolls in order to meet an urgent order. When these events occur, fewer tons are produced, although operating costs remain fairly constant. Thus, in these circumstances, operating costs are allocated over a smaller production quantity, resulting in item codes with higher costs."<sup>9</sup> According to Hyundai Steel, the differences in costs we observed were not the result of differences in physical characteristics but, rather, the result of differences in product-specific production volumes and differences in processing at the pre-rolling production stage.

Because Hyundai Steel's originally reported costs included significant variances for very similar products which were explained by factors other than the differences in physical characteristics, Hyundai Steel's originally reported conversion costs were distortive and, therefore, did not reasonably reflect the costs associated with the production and sale of the merchandise. For this reason, in our January 13, 2016, supplemental questionnaire, we asked Hyundai Steel to revise its costs to eliminate or significantly reduce the effect of the product-specific production volumes on its per-unit costs because the per-unit cost differences did not relate to these products' physical characteristics.<sup>10</sup> Hyundai Steel did so, but only with respect to certain CONNUMs

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<sup>6</sup> See, *e.g.*, the Department's March 25, 2015 section B questionnaire at B-8 through B-12.

<sup>7</sup> See Letter to Hyundai Steel dated September 21, 2015, at 5-6.

<sup>8</sup> *Id.*

<sup>9</sup> See Hyundai Steel's supplemental response dated October 20, 2015, at 14-15.

<sup>10</sup> See Letter to Hyundai Steel dated January 13, 2016, at 1.

where, according to Hyundai Steel, the products “were produced in limited quantities and incurred relatively high processing costs at the pre-rolling production stage, such that the unit cost differences were unusually large.”<sup>11</sup> As Nucor observes, Hyundai Steel did not explain what constituted “limited quantities,” “relatively high processing costs,” or “unusually large” unit cost differences.

For the *Preliminary Results*, because: (1) Hyundai Steel only revised its costs for a subset of its models; and (2) we found other instances where the differences in costs between similar CONNUMs could not be explained by the differences in the physical characteristics of those CONNUMs, we determined that Hyundai Steel’s reported costs did not reasonably reflect the costs associated with the production and sale of the merchandise. To mitigate the impact of the cost fluctuations which were unrelated to the reported products’ physical characteristics, we re-allocated Hyundai Steel’s conversion costs among products with common quality, specification, and heat treatment.<sup>12</sup> We continue to find our recalculation of Hyundai Steel’s conversion costs to be a reasonable methodology for mitigating the distortions found in Hyundai Steel’s reported costs.

As explained above, Hyundai Steel’s reported costs are distortive because they result in significant cost differences for very similar models and these cost differences are the result of factors other than the physical characteristics. Our recalculation of Hyundai Steel’s reported conversion costs reasonably mitigates the distortions in those costs by smoothing the differences in conversion costs for very similar products caused by differences in product-specific production volumes. Our methodology here is consistent with the Department’s past practice.<sup>13</sup> Additionally, our recalculation follows a similar method to that which Hyundai Steel itself used with respect to the subset of CONNUMs for which it revised its costs. Accordingly, we have continued to use our preliminary methodology for the final results.

Hyundai Steel contends that we did not identify any other CONNUMs for which it thought costs varied more than was attributable to differences in physical characteristics. As a preliminary matter, the CONNUMs we cited in our September 21, 2015, supplemental questionnaire were not meant to be an exhaustive list. Nevertheless, we have identified additional illustrative examples where we find Hyundai Steel’s reported costs to be distortive, including an example where Hyundai Steel revised the costs for certain similar CONNUMs but not for others. Because of the proprietary nature of these examples, please *see* the final results analysis memorandum for Hyundai Steel, dated concurrently with this memorandum for these examples.<sup>14</sup>

Hyundai Steel also claims that the Department’s applied methodology would likely result in

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<sup>11</sup> See Hyundai Steel’s supplemental response dated February 11, 2016, at 1.

<sup>12</sup> See *Preliminary Results*, 81 FR 12870, and accompanying Preliminary Decision Memorandum at 12.

<sup>13</sup> See, e.g., *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 39908 (June 20, 2016), and accompanying Issues and Decision Memorandum at Comment 9, and *Welded Line Pipe From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015), and accompanying Issues and Decision Memorandum at Comment 5.

<sup>14</sup> See Memorandum from Thomas Schauer, Senior International Trade Compliance Analyst, to File, “Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results Analysis Memorandum for Hyundai Steel Company,” dated concurrently with this memorandum.

more serious distortions. As an example, Hyundai Steel asserts that smoothing conversion costs simply by reference to product characteristics may result in erroneously averaging costs in different production lines that are not capable of processing the entire range of products. We have previously explained that it is inappropriate to have distortions attributable to the effect of not neutralizing cost differences which are unrelated to the physical characteristics identified by the Department.<sup>15</sup>

Finally, with respect to Nucor's argument that we should apply AFA to Hyundai Steel's reported costs, see the Department's response to Comment 2, below.

#### Comment 2: Reported Costs

Nucor argues that the Department should apply AFA to Hyundai Steel because it failed to provide useable and reliable COP information in a timely manner and in the form requested, which significantly impeded this review.

Nucor asserts that the Department improperly calculated a dumping margin using Hyundai's unreliable COP information. Nucor contends that the Department's preliminary results correctly identified that there were significant cost differences between CONNUMs which are unrelated to the physical differences between those CONNUMs in Hyundai Steel's COP database. Moreover, Nucor asserts, while Hyundai Steel modified the unit costs for some CONNUMs at the Department's request, the Department found other instances where the fluctuation in costs between similar CONNUMs cannot be wholly explained by the differences in the physical characteristics of those CONNUMs. Thus, Nucor alleges, Hyundai Steel's revisions of its COP database failed to cure the serious deficiencies identified by the Department. However, Nucor contends, instead of applying AFA to Hyundai Steel for providing unusable COP information, the Department merely recalculated Hyundai Steel's conversion costs to mitigate the impact of the cost fluctuations that are unrelated to the reported products' physical characteristics.

According to Nucor, the Department provided Hyundai Steel several opportunities to provide a usable cost database. Nucor claims that, in response to the Department's final request to obtain accurate cost information, Hyundai Steel explained that it revised its COP database by modifying the unit costs of those products that were produced in limited quantities and incurred relatively high processing costs at the pre-rolling production stage, such that the unit cost differences were unusually large. However, Nucor contends, Hyundai Steel failed to explain what quantities it considered to be limited, what costs it considered to be relatively high, or what cost differences it considered to be unusually large. Nucor asserts that it appears that Hyundai Steel cherry-picked the CONNUMs that it selected to be modified in its revised COP database. Nucor claims that Hyundai Steel's selection process for which CONNUMs to be modified appears to be completely arbitrary, rendering its COP database unusable in this NSR.

Furthermore, Nucor argues, Hyundai Steel's methodology of how to modify its CONNUMs appears to be highly arbitrary. Nucor observes that Hyundai Steel weight-averaged the CONNUM it chose to modify with the single most similar CONNUM based on the Department's

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<sup>15</sup> See *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 15, 2015), and accompanying Issues and Decision Memorandum at Comment 5.

CONNUM hierarchy. Nucor provides an example of a CONNUM which is weight-averaged with one other CONNUM which differs from it with respect to a single physical characteristic. However, Nucor contends, the COP database contained additional CONNUMs that were also identical with these CONNUMs with the exception of the single physical characteristic. According to Nucor, it is unclear why Hyundai Steel failed to include those CONNUMs in the weighted average used to calculate its modified cost.

Nucor claims that, in its preliminary results, the Department acknowledged that Hyundai Steel's COP database was seriously flawed by recalculating some of Hyundai Steel's costs. Nucor argues that, given the fact that Hyundai Steel impeded this review by not properly revising its COP database for over six months, the Department should not have made changes to Hyundai Steel's COP database. Nucor asserts that, while the Department averaged a portion of Hyundai Steel's costs among some of the plates' physical characteristics, this does not result in accurate per-unit costs. Nucor concludes that, in this case, where the respondent stonewalled the agency for six months and failed to provide accurate COP data, the Department should apply AFA to Hyundai Steel's costs.

Hyundai Steel argues that AFA is an extreme remedy meant for truly extraordinary circumstances, where a respondent has engaged in a deliberate attempt to impede the Department's investigation that substantially affected the Department's ability to calculate a dumping margin. According to Hyundai Steel, the application of AFA has no place where, as here, the respondent has fully participated in the proceeding and has provided thorough and accurate information and data in response to not only the Department's initial questionnaire, but also to multiple supplemental questionnaires.

Hyundai Steel asserts that the Department has generally found it appropriate to apply AFA when an interested party has engaged in a deliberate attempt to impede the Department's investigation that substantially affected the Department's ability to calculate a dumping margin. Hyundai Steel further contends that the Court of Appeals for the Federal Circuit (CAFC) clarified that a respondent satisfies the "best of its ability" standard under section 776(b) of the Act when it "put{s} forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation."<sup>16</sup> Hyundai Steel claims that this standard does not demand perfection, as the CAFC noted that "mistakes sometimes occur."<sup>17</sup> Instead, according to Hyundai Steel, the standard merely instructs the respondent to do its best to respond to the Department's requests, in order to avoid the application of AFA.

Hyundai Steel further argues that, even when the statutory prerequisites have been met, the statute does not require the Department to apply AFA, but that the Department may exercise its discretion in deciding whether doing so would be appropriate under the facts of the particular case. According to Hyundai Steel, the company acted to the best of its ability and does not qualify under any of the enumerated justifications for applying AFA, as set forth in section 776(a) of the Act. Hyundai Steel asserts that Nucor's arguments far overstate any issues with

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<sup>16</sup> See Letter from Hyundai Steel, "Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Rebuttal Brief," (April 20, 2016) (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*)).

<sup>17</sup> *Id.*

Hyundai Steel's COP data, which the Department recognized in disregarding Nucor's pre-preliminary requests to apply AFA.

Department's Position: Section 776(a) of the Act specifies that if: (1) necessary information is not available on the record; or (2) an interested party or any other person withholds information that has been requested by the Department, fails to provide such information by the deadlines for submission of the information or in the form and manner requested, significantly impedes a proceeding, or provides such information but the information cannot be verified, the Department shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination. Section 776(b)(1)(A) of the Act specifies that if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.

We disagree with Nucor that application of AFA is warranted with respect to Hyundai Steel's product-specific costs. Hyundai Steel did not withhold information, did not fail to provide such information by the deadlines for submission of the information or in the form and manner requested, nor did it significantly impede this proceeding in responding to our requests for information. Hyundai Steel revised its costs for certain models in response to our request.<sup>18</sup>

It is true that Hyundai Steel did not revise its costs for all models.<sup>19</sup> However, we believe the language in our January 13, 2016, supplemental questionnaire may have been unclear. Specifically, our September 21, 2015, supplemental questionnaire references specific CONNUMs in our requests for information.<sup>20</sup> Our January 13, 2016, supplemental questionnaire, however, states:

{w}e previously asked for an explanation of why certain models with very similar physical characteristics had very divergent costs. You explained that the "difference in product-specific costs for the above-mentioned products comes from differences in processing. The products above incurred relatively high processing costs at the pre-rolling production stage." Thus, it appears that the per-unit cost differences are not related to these products' physical characteristics. Please revise your costs to eliminate or significantly reduce the effect of the product-specific production volumes on your per-unit costs.<sup>21</sup>

Based on this, we determine that Hyundai Steel has cooperated with our requests for information. As a result, an adverse inference is not warranted. Moreover, the revision is in the form of an allocation; no additional data are required to revise the costs for all models. As a result, we are not missing data on the record and the use of facts available (adverse or otherwise) is not necessary or warranted.

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<sup>18</sup> See Letter from Hyundai Steel, "Certain Cut-to-Length Carbon Quality Steel Plate from Korea: Supplemental Section D Response," dated February 11, 2016 at 1.

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

<sup>20</sup> See Letter to Hyundai Steel dated September 21, 2015 (SQR3) at 4-6.

<sup>21</sup> See Letter to Hyundai Steel dated January 13, 2016 at 1.

Moreover, as described in our response to Comment 1, above, we have the information on the record necessary to revise Hyundai Steel's costs in order to mitigate the distortions found in Hyundai Steel's reported costs. Accordingly, we have not used AFA with respect to Hyundai Steel's reported costs.

### Comment 3: Finished Goods Inventory

Nucor argues that the Department should apply AFA to Hyundai Steel because it impeded this review by withholding its finished goods inventory movement information and failing to submit it in the form requested by the Department.

According to Nucor, the Department instructed Hyundai Steel to provide a finished goods inventory movement schedule showing each month of the POR; in response, Hyundai Steel submitted screenshots from its accounting system showing the monthly finished goods inventory movement in total for the plate plant. Nucor claims that, although the source files for Hyundai Steel's inventory movement schedule appear to be in MS Excel,<sup>®</sup> the respondent did not provide a schedule as requested by the Department. Instead, the respondent submitted 13 screenshots, hindering the Department's ability to calculate the monthly per-unit values and analyze the data.

Nevertheless, Nucor contends that a calculation of the monthly per-unit values based on these screenshots demonstrates that the information in Hyundai Steel's screenshots contradicts Hyundai Steel's prior statements.

Moreover, Nucor claims, when the Department requested that Hyundai Steel provide a detailed explanation of each adjustment labeled as "other" in its finished goods inventory movement schedule, Hyundai Steel failed to do so; instead of providing a detailed explanation as requested by the Department, Hyundai Steel simply provided a short description of the labels in its screenshots.

Nucor concludes that the information contained in Hyundai Steel's screenshots raises a number of questions and does not appear to be accurate. According to Nucor, because Hyundai Steel withheld this information from the Department for five months and failed to provide it in the form and manner requested (*i.e.*, in Excel format), the Department could not investigate this significant issue further. Therefore, Nucor argues that the Department should find that Hyundai Steel's delay has significantly impeded this review and should apply AFA to Hyundai Steel's COP.

Hyundai Steel argues that Nucor's claims are inaccurate. According to Hyundai Steel, the Department requested it to provide a monthly finished goods inventory movement schedule. Hyundai Steel claims that it complied by submitting screenshots of its monthly finished goods inventory movement reports, which fully addressed the Department's request and provided the information necessary for the Department's analysis. According to Hyundai Steel, the inventory movement schedules containing both quantity and extended costs/values provided the Department all of the data it needed to derive the monthly costs easily.

Hyundai Steel contends that it calculates its product costs on an annual basis when it prepares its

year-end financial statements. In other words, Hyundai Steel maintains, while costs are recorded on a monthly basis, Hyundai Steel recalculates its costs using annual values at year's end. According to Hyundai Steel, these annual average costs constituted the first step in calculating the reported unit costs, *i.e.*, the POR product costs were calculated by starting with the fiscal year costs, deducting the amounts incurred in January 2014, and adding the amounts incurred in January 2015. Indeed, Hyundai Steel contends, given that the POR differs from Hyundai Steel's fiscal year by only one month, the reported costs are, for the most part, those calculated on a fiscal year basis. Consequently, Hyundai Steel claims that it was accurate to indicate that the monthly costs as reflected in its reported costs did not fluctuate during the POR.

Finally, Hyundai Steel contends that it fully explained each of the "other" adjustments reflected in its inventory movement schedules, citing its Supplemental Response dated February 11, 2016, at Exhibit SD-5, in which Hyundai Steel provided a table identifying each type of inventory movement reflected in its inventory movement schedules, a short description, and an additional narrative explanation. According to Hyundai Steel, all of the 'other' adjustments are commonly found in inventory movement schedules.

Department's Position: We have not applied AFA to Hyundai Steel with respect to finished goods inventory. In response to our request to "provide a finished goods inventory movement schedule showing each month of the POR,"<sup>22</sup> Hyundai Steel submitted "screenshots from its accounting system showing the monthly finished goods inventory movement in total for the plate plant."<sup>23</sup> Hyundai Steel's screenshots from its accounting system were an adequate response to our request for information. The fact that Hyundai Steel submitted the information as screenshots rather than collate the information into a single table does not impair our ability to analyze the information.<sup>24</sup> Moreover, contrary to Nucor's assertion, we did not ask for this information to be reported in any specific format (*e.g.*, MS Excel<sup>®</sup>).

With respect to Nucor's comment regarding Hyundai Steel's monthly costs, Nucor is comparing values derived from Hyundai Steel's finished-goods inventory ledger with values derived from the costs reported to the Department. Hyundai Steel has explained that it "uses a yearly weighted averaging method to calculate the unit cost of manufacturing for fiscal year, and therefore, every month has the same unit cost of manufacturing" with respect to its reported costs.<sup>25</sup> In other words, because finished goods necessarily reflect costs at a specific point in time and respondents are instructed to report average POR costs, there will necessarily be a difference.

Finally, with respect to the descriptions that Hyundai Steel provided regarding "other" adjustments, Hyundai Steel's original descriptions were very short phrases.<sup>26</sup> We asked for more

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<sup>22</sup> See Letter from Hyundai Steel, "Certain Cut-to-Length Carbon Quality Steel Plate from Korea: Supplemental Section D Response," dated February 11, 2016 at 1.

<sup>23</sup> *Id.*

<sup>24</sup> Nor did it impair Nucor's ability to analyze the information, as can be seen by the fact that Nucor used this information to argue its next point. See Nucor's Case Brief at 10-11.

<sup>25</sup> See Letter from Hyundai Steel, "Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Fourth Supplemental Sections C-D Questionnaire Response," dated December 3, 2015 at 4.

<sup>26</sup> See letter from Hyundai Steel, "Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Supplemental Sections C-D Questionnaire Response," dated October 20, 2015 at Exhibit S3-4E.

detailed descriptions and Hyundai Steel cooperated fully by submitting timely explanations with which we were satisfied.<sup>27</sup>

In conclusion, we see no reason to apply facts available, adverse or otherwise, to Hyundai Steel as a result of alleged issues regarding its finished goods inventory ledger.

#### Comment 4: Scrap Offset

Nucor argues that the Department should apply AFA to Hyundai Steel's sales of scrap and deny Hyundai Steel's claimed scrap offset, because it has failed to provide information in a timely manner and in the form requested and has significantly impeded the review. According to Nucor, Hyundai Steel has failed to provide its scrap inventory movement schedule in the form requested by the Department, it has failed to include sales of scrap in the form of "defective products" in its scrap inventory movement schedule, and it has failed to provide a reconciliation for the Dangjin plant.

First, Nucor claims that, although the Department instructed Hyundai Steel to provide an inventory schedule for the scrap generated at the end of each period, referring specifically to the inventory balances at the end of each month, Hyundai Steel completely ignored this request and merely provided annual quantities. Moreover, Nucor asserts, the schedule that Hyundai Steel submitted failed to cover the entire POR as requested by the Department but only covered fiscal year 2014. In addition, Nucor alleges, Hyundai Steel simply ignored the Department's request to explain how it manages to consume all of the scrap generated by the end of each month so that it does not have to maintain an inventory for scrap.

Second, Nucor contends that Hyundai Steel has explained that it sold products that were neither prime nor non-prime merchandise, which the company referred to as defective products. According to Nucor, Hyundai Steel reported that it generates defective products that, unlike non-prime products (which are assigned inspection code 2), have serious defects or problems, such as surface defects. Nucor claims that Hyundai Steel assigns these defective products inspection codes 3, 5, or 6 depending on the extent of the defect. Nucor asserts that, because Hyundai Steel has classified and reported its non-prime products under inspection code 2, all other inspection codes that are not related to prime merchandise should be properly treated as scrap. As a result, Nucor concludes, Hyundai Steel has failed to include sales of scrap in the form of defective products in its scrap inventory movement schedule.

Finally, Nucor argues that Hyundai Steel has failed to explain certain business proprietary information regarding the Dangjin plant. Nucor contends that, while the Department requested that Hyundai Steel reconcile the fiscal year 2014 scrap quantities it reported in Exhibits S3-6A and S3-6B of its October 21, 2015, supplemental response, Hyundai Steel never complied with the Department's request. According to Nucor, Hyundai Steel simply dismissed the Department's question by claiming that Exhibit S3-6A represents a copy of Hyundai Steel's internal planning document for determining the unit scrap value as part of its budget setting process in late 2013 for the subsequent fiscal year 2014, and that the quantities shown in that

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<sup>27</sup> See Letter from Hyundai Steel, "Certain Cut-to-Length Carbon Quality Steel Plate from Korea: Supplemental Section D Response," dated February 11, 2016 at Exhibit SD-5.

document were simply estimates. Nucor claims that Hyundai Steel has failed to explain what it claims is a peculiarity within Hyundai Steel's business proprietary information. Furthermore, Nucor asserts that this does not appear to be a simple mistake due to an estimate. Nucor argues that the Department cannot simply ignore Hyundai Steel's internal planning documents, which represent actual, contemporaneous business documents prepared in the normal course of business. Nucor concludes that Hyundai Steel has failed to provide adequate information to value accurately the scrap reintroduced into its production process.

Hyundai Steel argues that the Department should not deny Hyundai Steel's claimed scrap offset as AFA. According to Hyundai Steel, the record makes clear that it calculates its product costs on an annual basis in conjunction with preparing the year-end financial statements. In the case of scrap, Hyundai Steel asserts that it responded to the Department's request by providing a reconciliation of its monthly scrap purchases to its fiscal year scrap inventory movement schedule, which then corresponded to the annual costs utilized in the reported costs. Hyundai Steel contends that, given its reporting methodology and annual cost accounting, its submission was fully responsive to the Department's request. With respect to providing the additional explanation concerning how the company manages to consume the scrap by month's end, Hyundai Steel claims that Nucor omitted a key phrase in the Department's instructions, which was that Hyundai Steel was to provide additional explanations if it did not maintain an inventory for scrap generated. Hyundai Steel asserts that, because it demonstrated that it maintains scrap inventory records, the Department's additional question was not applicable.

With respect to defective products, Hyundai Steel argues that Nucor's claim that Hyundai Steel failed to report certain sales of scrap is pure speculation and simply unfounded. Hyundai Steel contends that Nucor has relied on information provided in response to the Department's supplemental sales questionnaires concerning how Hyundai Steel identifies defective products, if and when they are identified in production. Hyundai Steel asserts that it nowhere indicated that it had in fact produced such defective steel during the POR. According to Hyundai Steel, it demonstrated in its submissions that it consumed internally all scrap generated in the production process.

Finally, Hyundai Steel does not contest Nucor's view that Hyundai Steel's internal planning documents are actual, contemporaneous business documents. However, Hyundai Steel contends, Nucor misses the point of these documents. Hyundai Steel claims that these documents are actual and contemporaneous business documents that Hyundai Steel prepares for internal budgeting purposes and, therefore, contain estimates rather than the final values. Hyundai Steel argues that, despite Nucor's contention that Hyundai Steel failed to explain the information used as a basis for its estimate, the source document itself explains the alleged peculiarity. Thus, as it was readily apparent from the documents submitted by Hyundai Steel, the Department had no reason to address Nucor's argument regarding Hyundai Steel's scrap generation rates, or to deviate from its normal practice of relying on the respondent's books and records.

Department's Position: An adverse inference is warranted only where an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. As described below, we determine that Hyundai Steel has cooperated to the best of its ability with respect to our requests for information.

First, we asked Hyundai Steel to “provide an inventory schedule for the scrap generated at the end of each period.”<sup>28</sup> Hyundai Steel prepares annual financial statements and it provided a schedule which reconciled the annual total.<sup>29</sup> Accordingly, because Hyundai Steel complied with our request and we did not specify monthly reconciliations, we determine that Hyundai Steel fully responded to our request for information.

With respect to defective products, when we asked what distinguished prime and non-prime products, Hyundai Steel explained that “{p}roducts that do not match the specific customer's order but can be sold to another customer that has requested the same type of product are assigned an inspection code of ‘2.’ Products that have serious defects or problems, such as surface defects, are assigned an inspection codes of ‘3’ or ‘5’, depending on the extent of the defect, while unsaleable scrap is coded ‘6.’”<sup>30</sup> Hyundai Steel also reported that “the sales of the non-prime products made during the reporting period in the home market were fully reported in the home market sales database.”<sup>31</sup> Hyundai Steel further reported that “all of Hyundai Steel’s reported sales of nonprime products were coded as ‘2’ during the POR.”<sup>32</sup> Thus, there is no record evidence that Hyundai Steel had any sales of defective products during the POR.

Finally, with respect to the Dangjin plant, Hyundai Steel has explained that Exhibits S3-6A and S3-6B of its October 21, 2015, supplemental response do not reconcile because Exhibit S3-6A consists of estimates. We disagree with Nucor’s contention that Hyundai Steel has failed to provide adequate information to accurately value the scrap reintroduced into its production process. Hyundai Steel provided that information in Exhibit S3-6B of its October 21, 2015, supplemental response.<sup>33</sup> Moreover, the information in Exhibit S3-6B reconciles with the scrap inventory movement schedule which Hyundai Steel submitted in Exhibit SD-8 of its February 11, 2016, supplemental response.<sup>34</sup> Accordingly, we see no reason that the estimates in Exhibit S3-6A of Hyundai Steel’s October 21, 2015, supplemental response impugn the data Hyundai Steel reported based on its actual experience during the POR.

For the reasons described above, we determine that Hyundai Steel has cooperated fully with our requests for information.

## B. *Administrative Review*

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<sup>28</sup> See Letter to Hyundai Steel dated January 13, 2016, at 1.

<sup>29</sup> See Letter from Hyundai Steel, “Certain Cut-to-Length Carbon Quality Steel Plate from Korea: Supplemental Section D Response,” dated February 11, 2016 at 1.

<sup>30</sup> See SQ3 at 7.

<sup>31</sup> *Id.*, at 6.

<sup>32</sup> *Id.*, at 7.

<sup>33</sup> See Letter from Hyundai Steel, “Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Supplemental Sections C-D Questionnaire Response,” dated October 20, 2015 at Exhibit S3-6B.

<sup>34</sup> See Letter from Hyundai Steel, “Certain Cut-to-Length Carbon Quality Steel Plate from Korea: Supplemental Section D Response,” dated February 11, 2016 at 3 and Exhibit SD-8.

#### Comment 5: Major Input Adjustments

Nucor argues that the Department should use DSM's affiliated supplier's slab COP in applying the major input rule, in accordance with section 773(f)(3) of the Act. Nucor explains that the Department determines "the value of the major input on the basis of the information available regarding such cost of production" under section 773(f)(3) of the Act and, pursuant to this statutory provision, the Department values the major input using the transfer price, the market price, or the affiliate's COP, whichever is highest under 19 CFR 351.407(b). Nucor further argues that the affiliated supplier's COP is the most appropriate measure to value DSM's slab purchased during the POR. Nucor also requests that the Department find that DSM purchased slab directly from this affiliated supplier.

Nucor requests that the Department readjust DSM's major input slab cost using Nucor's calculation of DSM's affiliated supplier's COP to produce slab. Nucor explains that it calculated the weighted-average per-unit COP of all steel products sold by DSM's affiliated supplier using the segment information contained in DSM's affiliated supplier's parent company's financial statements. Because this amount includes high-end products and low-end products (such as slab), according to Nucor, the calculations, on average, approximate the COP of an average priced product, such as CTL plate. Next, Nucor explains, its methodology reduces this weighted-average per-unit COP by post-slab processing costs, using DSM's reported costs as the surrogate.

Nucor argues that its recalculation of DSM's affiliated supplier's cost to produce slab on the record of this review remedies the Department's concerns in the last administrative review in which the Department did not use DSM's affiliated supplier's cost to adjust the major input cost for DSM's slab. Nucor explains that, specifically, instead of using the crude steel production quantity,<sup>35</sup> it used the quantity of finished products shipped, which includes high-end products and low-end products, such as slab, in order to offset any overstatement of costs related to including high-end products by including all low-end products (such as slab) produced and sold by DSM's affiliated supplier. Nucor claims that it essentially calculated the weighted-average per-unit COP of all steel products DSM's affiliated supplier sold. According to Nucor, while this calculation is not specific to a particular product group, the quantity in the denominator is clearly defined as shipped finished products, and the definition of finished goods is well established. Nucor states that the shipment quantities of finished products reported on a non-consolidated basis in DSM's affiliated supplier's financial statements include transactions with external customers; therefore, there are no distortions in the calculation of the denominator in DSM's affiliated supplier's cost to produce slab.

Nucor contends that, to address the Department's concern with the numerator in Nucor's calculations in the last administrative review, it excluded the per-unit post-slab processing costs from DSM's affiliated supplier's weighted-average per-unit COP. Nucor explains that it used

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<sup>35</sup> Nucor explains that the term "crude steel" means either liquid steel or cast steel before being further worked. Nucor states that crude steel essentially represents the steel material used to make finished steel products. Nucor contends that the proportion between the consolidated and unconsolidated quantities of crude steel closely approximates the proportion between the consolidated and unconsolidated quantities of finished goods made from that crude steel. *See* Nucor's Case Brief at 8.

DSM's own processing costs as a reasonable estimate of DSM's affiliated supplier's processing costs. Nucor argues that, while the production experiences of DSM and its affiliated supplier are not the same, DSM's post-slab processing costs are likely reasonably similar for purposes of calculating DSM's affiliated supplier's COP, while limiting any alleged distortions in the calculations.

Nucor claims that the segment information is likely more accurate than the petition information the Department has relied on in past cases, because of the nature of the information in DSM's affiliated supplier's parent company's financial statements, which has been maintained in the normal course of business. Nucor argues that *Huvis Corp. v. United States*, 570 F.3d 1347, 1350-51 (Fed. Cir. 2009) (*Huvis Corp*) has upheld a similar calculation based on financial statements.

Nucor requests that, if the Department decides not to use the affiliated supplier's COP to value slab DSM purchased, the Department should continue the preliminary methodology for valuing slab DSM purchased from its affiliated supplier, *i.e.*, use the market price that DSM paid for slab from unaffiliated producers for its major input rule adjustment.

DSM explains that the Department's preliminary adjustment of DSM's major input was proper. DSM asserts that, when the affiliated supplier's COP is unavailable, as in this case, it has been the Department's practice to compare the transfer price to the market price to apply the major input rule. DSM contends that Nucor misstates the statute and the Department's policy regarding application of the major input rule by arguing that the use of the affiliated producer's COP is required in every case. DSM states that, unlike Nucor's argument, section 773(f)(3) of the Act allows, but does not require, the Department to use the affiliated supplier's COP. According to DSM, 19 CFR 351.407(b) states that, for purposes of section 773(f)(3) of the Act, the Department "normally will determine the value of a major input purchased from an affiliated person based on the higher of" transfer price, market price, or the affiliated supplier's COP. Citing *Huvis Corp.*, 570 F.3d at 1353, DSM argues that a comparison of all three costs is a permissible, but not required, interpretation of the major input rule.

DSM contends that Nucor's proposed COP for the slab supplied by DSM's affiliated producer is based on "segment" information in the affiliated producer's parent company's consolidated financial statements. DSM contends further that this "segment" information includes all of the affiliated producer's business activities and is not limited to the affiliated producer's production of slab or even to the production of crude or processed steel products. Moreover, DSM argues, this segmented information does not include a complete income statement and does not provide the cost of goods sold (COGS), let alone the COM. DSM explains that the Department's practice is to base its cost calculations on the financial statements of the actual producer of the merchandise, not a consolidated corporate parent company of the actual producer of the merchandise.

DSM argues that Nucor's proposed COP is distorted because Nucor calculated it by dividing the total cost of the affiliated producer's parent company (derived based on the consolidated income statement for the entire steel business adjusted for investments and interest) and reduced by the "per-unit post-slab processing cost," by the total quantity of finished products shipped. DSM

calls this methodology worse than the methodology Nucor unsuccessfully proposed in the previous review. DSM contends the addition of the high-end product distorts the construction of the COP of slab and this distortion is in no way offset because some unknown quantity of the total is slab, the product for which Nucor is attempting to approximate the cost. DSM claims that the use of the quantity of finished products shipped, not the production quantity, adds even more distortion because the quantity shipped may vary significantly from the quantity produced, depending on the inventory level.

DSM argues that Nucor also increases the quantity of finished products shipped in proportion to the difference between consolidated and non-consolidated crude steel production quantity without defining the term “crude steel” or how the difference between the two figures represents the difference in quantity of the finished goods produced between the consolidated and unconsolidated companies. DSM explains that, while the dictionary definition of crude steel is unrefined steel, a steel industry definition of crude steel is “the first solid state after melting, suitable for further processing or for sale.” For these reasons, DSM argues that there is no basis to assume that the production figure is total production, not some intermediate stage.

DSM explains that there is insufficient information to determine if the quantity of the finished goods in Nucor’s calculation represents external shipments alone or includes internal sales and transfers as well. DSM claims that there is little difference between the quantities of finished goods shipped in the financial statements and that used in Nucor’s allegation. DSM argues that, while it is impossible to know whether the quantity of shipment is understated or the COP is overstated, one of the two figures is flawed because Nucor’s derived cost of finished goods is higher than the average selling price reported in the financial statements. DSM explains that the steel segment being the largest of the three segments within the consolidated company should be enough for the Department to reject Nucor’s allegation and find that DSM’s affiliated supplier’s financial statements cannot be used to derive a COP for the major input analysis.

DSM argues that Nucor’s calculation of the numerator is also distortive. According to DSM, because no COGS is reported for the steel segment, Nucor derived the total cost based on the total internal and external sales value, less profit, for the unconsolidated steel segment within DSM’s affiliated supplier. DSM states that, because the internal sales value would be included in the elimination adjustment in the preparation of the consolidated financial statements, the inclusion of the internal sales value in the calculation of the total cost used as the numerator in Nucor’s calculation overstates the production cost for the finished goods shipped to external customers.

DSM contends that Nucor’s use of DSM’s processing costs to reasonably estimate those of DSM’s affiliated supplier erroneously assumes that there is a single input, slab, for all finished products produced by DSM’s affiliated supplier and that the ratio of the raw material cost to the total COP at DSM’s affiliated supplier is constant among all the finished products. DSM claims that its production experience is different from that of its affiliated supplier because slab is not the only input for production at its affiliated supplier, which produces high-end value-added products with different material costs depending on the inputs and the production process. According to DSM, Nucor’s proposed COP is 20 percent higher than the actual sale price for slab (including the seller’s profit) that DSM paid to unaffiliated suppliers during the POR.

DSM explains that *Huvis Corp.* is not a precedent supporting Nucor's proposed COP, which was calculated based on a product or a group of products different from slab and segment information from the affiliated producer's parent company's consolidated financial statements. According to DSM, the issue in *Huvis Corp.* was the Department's construction of a market price by deriving an amount for profit from the supplier's financial statements. DSM explains that in *Huvis Corp.*, the supplier's COP of each input was on the record and that there was no argument or evidence suggesting that the methodology at issue which the Department constructed: (1) inaccurately reflected the profit margin for the particular input; or (2) resulted in a transfer price grossly out of line with actual market prices on the record for transactions between unaffiliated parties.

DSM argues that Nucor's proposed COP amounts to an unwarranted application of AFA. DSM states that, in order to comply with the Department's request for information, it has made good faith efforts to obtain the COP of slab from its affiliated producer but the affiliated producer refused to supply the information. DSM states that its affiliated supplier has no incentive to submit any COP data to the Department because its affiliated supplier is not a Korean producer or a respondent in this review. DSM argues that its affiliated supplier's status as a respondent in another antidumping duty investigation is irrelevant in this review. DSM explains that the Department has declined to apply AFA in adjusting the major input cost in instances where the respondent has been cooperative and has attempted to obtain accurate COP but is unable to do so through no fault of its own.<sup>36</sup>

DSM requests that the Department continue to calculate the major input adjustment with the same preliminary methodology with one correction to a ministerial error in the preliminary major input adjustment. DSM alleges that the Department used a slightly incorrect figure of the total volume of DSM's slab purchased from unaffiliated suppliers in the preliminary major input adjustment. DSM requests that the Department use the correct figure of the total volume of DSM's slab purchased from unaffiliated suppliers in the final major input adjustments.

Department's Position: For the final results, we continue to apply our preliminary adjustment of the major input cost with the correction to the ministerial error DSM identified in the *Preliminary Results*.<sup>37</sup> We used the correct figure of the total volume of DSM's slab purchased from unaffiliated suppliers in the final major input adjustment. We applied the "major input" rule in valuing the slab DSM purchased from an affiliated producer through its affiliates.<sup>38</sup> While DSM purchased slab from its affiliated trading companies, the slab was produced mostly by an affiliated producer.<sup>39</sup>

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<sup>36</sup> See DSM's Rebuttal Brief at 15 (citing, e.g., *Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Carbon Steel Flat Products From Turkey*, 67 FR 62126 (October 3, 2002), and accompanying Issues and Decision Memorandum at Comment 3).

<sup>37</sup> See Memorandum to the File "Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Analysis Memorandum for Dongkuk Steel Mill Co., Ltd.," dated concurrently with this Issues and Decision Memorandum for business proprietary details concerning this correction to a ministerial error.

<sup>38</sup> See Memorandum to the File "Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Analysis Memorandum for Dongkuk Steel Mill Co., Ltd.," dated March 4, 2016, at 4-5 (DSM Preliminary Analysis Memorandum).

<sup>39</sup> See the verification report entitled "Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Cost and Home-Market Sales Verification of Dongkuk Steel Mill Co., Ltd.," dated November 24, 2015,

Pursuant to section 773(f)(3) of the Act, we may value major inputs purchased from affiliated parties at the higher of the market value, transfer price, or the affiliated supplier's COP. We will determine the value of the major input purchased from an affiliated person based on the higher of: 1) the price paid by the exporter or producer to the affiliated person for the major input; 2) the amount usually reflected in sales of the major input in the market under consideration between unaffiliated parties; and 3) the cost to the affiliated person of producing the major input.<sup>40</sup> We have relied on this methodology in other cases involving trading companies.<sup>41</sup> Moreover, the CIT upheld our application and interpretation of this statutory provision.<sup>42</sup> The major input rule applies to slab transactions between DSM and its affiliated suppliers.<sup>43</sup>

In this case, DSM was unable to obtain the slab COP from its affiliated producer.<sup>44</sup> We requested that DSM provide its affiliate's slab COP information but DSM indicated that, despite its repeated requests, its affiliated producer refused to provide the COP information.<sup>45</sup> Where an interested party or any other person withholds information that has been requested, the application of facts available is appropriate in reaching a determination, in accordance with section 776(a)(2)(A) of the Act. Under section 776(b) of the Act, we may use an inference adverse to the interests of an interested party that failed to cooperate by not acting to the best of its ability to comply with a request for information. In determining whether a respondent acted

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at 4, 7, and Cost Exhibits 1 and 2.

<sup>40</sup> See 19 CFR 351.407(b).

<sup>41</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From Taiwan*, 65 FR 16877 (March 30, 2000), and accompanying Issues and Decision Memorandum at Comment 11, where we stated as follows:

FETL does not purchase EG, the input at issue, directly from its affiliated producer. Rather, it is obtained through a line of affiliates, including the affiliated producer. Since the affiliated producer and all of the parties in the transaction between the producer and the respondent are affiliated with FETL, and the total value of the purchases of the EG from the affiliates is significant in relation to the total cost of manufacture of the subject merchandise, we have determined that section 773(f)(3) of the Act applies in this case. We disagree with FETL that the intent of section 773(f)(3) of the Act and the related regulations is only to be concerned with the cost of production of the immediate affiliated supplier. To do so in this case would mean to blindly base the cost of production computation of the affiliated supplier immediately preceding the respondent on the transfer price between the affiliated supplier and its affiliate, which in effect, contradicts the purpose of section 773(f)(3) of the Act. As discussed in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada*, the intent of sections 773(f)(2) and (3) of the Act "and the related regulations is to account for the possibility of shifting costs to an affiliated party. This possibility arises when an input passes to the responding company through the hands of an affiliated supplier, regardless of the value added to the product by the affiliated supplier." As such, we consider the appropriate method for computing the cost of production for a major input obtained from an affiliated producer through a chain of affiliated party transactions to be based on the actual cost of production incurred by the affiliated producer plus a portion of the general expenses of all of the affiliates involved in the transaction between the affiliated producer and the respondent. Thus, for the final determination, we computed the cost of production for the affiliated EG purchases based on the affiliated producer's cost of production plus a portion of the general expenses for each affiliate involved in the transaction.

<sup>42</sup> See *Mannesmann v. United States*, 77 F. Supp. 2d 1302 (CIT 1999).

<sup>43</sup> See section 773(f)(3) of the Act.

<sup>44</sup> See DSM's Supplemental Response dated August 4, 2015, at 20-21 and Exhibit D-17.

<sup>45</sup> *Id.*

to the best of its ability in seeking the COP information from its affiliate, we normally examine the nature of the affiliation, in addition to other facts.<sup>46</sup> Given the fact that the affiliate in question only owned a small percentage of DSM's shares, we determine that DSM could not compel it to provide its COP. Therefore, we are not applying an adverse inference in selecting from the facts available. In prior cases, we turned to other COP information on the record, if available, as non-adverse facts available.

We disagree with Nucor that it would be appropriate to use the segment information from the affiliated producer's parent's consolidated financial statements to calculate the affiliated producer's COP for slab as a neutral facts available. In the last completed administrative review, we explained that "{t}he segment information contained in the affiliated producer's parent's financial statements would be inappropriate to use as an estimate of the cost of slab because it represents all of the activities of the segment and is not limited to the production of slab. The segment includes the production of various higher end steel products in addition to slab as well as other activities."<sup>47</sup> Nucor's major input adjustment request in this administrative review does not provide segment information distinguishable from what we found and described in the last completed administrative review for us to conclude differently in this administrative review.<sup>48</sup> We also find it inappropriate to use the quantity of finished products shipped in the construction of COP for slab because: (1) they include both high-end and low-end products, especially when slab is considered as a low-end product; and (2) they may be different from the quantity of products produced during the POR depending on the level of inventory. Moreover, regardless of its definition, when we have market value on the record to calculate the major input adjustment, it is not necessary to use any crude steel information to construct COP for the slab in question. Therefore, no reasonable information exists on the record to calculate the COP of slab from the affiliated producer. *Huvis Corp.* affirmed our use of constructed market price in the calculation of the major input adjustment in the underlying case because we had good reasons to do so in order to improve accuracy.<sup>49</sup> For the reasons explained above, we do not find that the petitioner's methodology would improve the accuracy of the major input adjustment from the *Preliminary Results*.

In the recently completed antidumping duty investigation of certain corrosion-resistant steel products (CORE) from Korea, we relied on the COP information for hot-rolled coil in the petition for our major input adjustment for DSM, which was not able to provide the COP data from its affiliated supplier.<sup>50</sup> Even in the CORE investigation, however, we refused to use the type of information the petitioner provided in the last completed review and in this

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<sup>46</sup> See *Certain Cut-to-Length Carbon Steel Plate from Brazil: Final Results of Antidumping Duty Administrative Review*, 63 FR 12744, 12751 (March 16, 1998) (*Plate from Brazil*).

<sup>47</sup> See *Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013–2014*, 80 FR 22971 (April 24, 2015), and accompanying Issues and Decision Memorandum at Comment 3 (citation omitted).

<sup>48</sup> *Id.* See also Letter from Nucor, "Certain Cut-to-Length Carbon Quality Steel Plate from the Republic of Korea: Comments on DSM's Affiliated Slab Supplier's Cost of Production for Application of the Major Input Rule" dated July 9, 2015., at Exhibit 1, pages 12-13, which lists the activities performed at the steel segment.

<sup>49</sup> See *Huvis Corp.*, 570 F.3d at 1354-56.

<sup>50</sup> See *Certain Corrosion-Resistant Steel Products From the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 35303 (June 2, 2016), and accompanying Issues and Decision Memorandum at Comment 14.

administrative review.<sup>51</sup> Moreover, neither the petitioner nor any other interested parties placed on the record of this administrative review information similar to the COP data for hot-rolled coil in the petition for the CORE investigation for us to use as an alternative source for a major input adjustment for DSM.

In accordance with the Department's past practice, when there is no such COP data on the record and no indication that the affiliated supplier's COP was higher than the transfer or market price, we use the higher of the transfer price or the market price as facts available.<sup>52</sup> As facts available in this case, and consistent with our past practice, we used the higher of the transfer price or the market price that DSM reported for its purchases of slab.<sup>53</sup> Thus, as we did in the *Preliminary Results*, and with the correction of one ministerial error, we examined these slab purchases for the final results and adjusted DSM's COM to reflect the higher of market price or transfer price.<sup>54</sup>

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<sup>51</sup> *Id.* (“In CTL from Korea, we rejected Petitioners proposed company-wide financial statement average cost methodology to calculate the COP of the affiliated suppliers, and we continue to do so in this case for the same reasons.”) (“We disagree with Petitioners that it would be appropriate to use the financial statements of the affiliated producer, or the affiliated parent's consolidated financial statements, to calculate the affiliated producer's COP for hot-rolled coil. The financial statements and segment information relied on by Petitioners would be inappropriate to use as an estimate of the cost of hot-rolled coil because they are not limited to the production of hot-rolled-rolled coil. Instead, they include an average cost for the many different steel products produced by the company.”)

<sup>52</sup> See, e.g., *Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 54264, 54265 (September 11, 2014), and accompanying Issues and Decision Memorandum at Comment 6, *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53370, 53375 (September 11, 2006), unchanged in *Notice of Final Results of the Twelfth Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 72 FR 13086 (March 20, 2007), *Plate from Brazil*, 63 FR at 12751; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea*, 65 FR 16880 (March 30, 2000), and accompanying Issues and Decision Memorandum at Comment 6.

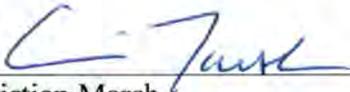
<sup>53</sup> See DSM Preliminary Analysis Memorandum at 4-5.

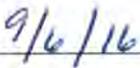
<sup>54</sup> *Id.*

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of these reviews and the final dumping margins for all of the reviewed companies in the *Federal Register*.

Agree  Disagree

  
\_\_\_\_\_  
Christian Marsh  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

  
\_\_\_\_\_  
(Date)