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January 23, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in the Less-Than-Fair-Value Investigation of
Certain Fabricated Structural Steel from Mexico

I. SUMMARY

The Department of Commerce (Commerce) finds that certain fabricated structural steel (fabricated structural steel) from Mexico is being, or is likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is January 1, 2018 through December 3, 2018.

We analyzed the comments submitted by interested parties and have made changes to the *Preliminary Determination*.¹ As a result of our analysis, and based on our findings at verification, we made changes to the margin calculations for Building Systems de Mexico, S.A. de C.V. (BSM) and Corey S.A. de C.V. / Industrias Recal S.A. de C.V. (Corey). We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

General

- Comment 1: Reporting Requirements for U.S. Sales
- Comment 2: Remove Home-Market Projects Outside the Reporting Requirements for U.S. Sales in the Constructed Value Profit Calculation

¹ See *Certain Fabricated Structural Steel from Mexico: Preliminary Affirmative Determination of Sales at Less-Than-Fair-Value and Postponement of Final Determination*, 84 FR 47487 (September 10, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).



BSM

- Comment 3: Whether BSM Failed to Report Accurate and Reliable U.S. Prices, and Whether to Apply Adverse Facts Available to BSM
- Comment 4: Whether BSM Should Report the Value of Subject Merchandise Through a Section E Questionnaire Response
- Comment 5: Valuation of an Order Associated with Two Different Sales
- Comment 6: Whether BSM Double Counted Revenue for an Order
- Comment 7: Alternate Differential Pricing Analysis
- Comment 8: Grant CEP Offset
- Comment 9: CEP Profit Rate Calculation
- Comment 10: Whether Commerce Should Use BSM's Reported Date of Sale
- Comment 11: Whether Commerce Should Use the Revised Indirect Selling Expense Ratio for Components Segment Sales
- Comment 12: BSM's Affiliated Party Input Purchases
- Comment 13: CV Profit Rate Used for BSM
- Comment 14: BSM's Financial Expense Ratio
- Comment 15: Adjustments Required by Mexican Financial Reporting Standards (MFRS)
- Comment 16: Application of Partial Facts Available With Adverse Inferences

Corey

- Comment 17: Whether Corey's Hudson Yards Tower A Project Sale Fell Within the POI
- Comment 18: Whether to Rescind Voluntary Respondent Treatment of Corey
- Comment 19: Adjust Corey's Report Costs to Account for All Affiliated Purchases
- Comment 20: Subtract Scrap Revenue from Total Cost of Manufacturing

II. BACKGROUND

On September 10, 2019, Commerce published the *Preliminary Determination* of sales at LTFV of fabricated structural steel from Mexico. From September through October 2019, we conducted verification of the sales and cost of production (COP) data reported by BSM and Corey, in accordance with section 782(i) of the Act.² In November 2019, we requested that Corey submit a revised U.S. sales database. We received this revised database in November 2019.

² See Memorandum, "Verification of the Sales Questionnaire Responses of Building Systems de Mexico S.A. de C.V. in the Antidumping Duty Investigation of Certain Fabricated Structural Steel from Mexico," dated October 31, 2019 (BSM's Mexico verification report); see also Memorandum, "Verification of NCI Group, Inc. and Robertson-Ceco II Corporation in the Antidumping Duty Investigation of Certain Fabricated Structural Steel from Mexico," dated October 31, 2019 (BSM's CEP verification report); Memorandum, "Verification of the Cost Responses of Building Systems de Mexico S.A. de C.V. in the Antidumping Duty Investigation of Certain Fabricated Structural Steel from Mexico," dated November 1, 2019 (BSM CVR); Memorandum, "Verification of the Sales Response of Corey S.A. de C.V. and Industrias Recal S.A. de C.V." dated November 5, 2019 (Corey SVR); and Memorandum, "Verification of the Cost Response of Corey S.A. de C.V. in the Antidumping Duty Investigation of Fabricated Structural Steel from Mexico," dated October 31, 2019 (Corey CVR).

We invited parties to comment on the *Preliminary Determination*.³ In November 2019, we received case briefs from BSM and the American Institute of Steel Construction Full Member Subgroup (the petitioner).⁴ We received rebuttal briefs from BSM, Corey, and the petitioner.⁵ On December 18, 2019, we held a public hearing.⁶

Based on our analysis of the comments received, as well as our verification findings, we revised our calculations of the weighted-average dumping margins for BSM and Corey from our calculations in the *Preliminary Determination*.

III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is fabricated structural steel from Mexico. For a complete description of the scope of this investigation, *see* Appendix I of the accompanying *Federal Register* notice.

IV. SCOPE COMMENTS

During the course of this investigation, and the concurrent AD and CVD investigations of fabricated structural steel from Canada, the People's Republic of China, and Mexico, Commerce received scope comments from interested parties. Commerce issued Preliminary Scope Decision Memoranda to address these comments and establish a period of time for parties to address scope issues in scope case and rebuttal briefs.⁷ We received comments from interested parties on the Preliminary Scope Decision Memoranda, which we addressed in the Final Scope Decision Memorandum.⁸ As a result, for this final determination, we made certain changes to the scope of these investigations from that published in the *Preliminary Determination*.

V. CHANGES SINCE THE PRELIMINARY DETERMINATION

³ *See Preliminary Determination*, 84 FR at 47488-89.

⁴ *See* BSM's Case Brief, "Certain Fabricated Structural Steel from Mexico: Case Brief of BSM," dated November 19, 2019 (BSM's Case Brief); *see also* Petitioner's Case Brief, "Certain Fabricated Structural Steel from Mexico: Case Brief," dated November 18, 2019 (Petitioner's Case Brief).

⁵ *See* BSM's Rebuttal Brief, "Fabricated Structural Steel from Mexico: Rebuttal Brief of BSM," dated November 27, 2019 (BSM's Rebuttal Brief); *see also* Corey's Rebuttal Brief, "Certain Fabricated Structural Steel from Mexico: Corey S.A. de C.V.'s Rebuttal Brief," dated November 27, 2019 (Corey's Rebuttal Brief); and Petitioner's Rebuttal Brief, "Certain Fabricated Structural Steel from Mexico: Petitioner's Rebuttal Brief," dated November 27, 2019 (Petitioner's Rebuttal Brief).

⁶ *See* Public Hearing Transcript regarding "Antidumping Duty Investigation on Fabricated Structural Steel from Mexico," dated December 18, 2019.

⁷ *See* Memorandum, "Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Preliminary Scope Decision Memorandum," dated July 5, 2019; *see also* Memorandum, "Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Second Preliminary Scope Memorandum," dated September 3, 2019 (collectively, Preliminary Scope Decision Memoranda).

⁸ *See* Memorandum, "Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Final Scope Decision Memorandum," dated concurrently with this memorandum (Final Scope Decision Memorandum).

We calculated export price (EP), constructed export price (CEP), constructed value (CV), and COP for BSM and Corey using the same methodology identified in the *Preliminary Determination*,⁹ except as follows:¹⁰

BSM

- We relied on BSM’s revised U.S. and COP databases, incorporating changes from the sales and cost verifications.
- We revised the commission offset. We relied on Corey’s home market (HM) sales related to projects contracted and completed during the POI to determine the amount of the offset. *See* Comment 2.¹¹
- We excluded a U.S. sale from our dumping margin calculations. *See* Comment 5.
- We granted a CEP offset. We relied on Corey’s publicly-ranged information to calculate the amount of the CEP offset. *See* Comment 8
- We revised the CEP profit rate. *See* Comment 9.
- We revised the reported cost of manufacturing to reflect the market price of unpainted coils. *See* Comment 12.
- We revised the reported per-unit total cost of manufacturing to include the adjustments required by MFRS C-6 and D-3, related to depreciation and labor expenses. *See* Comment 15.
- We revised the reported financial expense rate to correct a calculation error and include the scrap offset in the denominator of the calculation. *See* Comment 14.
- We applied partial adverse facts available to certain unreported U.S. sales. *See* Comment 16.
- We revised CV based on certain changes made to Corey’s CV.¹²

Corey

- We relied on Corey’s revised U.S. and COP databases, incorporating changes from the sales and cost verifications.

⁹ *See Preliminary Determination PDM; see also* Memoranda, “Analysis Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Fabricated Structural Steel from Mexico: Building Systems de Mexico S.A. de C.V.,” dated September 3, 2019 (BSM’s Preliminary Calculation Memorandum); “Constructed Value Calculation Adjustments for the Preliminary Determination- Building Systems de Mexico S.A. de C.V.,” dated September 3, 2019; “Analysis Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Certain Fabricated Structural Steel from Mexico: Corey S.A. de C.V.,” dated September 13, 2019 (Corey’s Preliminary Calculation Memorandum); and “Constructed Value Calculation Adjustments for the Preliminary Determination- Corey S.A. de C.V.,” dated September 3, 2019 (Corey’s Preliminary Cost Calculation Memorandum).

¹⁰ *See* Memoranda, “Analysis Memorandum for the Final Determination in the Antidumping Duty Investigation of Certain Fabricated Structural Steel From Mexico: Building Systems de Mexico S.A. de C.V.,” dated January 23, 2020 (BSM’s Final Calculation Memorandum); “Constructed Value Calculation Adjustments for the Final Determination – Building Systems de Mexico S.A. de C.V.,” dated January 23, 2020; *see also* Memoranda, “Analysis Memorandum for the Final Determination in the Antidumping Duty Investigation of Certain Fabricated Structural Steel from Mexico: Corey S.A. de C.V.,” dated January 23, 2020 (Corey’s Final Calculation Memorandum); “Constructed Value Calculation Adjustments for the Final Determination- Corey S.A. de C.V.,” dated January 23, 2020 (Corey’s Final CV Calculation Memorandum).

¹¹ *See* BSM’s Final Calculation Memorandum.

¹² *Id.*

- We adjusted direct material cost to reflect the market price of certain steel materials. *See* Comment 19.
- We revised the CV profit rate to reflect Corey’ HM sales related to projects contracted and completed during the POI. *See* Comment 2.¹³
- We revised the selling expenses ratio to reflect Corey’s HM sales related to projects contracted and completed during the POI. *See* Comment 2.¹⁴
- We revised the HM credit ratio to reflect Corey’ HM sales related to projects contracted and completed during the POI. *See* Comment 2.¹⁵

VI. DISCUSSION OF THE ISSUES

Comment 1: Reporting Requirements for U.S. Sales

Petitioner’s Comments:

- Commerce should instruct Corey to report all U.S. sales of fabricated structural steel for each project *completed* (*i.e.*, delivered under the terms of the contract) during the POI,¹⁶ as it did in the China and Canada fabricated structural steel investigations, rather than requiring it to report all sales of fabricated structural steel for each project contracted and completed during the POI.¹⁷
- Commerce has neither explained, nor justified, why it issued different reporting instructions in the instant investigation than it issued in the investigations covering fabricated structural steel from China and Canada.¹⁸
- Commerce’s approach in the instant investigation greatly reduces the number of reported sales, because many large, multi-year projects that are typically more aggressively priced take longer than one year to complete.¹⁹ Therefore, the U.S. sales that contribute to the bulk of total imports and that are most injurious, are excluded from examination.²⁰
- This reporting methodology generally limits the universe of reported sales to small-scale projects with a quick turnaround that are relatively high priced.²¹ However, even such short-term projects that commenced just prior to, or immediately after, the POI would not be reported.²² Thus, Commerce’s reporting methodology selected only minor, unrepresentative sales for examination.²³

¹³ *See* Corey’s Final CV Calculation Memorandum.

¹⁴ *Id.*

¹⁵ *See* Corey’s Final Calculation Memorandum.

¹⁶ *See* Petitioner’s Case Brief at 15 (citing Petitioner’s Letter, “Certain Fabricated Structural Steel from Mexico: Petitioner’s Comments on Corey’s Sections C and D Questionnaire Responses,” dated June 17, 2019, at Exhibit 1 (containing excerpts of U.S. sales reporting requirements issued to respondents in the concurrent LTFV investigations of fabricated structural steel from China and Canada) (emphasis in the original)).

¹⁷ *Id.* at 17.

¹⁸ *Id.* at 15.

¹⁹ *Id.* at 16.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

- Record evidence indicates that neither BSM²⁴ nor Corey²⁵ reported all U.S. sales that were for projects completed within the POI (which should be the reporting criterion).²⁶

Corey's Comments:

- Even if Commerce were to define the universe of reportable sales based solely on the project completion date being within the POI; Corey's reported sales would remain unchanged.
- Similarly, all costs incurred on all HM projects completed during the POI were reported.

BSM's Comments:

- It is impractical to require BSM to report a large number of additional sales at this late stage of the investigation.
- Commerce likely adopted a different approach in the Canada and China investigations because the mandatory respondents in those cases have far fewer sales.
- While the petitioner argues that projects in the fabricated structural steel industry usually take longer than one year to complete, the projects supplied by BSM are typically completed within a few months.
- Due to the large number of sales, and the uniqueness of each sale, Commerce's decision to restrict the universe of sales to contracted and completed during the POI is both reasonable and appropriate.²⁷

Commerce's Position: Commerce's practice, in investigations, is to rely on the date of sale in defining the universe of sales. Commerce's AD questionnaire for investigations provides a number of instructions in identifying the universe of sales. Instructions in Section A of the questionnaire include the following:

If Commerce has requested that you file your response to section A before your responses to sections B and C, in responding to this question, you may use the date of sale you use in your accounting system to determine the quantity and value sold during the period of investigation.

Instructions in Section C of the questionnaire include the following:

In accordance with the instructions provided in this section, prepare a separate computer data file containing each sale made during the POI of the subject merchandise, ...

²⁴ *Id.* at 16 (citing Petitioner's Letter, "Certain Fabricated Structural Steel from Mexico: Petitioner's Comments on Corey's Section A Second Supplemental Questionnaire," dated July 9, 2019, at 10).

²⁵ *Id.* at 16-17 (citing Corey's Letter, "Certain Fabricated Structural Steel from Mexico: Response of Corey S.A. de C.V.'s to the Department's Request for Information," dated April 10, 2019, at 1; and Corey's June 3, 2019 Section C Questionnaire Response at Exhibit C-3a.).

²⁶ *Id.* at 16-17.

²⁷ See BSM's Rebuttal Brief at 30 and 31 (citing section 777A(a)(1), (b) of the Act; 19 CFR 351.204(a); and 19 CFR 351.204(b)(1)).

In developing sales reporting requirements for this case, we attempted to adhere as closely as possible to the normal sales reporting requirement, which is based on the date when the sale is made. Early in this case, based on the petitioner's comments regarding contract and date of sale, we thought contract date would be appropriate for identifying sales within the POI. However, we did not believe it would be feasible to solely rely on contract date in defining the universe of sales. We stated the following in the preliminary determination:

{F}abricated structural steel is unique in that it is typically custom-made for a specific-project and normally it has not been manufactured by the date of the sale. All movement charges and adjustments for sales of fabricated structural steel may not be known until the fabricated structural steel has been produced and the project completed. Given these facts, we determined that the universe of U.S. sales examined should be based on contracted sales that were substantially completed during the POI.²⁸

Relying on the contract date as a reporting criterion is in harmony with our practice of using the date of sale in defining the universe of sales. However, considering the unique nature of fabricated structural steel projects, we required that the universe of sales be limited to projects completed during the POI so the respondent would be able to report all movement charges, adjustments, and costs associated with the fabricated structural steel project.

The petitioner argues that because many fabricated structural steel projects are large, multi-year projects, by limiting the universe of sales to only those sales contracted and completed during the POI, Commerce selected only minor, unrepresentative sales for examination. We disagree.

BSM explained:

For BSM, and its U.S. affiliates involved in the production of pre-engineered metal building systems, fabrication typically takes less than a week. ... bids typically are prepared within 1-2 weeks. ... For the NCI group of companies {BSM's U.S. affiliated resellers}, the entire sales process {from initial bid to project completion} for a pre-engineered metal building system typically takes a year or less."²⁹

Therefore, the petitioner's argument is not correct with respect to BSM.

The petitioner's argument is also irrelevant with respect to Corey. We compared Corey's sales for projects completed during the POI with its sales for projects contracted and completed during the POI and found there were no additional sales with a completion date in the POI that were not

²⁸ See *Preliminary Determination* PDM at 13.

²⁹ See BSM's Letter, "Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Scope Comments," dated March 25, 2019, at 5-6.

already reported by Corey in its Section C Response.³⁰ Thus, regardless of which reporting methodology is used, Corey would have reported the same U.S. sales.

Comment 2: Remove Home-Market Projects Outside the Reporting Requirements for U.S. Sales in the Constructed Value Profit Calculation

Petitioner's Comments:

- Commerce instructed the respondents to report sales of subject merchandise for each U.S. fabricated structural steel project contracted and completed during the POI.³¹
- However, for purposes of calculating CV profit, Commerce requested that the respondents provide revenue, cost, and profit information for all of their HM sales of the foreign like product for projects completed, and for which final payment was received, during the POI.
- There is no justification for calculating CV profit using HM sales that are reported on a different basis than U.S. sales.
- Commerce has a practice of requesting that HM and U.S. sales be reported on the same basis to ensure an apples-to-apples comparison.
- When verifying Corey, Commerce found a HM project was not contracted and completed during the POI. Thus, HM sales related to this project should be excluded from the CV profit calculation.

Corey's Comments:

- The petitioner cites no statute, regulation, case law or Commerce precedent supporting its argument for a strict limitation of the universe of HM sales that Commerce can rely upon for CV profit. The only statutory requirement is for Commerce to use “the actual amounts realized by the specific exporter or producer for profits, in connection with production and sale of a foreign-like-product.” Both the statute and regulations are silent on the period for reporting HM sales for CV profit purposes.
- Thus, Commerce has authority to determine which HM sales it will use for CV profit based on the facts of the particular investigation or review.
- The U.S. and HM sales used by Commerce in its *Preliminary Determination* calculations relate to fabricated structural steel projects completed over the same time period. Thus, the sales were reported on the same basis.
- While the petitioner requests that Commerce exclude from its CV profit calculations sales for a certain HM fabricated structural steel project that was under contract prior to the POI, the fabricated structural steel for the project was produced during the POI and the project was completed during the POI (which was verified by Commerce). There is no reason to exclude from the calculation of CV profit sales for a HM fabricated structural steel project that was manufactured and completed over the same period as U.S. projects.
- In *LNPPs from Japan*, Commerce selected HM sales that reasonably corresponded to the time of the U.S. sales for determining CV profit, including sales made prior to the period

³⁰ See Corey's Letter, “Certain Fabricated Structural Steel from Mexico: Response of Corey S.A. de C.V.'s to the Department's Request for Information,” dated April 10, 2019.

³¹ See Petitioner's Case Brief at 4 (citing Commerce's Letter, “Less-Than-Fair-Value Investigation of Certain Fabricated Structural Steel from Mexico,” dated April 11, 2019 (issuing Sections C, D, and E of the questionnaire)).

of review.³² Excluding the HM project as the petitioner suggests, when that project was entirely manufactured in 2018 (the POI), would run contrary to Commerce’s rationale in *LNPPS from Japan*.

- Commerce should continue to rely on the same CV profit calculation used in the Preliminary Determination (*i.e.*, base CV profit on Corey’s HM sales of fabricated structural steel manufactured and completed in the POI, which is consistent with the statute, applicable regulations, and Commerce’s precedent).

BSM’s Comments:

- The petitioner’s argument must be rejected. Excluding the sale of the fabricated structural steel project that was identified by the petitioner from the CV profit calculations would result in an even more unrepresentative and unreasonable profit rate, particularly when applied to BSM.
- However, if Commerce excludes the sale identified by the petitioner from its CV profit calculation, it should also exclude from the calculation sales related to another project, because record evidence (which is business proprietary information) indicates this project was contracted outside the POI.
- Moreover, sales for this additional project are outside the ordinary course of trade, with profit rates that are outliers that cannot be used to establish BSM’s profit rate. The petitioner itself supports this argument, because it encouraged Commerce to expand the universe of reportable sales for Corey, noting that Commerce’s reporting requirements limit “the universe of sales used in dumping calculations to small-scale, quick turn-around projects – projects that are relatively high priced.”
- To avoid using an unrepresentative high profit rate, Commerce should consider the alternative CV profit calculations proposed by BSM (which are explained and addressed in Comment 13).

Commerce’s Position: We agree with the petitioner that we should only use HM sales that are within the POI, as determined using the same reporting methodology as U.S. sales, to calculate CV profit. As explained in the *Preliminary Determination*, “... based on our practice, we have calculated CV profit and indirect selling expenses based on the home market sales for the same period.”³³ Specifically, we used Corey’s HM sales related to projects contracted and completed during the POI to calculate CV profit for both BSM and Corey. This approach is appropriate, because CV is the basis for normal value (NV) in this case, and section 773(a)(1)(A) of the Act directs Commerce to base NV on prices at a time reasonably corresponding to the time of U.S. sales. The time of U.S. sales is defined by the reporting requirements used in this investigation -- sales of projects contracted and completed during the POI.

³² *Id.* at 9 (citing *Large Newspaper Printing Presses and Components Thereof Whether Assembled or Unassembled, From Japan: Final Results of Antidumping Duty Administrative Review*, 66 FR 11555 (February 26, 2001) (*LNPPS from Japan*), and accompanying Issues and Decision Memorandum (IDM) at Comment 1, where Commerce stated “Accordingly, in defining the universe of HM sales for this proceeding, we have identified all home market sales of foreign like product made at a time which reasonably corresponds to the time of each respondent’s U.S. sale. Due to the custom-built nature of the products under consideration (and thus the long lag time between sale of the merchandise and its final installation at the customer’s site), the resulting pool of sales for each respondent begins prior to the POR”).

³³ See *Preliminary Determination PDM* at 20.

Additionally, Corey's suggested criteria are not consistent with Commerce's practice for identifying reportable sales. Using the same reporting criteria for both HM and U.S. sales is consistent with our established practice. Because we used the contract and completion dates to identify reportable U.S. sales these same criteria should be used to identify HM sales for purposes of our calculations. We do not use manufacturing periods to define the universe of reportable sales.

While Corey argues that HM projects that were manufactured and completed over the same period as U.S. projects serve as a suitable basis for calculating CV profit, using manufacturing period to define reportable sales is an imprecise methodology that can be open to interpretation. It is not clear if Corey is suggesting a methodology where all manufacturing of U.S. and HM projects must take place during the POI or if there simply needs to be some overlap between the manufacturing periods. Using such criteria would add an unnecessary level of complexity to identifying the appropriate sales for calculating CV profit and, as explained above, is not consistent with Commerce's sales reporting methodology.

Corey cites *LNPPs from Japan* to argue that, in defining the universe of HM sales, Commerce should use HM sales that reasonably correspond to the time of the respondents' U.S. sales. Corey provided an excerpt from that case which indicates that HM sales before the period of review were used in Commerce's analysis. However, the universe of HM sales in *LNPPs from Japan* was based on the "90/60" rule for administrative reviews.³⁴ As such, for the mandatory respondents in *LNPPs from Japan*, TKS and MHI, the universe of HM sales examined began prior to the period of review (09/01/1998 through 08/31/1999) in July 1998 and October 1997, respectively.³⁵ The "90/60" rule is not applicable in investigations and it is Commerce's practice to use sales within the time period for which data were collected (*i.e.*, the POI).³⁶ This is consistent with the methodology we described in the *Preliminary Determination*, to use HM sales with the same reporting methodology as U.S. sales.

During verification, we examined HM sales for various projects to confirm that these sales were correctly reported for HM projects contracted and completed during the POI. The results of our verification show that the HM sale that was identified by the petitioner and used to calculate CV profit in the *Preliminary Determination* does not meet our sales reporting requirements.³⁷ Therefore, we have not used that sale in calculating CV profit for the final determination.

BSM argues that HM sales for another project used in the calculation of CV profit fall outside the POI. We examined the record evidence cited by BSM to support its argument (which is

³⁴ See *LNPPs from Japan* IDM at Comment 1.

³⁵ *Id.*; see also *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Preliminary Results of Antidumping Duty Administrative Review*, 65 FR 62705 (October 19, 2000), explaining that one sale by MHI during the previous review was not fully delivered and installed. As a result, the examination of that sale was postponed until this particular review which resulted in the universe of HM sales to expand to October 1997 despite the period of review beginning in September 1998.

³⁶ See *LNPPs from Japan* IDM at Comment 1.

³⁷ See Memorandum, "Proprietary Information in the Final Determination of the Antidumping Duty Investigation of Certain Fabricated Structural Steel from Mexico: Corey S.A. de C.V." dated concurrently with this memorandum (Corey's BPI Memorandum) at Note 1.

business proprietary information that cannot be discussed here) and found the evidence does not substantiate BSM's argument.³⁸ Furthermore, Corey did not argue that any of its HM sales should be excluded from the CV profit calculation or that any fall outside the POI. Consequently, we have not excluded from our calculation of CV profit, HM sales for projects with a contract or purchase order date and a completion date during the POI.

Comment 3: Whether BSM Failed to Report Accurate and Reliable U.S. Prices, and Whether to Apply Adverse Facts Available to BSM

All of BSM's reported U.S. sales are CEP sales made by U.S. affiliates, NCI Group, Inc. and Robertson-Ceco II Corporation (collectively, NCI) through the Buildings or Components business segments. The Buildings segment designs pre-engineered metal buildings for customers and then produces and sells to the customer all of the metal components required to construct the shell of the building. The Buildings segment charges the customer one price for the entire metal building package. The metal structural components in the building package include both subject fabricated structural steel produced by BSM in Mexico and non-subject components produced in the United States. Different sections of the building are produced, shipped, and invoiced together. NCI refers to these different sections of the building as project phases. While the Buildings segment charges the customer one price for the entire metal building package, NCI invoiced the customer for separate phases of the building. BSM reported the gross unit sales price for the subject fabricated structural steel included in the pre-engineered metal building based on NCI's invoice to the customer for the building phase containing subject fabricated structural steel and the weight of that fabricated structural steel, as measured when BSM shipped the fabricated structural steel to NCI Group, Inc. in the United States. BSM referred to this reporting methodology as the Invoice Methodology.³⁹

The Components segment does not design pre-engineered metal buildings for customers, but sells metal structural building components to customers based on the customers' orders. The Components segment does not list the total quantity and value of the subject fabricated structural steel that it sells on the sales invoice but lists those figures on a Weight Sheet. BSM used these Weight Sheets to report gross unit U.S. sales prices of subject fabricated structural steel to Commerce. BSM referred to this reporting methodology as the Weight Sheet Methodology.⁴⁰

For certain U.S. sales of fabricated structural steel during the POI, NCI did not issue a sales invoice itemized by project phase or a Weight Sheet to the customers. However, NCI reported that it is able to identify the BSM-produced components that it sold in its accounting system. For these sales, BSM reported a sales price that was allocated to BSM-produced merchandise using documents generated to prepare the price quote for the project. BSM referred to this reporting methodology as the Quote Methodology.⁴¹

Petitioner's Comments:

³⁸ *Id.* at Note 2.

³⁹ *See* BSM's July 26, 2019, Section C Supplemental Questionnaire Response at 5.

⁴⁰ *Id.* at 7.

⁴¹ *Id.*

- Commerce should not rely on the gross unit U.S. sales prices reported by BSM. The gross unit U.S. sales prices do not represent the negotiated price at which the merchandise was sold to the first unaffiliated customer, as required by the statute.⁴² Moreover, the gross unit U.S. sales prices were calculated using quantities on internal invoices from BSM to NCI Group, Inc.
- The arbitrary phase breakout prices used for the Invoice and Weight Sheet reporting methodologies have no meaning for the customer, as they were not negotiated with the U.S. customer. BSM admitted that only one price for the entire building project is negotiated with the U.S. customer, not the individual prices charged for components or phases of a building project. Regardless of whether the individual phase price is listed on the invoice or could be linked to supporting documents used to prepare quotes, Commerce cannot use the internally derived phase pricing as the starting point for BSM's sales or for the sales adjustments. The phase prices reflect pricing between BSM and NCI Group, Inc. BSM could manipulate the individual phase pricing so long as the total project building price remains the same price negotiated with the U.S. customer.
- BSM also inappropriately used internal quantities that were obtained from BSM's invoices to NCI Group, Inc., in calculating the reported gross unit U.S. sales prices.
- Pricing for the Quote Methodology is also unreliable, because it is based on self-selected allocations.
- When multiple items, including subject merchandise, are grouped and sold together, Commerce's practice for determining an accurate sales price for the subject merchandise is to use information reported in a response to section E of the antidumping duty questionnaire (the section of the questionnaire concerning the cost of further manufacturing in the United States) to back out the costs of the non-subject merchandise from the total sales price for the group of merchandise that was sold.
- BSM did not explain its various non-compliant reporting methodologies for deriving the U.S. price and quantity of subject merchandise until later in the proceeding with limited time before the *Preliminary Determination*.
- In addition to reporting fictitious gross unit prices, BSM developed inaccurate methodologies to report per-unit values for eleven sales adjustments.
- BSM's failure to provide crucial quantity and pricing information significantly impeded this investigation. BSM's supplemental questionnaire responses did not adequately remedy or explain its non-compliant reporting methodologies. Pursuant to section 782(d) of the Act, Commerce should find BSM's explanation of its reporting methodologies to be unsatisfactory and exercise its discretion to disregard BSM's original and subsequent supplemental questionnaire responses.
- Because accurate prices are missing from the record due to BSM's failure to provide them, Commerce should rely on total adverse facts available (AFA) for its final determination.
- If Commerce does not apply total AFA for BSM's failure to report accurate and reliable prices, it should apply partial AFA by assigning an AFA rate to sales reported using the Quote Methodology, the most egregious of BSM's contrived reporting methodologies.

BSM's Comments:

⁴² See Petitioner's Case Brief at 23 (citing section 772 of the Act).

- The petitioner presented primarily the same arguments from its August 15, 2019 pre-preliminary comments, which Commerce implicitly rejected in the *Preliminary Determination* by using the prices and quantities reported by BSM and NCI Group, Inc.
- Section 772(b) of the Act defines the starting sales price as “the price at which the subject merchandise is first sold . . . to a purchaser not affiliated with the producer.”⁴³ BSM reported its affiliated U.S. resellers’ sales of BSM-produced fabricated structural steel to unaffiliated U.S. customers. BSM did not report internal transfer prices with NCI Group, Inc. The reported price is the *price charged to and paid by* the unaffiliated U.S. customer specifically for BSM-produced merchandise.
- The price of an entire pre-engineered metal building sold by the Buildings segment is based on anticipated costs plus a mark-up for the various components of that project. Through this process, the prices of the individual building components are determined. Phase pricing is based on this same process. Phase pricing, including the prices charged for building phases containing fabricated structural steel, is not arbitrarily decided. In fact, NCI recognizes revenue and tracks expected costs and revenue by phase, not by project. NCI Building Systems, Inc., the parent company, is a publicly traded company and, thus, it cannot arbitrarily assign revenue to specific phases of a project that is not representative of the value of what was sold and in accordance with U.S. generally accepted accounting principles (GAAP).
- For sales made by the Components segment, prices for frames (the subject fabricated structural steel produced by BSM) are communicated and negotiated with the customer. The prices for different types of frames are reflected in the Weight Sheet that is provided to the customer.
- If Commerce has concerns regarding U.S. sales with prices reported using the Quote Methodology, it should exclude these sales from its calculations as it did in the *Preliminary Determination*.
- The quantities in BSM’s invoices to NCI Group, Inc., which were used to calculate the reported gross unit U.S. sales prices, are actual quantities that can be tied to sales to the unaffiliated customer, as Commerce found during verification.
- The petitioner’s concerns of price manipulation are misguided, because the sales documentation at issue was generated months before the petitioner filed this case.
- Backing out the cost of non-BSM material from the complete building project price would involve a convoluted set of allocations and adjustments and would begin with the price of non-subject merchandise (a pre-engineered metal building). The flaw in the petitioner’s argument is that the resulting price would not be the price at which the subject merchandise was first sold to an unaffiliated U.S. customer.
- BSM and NCI explained their reporting methodologies in their initial and supplemental questionnaire responses, and Commerce found the reported information reliable and useable for purposes of calculating a preliminary dumping margin for BSM.
- There is no basis to determine BSM’s dumping margin using adverse facts available. The U.S. Court of Appeals for the Federal Circuit (CAFC) held that Commerce is required to consider “the overall facts and circumstances of each case, including the level of culpability of the non-cooperating party, in an AFA analysis.”⁴⁴ BSM reported

⁴³ See BSM’s Rebuttal Brief at 11 (citing section 772(b) of the Act).

⁴⁴ *Id.* (citing *BMW of N. Am. LLC v. United States*, 926 F.3d 1291, 1301 (Fed. Cir. 2019)).

project-specific information for a large number of sales and experienced significant burdens in doing so because it does not use a job order accounting system. BSM is also a cooperating respondent in the companion countervailing duty investigation. BSM's level of cooperation in this case has been extraordinary.

- Regarding the petitioner's allegation concerning sales adjustments, respondents frequently allocate expenses between subject merchandise and non-subject merchandise. Subject merchandise is commonly shipped with non-subject merchandise; thus, allocations are unavoidable.⁴⁵

Commerce's Position: We disagree that the reported U.S. sales quantities and values, with the exception of U.S. sales reported using the Quote Methodology, are unreliable and cannot be used to calculate BSM's dumping margin. Furthermore, we disagree with the petitioner that BSM developed inaccurate methodologies to report per-unit expenses for certain price adjustments and that the application of total, or partial, adverse facts available is appropriate. We address each of these issues in the separate sections below.

U.S. Sales Prices

As stated above, BSM only reported CEP sales during the POI. Specifically, NCI sold BSM-produced subject merchandise, purchased from BSM, to unaffiliated U.S. customers. NCI sold subject merchandise through its Buildings and Components business segments. We discuss sales made through each of these segments below.

1. Buildings Segment

Contrary to the petitioner's claim, the price charged for subject fabricated structural steel that was sold by the Buildings segment during the POI and that was reported to Commerce in the U.S. sales database is not an internal price that is unknown by, and not communicated to, the unaffiliated U.S. customer. Rather, the price of the BSM-produced subject fabricated structural steel that was included in the pre-engineered metal building package was separately identified and itemized on commercial invoices that were issued to unaffiliated U.S. customers. In a supplemental questionnaire response, BSM explained that "NCI is able to determine which phases on the invoice reflect BSM material..." and that "... the exact price for the BSM material is reflected in the invoice issued to the unaffiliated customer."⁴⁶ Record evidence does not indicate that this reported price was arbitrarily assigned to the building phase containing subject merchandise or otherwise subjectively allocated to building phases for purposes of this LTFV investigation.⁴⁷ At verification, we observed that NCI records and tracks the costs and prices of each phase of a building project in the normal course of business.⁴⁸ BSM reported to Commerce the building phase prices recorded in NCI's records.

⁴⁵ *Id.* at 16 (citing, *e.g.*, Commerce's Section C Questionnaire issued to BSM (April 11, 2019) at 20, 21, 28, 34).

⁴⁶ *See* BSM's July 26, 2019, Section C Supplemental Questionnaire Response at 5.

⁴⁷ *See* BSM's CEP verification report at 7-10 and Verification Exhibits 7 and 8.

⁴⁸ *Id.*

Yet we agree with the petitioner, and we confirmed during verification, that, when the Buildings segment sells a package of components required for an entire pre-engineered metal building, “NCI and the customer negotiate the price of the entire structure, not the price of individual components of the structure.”⁴⁹ However, NCI determines the price charged for the entire structure through a rigorous process that allows it to identify the sales value of various phases (parts) of the building project. These phase sales values sum to the total sales price charged to the unaffiliated customer for the entire set of components for the building. The prices for building phases containing subject fabricated structural steel are the sales values reported to Commerce. The basis for the reported prices can be better understood through a more detailed review of NCI’s rigorous costing and pricing process.

NCI designs the pre-engineered metal building using a software program that utilizes the building specifications/requirements provided by the customer. The software generates a bill of materials, which “identifies each component of the building, from the primary components (*e.g.*, frames, long bay purlins, *etc.*) to hardware such as bolts and screws, as well as the weight and cost of each item.”⁵⁰ The “underlying costs {in the software} come from a Part Data file which includes the cost for every item that will be used in the building.”⁵¹ Once the total cost of the package of building components is determined, the total price for the project (*i.e.*, the price that will be charged for all of the components of the building) is calculated using the total building costs and a proprietary formula.⁵² The propriety formula takes into consideration various attributes of the project.⁵³ During verification, we thoroughly examined this costing/pricing process. For a selected sale reported in the U.S. sales database, we examined various records relating to this process, including entries used to record the cost and revenue for the building phase that contained BSM-produced subject fabricated structural steel. The revenue recorded in NCI’s records for this phase matched the revenue recorded on the invoice issued to the U.S. customer. That same revenue was used in reporting the gross unit price in the U.S. sales database. At verification, we multiplied the proprietary pricing formula that was used to price the entire package of building components by the cost of the fabricated structural steel phase and calculated revenue for the phase that is consistent with the revenue for that phase recorded in NCI’s records and on the invoice issued to the customer.⁵⁴ These findings demonstrate that the phase revenue used in reporting to Commerce is part of the overall building package revenue negotiated with the U.S. customer.

2. Components Segment

We disagree with the petitioner’s claim that the gross unit prices reported for U.S. sales by the Components segment are arbitrary internal prices that have no meaning for the customer because they were not negotiated with the U.S. customer. Due to the nature of the record keeping

⁴⁹ *Id.* at 7.

⁵⁰ See BSM’s CEP verification report at 7.

⁵¹ See Memorandum, “Proprietary Information in the Final Determination of the Antidumping Duty Investigation of Certain Fabricated Structural Steel from Mexico: Building Systems de Mexico, S.A. de C.V.,” dated concurrently with this memorandum (BSM’s BPI Memorandum) at Note 1.

⁵² *Id.* at Note 2.

⁵³ *Id.* at Note 3.

⁵⁴ *Id.* at Note 4.

software used by the Components segment, the total sales quantity and value of fabricated structural steel (building frames) sold to unaffiliated U.S. customers by the Components segment are recorded on a document referred to as a Weight Sheet. At verification, we obtained evidence showing that Weight Sheets are issued to customers and that NCI negotiates the price of frames (*i.e.*, subject merchandise) directly with customers.⁵⁵ During verification, we examined a copy of a customer's email requesting a price adjustment, and a reissued Weight Sheet with the revised price as a result of this request.⁵⁶ Company officials explained that "{unit} prices for products generally remain consistent unless the customer negotiates a different price or NCI enacts percentage increases in prices."⁵⁷ The price increases established by NCI are also conveyed to the customer through letters.⁵⁸ Based on the forgoing, we find the record evidence does not support the petitioner's allegation regarding Component segment sales.

U.S. Sales Quantities

The petitioner also argues that the reported quantities that were used to calculate the gross unit U.S. sales prices are unreliable because they were obtained from BSM's sales invoice to NCI Group Inc. However, the quantities on BSM's sales invoices to NCI Group Inc. are the actual quantities of the subject fabricated structural steel that NCI sold to its unaffiliated U.S. customers during the POI. During our verification of NCI, we observed that, while NCI tracks shipments to its unaffiliated U.S. customers based on order and phase number, it only maintains theoretical weights, rather than actual weights, in its record keeping systems.⁵⁹ Moreover, NCI does not record the weight of the fabricated structural steel in the sales invoice that it issues to its unaffiliated U.S. customers. Thus, actuals weights may only be obtained from BSM's invoices to NCI Group Inc.

During our verification of BSM, company officials stated that, "... the scaled truck weights, before and after loading (the difference between the before and after loading weights, less dunnage, is the weight of the merchandise on the truck), are the only actual weights recorded and maintained by BSM."⁶⁰ At verification, we tested the accuracy of the weights recorded on BSM's sales invoices to NCI Group Inc. by comparing the weights on the weight tickets to the weights on BSM's sale invoices for selected orders.⁶¹ We noted that the scaled weights that we examined (after subtracting dunnage) equal the weights listed on the corresponding BSM sales invoices.⁶² We also observed that BSM tracks the shipment of merchandise to NCI Group Inc. using order and phase numbers.⁶³ NCI was able to link the weights on BSM's sales invoices to its sales of subject fabricated structural steel to unaffiliated U.S. customers using, as appropriate, those order and/or phase numbers. Therefore, BSM appropriately reported these weights in the U.S. sales database.

⁵⁵ See BSM's CEP verification report at 10.

⁵⁶ *Id.* at 11.

⁵⁷ *Id.* at 11 – 12.

⁵⁸ *Id.* at 11.

⁵⁹ See BSM's CEP verification report at 16.

⁶⁰ See BSM's Mexico verification report at 14.

⁶¹ *Id.* at 12.

⁶² *Id.*

⁶³ See BSM's BPI Memorandum at Note 5.

Price Adjustments

Furthermore, we disagree with the petitioner that BSM's reported per-unit price adjustments or expenses are inaccurate. We looked to Commerce's regulations as a starting point when analyzing this issue. The regulation governing allocations is found at 19 CFR 351.401(g)(2) and states:

Reporting allocated expenses and price adjustments. Any party seeking to report an expense or a price adjustment on an allocated basis must demonstrate to the Secretary's satisfaction that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology used does not cause inaccuracies or distortions.⁶⁴

BSM reported allocated price adjustments or expenses for eleven expense fields using data related to both subject and non-subject merchandise.⁶⁵ In its response to Section C of the questionnaire (the section of the questionnaire concerning U.S. sales), BSM reported that it was unable to isolate certain expenses for BSM's subject merchandise from expenses for non-subject merchandise using the available electronic data systems, and therefore, it "...has reported the field{s for such expenses} as specifically as possible for the subject merchandise...."⁶⁶ We find that BSM's reporting methodology for these eleven price adjustments or expenses is consistent with how BSM or NCI tracks these price adjustments or expenses in the normal course of business. Furthermore, record evidence indicates that BSM is not able to report these expenses on a more specific basis. For example, the expenses for technical services (*i.e.*, TECHSERU field) are recorded within a particular cost center for the Buildings segment, which includes expenses for both subject and non-subject merchandise.⁶⁷ As another example, NCI Building Systems, Inc.'s U.S. inland insurance policies (*i.e.*, USINSURU field) cover products sold through the Buildings, Components, IMP, and Coaters segments.⁶⁸ Because it is not possible to obtain an expense specific to subject merchandise, the per-unit inland insurance expense was calculated by dividing the annual global transportation insurance expense by the total tons of merchandise sold by these four business segments for each policy period. Accordingly, we find BSM's reporting methodology for these eleven price adjustments is both reasonable and reliable.

Use of Adverse Facts Available

Finally, we find that neither the use of facts available, nor AFA, is warranted. Under section 776(a) of the Act, Commerce may resort to facts available where necessary information is not available on the record or an interested party or any other person: (1) withholds requested information; (2) fails to provide such information by the deadlines established, or in the form or manner requested; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified. Furthermore, where an interested party has not acted to the

⁶⁴ See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413 (March 26, 2012) (*Refrigerators from Korea*), and accompanying IDM at Comment 12.

⁶⁵ See BSM's August 6, 2019, Section C Supplemental Questionnaire Response at 3-4.

⁶⁶ See BSM's June 4, 2019, Section C Response at 1-2.

⁶⁷ See BSM's CEP verification report at 31.

⁶⁸ *Id.* at 29-30.

best of its ability, section 776(b) of the Act allows Commerce to use adverse inferences in applying facts available.

Necessary information is not missing from the record. Although the petitioner maintains that BSM should have provided the type of information requested in Section E of Commerce's questionnaire, as explained in more detail in Comment 4, we have determined that such information is not required.

Furthermore, BSM has not withheld requested information or failed to provide requested information by the deadlines established or in the form or manner requested. The information reported by BSM and NCI was verified by Commerce with the exception of certain minor items and unreported sales. While the petitioner contends that BSM significantly impeded this investigation by failing to provide crucial quantity and pricing information, for the reasons explained above in our discussion of the Buildings and Components segments' sales, we do not find that to be the case.

The petitioner claims that BSM's supplemental questionnaire responses did not adequately remedy or explain its non-compliant reporting methodologies and that Commerce should find BSM's explanation of its reporting methodologies to be unsatisfactory and exercise its discretion to disregard BSM's original and subsequent supplemental questionnaire responses. However, in its response to Section A of the questionnaire (the section of the questionnaire concerning, *inter alia*, corporate structure), BSM disclosed that subject merchandise was sold through two different segments (*i.e.*, Buildings and Components segments) and it provided sample sales documentation for a sale through each segment.⁶⁹ In response to Commerce's supplemental questionnaire seeking further clarification regarding how BSM's reported sales quantities and values link to commercial invoices and other sales documentation, BSM described each methodology used in reporting U.S. sales.⁷⁰ Moreover, during verification, NCI provided detailed explanations of its sales processes and how it determined U.S. sales prices.⁷¹ We verified this information and found BSM's explanations of its reporting methodologies satisfactory. There is no basis to disregard the reported information.

Further, with the exception of its failure to report certain U.S. sales (*see* Comment 16 below), BSM cooperated to the best of its ability in this investigation, from the questionnaire response stage through Commerce's verifications. Other than the unreported sales discussed in Comment 16, BSM submitted requested information in a timely manner. In addition, BSM fully cooperated in Commerce's verifications. Therefore, with the exception of the unreported sales, there is no basis for using adverse inferences.

Lastly, there is no basis for applying partial AFA to sales reported using the Quote Methodology. Using the Quote Methodology, NCI estimated the sales values for a minority of Components segment sales during the POI.⁷² In the *Preliminary Determination*, we decided to exclude these sales from our dumping margin calculation because the prices for these sales are not actual prices

⁶⁹ See BSM's May 1, 2019 Section A Questionnaire Response at Exhibits A-12 and A-13.

⁷⁰ See BSM's July 26, 2019, Section C Supplemental Questionnaire Response at 5-8.

⁷¹ See BSM's CEP verification report under "Sales Process" section.

⁷² See BSM's July 26, 2019, Section C Supplemental Questionnaire Response at 7-8.

but were based on allocations. We continue to find that the prices of the sales reported using the Quote Methodology were allocated to subject merchandise and are not reliable for determining the actual prices charged for subject merchandise. However, as explained above, with the exception of certain unreported sales, there is no basis for using adverse inferences with respect to BSM. On the other hand, Commerce deciding to exclude small quantities of sales from dumping margin calculations in investigations is consistent with past practice. Hence, we have continued to disregard these sales for purposes of BSM's dumping margin calculation.

Comment 4: Whether BSM Should Report the Value of Subject Merchandise Through a Section E Questionnaire Response

Petitioner's Comments:

- BSM failed to provide a Section E questionnaire response or an acceptable justification for not reporting this required information. Thus, Commerce does not have the necessary data to calculate an accurate dumping margin.
- Regardless of whether BSM's fabricated structural steel was further manufactured in the United States, BSM-produced fabricated structural steel was sold together with merchandise produced in the United States by NCI as an entire pre-engineered metal building.
- BSM cannot derive accurate sales quantities and prices for the subject fabricated structural steel that is part of the building unless it backs out all of the U.S. manufacturing and other U.S. expenses from the total sales price of the entire building through a Section E questionnaire response.

BSM's Comments:

- Contrary to the petitioner's claim, a Section E questionnaire response was not needed, because BSM was able to separately identify the actual quantity and value of subject merchandise in the building sold to U.S. customers by NCI from the quantity and value of non-subject merchandise in the building.
- A Section E questionnaire response was also not needed because the only activity performed by NCI with respect to BSM-produced subject fabricated structural steel was unloading the fabricated structural steel in the United States and placing it on a truck. BSM-produced subject fabricated structural steel was not used in any further manufacturing that is described in the Section E questionnaire instructions.⁷³ BSM-produced subject fabricated structural steel was not installed by NCI at a construction or other type of site.
- Additionally, more than 65 percent of the total value of NCI's buildings using BSM material consisted of material supplied by other NCI facilities in the United States. Based on the *Roller Chain* rule, a Section E questionnaire response is not required in this scenario.⁷⁴
- Lastly, Commerce never required BSM to submit a Section E questionnaire response.

⁷³ See BSM's Rebuttal Brief at 18 (citing Commerce's Section E Questionnaire issued to BSM (April 11, 2019)).

⁷⁴ *Id.* at 19 (citing 19 CFR 351.402(c)(2); and *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27352-27354 (May 19, 1997) (*Preamble*)).

Commerce’s Position: The petitioner’s argument that BSM should have provided a Section E questionnaire response, or that BSM otherwise failed to provide justification for not submitting such information, is unfounded. We did not request a Section E questionnaire response from BSM because we found no basis for requiring this information. As noted under Comment 3 above, we disagree with the petitioner’s position that BSM reported unreliable U.S. prices for subject merchandise, or that accurate U.S. prices may only be obtained by subtracting U.S. manufacturing and other U.S. expenses reported in a Section E questionnaire response from the total price that NCI charged for its pre-engineered metal building.

As a starting point, it is important to note that BSM’s subject fabricated structural steel was not further manufactured in the United States. The Section E questionnaire provides the following guidance for purposes of reporting further manufacturing costs:

“This section of the antidumping questionnaire provides instructions for reporting the costs incurred for further manufacture or installation of the subject merchandise in the United States. Further manufacturing occurs when the subject merchandise exported into the United States is used as a material input to the manufacture of merchandise which is manufactured further in the U.S. Installation occurs when the subject merchandise that is exported into the United States is not further manufactured but rather is installed at a construction or other type of site.”

Based on the above description of further manufacturing, record evidence indicates that BSM’s subject merchandise was not further manufactured in the United States. BSM explained that “...BSM material that is shipped through NCI’s U.S. facilities may simply have other components added to the shipment at a U.S. facility and then continue on to the customer; it may be loaded on to another truck with other components, and then shipped; or it may be unloaded and stored temporarily (normally in the facility’s shipping yard) before being shipped to the customer.”⁷⁵ According to BSM, “... {BSM-produced} materials are delivered to the U.S. customer’s job site in the same condition as they were produced by BSM and imported by NCI.”⁷⁶ Additionally, NCI did not provide installation services at a job site during the POI.⁷⁷ Simply sorting and repackaging subject merchandise with non-subject merchandise in the United States does not qualify as further manufacturing or necessitate a Section E questionnaire response.

Irrespective of the above, the petitioner argues that, even if BSM’s subject fabricated structural steel was not further manufactured in the United States, Section E information (U.S. manufacturing and other U.S. expenses) was required in order to accurately determine the sales price for the BSM-produced fabricated structural steel that was combined with non-subject U.S. produced merchandise at NCI’s U.S. facility and sold together as a pre-engineered metal

⁷⁵ See BSM’s August 6, 2019, Section C Supplemental Questionnaire Response at 18.

⁷⁶ See BSM’s May 1, 2019 Section A Questionnaire Response at 39.

⁷⁷ *Id.* at 32. The only mention of U.S. further-processing of BSM-produced merchandise involves NCI welding BSM-produced purlin clips, which BSM considers to be non-subject merchandise, to U.S. produced fabricated structural steel. See BSM’s June 11, 2019, Section A Supplemental Questionnaire Response at 15-16.

building. Specifically, the petitioner contends that Commerce must treat the U.S. price for the entire pre-engineered metal building as the starting point and then subtract from that price the costs attributed to non-subject U.S. produced merchandise in order to obtain accurate prices for subject merchandise. We disagree with the petitioner. Record evidence, and our verifications of NCI and BSM, demonstrate that NCI tracks all aspects of production, pricing, and costs and could separately identify the quantity and value of BSM-produced merchandise that was contained in the pre-engineered metal buildings sold during the POI. We found no evidence that the quantities and values reported for the subject components contained in the pre-engineered metal buildings did not accurately reflect the information regularly tracked in the companies' records. For the discussion on BSM's U.S. Price, *see* Comment 3 above.

Comment 5: Valuation of an Order Associated with Two Different Sales

BSM's Comments:

- BSM invoiced and received payment from two separate customers for one fabricated structural steel order: (1) the original customer who canceled the order and did not take delivery but paid the invoiced amount because the fabricated structural steel was already produced; and (2) another customer who purchased the fabricated structural steel as scrap. BSM separately reported the revenue earned from each customer in the OTHREVVU field (payment from original customer) and the GRSUPRU field (payment from second customer). Commerce incorrectly disregarded the other revenue (OTHREVVU field). All revenue should be included in the net price calculation.
- If Commerce does not include all revenue for this order in its net price calculation (*i.e.*, GRSUPRU field (payment from second customer) and OTHREVVU field), it is more appropriate to include the revenue from the OTHREVVU field than the revenue from the GRSUPRU field in the net price calculation.
- If Commerce does not include OTHREVVU as part of the net price calculation, then the CV for the order must be offset by the amount reported in the OTHREVVU field and it must recalculate credit expense (CREDITU field) and indirect selling expense (INDIRSU field).

Petitioner's Comments:

- Because only the sale of scrap was actually completed, Commerce should continue to disregard the revenue reported in the OTHREVVU field in the dumping margin calculations.

Commerce's Position: In the *Preliminary Determination*, we disregarded the amount reported in the OTHREVVU field (*i.e.*, the amount received from the original customer) for the sale at issue, because we found that the second customer to whom the fabricated structural steel was later sold was the customer who actually purchased the merchandise.⁷⁸ Thus, we only accounted for the revenue received from the second customer (*i.e.*, GRSUPRU field) in our dumping margin calculations. After further consideration of record information, we have disregarded this sale altogether for the final determination.

⁷⁸ *See* BSM's Preliminary Calculation Memorandum at 4-5.

We find that the receipt of remuneration from the first customer does not constitute a completed sale, because the merchandise was not delivered, and the ownership of the merchandise was not transferred to the customer. Specifically, NCI had to maintain ownership of the merchandise in order to negotiate a sale and sell the merchandise to the second customer.

With respect to the sale to the second customer, BSM explained, and provided supporting documentation which demonstrates, that it sold the merchandise as scrap.⁷⁹ BSM explained that NCI "... would not certify the material for structural specifications because the material had been stored outside for months exposed to rusting."⁸⁰ Because the merchandise was sold as scrap, we find that this sale does not represent a sale of subject merchandise.⁸¹ Due to our aforementioned concerns regarding both transactions pertaining to this order, we have excluded the reported sale for this order from our dumping margin calculations. Because we excluded this sale from our dumping margin calculations, the petitioner's argument for adjusting CV, credit expense, and indirect selling expense is moot.

Comment 6: Whether BSM Double Counted Revenue for an Order

Petitioner's Comments:

- BSM double counted the revenue that it reported for one sales observation in the U.S. sales database. This error should be corrected.

BSM's Comments:

- Revenue was not double counted for the sales observation at issue. The sale relates to an order that included two separate phases. The revenue for one phase of the project was reported in the GRSUPRU field and the revenue for the other phase was reported in the OTHREUVU field. The revenue reported in the OTHREUVU field represents revenue received for the replacement material produced by BSM (*i.e.*, the shortage order) that is associated with previously rejected material.
- Both the GRSUPRU field and the OTHREUVU field must be included in the net price calculation. The total subject quantity (*i.e.*, TOTWTU variable) includes the quantity for both phases.

Commerce's Position: We disagree with the petitioner that BSM double counted the revenue reported for the sale at issue. Record evidence demonstrates that the reported GRSUPRU amount ties to the payment received for one phase of the order, whereas the reported OTHREUVU amount ties to the payment received for the shortage order produced by BSM for a different

⁷⁹ See BSM's April 21, 2019, Section C Supplemental Questionnaire Response at 4-5 and Exhibit SC-10.

⁸⁰ See BSM's June 4, 2019, Section C Response at 9.

⁸¹ See *Certain Carbon and Alloy Steel Cut-To-Length Plate from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 82 FR 16372 (April 4, 2017) (*Plate from Taiwan*), and accompanying IDM at Comment 16 ("first, we must determine whether the products at issue are non-prime or scrap. ... At times the downgrading is minor and the product remains within a product group (*i.e.*, remains scope merchandise), while at other times *the downgraded product differs significantly, no longer remains subject merchandise, and is not capable of being used for the same applications*); see also BSM's BPI Memorandum at Note 6.

phase of the project.⁸² Specifically, the commercial invoice for each phase identifies both the phase number and the corresponding sales value used in calculating either the reported GRSUPRU amount or the OTHREUVU amount, as appropriate.⁸³ BSM provided supporting payment documentation which ties to the sales values identified in the commercial invoices.⁸⁴ Because the evidence shows that the reported GRSUPRU and OTHREUVU amounts pertain to different phases of a project, and they tie to the amounts invoiced to customer, we have continued to use both the GRSUPRU and the OTHREUVU amounts in our net price calculations for the final determination.

Comment 7: Alternate Differential Pricing Analysis

Petitioner's Comments:

- In this investigation, because each U.S. sale by BSM involves a unique product, Commerce's differential pricing analysis is unable to determine whether prices differ significantly among purchasers, regions or time periods. Nonetheless, that does not mean that differential pricing does not exist.⁸⁵
- The price for subject merchandise is based on a number of factors, including the costs of steel, fabrication, transportation, installation, along with a profit. Project costs are all substantially known at the time that a company bids on a project, and do not vary widely upon completion of the project, and profit is limited because of competition in the market from the large number of U.S. and foreign fabricators.
- BSM's data do not bear out this expected pattern. Accordingly, BSM's data demonstrate that there is a pattern of pricing that differs significantly among purchasers, regions or time periods.⁸⁶
- Consequently, BSM's prices should not be allowed to mask dumping margins and Commerce should, based on {the petitioner's analysis}, and, as neutral facts available, find full differential pricing.⁸⁷

BSM's Comments:

- Commerce rejected these same arguments from the petitioner in the *Preliminary Determination*, and Commerce should do so here, as well.
- The petitioner recognizes that Commerce is unable to establish that a pattern of prices that differ significantly existed during the POI and argues that Commerce should, instead, examine differences in profit; however, this is not provided for by the statute.
- In its differential pricing analysis, Commerce compares prices of comparable merchandise (products with the same CONNUM). However, due to the custom nature of fabricated structural steel projects, comparable CONNUMs do not exist in this case. The petitioner has not argued that using CONNUMs to identify "comparable merchandise" is

⁸² See BSM's August 21, 2019, Section C Supplemental Questionnaire Response at 4-5 and Exhibit SSC-2.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ See Petitioner's Case Brief at 37.

⁸⁶ *Id.* at 39.

⁸⁷ *Id.* at 40.

inappropriate, nor has it provided an alternative basis for identifying comparable merchandise for purposes of a differential pricing analysis.

- The petitioner’s presumptions concerning BSM’s and NCI’s pricing behavior are not valid, because the companies’ U.S. sales of unassembled pre-engineered metal building systems differ from the generalized pricing behavior in the fabricated structural steel industry. The petitioner has even stated that merchandise in these two industries are “priced differently.”⁸⁸

Commerce’s Position: Commerce disagrees with the petitioner’s arguments that an alternative differential pricing analysis is warranted or that Commerce “should ... find full differential pricing” based on facts available.

In an LTFV investigation, section 777A(d)(1)(B) of the Act provides that Commerce “may” use an alternative, average-to-transaction comparison method to calculate a respondent’s estimated weighted-average dumping margin when two requirements are satisfied:

- 1) Commerce finds a pattern of prices that differ significantly among purchasers, regions or time periods; and
- 2) Commerce explains why such differences cannot be accounted for when using a standard comparison method provided for under section 777A(d)(1)(A) of the Act.

As an initial matter, we note that there is no language in section 777A(d)(1)(B) of the Act that mandates how Commerce measures whether there is a pattern of prices that differs significantly or a particular threshold for finding that the average-to-average method or the transaction-to-transaction method cannot account for such differences. On the contrary, carrying out this section of the statute⁸⁹ is a gap-filling exercise within the discretion of Commerce.⁹⁰ As explained in the *Preliminary Determination*, as well as in various other proceedings,⁹¹ Commerce’s differential pricing analysis is reasonable, including the use of the Cohen’s *d* test as a component in this analysis, and it is in no way contrary to the law.

⁸⁸ See BSM’s Rebuttal Brief at 27 (*quoting* Petitioner’s Responses to Supplemental Questions on General and Injury Volume I of the Petitioner (February 12, 2019) at 2).

⁸⁹ See *Koyo Seiko Co., Ltd. v. United States*, 20 F. 3d 1156, 1159 (Fed. Cir. 1994) (“The purpose of the antidumping statute is to protect domestic manufacturing against foreign manufacturers who sell at less than fair market value. Averaging U.S. prices defeats this purpose by allowing foreign manufacturers to offset sales made at less-than-fair value with higher priced sales. Commerce refers to this practice as ‘masked dumping.’ By using individual U.S. prices in calculating dumping margins, Commerce is able to identify a merchant who dumps the product intermittently—sometimes selling below the foreign market value and sometimes selling above it. We cannot say that this is an unfair or unreasonable result.” (internal citations omitted)).

⁹⁰ See *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984) (*Chevron*) (recognizing deference where a statute is ambiguous and an agency’s interpretation is reasonable); see also *Apex Frozen Foods Pvt. Ltd. v. United States*, 37 F. Supp. 3d 1286, 1302 (CIT 2014) (applying *Chevron* deference in the context of the Commerce’s interpretation of section 777A(d)(1) of the Act).

⁹¹ See, e.g., *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 IDM at Comment 1; see also *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32937 (June 10, 2015), and accompanying IDM at Comments 1 and 2; and *Welded ASTM A-312 Stainless Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 46647 (July 18, 2016), and accompanying IDM at Comment 4.

Notably, if Commerce decides to use an average-to-transaction comparison method to calculate a respondent's estimated weighted-average dumping margin, the statute explicitly requires that Commerce factually find that a pattern of *prices* that differ significantly existed during the POI.⁹² To the extent that the petitioner urges Commerce to consider some other factor besides the reported U.S. prices as the basis to find that a pattern existed, the petitioner's argument is clearly contrary to the law.

Commerce further rejects the petitioner's arguments that the factors which may determine the price to U.S. customers are relevant when considering whether prices differ significantly. The purpose or intent behind a respondent's pricing behavior in the U.S. market is not relevant to Commerce's analysis of the statutory requirement as provided in section 777A(d)(1)(B)(i) of the Act.⁹³ Specifically, the CAFC stated:

Section {777A(d)(1)(B) of the Act} does not require Commerce to determine the reasons why there is a pattern of export prices for comparable merchandise that differs significantly among purchasers, regions, or time periods, nor does it mandate which comparison methods Commerce must use in administrative reviews. As a result, Commerce looks to its practices in antidumping duty investigations for guidance. Here, the {U.S. Court of International Trade (CIT)} did not err in finding there is no intent requirement in the statute, and we agree with the CIT that requiring Commerce to determine the intent of a targeted dumping respondent would create a tremendous burden on Commerce that is not required or suggested by the statute.⁹⁴

Lastly, Commerce rejects the petitioner's argument that Commerce should find "full differential pricing" based on facts available. Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information, but the information cannot be verified, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Commerce finds that there is no information missing from record for BSM concerning its reported U.S. prices. As such, there is no basis to rely on facts available to make a decision that "full differential pricing" exists that would support the use of an alternative comparison method to determine the estimated weighted-average dumping margin for BSM.

Comment 8: Grant CEP Offset

⁹² See section 777A(d)(1) of the Act.

⁹³ See *JBF RAK LLC v. United States*, 991 F. Supp. 2d 1343, 1355 (CIT 2014); *aff'd JBF RAK LLC v. United States*, 790 F. 3d 1358 (Fed. Cir. 2015) (*JBF RAK*), see also *Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. v. United States*, 608 Fed. Appx. 948 (Fed. Cir. 2015).

⁹⁴ See *JBF RAK*, 790 F. 3d at 1368 (internal citations omitted).

In the *Preliminary Determination*, we based NV for BSM on CV. Because BSM's HM is not viable, we based the selling, general, and administrative (SG&A) expenses and profit included in CV on the HM sales of the other respondent in this investigation, Corey. BSM made CEP sales during the POI.

BSM's Comments:

- Commerce should grant BSM a CEP offset,⁹⁵ because it was unable to determine if differences between the levels of trade for BSM's CEP sales and Corey's HM sales affect price comparability. Additionally, Corey's HM sales are at a more advanced level of trade (LOT) than BSM's CEP sales.
- BSM's CEP sales and Corey's HM sales are at different marketing stages. BSM only performs logistical tasks for sales to the United States, while Corey performs sales support activities, training services, technical support services, and sales related administrative activities for its HM sales.⁹⁶ BSM is a contract manufacturer that does not market fabricated structural steel to the United States, while Corey actively markets fabricated structural steel to unaffiliated developers and general contractors in Mexico.
- Based on the SAA and Commerce's regulations, a CEP offset is appropriate and required because Commerce was unable to determine whether a difference in the LOT affects price comparability.⁹⁷
- The lack of available data to determine whether LOT differences affect price comparability is due to Commerce's decision to rely on Corey's HM sales for purposes of calculating BSM's CV. BSM has fully cooperated in this investigation. There is no data deficiency caused by BSM.
- Thus, the requirements for a CEP offset are met.

Petitioner's Comments:

- Commerce should continue to deny BSM a CEP offset.
- BSM failed to provide U.S. LOT information requested in Section A of the questionnaire. Commerce has found that when a respondent fails to provide the necessary information to allow a CEP offset, the CEP offset cannot be granted.⁹⁸
- A CEP offset is not granted automatically whenever an LOT adjustment cannot be calculated. Here, the record demonstrates that differences between the HM LOT and the U.S. LOT are minimal, and that they should be considered equivalent LOTs.

⁹⁵ Equal to the lesser of the amount of Corey's HM indirect selling expenses imputed to BSM, or the amount of indirect selling expenses incurred by BSM's U.S. affiliated reseller for sales of subject merchandise.

⁹⁶ See BSM's Case Brief at 10 (citing Corey's August 12, 2019, Third Supplemental Section A Questionnaire Response at Exhibit 3SA-1; and Corey SVR at 9-12)).

⁹⁷ *Id.* at 8 (citing Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316 (SAA), at 830-31 (1994); and 19 CFR 351.412(f)(1)).

⁹⁸ See Petitioner's Rebuttal Brief at 6 (citing *Certain Tapered Roller Bearings From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 83 FR 29092 (June 22, 2018), and accompanying IDM at Comment 10; see also *Large Diameter Welded Pipe From Greece: Final Determination of Sales at Less Than Fair Value*, 84 FR 6364 (February 27, 2019), and accompanying IDM at Comment 3)).

- Commerce’s regulations state that “{s}ubstantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing.”⁹⁹
- Simply having more selling activities in one LOT is not enough to find a different LOT.¹⁰⁰
- Corey’s HM selling activities are similar to the selling activities performed for BSM’s CEP sales with only limited and insignificant differences, if any.
- A difference in HM and U.S. selling expenses does not necessarily indicate that one LOT is more advanced than another. Commerce previously dismissed a respondent’s argument that the size of the HM and U.S. indirect selling expense ratios are indicative of different LOTs.¹⁰¹
- It would be highly unlikely for the descriptions and levels of reported selling activities of BSM and Corey (*i.e.*, two separate companies) to correspond precisely. Corey’s HM CV and selling expense information is essentially surrogate data for BSM’s margin calculations. Commerce should not expect the same level of comparability when using Corey’s data.

Commerce’s Position: We disagree with the petitioner. Commerce’s regulations at 19 CFR 351.412(f)(1) state that:

The Secretary will grant a constructed export price offset only where:

- (i) Normal value is compared to constructed export price;
- (ii) Normal value is determined at a more advanced level of trade than the level of trade of the constructed export price; and
- (iii) Despite the fact that a person has cooperated to the best of its ability, the data available do not provide an appropriate basis to determine under paragraph (d) of this section whether the difference in level of trade affects price comparability.

We address each of these criteria, in turn, below. First, all of BSM’s reported U.S. sales are CEP sales; thus, NV is compared to CEP.

⁹⁹ *Id.* at 7 (citing 19 CFR 351.412(c)(2)).

¹⁰⁰ *Id.* at 7-8 (citing *Circular Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 34345 (July 18, 2019), and accompanying PDM at 18; *see also Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 24471 (May 28, 2019), and accompanying IDM at Comment 5; and *Silicon Metal From Norway: Affirmative Final Determination of Sales at Less Than Fair Value, Final Determination of No Sales, and Final Negative Determination of Critical Circumstances*, 83 FR 9829 (March 8, 2018), and accompanying IDM at Comment 5).

¹⁰¹ *See* Petitioner’s Rebuttal Brief at 10 (citing *Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 10784 (March 22, 2019), and accompanying IDM at Comment 6).

Second, as explained below, we find record evidence indicates that the NV LOT is at a more advanced level than the CEP LOT. The *Preamble* to Commerce’s regulations notes that:

... while neither the statute nor SAA defines level of trade, section 773(a)(7)(A)(i) of the Act provides for LOT adjustments where there is a difference in levels of trade and the difference “involves” the performance of different selling activities. Thus, the statute uses the term “level of trade” as a concept distinct from selling activities. ... {A}n analysis of selling activities alone is insufficient to establish the LOT. Rather, the Department must analyze selling functions to determine if levels of trade identified by a party are meaningful. In situations where some differences in selling activities are associated with different sales, whether that difference amounts to a difference in the levels of trade will have to be evaluated in the context of the seller’s whole scheme of marketing.

Section 351.412(c)(2) states that an LOT is a marketing stage “or the equivalent” (which means that the merchandise does not necessarily have to change hands twice in order to reach the more remote LOT). It is sufficient that, at the more remote level, the seller takes on a role comparable to that of a reseller if the merchandise had changed hands twice. ... Each more remote level must be characterized by an additional layer of selling activities, amounting in the aggregate to a substantially different selling function. Substantial differences in the amount of selling expenses associated with two groups of sales also may indicate that the two groups are at different levels of trade.¹⁰²

Because of the nature of the fabricated structural steel projects under investigation, we did not request that respondents report HM sales for price-to-price comparisons, but decided to base NV on CV. When NV is based on CV, the NV LOT is that of the sales from which we derive CV SG&A expenses and profit. Because BSM’s HM is not viable, we based the SG&A expenses and profit included in CV on the HM sales of the other respondent in this investigation, Corey. Therefore, as described below, we compared BSM’s U.S. LOT to Corey’s HM LOT to determine whether the NV LOT is more advanced (remote) from the U.S. LOT.

BSM reported that it was dedicated to producing fabricated structural steel for, and selling fabricated structural steel to, its U.S. affiliate, based on specific instructions received from that company. Thus, BSM reported that it sold fabricated structural steel to the United States through one channel of trade. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.¹⁰³ BSM reported that it did not engage in any selling activities to sell to its U.S. affiliate other than providing logistical services, such as packing and arranging for transportation. We verified that BSM only issues invoices and performs logistical services with respect to its sales to its U.S. affiliate; the

¹⁰² See *Preamble*, 62 FR at 27296, 27371.

¹⁰³ See *Micron Technology, Inc. v. United States*, 243 F. 3d 1314, 1315-16 (Fed. Cir. 2001).

logistical services comprise arranging for shipment¹⁰⁴ and packing the merchandise.¹⁰⁵ BSM does not have a sales department (the invoices were created and issued by the shipping department).¹⁰⁶ Because BSM provided logistical services for all of its sales to its U.S. affiliate, we find that there are no differences in the selling activities performed by BSM to sell to the United States. Therefore, we determine that all of BSM's U.S. sales are at the same LOT.

Corey reported two HM channels of trade (one for commercial and one for residential customers) in which it engaged in the following sales activities: advertising; sales promotion/marketing; market research; personnel training; technical support (engineering services, technical assistance, erection services, project management), warehousing and freight and delivery; sales related support (order processing, securing performance or payment bonds or insurance); and warranty service.¹⁰⁷ Although Corey engaged in advertising and promotion at a higher level of intensity in the commercial channel of trade in comparison to the residential channel of trade, Corey reported that it performed all of the other selling functions at the same level of intensity in both HM channels of trade. Given the limited differences in the types and levels of selling activities performed in both HM channels of trade, we determine that all of Corey's HM sales are at the same LOT.¹⁰⁸

Different LOTs are characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them. A comparison of BSM's U.S. LOT to Corey's HM LOT shows that these LOTs involve purchasers at different stages in the chain of distribution and selling functions that differ in nature, quantity, and the degree to which they are performed. BSM's U.S. LOT involves a purchaser (the affiliated U.S. reseller) at an early stage of the chain of distribution. BSM sold fabricated structural steel to its U.S. affiliate which then sold the fabricated structural steel to unaffiliated U.S. customers. BSM did not perform any selling functions at this level of distribution, but merely received orders and shipped the fabricated structural steel to the United States. Unlike Corey, BSM did not market and sell fabricated structural steel to unaffiliated U.S. customers. In contrast, Corey's HM LOT is at the final stage of distribution to end users.¹⁰⁹

As noted above, Corey performs multiple selling functions in its HM, including: advertising; sales promotion/marketing; market research; personnel training; technical support (engineering services, technical assistance, erection services, project management), warehousing and freight and delivery; sales related support (order processing, securing performance or payment bonds or insurance); and warranty service. The quantity of functions performed by Corey in the HM is significantly greater than the quantity of functions performed by BSM for its U.S. sales. Moreover, these functions are significantly and qualitatively different. BSM is essentially an order processor while Corey is actively promoting and marketing its products and providing sales support. At verification, company officials explained that BSM "does not know how the

¹⁰⁴ See BSM's August 9, 2019, Third Section A Supplemental Questionnaire Response at 2 and 5.

¹⁰⁵ *Id.*

¹⁰⁶ See BSM's Mexico verification report at 3.

¹⁰⁷ See Corey SVR at 9-12.

¹⁰⁸ See *Preliminary Determination* PDM at 17.

¹⁰⁹ See BSM's Mexico verification report and Corey SVR under "Sales Process" sections.

components that BSM produces will be ultimately used. Furthermore, company officials explained that they do not know who the unaffiliated U.S. customer receiving the merchandise is, or if there are any additional phases of an order being produced in the United States. BSM officials also do not know whether the merchandise is to be sold through the Building or Components segment.”¹¹⁰ The greater number of selling functions performed by Corey, the nature of these selling functions (*i.e.*, activities to promote further business and maintain customers in comparison to only order processing and shipping) at the later stage of distribution (final end-user stage compared to initial stage of distribution) indicate that Corey’s HM LOT is at a different, more advanced (more remote) level than BSM’s U.S. LOT.

We disagree with the petitioner that the differences between BSM’s U.S. and Corey’s HM LOTs are minimal and, therefore, the LOTs should be considered at the same level. The petitioner describes Corey’s marketing, advertising, and promotional activities as minimal. However, the fact that Corey was involved in actively promoting sales (*i.e.*, advertising, sales promotion, sales/marketing support) and conducting market research in the HM,¹¹¹ when BSM did not engage in any of these activities, indicates two entirely different marketing stages in the chain of distribution. Moreover, the petitioner’s expense analysis does not accurately reflect the magnitude of Corey’s selling activities. During the POI, Corey’s sales promotion/marketing activities in the HM included: 1) creating new company brochures, newspaper advertising, billboard advertising, and displaying banners on tower cranes; 2) employing two individuals who were devoted to promoting HM sales; and 3) employees traveling extensively to visit potential and current customers.¹¹² Record evidence does not indicate that BSM engaged in such activities.

Also, record evidence does not support the petitioner’s claim that there is no difference between the LOTs with respect to technical support services, logistical services, sales related administrative activities, and warranty service activities. Unlike BSM, Corey reported that it always provided engineering services to its HM customers and provided technical assistance to HM customers by working “with structural engineers to make buildings more efficient, less expensive, and faster to build.”¹¹³ With respect to logistical services, Corey reported that it “provided storage services for both home and U.S. market customers,” while BSM did not provide any warehousing services for its sales to its U.S. affiliate.¹¹⁴ The petitioner equates Corey’s level of sales related administrative activities to BSM’s level because both engage in order processing. However, Corey reported that its order processing also includes reviewing engineering documents and issuing drawings; something not reported by BSM.¹¹⁵ Lastly, Corey reported performing warranty service activities, while BSM did not report performing such

¹¹⁰ See BSM’s Mexico verification report at 6.

¹¹¹ See Corey SVR at 9-10.

¹¹² See Corey SVR at 10.

¹¹³ *Id.*; see also Corey’s BPI Memorandum at Note 3.

¹¹⁴ See Corey’s BPI Memorandum at Note 4.

¹¹⁵ During the verification of BSM, “. . .we observed how BSM receives email orders from NCI Group, Inc. BSM personnel demonstrated how the specifications detailed in the orders are manually entered into Magic when an order email is received. Magic is used to assign an order to a plant based on product specifications (the type of product to be produced), factory resources, and factory space availability, in a process referred to as the ‘nesting process.’” See BSM’s Mexico verification report at 9. Therefore, while BSM performs input processing, it does not appear to be purely a sales-related administrative activity.

activities. The petitioner alleges that the expenses incurred by BSM to produce replacement fabricated structural steel components are warranty expenses. However, replacing a fabricated structural steel component, even if it is done in response to a claim that the original component was defective, is not necessarily the same thing as administering and evaluating warranty claims. The record indicates that more was involved in processing POI warranty claims on BSM's subject merchandise and those activities were performed by NCI, not BSM. Specifically, BSM reported that:

{f} or some subject sales during the POI, the Buildings Segment {(which is part of NCI Group Inc.)} incurred warranty expenses resulting from customer complaints about the fabricated structural steel not meeting the agreed upon specification, being damaged during transport, or otherwise not meeting the customer's requirements. ... For larger claims, NCI may send a technical service agent to the construction site to determine if the claim is valid and, if so, how much to credit the customer.¹¹⁶

At the U.S. CEP LOT used in our comparison, these expenses have been removed. On the other hand, Corey reported that, for its HM sales, it is the party that engaged in performing warranty service activities.

Based on the foregoing, we do not find that the selling activities Corey performed in the HM LOT are the same as those performed by BSM in the CEP LOT, or that those selling activities were performed at the same or comparable intensity levels in each market.

Lastly, we consider the final requirement for granting a CEP offset, namely that available data do not provide a basis for determining whether the difference in LOTs affects price comparability, despite cooperation by the respondent to the best of its ability. Pursuant to 19 CFR 351.412(d), Commerce "will determine that a difference in level of trade has an effect on price comparability only if it is established . . . that there is a pattern of consistent price differences between sales in the market in which normal value is determined." Here, we determined the NV level of trade based on selling expenses for sales in the HM. However, there are no data on the record that would allow us to establish whether there is a pattern of consistent price differences between sales at different levels of trade in the HM, *i.e.*, no LOT adjustment is possible because HM sales were not reported. Nonetheless, in the *Preliminary Determination*, we did not grant a CEP offset to BSM. We explained that decision by noting that:

... section A of the AD questionnaire requests that respondents provide a quantitative analysis showing how the expenses assigned to the POI sales made at different claimed levels of trade impact price comparability. Because the selling expenses used in comparing BSM's U.S. LOT to the LOT of CV are from BSM and Corey, respectively, the required quantitative analysis is not on the record. Therefore, we find no basis for making any adjustment with respect to LOT (a CEP offset).¹¹⁷

¹¹⁶ See BSM's June 4, 2019, Section C Response at 57.

¹¹⁷ See *Preliminary Determination* PDM at 17.

However, upon further analysis, we do not believe this scenario warrants the denial of a CEP offset. Specifically, 19 CFR 351.412(d)(2) provides that Commerce may use “sales by other companies” to determine if differences in LOTs affect price comparability. There is nothing in the CEP offset regulation, 19 CFR 351.412(f)(1)(iii), indicating that it does not apply if, pursuant to 19 CFR 351.412(d)(2), “sales by other companies” are the only usable information available for determining whether differences in LOTs affect price comparability.

In Section A of the questionnaire and in a supplemental questionnaire, we requested a quantitative analysis to support an LOT adjustment. In response to the Section A questionnaire, BSM reported “{a}s instructed by the Department, BSM is not submitting home market sales data for this investigation. Therefore, this question is not applicable.”¹¹⁸ In response to the supplemental questionnaire, BSM noted “{a}s discussed above, there is only one level of trade for BSM’s sales to the U.S. market and further, no prices are being compared because normal value will be determined based on constructed value.”¹¹⁹ Even if BSM had provided a quantitative analysis using its HM sales, we would not have used the information, because we based the HM LOT on Corey’s HM sales. A quantitative analysis of Corey’s HM sales data was also not possible, because Corey was not required to report a HM sales dataset. Therefore, available data do not provide a basis for determining how the difference in LOTs affect price comparability.

Moreover, we find that BSM cooperated to the best of its ability with respect to the requests for information described above. BSM correctly noted in response to the Section A question that Commerce did not require it to submit an HM sales dataset. In addition, BSM’s HM was not viable. In the Section A questionnaire, Commerce requested that BSM “provide a quantitative analysis showing how the expenses assigned to POI sales made at different claimed levels of trade impact price comparability.” However, BSM was not claiming different HM LOTs because it was not required to report HM sales. Therefore, BSM’s response was not inadequate or deficient. In response to the same question posed in a supplemental questionnaire, BSM noted that it only had one U.S. LOT and “no prices are being compared because normal value will be determined based on constructed value.”¹²⁰ This response was also not deficient. There was no quantitative analysis to conduct with respect to BSM’s HM sales because BSM was not claiming different HM LOTs and BSM’s HM sales were not being used in the dumping calculation (and Commerce did not require BSM to fully report its HM sales). Additionally, even if BSM could have anticipated that Corey’s HM sales would be used to determine CV selling expenses and profit for BSM, such data (Corey’s HM sales database) was not on the record and thus not available for analysis. Hence BSM was cooperative with respect to these information requests.

Therefore, we have granted BSM a CEP offset to CV in the final determination, in accordance with section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of: (1) the weighted-average ISEs incurred on Corey’s comparison-market sales; or (2) the ISEs deducted from the starting price in calculating CEP.

Comment 9: CEP Profit Rate Calculation

¹¹⁸ See BSM’s May 1, 2019 Section A Questionnaire Response 14-16.

¹¹⁹ See BSM’s August 9, 2019, Third Section A Supplemental Questionnaire Response at 2.

¹²⁰ *Id.*

BSM's Comments:

- Commerce erroneously double counted BSM's profit and expenses in its CEP profit calculation, because NCI Building Systems, Inc.'s consolidated totals used in the calculation already include BSM's profit and expenses. To correct this error, Commerce should exclude the separate BSM profit ratio calculation from its CEP profit calculation.
- If Commerce continues to calculate a profit ratio for BSM and a separate profit ratio for NCI Building Systems, Inc., it must average, instead of adding, the two profit ratios to derive the ratio used in calculating CEP profit.
- Commerce explained in the *Preamble* that "under section 772(f) {of the Act}, the Department does not deduct the CEP profit earned in both the United States and the home market from the price in the United States."¹²¹ Rather, the total profit is allocated, such that only a portion of the profit is deducted through the CEP profit rate calculation.¹²²
- The Components segment comprises the MBCI division and the DBCI division, which handles non-subject merchandise. Commerce should only use expenses incurred by the MBCI division in its CEP profit calculation to be consistent with the statutory directive to use "expenses incurred with respect to the narrowest category of merchandise sold in the United States and exporting country which includes the subject merchandise."¹²³
- Commerce used segment expenses of NCI Building Systems, Inc. to calculate the company's CEP profit ratio, but failed to include in its calculation shared corporate expenses, which are not reflected in the segment-specific income statements. BSM's U.S. indirect selling expense ratio (*i.e.*, INDIRSU field) includes NCI Building Systems, Inc.'s corporate shared expenses. The statute requires that any expenses included in the indirect selling expense ratio calculation be incorporated into the CEP profit calculation.¹²⁴ Commerce should include these shared corporate expenses in its CEP profit calculation or, if it does not, it should exclude these expenses from the U.S. indirect selling expense ratio calculation.
- Commerce should not weight average the Buildings segment and Components segment profit ratios to determine the profit ratio for NCI Building Systems, Inc. Rather, Commerce should sum the Buildings segment's and Component's segment's (MBCI division's) profit and then divide by the sum of each segment's total expenses to obtain NCI Building Systems, Inc.'s profit ratio. Weight averaging ratios, instead of values, is distortive.
- If Commerce continues to calculate segment-specific CEP profit ratios for NCI Building Systems, Inc., it should apply those segment-specific CEP profit ratios separately for Buildings segment and Components segment sales, respectively, in the U.S. sales database to calculate per-unit CEP profit.

Petitioner's Comments:

¹²¹ See BSM's Case Brief at 29 (citing *Preamble*, 62 FR at 27369, 27372).

¹²² *Id.*

¹²³ *Id.* at 30 (citing section 772(f)(2)(C)(ii) of the Act; and Import Administration Policy Bulletin No. 97/1 re: Calculation of Profit for Constructed Export Price Transactions (Sept. 4, 1997)).

¹²⁴ *Id.* at 30 (citing sections 772(d)(1), (f)(2)(B), and (f)(2)(C) of the Act).

- Commerce should correct the CEP profit calculation to the extent that it agrees with BSM's argument that it double counted BSM's profit and expenses.
- It is Commerce's standard practice to add the foreign producer's and U.S. affiliate's profits together, instead of averaging them.¹²⁵ Averaging the profits would result in double counting of expenses, because the denominator would include both the expenses of the foreign manufacturer and the U.S. affiliate for the same merchandise.
- Based on BSM's reporting methodology, the Components segment is the narrowest category of merchandise that includes subject merchandise; thus, Commerce should include the DBCI division's profits and expenses in its CEP profit calculations.
- The indirect selling expense ratio and CEP profit ratio are different adjustments and do not necessarily have to be calculated in the same manner.
- Removing company-wide expenses from the indirect selling expense calculation would violate Commerce's practice on the treatment of common expenses of a U.S. affiliate engaged in the sale of subject merchandise.¹²⁶

Commerce's Position: In the *Preliminary Determination*, we calculated CEP profit using information from BSM's 2018 audited financial statements and the Building and Components segments' income statements covering the calendar year 2018 (*i.e.*, the POI). The Building and Components segments' income statements figures are included in NCI Building Systems, Inc.'s consolidated financial statements. We weight averaged the Buildings and the Components segments profit ratios to determine one profit ratio for the U.S. affiliated resellers of subject merchandise and added this weighted-average profit ratio to BSM's profit ratio to derive the CEP profit ratio used to calculate CEP profit. Upon further consideration of the record and the comments received from interested parties, we have revised the CEP profit calculation for the final determination.

Commerce is required, in its determination of CEP, to identify and deduct from the U.S. starting price an amount for profit allocable to direct and indirect selling expenses incurred with respect to economic activity in the United States and the cost of any further manufacture or assembly in the United States.¹²⁷ The statute explains that the profit allocable to these expenses is determined by multiplying the total actual profit earned by a percentage equal to the total U.S. expenses to which the profit is allocated divided by total expenses. The statute and regulations indicate that "in calculating total expenses and total actual profit, the Secretary normally will use the aggregate of expenses and profit for all subject merchandise sold in the United States and all foreign like products sold in the exporting country, including sales that have been disregarded as being below the cost of production."¹²⁸ The SAA states that "the total profit is calculated on the

¹²⁵ See Petitioner's Rebuttal Brief at 24- 25 (citing *Certain Frozen Warmwater Shrimp From Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 50933 (August 29, 2008) (*Shrimp/Thailand*), and accompanying IDM at Comment 8; see also *Prestressed Concrete Steel Rail Tie Wire From Mexico: Final Determination of Sales at Less Than Fair Value*, 79 FR 25571 (May 5, 2014) (*Prestressed Concrete Rail Tire Wire/Mexico*), and accompanying IDM at Comment 1; and *Citric Acid and Certain Citrate Salts From Canada: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 37286 (July 1, 2014) (*Citric Acid Canada AR 12-13*), and accompanying IDM at Comment 2).

¹²⁶ See Petitioner's Rebuttal Brief at 26 (citing *Citric Acid Canada AR 12-13* IDM at Comment 3).

¹²⁷ See section 772(d)(1), (2) of the Act.

¹²⁸ See 19 CFR 351.402(d)(1).

same basis as the total expenses.”¹²⁹ Thus, the term “total actual profit” means the total profit earned by the foreign producer, exporter, and affiliated U.S. reseller selling subject merchandise and foreign like product. However, in this case, we did not require BSM to report its HM sales of foreign like products. In such cases, the statute provides that Commerce may determine CEP profit using the first of the following sources under section 772(f)(2)(C) of the Act that applies:

(ii) The expenses incurred with respect to the narrowest category of merchandise sold in the United States and the exporting country which includes the subject merchandise.

(iii) The expenses incurred with respect to the narrowest category of merchandise sold in all countries which includes the subject merchandise.

In the *Preliminary Determination*, we used the category of expenses listed in section 772 (f)(2)(C)(iii) of the Act to calculate CEP profit. Specifically, we used expenses incurred with respect to the category of merchandise sold to all countries which includes subject merchandise (*i.e.*, expenses and profit from the Building and Components segments in NCI Building Systems, Inc.’s consolidated financial statements and expenses and profit from BSM’s 2018 audited financial statements). We calculated separate profit ratios using financial data for each of these financial statements and summed the two profit ratios to determine the profit ratio that we used to calculate CEP profit.

BSM contends there are multiple errors in our CEP profit calculation. We now address those comments.

Double Counting

We agree with BSM that our preliminary calculation includes double counting of certain BSM revenue and expenses and, thus, misstates profit. BSM explained that it “...is a structural frame manufacturing facility within NCI Building Systems, Inc.’s Buildings Segment.”¹³⁰ During verification, company officials explained that

BSM’s monthly trial balances ... are uploaded manually into NCI Building Systems, Inc.’s Oracle 11i, which is used by the Buildings segment to record operating information. Information from Oracle 11i and Oracle 10.7 {(*i.e.*, accounting system for Components segment sales)} is ... used to produce NCI Building Systems, Inc.’s consolidated financial statements.¹³¹

NCI Building Systems Inc.’s consolidated income statement for the Commercial segment¹³² shows that BSM’s revenue and expenses are included in the Buildings segment’s financial

¹²⁹ See SAA at 825.

¹³⁰ See BSM’s June 11, 2019, Section A Supplemental Questionnaire Response at 5.

¹³¹ See BSM’s CEP verification report at 5.

¹³² As a result of NCI Building Systems, Inc.’s merger with Ply-Gem Industries Inc. in November 2018, certain business segments (including the Buildings and Components segments) were combined into the Commercial segment.

information.¹³³ The Buildings and Components segments' financial data¹³⁴ tie to the Buildings and Components segments' financial data in NCI Building Systems Inc.'s audited consolidated financial statements, which we reviewed during verification. Therefore, by adding the profit ratio derived from BSM's financial statements to the profit ratio derived from the Buildings and Components segments' income statements, as we did in the *Preliminary Determination*, we double counted certain BSM revenue and expenses that were also included in the consolidated financial statement and not eliminated upon consolidation.

For the final determination, to eliminate double counting, we used financial data on the record to exclude the results of BSM's operations from the expenses and profit of the Buildings segment in NCI Building Systems, Inc.'s consolidated financial statements before we calculated a CEP profit ratio for NCI Building Systems, Inc. Then, we added NCI Building Systems, Inc.'s profit ratio to the profit ratio that we calculated using BSM's financial statements to determine the CEP profit ratio that we used to calculate CEP profit.

BSM argues that we should average, rather than add together, NCI Building Systems, Inc. and BSM's profit ratios to determine the CEP profit ratio to use to calculate CEP profit. We have addressed this issue before and determined it was appropriate to add the profit ratios together. Thus, consistent with the methodology employed in *Shrimp/Thailand*, *Prestressed Concrete Rail Tire Wire/Mexico*, and *Citric Acid Canada AR 12-13* we have computed separate profit ratios for NCI Building Systems, Inc. and BSM, and then added these ratios to derive the CEP profit.

Calculation of Total Expenses

We also agree with BSM that our CEP profit calculation does not make use of expenses incurred with respect to the narrowest category of merchandise that includes subject merchandise with respect to the Components segment. As noted above, section 772(f)(2)(C)(iii) of the Act prescribes determining total expenses for calculating CEP profit based on "the narrowest category of merchandise sold in all countries which includes the subject merchandise." Given that the statute requires using expenses with respect to the "narrowest category" of merchandise sold in all countries which includes subject merchandise, we agree with BSM that we should revise our CEP profit calculation by not relying on financial data from the DBCI division of the Components segment in our CEP profit calculation. BSM reported that the Components segment comprises two divisions (*i.e.*, the MBCI and DBCI divisions).¹³⁵ The DBCI division only sells non-subject merchandise (*i.e.*, rolled up doors).¹³⁶ While the petitioner argues that the Components segment is the "narrowest category" of financial data, based on NCI's financial reporting, NCI separately tracks financial data for the DBCI division that are reflected in the audited consolidated income statements.¹³⁷ In *Furfuryl Alcohol from South Africa*, Commerce noted that, "...given the statutory preference for profit based on a narrow category of

¹³³ See BSM's Case Brief at 27-29; see also BSM's August 14, 2019, Second Section D Supplemental Questionnaire Response at Exhibit SSD-1; see also BSM's BPI Memorandum at Note 7.

¹³⁴ See BSM's August 14, 2019, Second Section D Supplemental Questionnaire Response at Exhibit SSD-1.

¹³⁵ See BSM's August 9, 2019, Section C Supplemental Questionnaire Response at 9.

¹³⁶ See BSM's CEP verification report at 20.

¹³⁷ *Id.* at 20; see also BSM's August 9, 2019, Section C Supplemental Questionnaire Response at 9.

merchandise, the use of internal financial reports may be appropriate where we do not otherwise have sufficiently tailored profit data.”¹³⁸ Commerce has previously explained that “paragraph (d)(2) {of section 351} specifies that the Department will not be limited to audited financial statements, but may use any appropriate financial report, including internal reports, the accuracy of which can be verified, if verification is conducted. This provision reflects the suggestion of commentators that Commerce make clear its discretion to use financial reports prepared in the normal course of business that are as specific as possible to the merchandise under investigation or review.”¹³⁹ For these reasons, and because we are able to identify the DBCI division’s financial data that are included in the Components segments data, we have not used the DBCI financial data in calculating CEP profit for the final determination.

Shared Indirect Selling Expenses

We agree with BSM that shared indirect selling expenses for NCI Building Systems, Inc. should be added to total expenses (and deducted from income before taxes) in the CEP profit calculation. In its Section C questionnaire response, BSM explained that “{c}ertain expenses, mostly of the administrative nature, are considered shared expenses, which do not benefit a specific segment within NCI.”¹⁴⁰ In calculating the indirect selling expense ratio (*i.e.*, INDIRSU field), BSM calculated an indirect selling expense ratio for these shared expenses and then added this ratio to the segment-specific indirect selling expense ratios that it calculated for the Buildings and Components segments.¹⁴¹ During verification, NCI described the shared expenses as corporate level expenses.¹⁴² As noted above, the statute requires that the profit be allocated to: 1) direct and indirect selling expenses; and 2) the cost of any further manufacture or assembly in the United States. Thus, accounting for shared indirect selling expenses in the CEP profit calculation is in keeping with the statute.

Weight Averaging Segment Specific Profit Ratios

In the *Preliminary Determination*, we calculated separate profit ratios (*i.e.*, income before taxes divided by total expenses) for the Buildings and Components segments and then weight averaged each of these ratios by the respective segment’s income before taxes to calculate the overall profit ratio for NCI Building Systems Inc. BSM contends that this methodology is distortive and, instead, we should have summed the income before taxes for both segments and divided by the sum of total expenses for both segments to derive the profit ratio for NCI Building Systems Inc. After further consideration, we agree. Expenses are in the denominator of our ratios and, thus, we should have weighted the profit ratio by expenses rather than income, which is in the numerator of the ratios. The calculation described by BSM essentially weight averages by expenses. For the final determination, we revised the profit ratio calculation for the Buildings and Components segments. Specifically, we calculated the profit ratio for NCI Building Systems

¹³⁸ See *Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol from the Republic of South Africa*, 62 FR 61084 (November 14, 1997) at Comment 8.

¹³⁹ See *Antidumping Duties; Countervailing Duties*, 61 FR 7308 (February 27, 1996).

¹⁴⁰ See BSM’s June 4, 2019, Section C Response at 65.

¹⁴¹ *Id.*

¹⁴² See BSM’s CEP verification report at 33.

Inc. by summing all income before taxes for the relevant affiliates and the MBCI division, and dividing this amount by the related total expenses.

Accordingly, we have made the revisions identified above in our CEP profit calculation for the final determination.

Comment 10: Whether Commerce Should Use BSM's Reported Date of Sale

BSM's Comments:

- Commerce should use BSM's reported date of sale (the date the final portion of a project has been shipped)¹⁴³ instead of the date of the purchase order or sales order acknowledgement as the date of sale.
- The date of sale is the date on which the material terms of sale are firmly and finally established. Commerce's regulations state that it may use a date of sale "other than the date of invoice if ... a different date better reflects the date on which the exporter or producer establishes the material terms of sale."¹⁴⁴ The *Preamble* to Commerce's indicates the date of sale must be when the terms of sale are firmly established and not merely proposed. The CIT explained that "an interested party proposing an alternate date of sale bears the burden of demonstrating that the material terms of sale were 'firmly' and 'finally' established on its proposed date."¹⁴⁵
- The date of sale reported by BSM best represents the date when the material terms of sale were firmly and finally established because material terms such as quantity, price, and delivery can, and often do, change up until the point that the project has been completed.
- Commerce observed at verification that the contract price changed for certain sales after the purchase order date.

Petitioner's Comments:

- Contract date is the appropriate date of sale, because that is when the material terms of the overall project are fixed, and it occurs prior to the shipment date.
- In cases involving large custom-made merchandise and/or long-term contracts, Commerce has indicated that contract date, rather than invoice date, may be the appropriate date of sale.
- BSM mischaracterizes the sale process in the fabricated structural steel industry and misunderstands Commerce's practice.
- In the fabricated structural steel industry, the material terms of sale are set by the contract. Producers spend large amounts of time bidding and negotiating to win contracts. Contracts are lengthy and establish detailed fixed prices, as well as terms that dictate how subsequent change orders will be addressed. Both parties make substantial commitments when the contract is signed (the seller's steel costs are determined at that time). Contracts are binding and legally obligate the parties to the transaction.

¹⁴³ Which is the final "Phase Complete" date for any phase of the project for Buildings segment sales and the later of the Oracle 10.7 system Load Date or the Oracle 11i Phase Complete date for the project for Components segment sales.

¹⁴⁴ See BSM's Case Brief at 36 (citing 19 CFR 351.401(i)).

¹⁴⁵ *Id.* at 37 (citing *Arcelormittal USA LLC v. United States*, 302 F. Supp. 3d 1366, 1375-76 (CIT 2018)).

- Relying on the contract date as the date of sale is consistent with Commerce’s regulations and practice even though there are inevitable design and engineering changes and price revisions after that date when large capital goods are sold.¹⁴⁶
- In *LNPP from Japan INV*, Commerce explained that “where the long-term sales negotiations, design, production, shipment and installation of LNPPs require contractual documentation, the date of sale of the subject merchandise is best established by the date a contract is signed.” In that case, Commerce also explained that it examined contract law “to identify the point in time when the essential elements of the sale are firm, thus demonstrating an intent to be legally bound.”¹⁴⁷
- In *LNPP Germany INV*, Commerce stated that contract amendments, *per se*, do not alter the date of sale, “given the industry involved and the nature of the construction process for these large customized machines under investigation, where minor specification changes are routine.”¹⁴⁸
- In *Large Power Transformers Korea INV*, Commerce relied on the purchase order date as the date of sale even though price changes could occur up until invoicing or later, because “...a meeting of the minds with regard to both price and quantity...” occurred with the purchase order.¹⁴⁹
- In *LNPP Germany AR 98-99*, Commerce stated that “due to the custom nature of LNPPs and the protracted sales, production, and installation process, minor design changes and appropriate accompanying price adjustments are expected and indeed unavoidable. Therefore, ... setting the date of sale on the date of the last minor change in the middle of the production process would be arbitrary and ignores the fact that the parties committed themselves to the sale and process at an earlier date.”¹⁵⁰
- Changes to material terms after the contract occur in the fabricated structural steel industry and such changes are specifically contemplated and addressed in contracts. All of BSM’s change orders were pursuant to the original contract. Thus, modifications pursuant to change orders do not constitute changes to the material terms of sale for purposes of identifying the date of sale.
- Because the Mexican peso deteriorated during the POI, BSM is attempting to use the date of sale argument in order to benefit from the change in the exchange rate.

¹⁴⁶ See Petitioner’s Rebuttal Brief at 28 and 29 (citing, *e.g.*, *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany: Final Results of Antidumping Duty Administrative Review*, 66 FR 11557 (February 26, 2001) (*LNPP Germany AR 98-99*), and accompanying IDM at Comment 1; *Large Power Transformers From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 77 FR 40857 (July 11, 2012) (*Large Power Transformers Korea INV*), and accompanying IDM at Comment 2; and *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan*, 61 FR 38139 (July 23, 1996) (*LNPP Japan INV*)).

¹⁴⁷ *Id.* at 29 (citing *LNPP Japan INV*).

¹⁴⁸ *Id.* at 30 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany*, 61 FR 38166 (July 23, 1996) (*LNPP Germany INV*)).

¹⁴⁹ *Id.* at 30 (citing *Large Power Transformers Korea INV* IDM at Comment 2).

¹⁵⁰ See *LNPP Germany AR 98-99* IDM at Comment 1.

Commerce’s Position: In the *Preliminary Determination*, Commerce used the date of the purchase order for Buildings segment sales and the date of the sales order acknowledgement for Components segment sales as the date of sale for all of BSM’s U.S. sales by NCI.¹⁵¹ NCI considers the purchase order and sales order acknowledgement as contracts.¹⁵² After carefully reviewing all of the record evidence, we have continued to rely on BSM’s purchase order and sales order acknowledgement dates as the date of sale for the final determination.¹⁵³

As an initial matter, it is important to note that the date of sale does not define the universe of reportable sales in this case. As discussed under Comment 1 above, Commerce instructed the respondents to report U.S. sales with contract and completion dates during the POI. The date of sale only impacts currency conversions. Specifically, foreign currencies are being converted into U.S. dollars based on the date of sale of the subject merchandise in accordance with section 773A of the Act.

Regarding date of sale, section 351.401(i) of Commerce’s regulations states that:

{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.¹⁵⁴

Nevertheless, in the *Preamble* to Commerce’s regulations, Commerce explained the exception to using the invoice date as the presumptive date of sale, as follows:

If the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale. For example, in situations involving large custom-made merchandise in which the parties engage in formal negotiation and contracting procedures, the Department usually will use a date other than the date of invoice.¹⁵⁵

The fabricated structural steel produced by BSM and sold by NCI is large custom-made merchandise purchased using purchase orders/sales order acknowledgements, which NCI regards as contracts.¹⁵⁶ Furthermore, for some of NCI’s sales, parties engage in negotiations. In the case

¹⁵¹ See BSM’s Preliminary Calculation Memorandum at 2.

¹⁵² See BSM’s June 11, 2019, Section A Supplemental Questionnaire Response at 12.

¹⁵³ See BSM’s August 6, 2019, Section C Supplemental Questionnaire Response at 9-10. Specifically, we are using the final Oracle 11i “Phase Complete” date for any phase of the project for Buildings segment sales and the later of the Oracle 10.7 system “Load Date” or the Oracle 11i “Phase Complete” date for the project for Components segment sales.

¹⁵⁴ See also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

¹⁵⁵ See *Preamble*, 62 FR at 27349.

¹⁵⁶ See BSM’s June 11, 2019, Section A Supplemental Questionnaire Response at 12.

of large-customized merchandise, Commerce has favored a date of sale earlier in the process, despite subsequent changes in sales terms, given the protracted sales, production, and installation process for such merchandise, and the fact that certain design changes and related price adjustments for such products are expected and often unavoidable.¹⁵⁷

For example, in *LNPP from Germany AR 98-99* Commerce explained that:

For other more fungible products, a change in product specifications and price may justify altering the date of sale. However, due to the custom nature of LNPPs and the protracted sales, production, and installation process, minor design changes and appropriate accompanying price adjustments are expected and indeed unavoidable.¹⁵⁸

While the record contains evidence of changes to BSM's fabricated structural steel projects after the purchase order/sales order acknowledgment date,¹⁵⁹ as noted above, such design changes and related price changes are inevitable with respect to large-customized products. Such changes do not mean that parties did not commit themselves to material aspects of the transaction which would allow production to begin. Thus, we find that the important material aspects of the sale were established on the purchase order/sales order acknowledgment date. Subsequent design alterations do not change that fact.

Given the foregoing, we have continued to rely on purchase order and sales order acknowledgement dates as the date of sale.

Comment 11: Whether Commerce Should Use the Revised Indirect Selling Expense Ratio for Components Segment Sales

BSM's Comments:

- During verification, Commerce observed that the Components segment's indirect selling expense ratio was overstated (the numerator of the ratio incorrectly includes R&D expenses that are not related to the sale of BSM's frames).
- Commerce should use the corrected indirect selling expense ratio for the Components segment in its calculations, which is already reflected in the revised U.S. sales database.

No other party submitted comments on this issue.

Commerce's Position: We agree with BSM and have relied on BSM's November 11, 2019, U.S. sales database, which reflects the revised indirect selling expenses for the Components segment, in our dumping margin calculations. During verification, we found a mathematical

¹⁵⁷ See *LNPP Germany INV*, 61 FR at 38182 ("... the Department's policy regarding the date of sale in the case of large, customized merchandise "has favored establishing the date of sale at an earlier point in the sale transaction process than at a later point, as it might be the case of fungible-type commodities which are offered for sale in the ordinary course of trade.").

¹⁵⁸ See *LNPP Germany AR 98-99* IDM at Comment 1.

¹⁵⁹ See BSM's September 27, 2019, submission of CEP verification exhibits at Exhibit 4 (Date of Sale).

error in the calculation of the indirect selling expense ratio reported for the Components segment.¹⁶⁰ Because this correction is already reflected in the November 11, 2019, U.S. sales database, we need not make additional changes to the reported indirect selling expenses for the final determination.¹⁶¹

Comment 12: BSM's Affiliated Party Input Purchases

Petitioner's Comments:

- During the POI, BSM purchased pre-painted coils from NCI. The pricing information BSM provided to Commerce demonstrates that these purchases were not made at arm's length.
- In the cost verification report, Commerce listed the prices BSM paid to affiliated and unaffiliated parties for purchases of pre-painted and unpainted coils used in the production of fabricated structural steel.¹⁶²
- This pricing information demonstrates that the market price BSM paid for unpainted coils exceeds the transfer price. Accordingly, for the final determination, Commerce should adjust BSM's reported costs to reflect market prices.¹⁶³

BSM's Comments:

- In its discussion of affiliated purchases, the petitioner appears to be confused about BSM's purchases of pre-painted and unpainted coils from NCI.
- The cost verification report shows that BSM's purchases of pre-painted coils from NCI on a customer pick-up basis were at arm's length.¹⁶⁴
- As noted by the petitioner, the cost verification report does show a difference between the market and transfer prices of unpainted coils. However, in calculating its proposed adjustment, the petitioner fails to account for the percentage that BSM's affiliated purchases of unpainted coils from NCI represents of the total purchases of unpainted coils.¹⁶⁵
- For the final determination, if Commerce decides to make this extremely minor adjustment, the calculation of the adjustment should account for the percentage that BSM's affiliated purchases of unpainted coils from NCI represents of the total purchases of unpainted coils.¹⁶⁶

Commerce's Position: We agree with the petitioner that Commerce should adjust BSM's reported costs to reflect the market price of unpainted coils. However, we agree with BSM that the petitioner's proposed adjustment is not correct, because its calculation fails to account for the percentage that BSM's affiliated purchases of unpainted coils from NCI represents of the total purchases of unpainted coils. As discussed in the cost verification report, during the POI, BSM

¹⁶⁰ See BSM's CEP verification report at 33-34.

¹⁶¹ See BSM's November 11, 2019, Post-Verification Response at 2 and revised U.S. sales database.

¹⁶² See Petitioner's Case Brief at 35 (citing BSM CVR at 18).

¹⁶³ *Id.* at 35 for a proposed calculation of the adjustment.

¹⁶⁴ See BSM's Rebuttal Brief at 20 (citing BSM Cost Verification Report at 18).

¹⁶⁵ *Id.* at 21 (citing BSM Cost Verification Report at 18).

¹⁶⁶ *Id.* at 22 for a proposed calculation of the adjustment.

purchased a small quantity of pre-painted and unpainted coils used in the production of fabricated structural steel from NCI.¹⁶⁷ As discussed by both the petitioner and BSM, the pricing information provided in the cost verification report shows that the market price for unpainted coils exceeds the transfer price BSM paid to NCI.¹⁶⁸ Accordingly, for the final determination, we have adjusted BSM's reported cost of manufacturing for the difference between the transfer price and the market price of unpainted coils.

Comment 13: CV Profit Rate Used for BSM

BSM's Comments:

- In the *Preliminary Determination*, Commerce determined the CV profit and CV selling expenses for BSM by using Corey's combined CV profit and selling expenses based on its POI HM sales made in the ordinary course of trade.
- Commerce cannot rely on Corey's CV profit rate because the rate is not a reasonable surrogate for BSM's profit for the reasons described below.

CEP Offset

- If Commerce grants BSM the CEP offset, the statute requires that Commerce reduce BSM's NV to account for the indirect selling expenses Corey incurred in the HM, up to the amount of NCI's U.S. indirect selling expenses. As such, Commerce will no longer be able to claim that Corey's proprietary information is protected by combining its CV selling expenses and profit into a single rate. Therefore, Commerce would need to use Corey's publicly ranged profit data.
- Alternatively, Commerce could reduce Corey's combined CV profit and selling expense rate used in the *Preliminary Determination* by the full amount of indirect selling expenses incurred by NCI on its CEP sales, which is the amount by which the CEP offset must be capped.

HM Sales and Sales Data Selection

- Commerce's selection of Corey's HM sales for purposes of calculating the CV profit was arbitrary. Commerce should have relied on a different universe of sales for purposes of calculating CV profit and CV selling expenses.
- Corey had additional HM sales that were profitable, however, Commerce did not explain its rationale for excluding them from the CV profit calculation. The data for these projects, when taking all years of cost and revenue into account, shows that they were made in the ordinary course of trade. As such, Commerce should have included them in the CV profit calculation, regardless of whether Commerce uses only the cost and revenue data from the POI.
- Commerce explained that it relied on sales data corresponding with the same period as the U.S. sales (*i.e.*, contract dated during the POI for which the project was completed during the POI). However, Commerce did not explain why it was appropriate to include data from outside of the POI for purposes of calculating the CV profit and CV selling expenses. To be consistent in the selection of HM sales and sales data, Commerce needs

¹⁶⁷ See BSM CVR at 18.

¹⁶⁸ *Id.* at 18 and CVE 14.

to include certain additional HM sales in the CV profit rate calculation, as well as, the projects' data from outside the POI.

- A less distortive method for calculating CV profit, would be to rely on Corey's overall costs and revenues for the POI by using the combined financial statements of Corey and its affiliate.

Project Outside the Ordinary Course of Trade

- When calculating CV profit and CV selling expenses, Commerce is directed to consider sales of the foreign like product made in the ordinary course of trade.¹⁶⁹
- According to the SAA,¹⁷⁰ merchandise sold at aberrational prices or with abnormally high profits are examples of sales that might be considered outside of the ordinary course of trade¹⁷¹ when calculating CV profit.
- Commerce's calculation of Corey's CV profit is based largely on an abnormally high profit rate that is extraordinary for the market in question.¹⁷²
- Information on the record (*e.g.*, Corey's own HM data, BSM's HM data, financial statements of other Mexican producers, *etc.*) confirms that the above referenced profit rate does not reflect what is normal in the trade under consideration.

Corey's HM Profit Rate is Unreasonable as Applied to BSM

- The CV profit rate calculated for Corey is not representative of the fabricated structural steel industry or of BSM's experience. It is an outlier and not consistent with typical profit rates in the fabricated structural steel industry. Commerce's reliance on an unrepresentative and unreasonably high profit rate will defeat the fundamental statutory purpose of achieving a fair comparison between NV and EP.¹⁷³
- Corey's profitability might be distorted by the receipt of countervailable subsidies, making the calculated CV profit rate unreliable.¹⁷⁴ Commerce does not normally use financial statements of companies receiving countervailable subsidies for purposes of surrogate ratios in non-market economy (NME) cases.¹⁷⁵ In addition, the CAFC recently remanded a market economy case for Commerce to consider evidence that the source company for CV profit received countervailable subsidies.¹⁷⁶
- BSM and Corey are very different companies, offering different products and services (*e.g.*, BSM is a fabricator of steel, with over a thousand projects per year, typically

¹⁶⁹ See BSM's Case Brief at 16-17 (citing sections 773(e)(2)(B)(ii) and 771(15) of the Act).

¹⁷⁰ *Id.* at 17 (citing 62 FR 27299 (citing SAA at 839-840)).

¹⁷¹ *Id.* at 17 (citing 19 CFR 351.102(35)).

¹⁷² *Id.* at 18 (citing Corey's July 29, 2019, Supplemental Section D Response at Exhibit SD-30).

¹⁷³ *Id.* at 20-22 (citing *Thai I-Mei Frozen Foods Co. v. United States*, 572 F. Supp. 2d 1353, 1368 (CIT 2008), *rev'd on other grounds*, 616 F. 3d 1300 (Fed. Cir. 2010); and *Husteel Co. v. United States*, 98 F. Supp. 3d 1315, 1349 (CIT 2015)).

¹⁷⁴ *Id.* at 22 (citing *Certain Fabricated Structural Steel from Mexico: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 33227 (July 12, 2019) (*CVD Preliminary Determination*), and accompanying PDM).

¹⁷⁵ *Id.* at 22 (citing *e.g.*, *Utility Scale Wind Towers from the Socialist Republic of Vietnam*, 77 FR 75984 (December 26, 2012) (*Wind Towers from Vietnam*), and accompanying IDM at Comment 2).

¹⁷⁶ *Id.* at 22-23 (citing *Mid Continent Steel & Wire, Inc. v. United States*, 941 F. 3d at 530, 544-45 (Fed. Cir. 2019) (*Mid Continent Steel & Wire, Inc. v. United States*)).

completed within a few months; Corey fabricates steel, typically for a few multi-year projects, and offers design and erection services).

- The sales used to calculate Corey's CV profit rate are not on the same basis as BSM's reported U.S. sales.¹⁷⁷
- For the final determination, Commerce should not rely on Corey's CV profit rate.

BSM's HM Sales Data

- The CAFC has clarified that the five percent viability threshold does not technically apply for purposes of determining whether profit data are available for purposes of section 773(e)(2)(A) of the Act.¹⁷⁸ As such, Commerce has the discretion to use BSM's HM sales data to calculate CV profit under section 773(e)(2)(A) of the Act.
- Commerce can also use BSM's HM sales data to calculate CV profit under section 773(e)(2)(B)(iii) of the Act, based on any other reasonable method.¹⁷⁹
- For purposes of calculating a CV profit rate for BSM, BSM's HM sales data are the best information available on the record because, they provide a larger universe of profitable sales; on the same basis and of the same type of merchandise as BSM's U.S. sales; and, is in line with other profit data on the record.¹⁸⁰

Petitioner's Comments:

- Commerce should continue to rely on Corey's CV profit rate, because it is the best and most reasonable source on the record.

CEP Offset

- If the CEP offset is granted, Commerce can use Corey's publicly ranged profit data as proposed by BSM.
- The use of BSM's alternative methodology, to reduce Corey's combined CV profit and selling expense rate used in the *Preliminary Determination* by the full amount of indirect selling expenses incurred by NCI on its CEP sales, is improper and its effect on NV is inconsistent with the law.

HM Sales and Sales Data Selection

- The obvious rationale for excluding Corey's additional HM sales that were profitable was that they did not meet Commerce's selection criteria.
- BSM apparently agrees that the standard applied to HM sales should be the same as the standard followed for U.S. sales, which means that only certain Corey sales are suitable for the CV profit calculation.¹⁸¹

¹⁷⁷ *Id.* (citing Corey CVR at CVE 13).

¹⁷⁸ *Id.* at 25 (citing *Mid Continent Steel & Wire, Inc. v. United States*, 941 F. 3d at 538).

¹⁷⁹ *Id.* at 25 (citing *e.g., 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 IDM at Comment 15).

¹⁸⁰ *Id.* at 26 (citing BSM's July 25, 2019, Supplemental Section D Questionnaire Response at Exhibit SD-25).

¹⁸¹ See Petitioner's Rebuttal Brief at 13 (citing BSM's Case Brief at 14-15).

- During the sales verification, Commerce found that one of the HM sales used for purposes of calculating the CV profit and CV selling expenses in the *Preliminary Determination* did not correspond to the same period as the U.S. sales.¹⁸²
- BSM appears to suggest that one of the HM sales used for purposes of calculating the CV profit and CV selling expenses in the *Preliminary Determination* did not meet Commerce’s criteria, because it incurred expenses outside of the POI. However, BSM is mistaken. In the cost verification report, Commerce explained that the amount booked in 2017 related to returns that were booked to this project in error and were reversed in 2018, and the amount booked in 2019 related to returns that were for this project.¹⁸³
- BSM does not explain why Commerce should deviate from its statutorily preferred methodology and, instead, rely on Corey’s overall costs and revenues for the POI by using the combined financial statements of Corey and its affiliate. Using these financial statements would result in considering non-subject merchandise, sales to other countries, and non-profitable projects.

Project Outside the Ordinary Course of Trade

- Other than claiming that the profit for this project is abnormally high, BSM does not identify anything unusual or atypical about this project. The profit on this project is not abnormally high and is in line with profits from other sales on the record.
- The record demonstrates that the profit levels of fabricated structural steel vary significantly.¹⁸⁴
- BSM compares its profit level with the profit levels of the other projects reported by Corey. However, these projects were not made during the POI and, as such, not used for purposes of calculating CV profit and CV selling expenses.
- BSM compares the CV profit used at the *Preliminary Determination* to its own reported HM projects. However, BSM’s presentation of these data is misleading, because it omitted an HM project.¹⁸⁵ BSM’s analysis relies on a small number of sales, some of which were outside the POI and the remainder considered non-viable.
- Further, BSM compares the project’s CV profit rate with petitioner’s statements about the competitiveness of the U.S. market. However, BSM’s U.S. market profit levels confirm the variation in profit levels common to the fabricated structural steel industry and that the profit for this project is ordinary.¹⁸⁶
- Finally, BSM compares the project’s CV profit rate with the submitted financial statements of other Mexican producers of similar merchandise. However, the use of financial statements is statutorily inferior to the preferred method. Further, one of the financial statements submitted by BSM had a high overall profit rate, so it is likely that numerous sales had profit margins which exceeded the one for the project referenced above.

Corey’s HM Profit Rate is Unreasonable as Applied to BSM

¹⁸² *Id.* at 14 (citing Corey SVR at 27).

¹⁸³ *Id.* at 15 (citing Corey CVR at 17).

¹⁸⁴ *Id.* at 17 (citing Petitioner’s Case Brief at Attachment 3).

¹⁸⁵ *Id.* at 18 (citing BSM’s July 25, 2019, Supplemental Section D Questionnaire Response at Exhibit SD-25).

¹⁸⁶ *Id.* at 19 (citing Petitioner’s Case Brief at Attachment 3).

- Unlike NME proceedings where Commerce uses the financial statements of companies it has not investigated and calculations are performed on a company-wide basis, Corey was fully investigated in AD and CVD proceedings and the cost and revenue figures used in the profit calculation were verified.
- In *Mid Continent Steel & Wire, Inc. v. United States*, the CAFC did not find that the subsidized company could not be used for CV profit, as suggested by BSM, but remanded to Commerce for further consideration and explanation.¹⁸⁷
- Corey's preliminary subsidy margin is attributable to one export subsidy program.¹⁸⁸ Therefore, Corey's receipt of countervailable subsidies does not distort the accuracy of its HM data, because Corey would not be entitled to use the duty-free imports in the production of fabricated structural steel sold in Mexico.
- The fact that there are differences between Corey and BSM does not override the statutory preference to use a respondent's HM sales data of subject merchandise when calculating CV profit.
- As discussed above, only one of the sales used to calculate Corey's CV profit rate in the *Preliminary Determination* is not on the same basis as BSM's reported U.S. sales.

BSM's HM Sales Data

- It is Commerce's practice, upheld by the CAFC, to not calculate CV profit based on sales from a non-viable market.¹⁸⁹
- Commerce should continue to rely on Corey's HM sales for purposes of calculating CV profit and CV selling expenses because Corey's HM is viable and the only source which complies with the U.S. reporting requirements.

Commerce's Position: For the final determination, consistent with the *Preliminary Determination*, we have calculated BSM's CV profit and selling expenses under section 773(e)(2)(B)(ii) of the Act, using Corey's combined CV profit and selling expenses (adjusted as reflected in Comment 2) based on its POI HM sales made in the ordinary course of trade. Corey's combined selling expenses and profit reflect the profit of a Mexican fabricated structural steel producer, on comparison market sales of the merchandise under consideration, in the ordinary course of trade.

As discussed in Comment 8 above, for the final determination, we have granted BSM a CEP offset.¹⁹⁰ However, we disagree with BSM and the petitioner that, if we grant a CEP offset, in order to protect Corey's proprietary data (*i.e.*, Corey's CV profit and selling expenses), we need to use Corey's publicly ranged CV profit data. Instead, for the final determination, we have relied on publicly ranged data provided by Corey to determine BSM's CEP offset. This allows us to continue to use Corey's combined CV profit and selling expense ratios while protecting Corey's proprietary data. Therefore, using Corey's publicly ranged profit data or BSM's proposed alternative (*i.e.*, to reduce Corey's combined CV profit and selling expense rate used in

¹⁸⁷ *Id.* at 20-21 (citing *Mid Continent Steel & Wire, Inc. v. United States*, 941 F. 3d at 530, 544).

¹⁸⁸ *Id.* at 20-21 (citing *CVD Preliminary Determination PDM* at 16).

¹⁸⁹ *Id.* at 23 (citing *Mid Continent Steel & Wire, Inc. v. United States*, 941 F. 3d at 536).

¹⁹⁰ See Section 773(a)(7)(B) of the Act.

the *Preliminary Determination* by the full amount of indirect selling expenses incurred by NCI on its CEP sales) is not necessary.

We disagree with BSM that the selection of Corey's HM sales for purposes of calculating CV profit and selling expenses was arbitrary. As stated in Corey's Preliminary Calculation Memorandum,¹⁹¹ under section 773(e)(2)(A) of the Act, we have calculated Corey's CV profit and selling expenses based on its POI HM sales made in the ordinary course of trade (*i.e.*, the preferred method). Commerce further articulated that, under the preferred method, normally the comparison market sales and cost information correspond with the same period as the U.S. sales. Therefore, based on our practice, we calculated CV profit and selling expenses using the HM sales and cost data that correspond with the same parameters followed in determining the population of reported U.S. sales (*i.e.*, projects contracted and completed during the POI).¹⁹² Accordingly, Commerce's selection criteria for purposes of calculating CV profit and selling expenses in the *Preliminary Determination* were not arbitrary but, in fact, mirrored the preferred method normally used to calculate CV profit.

We also disagree with BSM that Corey had additional HM sales that were profitable and should have been included for purposes of calculating CV profit and selling expenses. The additional HM sales in question, while they were completed during the POI, were contracted prior to the POI. Therefore, as noted above, in mirroring the parameters followed in determining the population of reported U.S. sales, we determined the population of HM sales for CV profit based on whether the HM sales were contracted and completed during the POI. As such, the additional sales did not meet the same reporting requirements used for the U.S. sales because they were contracted prior to the POI. Thus, the sales should not be included in the calculation of CV profit for Corey.

BSM claims that Commerce used data from outside of the POI for purposes of calculating CV profit for the *Preliminary Determination* without explanation. At the *Preliminary Determination*, for one of the projects used in the calculation of CV profit, we noted unexplained extraneous amounts that appeared to be recorded outside the POI. While we were not certain what those amounts represented at the *Preliminary Determination*, we determined it was reasonable at that point in the proceeding to include the amounts in the CV profit calculation, and we stated that fact in Corey's Preliminary Cost Calculation Memorandum.¹⁹³ Consequently, as highlighted by the petitioner, during Corey's cost verification, company officials explained that, for the project in question, there was no production during 2017 and the extraneous amounts represented returns to the warehouse that were posted to the incorrect project by mistake. The entry error was discovered and reversed in 2018. In addition, the extraneous amounts reported for the same project in 2019 correctly represented returns to the warehouse.¹⁹⁴ As such, the pre- and post-POI cost activity for this project simply relates to returns and corrections of accounting recording errors, not production activity and costs. Therefore, this project meets the parameters followed in determining the population of reportable HM sales and, in order to accurately

¹⁹¹ See Corey's Preliminary Calculation Memorandum at 1-2.

¹⁹² *Id.* at 2; see also section 773(e)(2)(A) of the Act.

¹⁹³ *Id.* at Attachment 2.

¹⁹⁴ See Corey CVR at 17.

capture the POI sales data for this project, the data in question need to be included in the calculation to properly determine CV profit.

Regarding BSM's suggestion that a less distortive method for calculating CV profit would be to rely on Corey's financial statements, we disagree. Commerce's use of Corey's HM sales for purposes of calculating CV profit and selling expenses for BSM is in conformity with our practice and statutory obligations. In accordance with section 773(e)(2)(B)(ii) of the Act, Corey's combined selling expense and profit reflects the profit of a Mexican fabricated structural steel producer, on comparison market sales of the foreign like product, in the ordinary course of trade. As discussed by the petitioner, using Corey's financial statements would result in considering non-foreign like product, sales to other countries and non-profitable projects.

We agree with BSM that, when calculating CV profit and selling expenses, Commerce is directed to consider sales of the foreign like product made in the ordinary course of trade. As discussed above, we have calculated BSM's CV profit and selling expenses under section 773(e)(2)(B)(ii) of the Act using Corey's combined CV profit and selling expenses (adjusted as reflected in Comment 2) based on its POI HM sales of the foreign like product, made in the ordinary course of trade. That section allows for use of data from other respondents, limited to the foreign like product, and only includes sales made in the ordinary course of trade.¹⁹⁵ As such, Commerce's use of Corey's HM sales for purposes of calculating CV profit and selling expenses for BSM is in conformity with statutory obligations.

We disagree with BSM that Commerce's calculation of Corey's CV profit is based largely on an abnormally high profit rate that is extraordinary for the market in question. Corey's combined selling expense and profit used for purposes of calculating CV profit and selling expenses for BSM reflects the profit of a Mexican fabricated structural steel producer, on comparison market sales of the foreign like product, in the ordinary course of trade. BSM does not identify anything unusual or atypical about the project itself. BSM argues that information on the record (*e.g.*, Corey's own HM data, BSM's HM data, financial statements of other Mexican producers, *etc.*) confirms that the above referenced profit rate does not reflect what is normal in the market under consideration. However, based on our review of the record, the profit levels of BSM's fabricated structural steel and certain financial statements submitted by BSM are within the range in question for Corey's profit rate.¹⁹⁶ Accordingly, we determined that Corey's CV profit rate was not aberrational.

We agree with BSM that Commerce does not normally use financial statements of companies receiving countervailable subsidies for purposes of surrogate ratios in NME cases. However, in the instant case, we are not relying on Corey's financial statements for purposes of calculating BSM's CV profit and selling expenses. Instead, we are relying on the revenue and cost data specific to each of Corey's HM sales. And the subsidy in question relates to Corey's receipt of countervailable subsidies related to an export subsidy program.¹⁹⁷ Export subsidies relate to

¹⁹⁵ See *Thai I–Mei Frozen Foods Co. v. United States*, 616 F. 3d 1300, 1307 (Fed. Cir. 2010).

¹⁹⁶ See Petitioner's Rebuttal Brief at 19 (citing Petitioner's Case Brief at Attachment 3); see also BSM's Case Brief at 19 (citing BSM's August 5, 2019, Submission of New Factual Information at Attachment 3).

¹⁹⁷ See *CVD Preliminary Determination PDM* at 16.

export sales, not HM sales, which is what the CV profit calculation is based on. Consequently, we found no evidence to support BSM's assertion that Corey's HM profitability is distorted by the receipt of a countervailable export subsidy.¹⁹⁸ While the CAFC recently remanded to Commerce for further information regarding subsidies in *Mid Continent Steel & Wire, Inc. v. United States*, the Court has not issued its final judgment at this point. Moreover, the argument is not relevant here, because we are not relying on financial statements for purposes of calculating BSM's CV profit and selling expenses.¹⁹⁹

We disagree with BSM that alternative (B)(ii) requires other producers subject to the proceeding be identical to a respondent in both business structure and operation before their information can be used to calculate surrogate profit or selling expense rates. While we would consider on a case-by-case basis whether there was something unusual about the other producers' data that would preclude us from using them under alternative (B)(ii), we find no evidence in this proceeding that would preclude us from using Corey's data to calculate HM selling expense or profit rates to use for BSM. Moreover, there is no requirement under alternative (B)(ii) that Commerce analyze the other respondent's business operations, customers, *etc.* compared to BSM. Further, as discussed above, Commerce's use of Corey's HM sales for purposes of calculating CV profit and selling expenses for BSM under alternative (B)(ii) mirrors the preferred method, is reasonable and in conformity with our practice and statutory obligations because it represents a profit of a Mexican fabricated structural steel producer, on comparison market sales of the foreign like product made in the ordinary course of trade.

We disagree with BSM that its HM sales data are the best information available on the record for purposes of calculating CV profit and selling expenses for BSM. In the section D questionnaire, we requested that the companies provide revenue, cost and profit information for all HM sales of the foreign like product which were completed, and final payment was received during the POI. The HM sales information provided by BSM showed that its volume of HM sales was not considered viable as a basis for determining NV, and there were no sales of the foreign like product made to third country markets during the POI.²⁰⁰ While, in this case, we are not making price to price comparisons and, thus, we were not required to determine viability in selecting a comparison market, the fact remains that BSM does not have a viable home or third country market that could be used as a basis for NV. Because BSM did not have a viable home or third country market, the volume of HM sales during the POI is too insignificant to reflect a meaningful HM profit rate. We reason that if the non-viable comparison market sales are not robust enough to use as a basis for NV, they likewise should not be robust enough to use for CV profit. Therefore, because of the absence of viable comparison market sales, consistent with our practice, we are unable to calculate CV profit and selling expenses for BSM using the preferred method under section 773(e)(2)(A) of the Act (*i.e.*, based on the respondent's own HM or third country sales made in the ordinary course of trade).²⁰¹ To use the non-viable data for CV profit

¹⁹⁸ See BSM's Case Brief at 22 (citing *e.g.*, *Wind Towers from Vietnam* IDM at Comment 2).

¹⁹⁹ *Id.* at 22-23 (citing *Mid Continent Steel & Wire, Inc. v. United States*, 941 F. 3d at 530, 544-45).

²⁰⁰ See BSM's June 4, 2019, Section D Response at 40 and Exhibit D-21; BSM's July 25, 2019, Supplemental Section D Questionnaire Response at 31-33 and Exhibit SD-25; and BSM's May 1, 2019 Section A Questionnaire Response at 2 and Exhibit A-1.

²⁰¹ See *Certain Steel Nails from the Sultanate of Oman: Final Determination of Sales at Less Than Fair Value*, 80 FR 28972 (May 20, 2015), and accompanying IDM at Comment 1.

would result in us constructing a price that reflects the same comparison market sales that would be rejected as not being robust enough to use as a basis for NV. BSM argues that, in *Mid Continent Steel & Wire, Inc. v. United States*, the CAFC clarified that the five percent viability threshold does not technically apply for purposes of determining whether profit data are available for purposes of section 773(e)(2)(A) of the Act.²⁰² However, as discussed by the petitioner, BSM fails to mention that, in *Mid Continent Steel & Wire, Inc. v. United States*, the CAFC upheld Commerce's practice not to calculate CV profit based on sales from a non-viable market.²⁰³

Comment 14: BSM's Financial Expense Ratio

BSM's Comments:

- In the *Preliminary Determination*, Commerce revised BSM's financial expense rate calculation to include the revenue from sales of steel scrap in NCI Building Systems, Inc.'s consolidated cost of sales (COS) denominator.
- Commerce derived the amount of scrap revenue based on BSM's revenue from sales of steel scrap as a percentage of BSM's unconsolidated COS.
- Commerce's revision incorrectly assumes that the COS reported in NCI Building Systems, Inc.'s consolidated financial statements does not include the revenue for sales of scrap generated by other NCI Building Systems, Inc. entities.
- Financial accounting information on the record of this investigation demonstrates that, other than BSM, only one of NCI Building Systems, Inc.'s segments records its scrap revenue under a revenue general ledger (GL) account.²⁰⁴ The other segments, including the Buildings segment (which includes BSM), record the net scrap revenue under a GL account which is part of the COS.
- For the final determination, Commerce should rely on NCI Building Systems, Inc.'s financial accounting information to adjust NCI Building Systems, Inc.'s consolidated COS denominator used in the financial expense rate calculation. In doing so, Commerce should adjust the COS denominator only by the scrap revenue not already incorporated in NCI Building Systems, Inc.'s COS (*i.e.*, recorded under a revenue GL account).

Petitioner's Comments:

- According to the cost verification report, the COS denominator of BSM's financial expense rate did not include the scrap offset.
- For the final determination, Commerce should continue to adjust the COS denominator of the financial expense rate based on BSM's experience.

Commerce's Position: We agree with the petitioner that Commerce should continue to adjust NCI Building Systems, Inc.'s consolidated COS denominator used in the calculation of BSM's financial expense rate to include the revenue from sales of steel scrap. However, we agree with BSM that Commerce should rely on NCI Building Systems, Inc.'s financial accounting

²⁰² See BSM's Case Brief at 25 (citing *Mid Continent Steel & Wire, Inc. v. United States*, 941 F. 3d at 538).

²⁰³ See *Mid Continent Steel & Wire, Inc. v. United States*, 941 F. 3d at 539.

²⁰⁴ See BSM's Case Brief at 44 (citing BSM's August 14, 2019, Second Section D Supplemental Questionnaire Response at Exhibit SSD-1).

information on the record of this investigation to determine the correct amount for the adjustment. As discussed by BSM, the income statement provided at Exhibit SSD-1 demonstrates that, at the consolidated level, NCI Building Systems, Inc.'s COS already includes the net revenue from the sales of scrap for several of its segments.²⁰⁵ Therefore, deriving the amount of scrap revenue consistent with the *Preliminary Determination* (i.e., based on BSM's revenue from sales of steel scrap as a percentage of BSM's unconsolidated COS) results in double counting for certain entities included in the consolidated financial statements. Accordingly, for the final determination, to mitigate the double counting, we have adjusted NCI Building Systems, Inc.'s consolidated COS denominator used in the calculation of BSM's financial expense rate to include only the scrap revenue not already incorporated in NCI Building Systems, Inc.'s COS (i.e., recorded under a revenue GL account).

Comment 15: Adjustments Required by Mexican Financial Reporting Standards (MFRS)

BSM's Comments:

- In the normal course of business, BSM does not recognize the effects of certain Mexican GAAP (i.e., MFRS C-6 and D-3) related to depreciation and labor expenses.
- In the *Preliminary Determination*, Commerce revised BSM's reported costs to include the costs BSM calculated to estimate the effects of MFRS C-6 and D-3.
- Commerce's adjustments are contrary to its preference for using a company's own books and records.²⁰⁶
- The adjustments required by MFRS C-6 and D-3 are not required by U.S. GAAP and, in the normal course of business, BSM's financial information is consolidated with its U.S. affiliates' financial information audited in accordance with U.S. GAAP.
- BSM's reported costs can reasonably be used to compute the costs incurred to produce the subject merchandise and BSM historically has not made the MFRS C-6 and D-3 adjustments. In addition, BSM books severance expenses as the actual cost incurred in its current-year profit and loss statement rather than accruing them for potential future costs.
- For the final determination, Commerce should rely on BSM's costs as reported (i.e., not including the MFRS C-6 and D-3 adjustments).

Petitioner's Comments:

- As noted in BSM's audited financial statements, BSM does not recognize the effects of MFRS C-6 and D-3 related to depreciation and labor expenses. Therefore, BSM's records are not kept in accordance with Mexican GAAP, nor do they reflect the costs associated with the production and sale of the merchandise as required by section 773(f)(1)(A) of the Act.
- Commerce adjusted BSM's costs to reasonably reflect BSM's cost of production, because they were not kept in accordance with Mexican GAAP and should continue to do so for the final determination.

²⁰⁵ See BSM's August 14, 2019, Second Section D Supplemental Questionnaire Response at Exhibit SSD-1.

²⁰⁶ See BSM's Case Brief at 45 (citing section 773(f)(1)(A) of the Act).

Commerce’s Position: We agree with the petitioner that Commerce should continue to adjust BSM’s reported costs to include the costs BSM calculated to estimate the effects of MFRS C-6 and D-3. BSM argues that Commerce’s adjustments are contrary to its preference for using a company’s own books and records. We disagree. When Commerce evaluates a respondent’s submitted costs, section 773(f)(1)(A) of the Act provides that “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.”

As explained by BSM in its section D response, BSM’s financial accounting practices are in accordance with Mexican GAAP, except for two exceptions. BSM does not recognize the effects of MFRS C-6, related to depreciation expenses, or MFRS D-3, related to labor expenses.²⁰⁷ Therefore, BSM’s normal books and records are not kept in accordance with Mexican GAAP. In instances where a respondent does not maintain its accounting records in accordance with the GAAP of the exporting country, Commerce must determine the appropriate costing methodology. Commerce’s practice in such instances is to look to the exporting country’s GAAP for guidance.²⁰⁸ In the instant case, the notes to BSM’s FY 2018 audited financial statements demonstrate that Mexican GAAP requires compliance with MFRS C-6 and D-3, and the reported cost of manufacture is based on BSM’s non-GAAP compliant books and records.²⁰⁹ Therefore, for the final determination, we have continued to revise BSM’s reported costs to include the costs BSM calculated to estimate the effects of MFRS C-6 and D-3. The fact that the adjustments required by MFRS C-6 and D-3 are not required by U.S. GAAP and BSM’s financial information is consolidated with its U.S. affiliates’ financial information audited in accordance with U.S. GAAP is not relevant. BSM’s normal books and records are audited in accordance with MFRS. Accordingly, they should be in compliance with Mexican GAAP, not U.S. GAAP.²¹⁰

Comment 16: Application of Partial Facts Available With Adverse Inferences

At Commerce’s verifications of BSM and NCI, as part of their minor corrections, company officials identified eight U.S. sales of subject merchandise that should have been reported to Commerce but were not reported. Company officials explained that they incorrectly excluded seven of these eight sales from the U.S. sales dataset based on sales invoices dated outside the POI. For these seven sales, company officials failed to bear in mind that invoice date did not dictate whether or not a sale was required to have been reported to Commerce in this investigation. Rather, sales for fabricated structural steel projects contracted and completed during the POI were supposed to have been reported.²¹¹

²⁰⁷ See BSM’s June 4, 2019, Section D Response at 9-10.

²⁰⁸ See *Notice of Final Determination of Sales at Less Than Fair Value: Live Swine from Canada*, 70 FR 12181 (March 11, 2005) (*Live Swine from Canada*), and accompanying IDM at Comment 58.

²⁰⁹ See BSM’s August 7, 2019, Supplemental Section A Questionnaire Response at Exhibit SuppA2-1.

²¹⁰ See *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382 (*Fed. Cir. 2003*) (*Nippon Steel*).

²¹¹ See BSM’s CEP verification report; see also BSM’s Mexico verification report.

In addition, at verification, officials noted that when company officials prepared the U.S. sales database, there was a U.S. sale for a project with incomplete phases as of the end of the POI, which officials did not report to Commerce, because the project was incomplete at that time. However, after company officials prepared the database, the incomplete phases of the project were cancelled. All of the remaining phases of the project were completed during the POI, but officials did not update the U.S. sales database to include this sale.

No parties submitted comments on this issue.

Commerce’s Position: Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party or any other person: (1) withholds information that has been requested by Commerce; (2) fails to provide information within the established deadlines or in the form or manner requested, subject to section 782(c)(1) and section 782(e) of the Act; (3) significantly impedes a proceeding; or (4) provides information but the information cannot be verified, then Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Moreover, section 776(b) of the Act provides that, if Commerce finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the SAA explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²¹²

In *Nippon Steel*, the CAFC noted that, while the statute does not provide an express definition of the “failure to act to the best of its ability” standard, the ordinary meaning of “best” is “one’s maximum effort.”²¹³ Thus, according to the CAFC, the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do. The CAFC indicated that inadequate responses to an agency’s inquiries would suffice to find that a respondent did not act to the best of its ability. While the CAFC noted that the “best of its ability” standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.²¹⁴ The “best of its ability” standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, “have familiarity with all of the records it maintains,” and “conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of” its ability to do so.²¹⁵

We find that the application of facts available is appropriate under sections 776(a)(1) of the Act, which provides that if the necessary information is not on the record, Commerce shall use the facts otherwise available in reaching its determination. We do not have the necessary information on the record to calculate dumping margins for the missing sales. Therefore, we

²¹² See SAA at 870; see also *Notice of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

²¹³ See *Nippon Steel*, 337 F. 3d at 1382.

²¹⁴ *Id.*.

²¹⁵ *Id.*

must base the dumping margin for these sales on facts available. Section 782(d) of the Act does not change this decision because, although Commerce issued supplemental questionnaires to BSM, Commerce was not aware of these reporting deficiencies until verification and, thus, it was unable to provide BSM with an opportunity to remedy the deficiencies through a supplemental questionnaire. Similarly, we find that BSM failed to provide information on these sales by the deadlines for submission of the information, within the meaning of section 776(a)(2)(B) of the Act. BSM did not inform Commerce of any difficulties in reporting these sales, and therefore section 782(c)(1) of the Act does not apply. Likewise, section 782(e) of the Act does not apply, because, as just mentioned, BSM did not meet the relevant deadlines and, as discussed below, it did not act to the best of its ability.

In addition, we find that BSM's failure to report the requested information, accurately and in the manner requested, using the records over which it maintained control, indicates that BSM did not act to the best of its ability to comply with our requests for information. Company officials explained that they failed to report most of the U.S. sales identified as a minor correction at verification because they failed to bear in mind that sales of projects completed during the POI were supposed to have been reported.²¹⁶ In addition, during Commerce's completeness tests at verification, officials identified a sale with incomplete project phases at the time that officials compiled the U.S. sales database, but those incomplete phases were later cancelled, leaving all phases of the project complete as of the end of the POI. Sales of fabricated structural steel for projects completed during the POI were to have been reported in the U.S. sales database. However, the U.S. sales database did not include this sale.

While the CAFC noted that the "best of its ability" standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.²¹⁷ We find that BSM's failure to keep reporting requirements in mind and the failure to provide a complete sales database are not indicative of doing the maximum one is able to do. Hence, we find that the application of AFA is appropriate under section 776(b) of the Act for BSM's unreported U.S. sales of subject merchandise.

As partial AFA, we have assigned the highest non-aberrational, transaction-specific dumping margin calculated for BSM to BSM's unreported U.S. sales.²¹⁸ In light of the fact that we are relying on BSM's own information obtained during the course of this investigation, there is no requirement that Commerce corroborate this information pursuant to section 776(c) of the Act.

Comment 17: Whether Corey's Hudson Yards Tower A Project Sale Fell Within the POI

Petitioner's Comments:

- Commerce should have required respondents to report all U.S. sales of fabricated structural steel for projects substantially completed during the POI (substantial

²¹⁶ See BSM's CEP verification report.

²¹⁷ See *Nippon Steel*, 337 F.3d at 1382.

²¹⁸ See BSM's Final Calculation Memorandum.

completion establishes the date when prices and expenses have been finalized)²¹⁹ and Corey should have been required to report its sales of fabricated structural steel for its Hudson Yards Tower A project (Hudson Yards project), because this project was substantially completed during the POI (*i.e.*, calendar year 2018)²²⁰ (the price and expenses for the project were finalized in 2018.)²²¹

- Date of delivery is not the appropriate date of substantial completion for the Hudson Yards project, because the final price was subject to change, and did, in fact, change after the date of delivery.²²²
- Commerce cannot fulfill its statutory obligation to calculate dumping margins as accurately as possible without the Hudson Yards project sales data.²²³ The Hudson Yards project is one of the key projects that contributed to the injury that precipitated this investigation. Sales data for this project are critical to Commerce’s evaluation of Corey’s U.S. pricing practices.²²⁴

Corey’s Comments:

- Commerce defined the universe of U.S. sales to be reported as sales of fabricated structural steel for projects contracted and completed during the POI. Record evidence shows that the Hudson Yards project was neither contracted nor completed during the POI (calendar year 2018).
- Regardless of which date is considered to be the “contract date,” the Hudson Yards project began in either 2014 or 2015, well before the POI (2018). As such, the Hudson Yards project did not involve POI sales.
- While the petitioner claims that substantial completion occurred with the final payment, the final payment for retainage and contracted allowances was an accounting adjustment. The petitioner’s argument that charges or credits against an allowance that was part of the contract price constitute a change in the final price is without merit. These charges cannot be reasonably interpreted as a material change to Corey’s obligations under the contract.
- Rather, Corey’s contractual obligations were completed prior to the POI. Commerce verified that Corey performed no work on the Hudson Yards project during the POI. The reconciliation of final changes and the final amount of back-charges (credits to the customer) through a change order do not materially affect the scope, the quantity, or the value of the fabricated structural steel produced and shipped by Corey.
- Even if Commerce accepts the petitioner’s argument that any changes in allowances affect the date of completion, the final change order credit for the remaining allowances for the Hudson Yards project was not issued until January 2019, after the POI. Therefore, fabricated structural steel sales for the Hudson Yards project would still not be reportable.

²¹⁹ See Petitioner’s Case Brief at 18-19 (citing Petitioner’s Letter, “Certain Fabricated Structural Steel from Canada, Mexico, and the People’s Republic of China: Petitioner’s Comments on Questionnaire Modifications,” dated March 22, 2019, at 4-5).

²²⁰ *Id.* at 17.

²²¹ *Id.* at 19-20.

²²² *Id.* at 20-21.

²²³ *Id.* at 22.

²²⁴ *Id.* at 18.

Commerce’s Position: We disagree with petitioner. Corey was not required to report fabricated structural steel sales for the Hudson Yards project under Commerce’s reporting requirements (we address the petitioner’s argument regarding those requirements in Comment 1) or under the theory that without those sales the reported sales do not yield accurate dumping margins. We required the respondents to report all sales of fabricated structural steel for projects that were contracted and completed during the POI. Verified record evidence shows that Corey finalized the contract for the Hudson Yards project prior to the beginning of the POI²²⁵ and that the fabrication work, shipping, delivery, field work, and installation for the project were completed prior to the POI.²²⁶ As no party disputes the Hudson Yards project’s pre-POI contract date, this element alone, when considering that only U.S. sales for projects that were contracted and completed during the POI were to be reported, is sufficient to determine that fabricated structural steel sales for the Hudson Yards project are outside the POI and not sales which need to be reported.

Nevertheless, the petitioner argues that the Hudson Yards project was not substantially completed upon delivery of the fabricated structural steel but, rather, was completed in 2018, because the final price was not known until 2018.²²⁷ The petitioner essentially argues that until the final payment is made, the contractual obligations under the project cannot be complete. The petitioner noted that “determination of the final price paid to Corey and whether Corey needed to take any additional actions clearly involved an assessment of the fabricated structural steel it delivered.”²²⁸ However, the documentation cited by the petitioner to support its argument does not reference any construction or further work required to be performed by Corey, nor does it indicate that Corey performed any work on the Hudson Yards project in 2018. Rather, this documentation is a request for complete release of retainage, and it memorializes credits to the customer.²²⁹ These credits relate to allowances in the initial contract.²³⁰ Corey’s retainage request and reconciliation of credits, does not signify that work was still ongoing as of 2018 but, rather, that it was already completed. Hence, this documentation does not provide evidence of an ongoing project, but relates to relatively minor outstanding amounts for which a final accounting was required

The petitioner itself previously noted that substantial completion is evidenced when all payments that can be reasonably expected have been received. The petitioner explained that “all payments” means all payments except minor outstanding amounts related to typical end-of-

²²⁵ See Corey’s Letter, “Certain Fabricated Structural Steel from Mexico: Corey S.A. de C.V.’s Supplemental Section A Questionnaire,” dated May 21, 2019, at 3; see also Corey’s Letter, “Certain Fabricated Structural Steel from Mexico: Corey S.A. de C.V.’s Second Supplemental Section A Questionnaire Response,” dated July 1, 2019 (Corey’s July 1, 2019 2nd Supplemental Section A Response), at Exhibit 2SA-15.

²²⁶ *Id.* at 2SA-5 and 2SA-9; see also Corey SVR at 22.

²²⁷ The petitioner’s argument relies on criteria we typically examine to determine the date of sale. As noted above and in the PDM, we did not define the universe of reportable sales as those sales with a date of sale during the POI; rather, we defined the universe of reportable sales based on contract and substantial completion dates.

²²⁸ See Petitioner’s Letter, “Certain Fabricated Structural Steel from Mexico: Petitioner’s Pre-Preliminary Comments Pertaining to Corey,” dated August 13, 2019.

²²⁹ See Corey’s July 1, 2019 2nd Supplemental Section A Response at 2SA-12.

²³⁰ See Corey SVR at 24 and Exhibit 8C.

contract issues with the customer. Under this definition, Corey’s work on the Hudson Yards project was substantially completed prior to the POI. The credits and request for release of retainage in 2018 are minor outstanding amounts related to typical end-of-contract issues.

The petitioner also defined substantial completion to mean:

the date on which the terms of the principal and any ancillary agreements that are an integral part of the contract (including side agreements negotiated along with the principal sales agreements, as well as amendments and change orders) are considered substantially filled by both parties ...²³¹

As explained above, record evidence indicates that Corey filled its terms under the contract for the Hudson Yards project prior to the POI.

Lastly, it is not correct that Commerce cannot fulfill its statutory obligation to calculate dumping margins as accurately as possible without sales data for the Hudson Yards project. The petitioner is effectively arguing that Corey’s true rate of dumping is only reflected in certain sales. The petitioner has not provided record evidence to substantiate this claim and has not pointed to statutory or regulatory provisions for selecting the universe of sales on such a basis.

Comment 18: Whether to Rescind Voluntary Respondent Treatment of Corey

Petitioner’s Comments:

- Commerce should reverse its decision to select Corey as a voluntary respondent, because there is not enough time remaining to collect and analyze sales data for the Hudson Yards project.²³² In light of the numerous deficiencies in Corey’s responses (*i.e.*, the failure to report sales for the Hudson Yards project), Commerce should use its resources elsewhere.²³³

Corey’s Comments:

- The petitioner cites no authority and no prior investigation to support rescinding Corey’s status as a voluntary respondent.
- Commerce formally notified Corey that it is a respondent in this investigation, with all the responsibilities and consequences of that status. Corey provided full questionnaire responses, numerous supplemental questionnaire responses, and engaged in verification. Corey’s full participation in this investigation was based on the understanding that a dumping rate will be calculated for Corey, pursuant to Commerce’s regulations.²³⁴

²³¹ See Petitioner’s Letter, “Certain Fabricated Structural Steel from Canada, Mexico, and the People’s Republic of China: Petitioner’s Comments on Questionnaire Modifications,” dated March 22, 2019, at Exhibit 1.

²³² See Petitioner’s Case Brief at 22 (“With the limited time left in this investigation, there is not enough time to request the missing and unexplained information, issue additional supplemental questionnaires, allow Petitioner to meaningfully participate, conduct the verifications required for this new information, and allow the issues to be briefed before final determination.”).

²³³ *Id.* at 23.

²³⁴ See 19 CFR 351.204(d)(2).

- The petitioner’s suggestion to arbitrarily rescind voluntary treatment of a company violates the most basic principles of due process that underlie Commerce’s administration of the antidumping duty laws.

Commerce’s Position: The petitioner’s argument is predicated upon Corey’s failure to report sales for the Hudson Yards project. However, as explained above, Corey did not need to report sales for the Hudson Yards project, because the project was not contracted and completed during the POI. Hence, the only reason the petitioner gave for no longer treating Corey as a voluntary respondent is baseless. Therefore, we are continuing to treat Corey as a voluntary respondent.

Comment 19: Adjust Corey’s Report Costs to Account for All Affiliated Purchases

Petitioner’s Comments:

- In the *Preliminary Determination*, Commerce found that the market price exceeded the transfer price for steel inputs and, therefore, adjusted the direct material costs of Corey to reflect the market price.²³⁵ However, in doing so, Commerce limited its analysis to the steel inputs that were purchased from both affiliated and unaffiliated suppliers (*i.e.*, identical inputs purchased from both affiliated and unaffiliated suppliers) and to the inputs used only in the production of the U.S. projects.
- Commerce should revise Corey’s reported costs for the final determination by including in the analysis all affiliated purchases regardless of whether the identical product is purchased from both affiliated and unaffiliated suppliers and regardless of whether the input was used to produce projects in the HM or the U.S. market. In other words, Commerce should calculate the adjustment based on all its affiliated and unaffiliated party purchases of steel, not only identical steel items that were purchased from both affiliated and unaffiliated parties.²³⁶
- At the preliminary determination, Commerce did not have Corey’s COP or market prices for all items purchased from affiliated parties because Corey failed to provide this information. The obligation to report market value and COP information for its affiliated party purchases falls squarely on Corey. Given Corey’s failure to provide this information, Commerce should use the best available information on the record, which is the overall average steel purchase price for the POI.

Corey’s Comments:

- The petitioner’s methodology of using company-wide steel purchases to adjust the costs of the U.S. projects is misguided and contrary to Commerce’s practice.
- Commerce has explained that “because this section of the statute does not specify a particular methodology for determining market value, Commerce has established a hierarchy for establishing market value in the application of section 773(f)(2) and (3) of the Act.”

²³⁵ See Petitioner’s Case Brief at 4 (citing Corey’s Preliminary Cost Calculation Memorandum at 1).

²³⁶ *Id.* at 11 (citing Commerce’s standard questionnaire, Section D, II.A.8).

- Commerce’s normal practice when comparing transfer price to market price is to compare purchases of “sufficiently similar” inputs.²³⁷ As the courts have agreed, such a practice seeks to provide higher accuracy for Commerce’s antidumping calculations.²³⁸
- Before valuing and comparing inputs, Commerce’s consistent practice is to consider whether the inputs are relevant to the subject merchandise under consideration and have the same characteristics. For example, Commerce has analyzed affiliated party inputs considering the gauges (thickness), and specification of the steel used to produce subject merchandise.²³⁹
- Contrary to the petitioner’s speculation, Commerce will adjust transfer prices to reflect market price or COP only based on sufficiently similar products that encompass “comparable transactions of similar inputs” or “arm’s-length prices charged by unaffiliated purchases for sales of the identical inputs.”²⁴⁰
- Where the character of the product is unique or customized, as here, Commerce insures that the products are “similar or comparable to one another” before performing an input adjustment analysis. In short, the analysis of the affiliated party inputs is done by comparing transfer prices and market prices of comparable or identical input.²⁴¹
- Here, the petitioner has no basis to claim that all the steel components purchased by Corey during the POI are similar or identical to the inputs used to produce the U.S. projects or could have been used to produce the subject merchandise. To the contrary, aggregating different product types and specifications into a single average price is itself a market distortion and a faulty exercise.
- This is particularly true in this proceeding, where Corey was able to provide its purchases of steel inputs from affiliated and unaffiliated parties and then filtered that information using the inventory movement schedule for each U.S. project.
- Commerce should continue to calculate the transactions disregarded adjustment for Corey using the project specific steel purchases.
- Should Commerce make changes to the adjustment for steel purchases, Commerce should apply the adjustment to the projects sold in both the U.S. and HM consistent with the

²³⁷ See Corey’s Rebuttal Brief at 14 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile*, 63 FR 31411 (June 9, 1998), and accompanying IDM at Comment 32; see also, e.g., *Dupont Teijin Films v. United States*, 997 F. Supp. 2d 1338, 1343 (CIT 2014) (discussing similarity of production as the test for comparability)).

²³⁸ *Id.* (citing *Huvis Corp. v. United States*, 570 F. 3d 1347, 1350 (Fed. Cir. 2009) (for purposes of a major input adjustment the Department constructed a market price according to the grade and specification of input); see also *Thai Plastic Bags Indus. Co. v. United States*, 746 F. 3d 1358, 1368 (Fed. Cir. 2014) (“physical differences in products ‘generally account’ for major differences in costs”)).

²³⁹ *Id.* (citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Final Determination of Sales at Less Than Fair Value*, 81 FR 47352 (July 21, 2016), and accompanying IDM at Comment 5 at 18-19, “We agree with Maquilacero that an increase to its reported HRC costs is not warranted because record evidence supports the fact that the particular gauge HRC purchased from its affiliated supplier could not have been used to produce subject merchandise.”).

²⁴⁰ *Id.* at 15 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan*, 62 FR 24394, 24411-12 (May 5, 1997), and accompanying IDM at Comment 15; see *Mannesmannrohren-Werke AG v. U.S.*, 77 F. Supp. 2d 1302, 1305, 1307 (CIT 1999) (The Department typically requests information on any purchases of the identical input from unaffiliated suppliers); see also *Notice of Final Results of Antidumping Duty Administrative Review: Certain Pasta From Italy*, 65 FR 7349, 7352- 53 (February 14, 2000)).

²⁴¹ *Id.*

statute and Commerce's practice of applying the same major input adjustment to costs in both markets.

Commerce's Position: For the final determination, we continued to analyze Corey's affiliated purchases of steel components in accordance with the transactions disregarded rule, section 773(f)(2) of the Act. However, we have revised our analysis to compare market prices to transfer prices of identical steel component inputs that were purchased from both affiliated and unaffiliated suppliers regardless of the market for which the project was destined to be sold (*i.e.*, home or U.S. market). Further, we applied the results of the transactions disregarded rule to the cost of the projects sold in both the U.S. and home markets.

Under section 773(f)(2) of the Act, the transactions disregarded rule provides that "a transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated."²⁴²

During the POI, Corey purchased a significant variety of steel components from affiliated suppliers for use in the manufacture of fabricated structural steel. Corey provided a list of all the steel components purchased from its affiliated companies and from unaffiliated suppliers during the POI which showed the quantity and value of the purchases for each input by affiliated supplier. The data provided by Corey shows that for certain steel component inputs purchased from affiliated suppliers, the identical input was not purchased from unaffiliated suppliers. In addition, the data provided by Corey show that for certain steel component inputs purchased from unaffiliated suppliers, the identical input was not purchased from affiliated suppliers. Accordingly, for the preliminary determination, using the list provided by Corey, to determine whether preferential pricing was provided to Corey by each affiliated supplier, we limited our transactions disregarded analysis to comparing only the identical inputs purchased from both affiliated and unaffiliated suppliers. We determined that this limited analysis was a reasonable way to assess whether the affiliated supplier was providing preferential pricing to Corey, and to ensure that the data used to perform the comparison between affiliated and unaffiliated suppliers were comparable. Further, we limited the comparison to inputs used to produce the projects sold only in the U.S. market and, thus, only applied the resulting adjustment from the analysis to projects sold in the U.S.

In considering the arguments here, we agree with the petitioner that our analysis should be expanded to include purchases from affiliated and unaffiliated suppliers regardless of the market for which the project was destined to be sold (*i.e.*, home or U.S. market). Further, we agree that the results of the expanded analysis should be applied to the cost of the projects sold in both the

²⁴² See, e.g., *Refrigerators from Korea* IDM at Comment 17; see also *Final Results of Antidumping Duty Administrative Review: Silicomanganese from Brazil*, 69 FR 13813 (March 24, 2004), and accompanying IDM at Comment 7.

U.S. and home markets. However, we disagree that the full POI universe of affiliated and unaffiliated purchases should be included in the analysis (*i.e.*, including all purchases in the weighted average comparisons regardless of whether or not the identical product was purchased from both the affiliated and unaffiliated supplier). In all cases, available record evidence dictates the information that is used as the transfer price and market price in applying the transactions disregarded rule. In this case, because of the significant variation of steel components purchased from affiliated and unaffiliated suppliers, we only compared purchases from affiliated and unaffiliated suppliers where the identical product was purchased from both. This prevents illogical comparisons of a mix of non-comparable products. Therefore, for the final determination, we have continued to limit our transactions disregarded analysis to those components purchased by both affiliated and unaffiliated suppliers and have applied the results to the cost of the projects sold in both the U.S. and home markets.

Regarding the petitioner's argument that Corey failed to provide information necessary to perform the transactions disregarded analysis, we disagree. Corey fully complied with all of Commerce's requests associated with purchases from affiliated parties.²⁴³

Comment 20: Subtract Scrap Revenue from Total Cost of Manufacturing

Petitioner's Comments:

- Commerce should disallow the scrap offset in the cost database in calculating the total cost of manufacturing (TOTCOM), because Corey double counted its scrap offset.
- Corey has demonstrated that its scrap offset has already been accounted for in its reported direct material costs and, therefore, the scrap offset field reported in its cost database results in double counting the scrap revenue.
- Commerce discovered that Corey's claimed scrap offset was already accounted for in its costs of direct materials (DIRMAT). Specifically, the verification report states that "the sum of the total cost of materials consumed, less the cost of materials returned to the warehouse, less the cost of scrap generated equals the cost of materials for the month."²⁴⁴
- Because scrap is already accounted for in DIRMAT, scrap should not be subtracted again through a scrap offset field.
- Corey explained for the first time at verification that the scrap offset field is still necessary because scrap revenue is also counted as an increase in its non-project specific costs, which are reported in the OTH_COST field. Corey therefore claims that the scrap revenue offset variable is merely an adjustment to negate the increase in the cost assigned to the non-project specific costs for the scrap revenue (*i.e.*, the scrap revenue offset and the increase in the cost assigned to non-project costs cancel each other out).
- This claim directly contradicts Corey's previous explanations as well as the cost buildup of the OTH-COST field in Exhibit D-13.²⁴⁵

²⁴³ See Corey's July 29, 2019 Supplemental Section D Response at 9 and 10.

²⁴⁴ See Petitioner's Case Brief at 12 (citing Corey CVR at 11).

²⁴⁵ *Id.* at 13 (citing Corey's June 3, 2019, Section D Response at Exhibit D-13).

- Corey’s cost buildup of the non-project specific costs provided in its questionnaire responses proves that scrap revenue was not part of the non-project specific costs reported to Commerce.
- Corey’s claim is mathematically impossible, as the scrap offset in its normal books and records is greater than the total non-project specific costs reported in the cost database. There is, therefore, no basis to grant Corey’s claimed scrap offset in the reported cost database, and it should be disallowed in the calculation of Corey’s cost of manufacture for purposes of the final determination.

Corey’s Comments:

- The petitioner’s allegation that the scrap offset double counts scrap revenue is factually incorrect and contradicted by numerous documents on the record.
- Commerce thoroughly examined this topic at verification and confirmed the accuracy of Corey’s reported scrap offset.²⁴⁶
- The Cost Verification Exhibit CVE-11, “Yield Loss and Scrap Offset,” at page 2 shows the total scrap offset assigned to each of the projects during 2018, along with a booking of the non-project specific costs.
- Page 12 of this exhibit shows how this scrap booking (“chatara” in Spanish), was included along with other offsets during 2018.
- Page 13 of this exhibit then demonstrates that this figure is the total amount booked under the non-project specific cost centers.
- The total for 2018 on this page is the figure considered as non-project specific costs and referenced in the petitioner’s case brief.
- While claiming that Corey’s calculation is “mathematically impossible,” the petitioner failed to consider the fact that there can be offsets to costs, as demonstrated above.
- Therefore, for the final determination, Commerce should not remove the scrap offset from the total cost of materials. If Commerce decides to remove the scrap offset, which it should not do, it must also remove the scrap offset from the calculation of the HM CV profit rate.

Commerce’s Position: We disagree with petitioner that the scrap offset was double counted. At verification, Commerce examined both the reported direct materials cost and the “scrap offset” field in the cost database. As noted on pages 2 and 3 of Corey’s Cost Verification Report, in its normal books and records, Corey tracks and applies a scrap offset for scrap generated on a project specific basis and this offset is initially recorded as a part of the project specific cost of goods sold (COGS). For financial statement presentation purposes, however, Corey’s scrap revenue is reported as a separate revenue line item. Therefore, to avoid double counting the scrap revenue (*i.e.*, including scrap revenue as an offset to the COGS and including the same amount as separate revenue item on the financial statements) in its normal books and records, Corey records a journal entry that increases the non-project specific COGS for the scrap revenue earned (*i.e.*, debit) and classifies the same amount as a revenue item (*i.e.*, credit). For cost reporting purposes, the reported direct material costs and the reported non-project specific costs include offsetting scrap amounts. Since the reported direct material costs and the reported non-project costs include offsetting scrap amounts, Corey reported the “scrap revenue offset”

²⁴⁶ See Corey’s Rebuttal Brief at 20 (citing Corey CVR at 2 and 3).

variable as a means to recognize the benefit of the scrap generated on a project-specific basis. It is important to note that Corey did not include as an offset to its G&A costs the reclassified scrap amount reported as a revenue item in its audited financial statements.

Further, the petitioner argues that Corey's claim is mathematically impossible, as Corey's scrap revenue is greater than the total non-project specific costs. Specifically, the petitioner points out that, if Corey reclassified the scrap revenue for financial statement presentation, by adding it to the non-project specific accounts, then the non-project specific amount should exceed the scrap revenue amount. While on its face it appears this fact is correct, what the petitioner failed to recognize was that the original amount in the non-project specific accounts, to which the scrap revenue was added, was a negative amount, which is why the total non-project specific costs do not equal or exceed the scrap revenue amount.

VII. 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 determination in the investigation and the final weighted-average dumping margins in the *Federal Register*.

Agree

Disagree

1/23/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance