A-423-808
Administrative Review
POR: 5/1/06-4/30/07
Public Document
AD/CVD: O6: GM

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Stainless Steel Plate in Coils from Belgium (Period of Review: May 1, 2006, through April 30, 2007)

SUBJECT: Issues and Decisions for the Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Stainless Steel Plate in Coils from Belgium (2006-2007)

Summary

We have analyzed the case and rebuttal briefs submitted by domestic interested parties and respondents.[1] As a result of our analysis, we have made changes from the preliminary results in the margin calculations. We recommend that you approve the positions described in the Discussion of Interested Party Comments, sections A and B, infra. Outlined below is the complete list of the issues in this review for which we have received comments from the interested parties.

I. Background

On June 6, 2008, the Department of Commerce (the Department) published in the Federal Register the preliminary results of this administrative review. See Stainless Steel Plate in Coils From Belgium: Preliminary Results of Antidumping Duty Administrative Review, 73 FR 32298 (June 6, 2008) (Preliminary Results). On September 15, 2008, the Department published a notice extending the deadline of the final results to December 3, 2008. See Stainless Steel Plate

[1] Case briefs and rebuttal briefs were submitted by the following domestic interested parties and respondent: On October 24, 2008, Allegheny Ludlum Corporation, North American Stainless, United Auto Workers Local 3303, Zanesville Armco Independent Organization, and the United Steelworkers of America, AFL-CIO/CLC (collectively, the petitioners) filed a case brief (the Petitioners' Case Brief); on October 29, 2008, the petitioners filed a rebuttal brief (the Petitioners' Rebuttal Brief); on October 24, 2008, the respondent, Ugine & ALZ Belgium (U&A Belgium) submitted a case brief (U&A Belgium's Case Brief); and on October 29, 2008, U&A Belgium submitted a rebuttal brief (U&A Belgium's Rebuttal Brief).

in Coils From Belgium: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review, 73 FR 53190 (September 15, 2008). On October 17, 2008, the Department issued a Post-Preliminary Determination. See Memorandum from Angela Strom to Neal Halper titled, "Proposed Adjustments to the Cost of Production and Constructed Value Data – Ugine and ALZ Belgium," dated October 17, 2008 (Post-Preliminary Determination). This review covers one manufacturer/exporter of the subject merchandise: U&A Belgium.

II. List of Comments

Comment 1: Whether the Disallowance of Offsets for Non-Dumped Sales is in Accordance with the Statute and the International Obligations of the United States

Comment 2: Whether to Revise the Date of Sale for Certain Home Market Sales

Comment 3: Whether to Incorporate the Department's Findings in the Ongoing Scope Inquiry

Comment 4: Whether to apply an Alternative Cost-Averaging Methodology

a. Legal Framework and Case Precedent
b. Significance of the Changes in Costs
c. Linkage Between Costs and Sales Information
d. Substantial Quantities Test and 20 Percent Threshold

III. Discussion of Interested Party Comments

Comment 1: Whether the Disallowance of Offsets for Non-Dumped Sales is in Accordance with the Statute and the International Obligations of the United States

According to U&A Belgium, in the Preliminary Results, the Department did not grant offsets for non-dumped sales.[2] U&A Belgium asserts that it is improper for the Department not to allow offsets for non-dumped sales. Specifically, U&A Belgium states that the Department has now revised its interpretation of the antidumping statute so that it no longer requires the disallowance of offsets for non-dumped sales.[3] Furthermore, U&A Belgium asserts that the World Trade Organization (WTO) has found that the disallowance of offsets for non-dumped sales is inconsistent with WTO rules,[4] and argues that the Department must now interpret the

[2] See U&A Belgium's Case Brief at 2.

[3] See "Issues and Decision Memorandum for Final Results of Section 129 Determination," Implementation of the Findings of the WTO Panel in US -- Zeroing (EC): Notice of Determinations Under Section 129 of the Uruguay Round Agreements Act and Revocations and Partial Revocations of Certain Antidumping Duty Orders, 72 FR 25261 (May 4, 2007).

[4] See Appellate Body Report, United States-Laws, Regulations and Methodology for Calculating Dumping Margins, WT/DS294/AB/R (April 18, 2006); see also Appellate Body Report, United States – Measures Related to Zeroing and Sunset Reviews, WT/DS322/AB/R (January 9, 2007) (US-Zeroing (Japan)); see also Report of the

antidumping statute in accordance with international obligations.[5] U&A Belgium requests that the Department eliminate the programming language which disallows offsets for non-dumped sales from the margin calculation program for these final results.

The petitioners rebut U&A Belgium, stating that U&A Belgium's argument fails to recognize that the Department recently affirmed the practice of disallowing offsets for non-dumped sales through its continued application of this methodology. In support of its argument, the petitioners cite the final results of several recent administrative reviews in which the Department disallowed offsets for non-dumped sales. See Petitioner's Rebuttal Brief at 2. Furthermore, the petitioners reference the Department's decision to disallow offsets for non-dumped sales in the recent final results of the administrative review of the order in Certain Tissue Paper Products from the People's Republic of China[6] and argue that U&A Belgium has not presented any new arguments or analysis to demonstrate that the Department should change its current position with respect to its treatment of non-dumped sales. Therefore, the petitioners assert that the Department should reject U&A's argument and continue its methodology with respect to disallowing offsets for non-dumped sales in this review.

Department's Position:

We have not changed our calculation of the weighted-average dumping margin, as suggested by U&A Belgium in these final results. Section 771(35)(A) of the Tariff Act of 1930, as amended (the Act), defines "dumping margin" as "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." Outside the context of antidumping duty investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when NV is greater than export price or constructed export price. As no dumping margin exists with respect to sales where NV is equal to or less than export price or constructed export price, the Department does not permit these non-dumped sales to offset the amount of dumping with respect to other sales. The Court of Appeals for the Federal Circuit has held that this is a reasonable interpretation of the statute. See, e.g., The Timken Company v. United States, 354 F. 3d 1334, 1343 (Fed. Cir. 2004) (Timken); Corus Staal BV v. Department of Commerce, 395 F. 3d 1343, 1347-49 (Fed. Cir. 2005), cert. denied: 126 S. Ct. 1023, 163 L. Ed. 2d 853 (January 9, 2006) (Corus I); and, SKF v. United States, 537 F.3d 1373 (Fed. Cir. 2008).

Panel, United States – Continued Existence and Application of Zeroing Methodology, WT/DS350/R (October 1, 2008).

[5] See, e.g., Murray v. Charming Betsy, 6 U.S. (2 Cranch) 64, 118, 2 L.Ed. 208 (1804); see also Fed.-Mogul Corp. v. United States, 63 F.3d 1572, 1581 (Fed. Cir. 1995) (noting that trade laws are not exempt from the *Charming Betsy* principle).

[6] See Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review, 73 FR 58113 (October 6, 2008) and accompanying Issues and Decision Memorandum at Comment 5.

U&A Belgium cites to decisions from the WTO Appellate Body which have ruled that the practice of disallowing offsets for non-dumped sales violates U.S. obligations under the WTO Antidumping Agreement. We disagree with U&A Belgium as the Federal Circuit has held that WTO reports are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements (URAA). See 19 U.S.C. 3538. See also Corus I, 395 F. 3d 1343, 1347-49; accord Corus Staal BV. United States, 502 F. 3d, 1370, 1375 (Fed. Cir. 2007) (Corus II); and NSK v. United States, 510 F. 3d 1375 (Fed. Cir. 2007) (NSK).

With respect to US – Zeroing (EC), the Department has modified its calculation of weighted average dumping margins when using average-to-average comparisons in antidumping investigations. See Antidumping Proceedings: Calculation of Weighted Average Dumping Margin During an Antidumping Investigation: Final Modification, 71 FR 77722 (December 27, 2006) (Zeroing Notice). In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding such as administrative reviews. See Zeroing Notice, 71 FR at 77724.

With reference to U&A Belgium's citation to US-Zeroing (Japan), Congress has adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports. As is clear from the discretionary nature of this scheme, Congress did not intend for WTO Reports to automatically trump the exercise of the Department's discretion in applying the statute. See 19 22 U.S.C. 3538(b)(4) (implementation of WTO reports is discretionary). Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports. See 19 U.S.C. 3533(g); see, e.g., Zeroing Notice, 71 FR at 77722, 77724. With regard to the denial of offsets in administrative reviews, the United States has not employed this statutory procedure. With regard to US-Zeroing (Japan), appropriate steps have been taken in response to that report and those steps do not involve a change to the Department's approach for calculating weighted-average dumping margins in the instant administrative review. Furthermore, in response to US-Zeroing (Japan), the Federal Circuit has repeatedly affirmed the permissibility of denying offsets in administrative reviews. See Corus II, 502 F.3d. at 1374-75; NSK, 510 F. 3d at 1375.

Based on these reasons, the various WTO Appellate Body reports regarding "zeroing" do not establish whether the Department's denial of offsets in this administrative review is inconsistent with the WTO Antidumping Agreement. Accordingly, and consistent with the Department's interpretation of the Act described above, the Department has continued to deny offsets to dumping based on export transactions that exceed NV in this review.

For the foregoing reasons, we have not changed the methodology with respect to the denial of offsets for non-dumped sales in calculating U&A Belgium's weighted-average dumping margin for these final results.

Comment 2: Whether to Revise the Date of Sale for Certain Home Market Sales

U&A Belgium states that in the Preliminary Results, the Department revised the date of sale to reflect the date of shipment for certain sales observations reported in U&A Belgium's home market sales database, as it is the Department's practice to use the date of shipment as the date of sale where the date of shipment precedes invoice date. According to U&A Belgium, these revisions to the date of sale were included in the margin program released by the Department for the Preliminary Results. However, U&A Belgium argues that the revised margin program issued with the Department's Post-Preliminary Determination did not include the aforementioned revision to the date of sale. Therefore, U&A Belgium requests that the Department change the sale date to shipment date for the respective observations for these final results.

The petitioners rebut U&A Belgium, arguing that the Department should not revise the date of sale for the sales transactions in question. Specifically, the petitioners state that, based on the data reported, there is prima facie evidence to suspect that there is a typographical error in the sale date reported for these sales transactions. Furthermore, the petitioners state that the effect on the antidumping duty margin is disproportionate to the adjustment requested by U&A Belgium. The petitioners argue that, if the Department contemplates making the change to the sale date for the aforementioned transactions, it should take into account the petitioners' request made in this review to conduct verification of the submitted responses based on good cause. The petitioners assert that, even if the Department does not conduct a complete verification, pursuant to 19 C.F.R. § 351.301(c)(2)(i), the Department should require U&A Belgium to document its date of shipment.

Department's Position:

We agree with U&A Belgium. The Department inadvertently failed to include the programming change for the date of sale for certain observations when it issued the margin program for the Post-Preliminary Determination. It is the Department's practice to use the date of shipment as the date of sale where the date of shipment precedes the invoice date. See Honey from Argentina: Preliminary Results of Antidumping Duty Administrative Review, 69 FR 623, (January 6, 2004). See also; Notice of Final Determinations of Sales at Less than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada, 68 FR 52741, (September 5, 2003) and accompanying Issues and Decision Memorandum at Comment 3. Accordingly, as intended in the Preliminary Results, in these final results the Department will use shipment date as the date of sale where the shipment date occurred prior to the invoice date.

The petitioners allege that a typographical error was committed by U&A Belgium in its reporting of the sales transactions in question. However, the petitioners failed to identify any information on the record that shows that the reported date of sale is incorrect. Furthermore, we find that the reporting of the date of sale for the transactions in question are correct, as it is not unreasonable for U&A Belgium to make a shipment prior to invoicing.[7] There is no evidence on the record to

[7] See Memorandum to the File regarding Analysis Memorandum from the 5th Administrative Review, dated December 3, 2008 with attachment titled "Memorandum from Toni Page to The File -- Analysis for Ugine & ALZ,

conclude that the date of sale for the sales transactions in question was misreported by U&A Belgium. Therefore, lacking evidence to the contrary, we are accepting U&A Belgium's information as reported for this review.

The petitioners also argue that the Department should not rely on the reported date of sale without conducting verification or requiring U&A Belgium to substantiate the date of shipment reported. The Department disagrees with this assertion for several reasons. First, verification in this proceeding is not required in accordance with section 782(i)(3) of the Act. Second, the petitioners failed to identify any information on record that shows the reported date of sale is incorrect. Finally, we find that the date of sale is correctly reported. Because we do not find that there is good cause for conducting an on-site verification, we did not conduct an on-site verification of U&A Belgium in this administrative review.

Comment 3: Whether the Department Should Incorporate its Findings in the SSPC Scope Inquiry

U&A Belgium states that on July 23, 2007, the Department initiated a scope inquiry to determine whether material of a nominal thickness of 4.75mm or greater but an actual thickness of less than 4.75mm is properly within the scope of order. U&A Belgium states that although this scope inquiry remains open, the scope issues have been fully briefed and expects a determination soon. U&A Belgium notes that in its submissions to the Department during this review, it identified the merchandise covered by the aforementioned scope inquiry to enable the Department to exclude the merchandise should the Department find it to be not subject to the antidumping duty order. U&A Belgium asserts that, "{w}hen the scope ruling is announced, the Department should ensure that the Final Results in this review reflect the results of the scope inquiry." See U&A Belgium's Case Brief at 3.

The petitioners state that they "fully expect that the Department will render a determination confirming that SSPC that is nominally 4.75mm thick or more, but that is actually something less than 4.75mm in thickness, remains in-scope." See the Petitioner's Rebuttal Brief at 6. The petitioners further state that they "do not disagree that, if the final scope ruling is announced before the final results of this review are determined, those results may incorporate the results of the final scope ruling." Id.

Department's Position:

The authority for scope proceedings and administrative reviews of antidumping duty orders fall under separate sections of the statute and have independent time limits that govern the respective segments. Therefore, the Department's time limits for scope proceedings are not required to correspond to the statutory deadlines mandated for an antidumping duty review. See 19 C.F.R. § 351.213 and 19 C.F.R. § 351.225. However, the Department agrees with the underlying

---

N.V. Belgium (U&A Belgium) for the Preliminary Results of the Fifth Administrative Review of Stainless Steel Plate in Coils (SSPC) from Belgium," dated May 27, 2005 (Analysis Memorandum) (Public Version) at 9.

assertion made by both U&A Belgium and the petitioners to apply the results of the scope ruling to the final results of this review.

The scope ruling in question was issued on December 3, 2008. In this scope ruling, the Department determined that SSPC of a nominal thickness of 4.75mm or greater but an actual thickness of less than 4.75mm is within the scope of order. Due to the fact that the Department and CBP considered such merchandise as subject merchandise prior to the request for scope ruling, for purposes of this review, the Department requested and U&A Belgium provided information concerning shipments of these products in its questionnaire responses and sales and cost data. Accordingly, pursuant to the aforementioned scope ruling, sales/entries of the product covered by the ruling continue to be considered subject merchandise and thus have been included in the final results of this review.

Comment 4: Whether to apply an Alternative Cost-Averaging Methodology

a. Legal Framework and Case Precedent

The petitioners object to the use of shorter cost averaging periods to conduct the sales below cost test employed by the Department in its post-preliminary calculations[8] and urge the Department to reverse its preliminary decision to depart from what petitioners argue is its statutorily required practice of examining costs over an extended period of time. The petitioners conclude that the record evidence in the case: 1) failed to establish that costs changed significantly and consistently; 2) failed to demonstrate a linkage between costs and pricing. Moreover, the petitioners maintain that the data supplied by the respondent was inherently problematic because of operational changes and was not verified, and, therefore, cannot be used to make a determination of whether costs changed.

The petitioners argue that a departure from the Department's standard practice of using annual average costs is not supported by prior case precedent. The petitioners aver that the Department has both consistently and routinely rejected requests to rely on cost periods that are less than one year and the Department's policy of using annual averages has been sustained by the courts. For example, petitioners state that in Stainless Steel Sheet and Strip in Coils From Italy: Final Results of Antidumping Duty Administrative Review, 67 FR 1715 (January 14, 2002) (SSSS from Italy), the Department rejected the respondent's request to use quarterly cost-averaging periods where the respondent had argued that such periods were warranted based on significant changes in nickel costs. The petitioners also refer to a more recent decision (Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada, 71 FR 3822 (January 24, 2006) and accompanying Issues and Decision Memorandum at Comment 5) (Wire Rod from Canada), where the Department denied the use of multiple cost periods and instead utilized its standard annual average approach to smooth out the effects of the underlying cost fluctuations. The petitioners additionally argue that it should not use shorter cost averaging periods. See Certain Steel and Concrete Reinforcing Bars from Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and

[8] See Post-Preliminary Determination.

Determination To Revoke in Part, 70 FR 67665 (November 8, 2005) (Rebar from Turkey - 1) and accompanying Issues and Decisions Memorandum at Comment 1; Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod From Mexico, 71 FR 27989 (May 15, 2006) and accompanying Issues and Decision Memorandum at Comment 13) (Wire Rod from Mexico); and Fujitsu General Ltd., v. United States, 88 F.3d 1034, 1038-39 (Fed. Cir. 1996).

The petitioners recognize a limited number of cases where the use of shorter cost averaging periods were used by the Department; however, the petitioners insist that the fact patterns in these cases are clearly distinguishable from those present in the instant case. For example, the petitioners explain that cases involving the semi-conductor industry[9] are unique, with no similarities between pricing and costs for semiconductors and stainless steel plate in coils. The petitioners contend that the administrative reviews for brass products[10] largely differ from this instant case because monthly cost and price fluctuations were in absolute lockstep with one another as there were separate pricing amounts for the metal value and the fabrication component on the sale invoices. The petitioners provide that in SSSS from Korea the shorter periods were based on dramatic changes in prices, as opposed to costs, noting consistent and dramatic declines in currency valuation during the period of investigation (POI). See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 64 FR 30664 (June 8, 1999) (SSSS from Korea). The petitioners also claim that the Department's reliance on Stainless Steel Sheet and Strip in Coils From Mexico: Preliminary Results of Antidumping Duty Administrative Review, 73 FR 45708 (August 6, 2008) (SSSS from Mexico) is misplaced, stating that preliminary findings are significantly less probative than the final results of a review.

[9] Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909 (February 23, 1998), Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea, 58 FR 15467 (March 23, 1993), Erasable Programmable Read Only Memories (EPROMs) From Japan; Final Determination of Sales at Less than Fair Value, 51 FR 39680 (October 30, 1986).

[10] Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order: Brass Sheet and Strip From the Netherlands, 65 FR 742 (January 6, 2000) (Dutch Brass); Certain Brass Sheet and Strip From Italy; Final Results of Antidumping Duty Administrative Reviews, 57 FR 9235 (March 17, 1992).

The petitioners opine that use of shorter cost averaging periods is not allowed by the statute and is inconsistent with Department regulations. The petitioners state that section 773(b)(2)(B) of the Act provides that the Department must examine sales below cost over "an extended period of time" that is normally one year, but not less than six months. Thus, the petitioners claim that altering the sales below cost test, because of fluctuations in costs over shorter time periods, is not allowed by statute and is directly contrary to the statutory intent to evaluate whether sales below cost occurred over an extended period of time. The petitioners argue that while 19 C.F.R. § 351.414(d)(3) allows the Department to use shorter periods to account for significant changes in pricing, the same cannot be applied for changes in costs.

The petitioners allege that the Department's justification for departing from annual costs in this case is less substantive than the robust analysis conducted in Habas Sinai ve Tibbi Gazlar Isthihsal Endustrisi A.A. v United States, Slip Op. 07-67 (CIT November 15, 2007) (Habas Sinai Remand). The petitioners explain that in the Habas Sinai Remand, the Department first measured the fluctuations in the overall cost of manufacturing (COM), determined whether the fluctuations in COM were unusual or significant, and subsequently analyzed whether there was linkage between the underlying costs and sale prices. The petitioners aver that if the Department examines the evidence in this manner, the facts of this record would not substantiate a significant change in costs, would invalidate the linkage claim between costs and sale prices and, therefore, would clearly not support a departure from the Department's long-standing practice.

U&A Belgium urges the Department to continue its shorter cost averaging period methodology in the final results. U&A Belgium asserts that the statute, regulations and past practice all support the use of shorter cost averaging periods in this case. U&A Belgium provides that the petitioner's interpretation of section 773(b)(2)(B) of the Act and of the Department's regulations is flawed. U&A Belgium maintains that the petitioners misread the statutory and regulatory definition of "extended period of time," which refers to when the Department may disregard below-cost sales. U&A Belgium contends that how the Department determines whether sales have been made below cost is not constrained by this definition. In addition, U&A Belgium objects to the petitioners' reference to 19 C.F.R.§ 351.414(d)(3), affirming that the language refers to average-to-average price comparisons in investigations, which is not relevant to this administrative review.

U&A Belgium maintains that the Department has a long-standing practice of using shorter cost averaging periods in cases where the use of a single weighted-average cost would lead to inappropriate comparisons. U&A Belgium states the Department has departed from using annual average costs in cases where the respondent experienced rapid technological changes, exchange rate volatility and/or large material cost fluctuations. U&A Belgium asserts that the Department has established clear criteria for departing from annual average cost in Dutch Brass[11] and further refined its criteria in SSSS from Mexico and the Habas Sinai Remand to test: 1)

[11] See Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip from the Netherlands, 65 FR 742, 743 (January 6, 2000) (Dutch Brass).

whether the cost changes throughout the period of investigation or review were significant; and, 2) whether sales during the shorter averaging period could be accurately linked with the cost of production or constructed value during the same averaging period. U&A Belgium argues that where the Department has rejected shorter cost averaging periods the facts were much different from those in this review. For example, U&A Belgium cites Wire Rod from Canada where the Department concluded that comparing the erratic fluctuations in costs to the sales prices within the same period would not result in a more accurate calculation. In the 2005 decision of Rebar from Turkey - 1, the Department determined that the changes in costs were not significant and that there was no direct linkage between quarterly average cost and sales prices. In reference to SSSS from Italy, the costs for nickel were pale in comparison to the dramatic and sustained increases in nickel prices in this instant review. U&A Belgium contends that this instant review stands in contrast to those cases due to the consistent and significant increases in nickel costs, total costs of manufacturing and sales prices throughout the period of review (POR). Accordingly, U&A Belgium insists that, contrary to the petitioners' objections, these cases instead reveal that the Department has developed criteria to evaluate whether it is appropriate to use shorter cost averaging periods and routinely rejects the use of shorter cost averaging periods only when the facts of the case indicate that the Department's criteria have not been met. Also due to the substantially similar fact pattern in the ongoing SSSS from Mexico proceeding, U&A Belgium explains that it is necessary that the Department apply a consistent approach in both SSSS from Mexico and this review.

b. Significance of the Changes in Costs

The petitioners assert that the record evidence cannot support a conclusion as to whether the cost changes throughout the period of review were significant because the reported costs are inherently unreliable. The petitioners base this conclusion on the following factors: 1) potentially unidentified affiliated transactions undermine the validity of the U&A cost data; 2) the complexities of the dual cost accounting systems in use during the POR undermine the validity of U&A Belgium's cost data; and, 3) global market price indices are not indicative of this respondent's cost experience during the period of review. In addressing the first area of concern, the petitioners allege that while operations were being integrated during the merger with Mittal Steel, N.V. (Mittal), situations affecting the arms-length nature of the transactions almost certainly arose prior to the full consummation of the merger leading to various affiliated transactions that were likely overlooked and ultimately unreported. Thus, the petitioners contend that U&A Belgium's cost and sales data are inherently dubious and unreliable.

As for the second matter, the petitioners argue that the source of the cost data was based on two accounting systems in place for different periods of the POR, which used markedly different data collection points and produced quantitatively different results. As a result of the transition from one accounting computer software package to another during the POR, the petitioners assert that U&A Belgium's cost data and the resulting POR cost patterns evidenced cannot be considered reliable in determining whether shorter cost periods are warranted. Regarding the third point, petitioners argue that any correlation between price movements in nickel market prices, such as those published by the London Metal Exchange (LME) during the POR, and cost changes experienced by U&A Belgium are purely speculative because U&A Belgium's purchasing

practices are specifically geared to minimizing the impact of nickel price volatility. The petitioners opine that it is inappropriate for the Department to find even a causal linkage between U&A Belgium cost changes and LME prices based on the timing and manner with which nickel inputs are acquired. The petitioners attest that while U&A Belgium claimed the alloy surcharge is based on LME nickel levels, the link between LME prices and actual manufacturing costs remains tenuous. As a result, the petitioners urge the Department to discredit the relevance of global pricing indices in considering whether shorter cost periods are warranted in this case. The petitioners further argue that the reported costs cannot be relied upon because they were not verified by the Department.

U&A Belgium asserts that the record evidence in this case sustains the significance of the cost changes. U&A Belgium states that it has provided substantial documentation to demonstrate that: 1) nickel costs dramatically increased during the POR; 2) nickel cost changes are greater than historical nickel price fluctuations; 3) nickel is a large component of COM; 4) COM significantly increased; and, 5) distortions result from the sales-below-cost test if a single annual cost is used. U&A Belgium refutes the petitioners' suggestions that the underlying data used to formulate the Department's finding of significance is flawed and unreliable. Citing to its April 15, 2008, and April 22, 2008, submissions, U&A Belgium asserts that it prepared its supplemental questionnaire responses as if the merger were fully consummated, reviewing all transactions with Mittal companies and ensuring all relevant transactions were reported. To address petitioners' secondary concern, U&A Belgium argues that a conversion from one widely accepted accounting software program to another widely used software program does not in itself draw the data into question. U&A Belgium explains that it has provided substantial information to support the conclusion that the cost data extracted from the accounting systems reflects business reality such as reconciliations which demonstrate the reported costs reconcile to the audited financial statements of the company. As a final matter, U&A Belgium negates petitioners' attempt to invalidate conclusions that alloy surcharges and nickel costs increased significantly, stating it demonstrated on the record that its actual purchase costs and consumption costs for nickel increased dramatically over the period of review. As a result, U&A Belgium finds petitioner's concerns to be irrelevant or contradicted by the evidence on the record.

c. Linkage Between Costs and Sales Information

The petitioners advocate a standard for finding linkage between costs and prices that requires a strong, consistent and exact correlation, demonstrating that they move in lockstep with each other. The petitioners claim that the Department's findings on linkage between sales prices and costs are unsupported by record evidence in this case. First, petitioners point out that unlike Dutch Brass where the Department concluded there was a direct link between sales transactions and costs, the alloy surcharge in this case differs from the true pass-through pricing system established by the respondent in Dutch Brass. The petitioners point out that U&A Belgium itself reports that there is a two-to-three month lag between changes in costs and changes in its alloy surcharges. Therefore, the petitioners argue that U&A Belgium's own data reveals that the sales prices and surcharge amounts do not necessarily reflect the costs incurred within the same period of time. The petitioners argue that U&A Belgium's claim is further belied by the fact that home market customers often elect not to have the surcharge amount as a separate line-item on the

invoice; hence, the surcharge is not directly identifiable on the invoice. The petitioners assert that even if the alloy surcharge was correlated with cost, U&A Belgium's normal commercial practices, which seek to ensure stable costs for nickel, negate the theoretical relationship between acquisition and consumption costs, and market prices promulgated by the LME, which are used to compute the surcharge amounts.

Second, the petitioners assert that U&A Belgium has failed to show its costs were in absolute lockstep with its prices. The petitioners allege there are insufficient sales in the home-market to permit the Department to accurately test whether a systematic linkage between costs and prices exist. The petitioners state their review of data on the record showed no consistent correlation between the increases and decreases in grade-specific costs on a quarterly basis to the increases and decreases in grade-specific prices on a quarterly basis. The petitioners state that the fluctuations in cost are not aligned with the fluctuations in price on a quarterly basis, which was the test set forth in the Habas Sinai Remand. Additionally, the petitioners contend that the limited number of home market sales taints the analysis and discredits any claim that sales during shorter averaging periods can be accurately linked to the COP information within the same period.

U&A Belgium explains that record evidence demonstrates a linkage between sales and costs and agrees with the Department's assessment of linkage in its Post-Preliminary Determination. U&A Belgium first and foremost argues that alloy surcharges are pass-through mechanisms. U&A Belgium notes that the petitioners argued in the sunset review proceeding that the increase in SSPC prices resulted from an increase in the alloy surcharge used to pass along the sharp increase in raw material costs. U&A Belgium maintains that the International Trade Commission agreed that raw material costs and surcharges were paid and passed on by all producers.[12] U&A Belgium disputes petitioners' reference to Wire Rod from Canada, where the Department did find that sales transactions could not be tied to costs because in that case the respondent did not put sufficient evidence on the record. U&A Belgium asserts that in the present case, it has demonstrated with record evidence a clear linkage between cost and sales. Citing to Dutch Brass, U&A Belgium recognizes that the pass-through pricing system in the stainless steel industry is not identical to the one employed in the brass industry, but contends it need not be identical. U&A Belgium asserts that the Department's standard test for linkage examines whether a mechanism for passing increased raw material cost exists. U&A Belgium disagrees with the petitioners proposition that an exact correlation be found where costs and prices move in lockstep with each other. U&A Belgium discounts the petitioners' argument that because the alloy surcharge does not appear on certain home market invoices it is not a pass-through pricing mechanism. According to U&A Belgium, regardless of whether the alloy surcharge is broken out as a line item on the invoice or not, the alloy surcharge is a fixed component of the price that is calculated based on the same formula, and was applied to all sales in the home market.

[12] See Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa and Taiwan, Inv. Nos. 701-376, 377 and 379 and 731-TA-788-783 (Review) USITC Pub. 3784 (June 2005) at II-6.

U&A Belgium rejects the petitioner's assertions that an insufficient number of home market sales precludes the Department from evaluating linkage between sales and costs. U&A Belgium states there is a sufficient population of sales to support a determination that sales prices increased significantly over the period of review. Accordingly, U&A Belgium argues that nickel price increases not only impact the home market in the sales-below-cost test, but also impact U.S. sales transactions regarding difference-in-merchandise adjustments and constructed values. U&A Belgium points out that when high volume products sold during the POR in the home market are examined, the difference in price over the period of review is significant.

d. Substantial Quantities Test and 20 Percent Threshold

The petitioners conclude that if the Department decides to abandon its statutory requirement and normal practice of relying on cost data covering an extended period of time, then the companion requirement of examining whether 20 percent of sales by volume on an annual basis are below cost, should also be disregarded. According to the petitioners, conducting a further comparison of the quantities of sales-below-cost on an annual basis would result in a skewed analysis. As such, the petitioners assert that if the Department continues to use a quarterly cost analysis for purposes of the final results, the Department should only examine whether sales in a particular quarter are below cost and disregard all below cost sales.

U&A Belgium contends that the petitioner's suggestion to disregard the Department's 20 percent threshold is incorrect. U&A Belgium states that the Department's calculation methodology was correct in the Post-Preliminary Determination in determining whether sales were below cost over an extended period of time.

Department's Position:

We agree with U&A Belgium that due to the significant change in its cost of manufacturing of stainless steel plate in coils during the POR, it is appropriate to deviate from our normal annual average cost methodology in this case.

a. Legal Framework and Case Precedent

The Department has conducted a careful review of the facts of this case, as well as the related comments received in response to our Shorter Cost Averaging Periods; Request for Comment[13] published on May 9, 2008. In the introduction to the Shorter Cost Averaging Periods: Request for Comment, the Department stated it sought to develop a predictable methodology to determine when, due to the occurrence of significant cost changes throughout the POI or POR, the use of shorter period cost-averaging would be more appropriate than the established practice of using annual cost averages. While the Department has yet to adopt a new policy concerning the issue of significant cost changes, we find that a change in production costs during the POR would need

[13] Antidumping Methodologies for Proceedings that Involve Significant Cost Changes Throughout the Period of Investigation (POI)/Period of Review (POR) that May Require Using Shorter Cost Averaging Periods; Request for Comment, 73 FR 26364 (May 9, 2008) (Shorter Cost Averaging Periods; Request for Comment)

to be significant, before moving away from the normal method of calculating an annual average cost. Our normal annual average cost method smoothes out normal cost fluctuations that occur during an accounting period. Moreover, we prefer to calculate costs on an annual average basis in an antidumping duty context because, as costs are calculated over shorter periods, it directly limits the periods of time over which sale prices can reasonably be matched, thus limiting price-to-price comparisons.

Section 773(b)(1) of the Act describes how sales may be disregarded if they have been made at prices which represent less than the COP of that product. Section 773(b)(3) of the Act defines the COP as: "{a}n amount equal to the sum of – (A) the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product, during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business," emphasis added. We typically use the POI or POR as the period that best represents that period. While production runs usually occur over a few months, most companies do not track costs directly to products. Even if companies did track costs as such, because of accounting limitations, timing problems and month-to-month cost fluctuations, costs calculated over a longer period are more representative of the actual cost of production. For this reason, the Department has developed a consistent and predictable methodology to calculate cost on an annual average basis over the entire POR.

The Department's questionnaire routinely requests that respondents report their costs on an annual-average basis over the entire POR. See, e.g., Pasta from Italy at Comment 18; Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada, 71 FR 3822 (Jan. 24, 2006) and accompanying Issues and Decision Memorandum at Comment 5 (where the Department explains its practice of computing a single weighted-average cost for the entire period); and Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 55 FR 26225, 26228 (June 27, 1990) (where the Department stated that the use of quarterly data would cause aberrations due to short-term cost fluctuations). See also Grey Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 58 FR 47253, 47257 (Sept. 8, 1993) (where the Department explained that the annual period used for calculating costs accounts for any seasonal fluctuation which may occur as it accounts for a full operation cycle).

We have also considered the substantially similar fact patterns reported by respondent parties in both the concurrent review of SSSS from Mexico and the recent decision in Rebar from Turkey - 2.[14] Considering the unique facts of this case in conjunction with the comments received and past practice, the Department is continuing to develop and refine its methodological framework in analyzing and calculating manufacturing costs where the cost changes are significant during the period of review. We recognize that in this case distortions result when our normal annual average cost method is used because of the significant cost changes. The alternative methodology applied in this case is intended to achieve greater accuracy and fairness in our

[14] See Certain Steel Concrete Reinforcing Bars from Turkey: Final Results of Antidumping Duty Administrative Review and Determination to Revoke in Part, 73 FR 66218 (November 7, 2008) and accompanying Issues and Decision Memorandum at Comment 2 (Rebar from Turkey - 2).

antidumping calculations. In this case, the cost changes reported by U&A Belgium during the POR are clearly significant and would impact our normal antidumping methodology in a manner that is distortive. For the reasons discussed below, we consider the methodology employed in the Post-Preliminary Determination for the instant case to be both reasonable and appropriate and supported by law. See Post-Preliminary Determination; see also Memorandum to Neal M. Halper from Angela Strom, titled "Cost of Production and Constructed Value Calculation Adjustments for the Final Results – Ugine and ALZ Belgium," dated December 3, 2008 (Final Cost Calculation Memorandum) where the methodological framework remains unchanged for these Final Results.

As articulated in Shorter Cost Averaging Periods; Request for Comment at 73 FR 26365, the Department has concluded that although section 773(b)(3) of the Act states that the COP is calculated using a period which would ordinarily permit the production of the foreign like product, no guidance is given with regard to whether the Department should use only a single, weighted-average period of time, or multiple time periods within that production period for purposes of making comparisons and calculating a dumping margin. The Department's established practice is to use a single weighted-average COP that applies to the entire POI/POR, and has applied this methodology in the vast majority of investigations and reviews. At the same time, the Department has also established a long-standing practice of applying alternative cost averaging methods in instances where the Department has determined that its normal annual average costs would lead to skewed data and inappropriate comparisons. These situations include, but are not limited to, high inflation, rapid technological advancements, and extraordinary raw material cost volatility. See e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results of Antidumping Duty Administrative Review, 66 FR 56274 (November 7, 2001) (Rebar from Turkey Final); see also Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909 (February 23, 1998) (SRAMS from Taiwan), and Dutch Brass. Our past precedent reveals that in cases where alternative cost averaging methods were requested, our standard practice is to examine: 1) whether the cost changes throughout the POI or POR were significant; and, 2) whether sales during the shorter averaging period could be accurately linked with the COP or constructed value (CV) during the same averaging period. See e.g., Habas Sinai Remand. As a result, the Department has routinely administered these standards to determine whether alternative cost-averaging methods are warranted. In instances when the standard has not been met, the Department has appropriately rejected the request for shorter cost averaging periods and has continued with our standard annual cost approach. See e.g., SSSS from Italy, Wire Rod from Canada, Rebar from Turkey - 1. As a result, we affirm that our finding in this instance is supported by evidence on the record and in accordance with law.

b. Significance of the Changes in Costs

In determining whether a change in costs is significant, we find that the most comparable scenario to rapidly changing input costs may be that of a highly inflationary environment. High inflation results in costs that are at different currency levels due to rapidly decreasing currency values. It manifests itself in the increase of all prices stated in that currency, not just one input. Similarly, the increase in price of a primary input, as we find in this review, has distortive effects

on the total COP and on our dumping calculations (i.e., comparison over a period of time).[15] Because similar distortions arose in our antidumping analysis resulting from significant cost changes that occurred during this period of review, we have used a methodology that is similar to the established high inflation methodology to compute COP and CV.

In high inflation cases, the Department has established a threshold of 25 percent annual rate of inflation, which is used to determine when the Department departs from its normal methodology of calculating an annual weighted-average cost.[16] The Department's threshold of 25 percent originates from generally accepted accounting standards promulgated in International Financial Reporting Standards (IFRS). International Accounting Standard (IAS) 29 was developed to provide guidelines for enterprises reporting in the currency of a hyperinflationary economy so that the financial information provided is meaningful. Essentially, IAS 29 establishes when it is appropriate for an entity to depart from normal IFRS accounting standards and adopt an alternative method, because the existing method (i.e., historical costing) will result in distortions. The inflation standard set out under IAS 29 is when the cumulative inflation rate over three years approaches, or exceeds, 100 percent. We note that doubling of the index over a three year period equates to approximately a 25 percent annual rate of inflation. The Department has similarly followed the guidelines of the IAS 29 to determine whether economic variables (i.e., inflation) affect the financial information and cost data reported by a respondent operating in that economic environment. In instances when the inflation index of the respondents' country exceeds 25 percent, the Department utilizes the monthly inflation indices to restate the annual weighted average cost for the respondent at the currency levels for each month of the POI or POR. We find this methodology is warranted in order to avoid the distortive effect of inflation on our comparison of costs and prices. See Rebar from Turkey Final.

For purposes of this review, we have set our significance threshold at the hurdle rate applied in our high inflation methodology. Inflation indices measure, in terms of a percentage, price changes for a particular basket of goods over a period of time. We find that a similar comparison can be made here, where a particular basket of goods (i.e., stainless steel inputs) are experiencing rapid changes in price levels which largely impacts the total cost of manufacturing (COM). To benchmark these changes in COM to our significance threshold, we have used U&A Belgium's data to compute the cost difference, in terms of a percent, between the lowest quarterly COM and the highest quarterly COM. For the highest volume control numbers (CONNUMs) sold in the home market and U.S., the cost difference exceeds our significance threshold.[17] This significance threshold is high enough to ensure that we do not move away from our normal practice without good cause and forgo the benefits of using an annual average cost, but allows

[15] The Department considers a respondent to be in a high inflationary economy when the producer price index for the exporting country changed at a 25 percent annual rate. This threshold has been used for many years for respondent countries experiencing high inflation.

[16] The Department normally considers the producer price index published by a given country's financial and economic authorities to be the relevant inflation index in our proceedings. See Rebar from Turkey – 2.

[17] See Final Cost Calculation Memorandum.

for a change in methodology when significantly changing input costs are clearly affecting our annual average cost calculations.

The petitioners did not challenge the significance finding in the Post-Preliminary Determination itself but rather alleged that the underlying cost data used to compute the cost change is flawed and unreliable. The petitioners' allegations are three-fold: 1) implications of potentially unreported affiliated transactions due to the Arcelor-Mittal merger undermine the use of U&A Belgium's cost data; 2) the complexities of the dual cost accounting systems in use during the POR undermines the reliance on U&A Belgium's cost data to establish the propriety of unique cost periods; and 3) global market price indices are not indicative of this respondent's cost experience during the POR.

As for the first matter, U&A Belgium reported its purchases of inputs from affiliated parties during the POR in its September 28, 2007, response at Appendix D-7. Later, in its April 15, 2008, response at page 2, U&A Belgium confirmed that there have been no changes to U&A Belgium's inputs from affiliates within the review period resulting from the merger with Mittal Steel. The Department has fully examined the record evidence and public information related to the Arcelor-Mittal merger, and has found no reason to believe that U&A Belgium's statements were incorrect. Furthermore, petitioners have failed to point to or provide further evidence which would support its assumption that certain affiliated transactions were either intentionally unreported or inadvertently overlooked by U&A Belgium during the POR. Thus, we find petitioner's allegation speculative and unsupported by record evidence.

U&A Belgium also fully disclosed the conversion between accounting systems during the POR. These conversions occur in a number of our administrative reviews as companies routinely update or replace existing software programs to accommodate their commercial and financial reporting needs. The Department formulated several questions to identify and better understand the differences between the accounting systems in this review. U&A Belgium provided both qualitative and quantitative descriptions of this conversion, illustrating the differences between the allocation methodologies, inventory valuation methods and actual versus budgeted cost approaches. See U&A Belgium's April 22, 2008, response at 1-5, 27, and Exhibits SSD-1 and SSD-2. While slight differences exist between the two accounting systems, the Department concludes that record evidence demonstrates that both systems are based on reasonable methodologies and overall are consistent with the home country's generally accepted accounting standards. Data from the systems used to prepare the financial statements have been audited and certified by independent accountants, and thus, we do not find data quality an issue in this case.

The petitioners also quarrel with the Department's companion reference to global price indices as support for its determination that nickel acquisition costs changed dramatically during the POR because nickel indices published by the LME, for example, are not indicative of U&A Belgium's actual cost experience. The petitioners make a parallel argument that U&A Belgium's cost experience cannot be nearly as dramatic as that indicated by global price indices because of the specific purchasing practices of U&A Belgium intended to minimize the impact of price volatility in the market. While the LME nickel indices do not reflect U&A Belgium's specific experience they are indicative of nickel market conditions in a market in which U&A

Belgium actively participated. Our analysis of U&A Belgium's actual cost of nickel revealed that nickel, in terms of cost, was a primary input for U&A Belgium's merchandise under consideration and that U&A Belgium's nickel consumption costs changed significantly during the POR based on our review. See U&A Belgium's April 22, 2008, response at Appendix SSD-3. We also looked to the LME, the leading authority for the non-ferrous metals market, which reported commensurate increases in nickel prices of over 135 percent during the POR. We disagree with petitioners that there is reason to question the legitimacy of the reported costs because the Department did not conduct a verification of U&A Belgium. Verification of U&A Belgium was not required under section 782(i) of the Act or 19 C.F.R. § 351.307. Thus, there is no basis to reject the data because it was not verified. The Department exercised its own discretion in electing not to conduct a verification of the data provided in this segment of the proceeding. We have no reason to find that the data is inaccurate or would not otherwise withstand the scrutiny of verification. See Final Cost Calculation Memorandum.

c. Linkage Between Costs and Sales Information

Consistent with past precedent, if the Department finds cost changes to be significant in a given administrative review or investigation, the Department subsequently evaluates whether there is evidence of linkage between the cost changes and the sales prices for the given POI/POR. Our definition of linkage in the instant case does not require direct traceability between a specific sale and its specific production cost, but rather relies on whether there are elements which would indicate a reasonably positive correlation between the underlying costs and the final sales prices levied by the company. These correlative elements may be measured and defined in a number of ways depending on the associated industry, the overall production process, inventory tracking systems, company-specific sales policies, inventory turnover ratios, price and cost trend analysis, and pricing mechanisms present in the normal course of business (e.g., alloy surcharges, raw material pass through devices). Because the Department is unable to develop and adhere to a strict linkage policy covering all cases, companies and industries, we deem it appropriate to evaluate the record evidence on a case-by-case basis to determine whether a reasonable level of correlation exists in linking costs and sales.

In this case, we evaluated whether the sales prices during the shorter cost averaging period were reasonably correlated with the COP/CV during the same shorter cost averaging period. We note that U&A Belgium had an alloy surcharge mechanism in place during the POR, which is derived by incorporating the average market prices for inputs used in the manufacture of stainless steel plate in coils, including nickel, chromium, molybdenum, titanium and scrap. See U&A Belgium's April 22, 2008, response at Appendix SSD-7. We note that this regime is held as an industry standard for nearly all stainless steel producers. It was developed as a means for producers to effectively charge its customers for consistently changing raw material costs through an additional levy added to the base sales price. We also note that the time lag used to compute the alloy surcharge is comparable to the time that it takes to produce and ship customer orders. See U&A Belgium's May 16, 2008, supplemental questionnaire response at 14.[18] We

[18] See the Final Cost Calculation Memorandum for further detail regarding the time lag used by U&A Belgium to compute its alloy surcharges.

note that the final sale price reported by U&A Belgium represents the sum of the base invoice price plus the applicable monthly alloy surcharge, which may or may not be separately identifiable on the invoice or in the sales database. See e.g., U&A Belgium's April 15, 2008, response at Appendix SSB-4. Nevertheless, because the alloy surcharge reflects the changes in the market price for the relevant inputs, we determined that a reasonable level of correlation exists between the underlying input costs and final sales prices levied by U&A Belgium.

The petitioners argue that the Department's linkage finding is undermined by the fact that surcharge amounts are not directly identifiable on several home market sales invoices. We disagree with this assessment. As articulated above, the surcharge mechanism is considered to be a normal business practice for the stainless steel industry. In fact, the domestic stainless producers also compute monthly surcharge amounts, publicly release the surcharge amounts on their company websites,[19] and uniformly apply them on sales to their final customers. Similarly, U&A Belgium publicly displays their surcharge information[20] as a means to inform customers of the monthly surcharges applicable to their stainless steel purchases.[21] At the request of some home market customers, U&A Belgium does not include the surcharge amounts separately on the final invoice, but instead states a single gross price inclusive of the surcharge amount. See sample calculation at U&A Belgium's April 22, 2008, Section D supplemental response at Exhibit SSD-10. The petitioner's claim, therefore, implies that U&A Belgium, at a time when material costs were at unprecedented highs, would choose to omit the published surcharge amounts from the invoice price for a large number of unaffiliated sales in the home market. We find this claim to be unsupported by the record evidence and relevant public information.

Petitioners argue, in reference to Habas Sinai Remand, that U&A Belgium should be required to show that its costs were in absolute lockstep with its prices in order to demonstrate linkage. However, given the insufficient volume of home market sales during the POR, petitioners assert that the Department is unable to test the proposition that prices moved in lockstep with costs during this period. The Department disagrees with petitioners on these matters. First, the Department found that U&A Belgium's home market sales volume was greater than five percent of its U.S. sales volume. Thus, pursuant to section 773(a)(1)(B)(I) of the Act, we have determined that U&A Belgium's sales of stainless steel plate in coils in Belgium were sufficient to render the Belgian market viable in our antidumping analysis under the statute. As a result, the Department is using these home market sales for normal value. Secondly, we do not agree that costs must be in absolute lockstep with prices, as suggested by petitioners. Rather, we find that the alloy surcharge mechanism here appropriately satisfies our linkage criteria and allows for proper sales comparisons within the home market. See Final Cost Calculation Memorandum.

---

[19] See e.g., Allegheny Ludlum and North American Stainless surcharge information at: < http://www.alleghenytechnologies.com/ludlum/pages/SurchargeCalculator/SurchargeHistory.asp> http://www.northamericanstainless.com/NAS_App/Surcharge1?language=E&type=F; see also Final Cost Calculation Memorandum.

[20] See <http://www.arcelormittal-stainless-europe.com/price-schedule.html>; see also Final Cost Calculation Memorandum.

[21] See U&A Belgium's April 16, 2008, response at Exhibit SSB-4-C.

d. Substantial Quantities Test and 20 Percent Threshold

We disagree with the petitioners' suggestion that we modify the application of our substantial quantities test (i.e., our 20 percent threshold) in our antidumping analysis. Section 773(b)(2)(A) of the Act state that sales made at prices below the cost of production have been made in substantial quantities if the volume of such sales represents 20 percent or more of the volume of sales under consideration for the determination of normal value. Hence, the calculation of the 20 percent volume must be made over the entire population of sales under consideration, and should not be administered within shorter segments of the POR. Consistent with our long-standing practice on this matter, we have used the period of review (i.e., one full year) for the substantial quantities test despite the fact we implemented a shorter cost averaging approach in this instant review.[22] See e.g., Rebar from Turkey - 2 at Comment 2 (where the Department used one period of review for the substantial quantities test despite the two annual cost average periods); Brass Sheet and Strip from the Netherlands, 65 FR at 743 (where the Department used one overall period for the substantial quantities test, despite using monthly metal costs); SRAMs from Taiwan, 63 FR at 8913 (where the Department used one overall period for the substantial quantities test, despite using quarterly costs); and Post-Preliminary Determination and Final Cost Calculation Memorandum. In addition, we disagree with the petitioners' argument that the Department is prohibited from altering the below cost test to address fluctuations because of the provision in the statute that addresses the term "extended period of time" as a period that is "normally 1 year, but not less than 6 months." See section 773(b)(2)(B) of the Act. The application of the term "extended period of time" pertains to the substantial quantities test addressed above, where we noted that consistent with our long-standing practice, we have used the POR (i.e., one full year) for this test.

[22] We further find that our alternative cost methodology also satisfies the statutory requirements set forth in section 773(b)(2)(D) of the Act.

IV. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results and the final weighted-average dumping margin in the Federal Register.

Agree _____ Disagree _____

_____
David M. Spooner
Assistant Secretary
for Import Administration

_____
(date)