

A-580-809
Administrative Review
POR: 11/1/07-10/31/08
Public Document
Office 1: AJM

DATE: June 14, 2010

MEMORANDUM TO: Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the 2007-2008
Administrative Review of Circular Welded Non-Alloy Steel Pipe
from the Republic of Korea

SUMMARY

We have analyzed the case and rebuttal briefs of interested parties in the 2007-2008 administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea (“Korea”). As a result of our analysis, we have made certain changes in the margin calculation. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a complete list of the issues for which we received comments by parties:

Comment 1: Application of Quarterly Costs
Comment 2: Inventory Valuation Loss
Comment 3: Application of the Major Input Rule
Comment 4: Allowance for Doubtful Accounts/Bad Debts
Comment 5: Ordinary Pipe versus Pressure Pipe Classification
Comment 6: Bank Charges Incurred: Letter of Credit Charges
Comment 7: Recalculating SeAH’s Dumping Margin by Comparing Monthly Weighted-Average Normal Values to Individual U.S. Prices
Comment 8: Zeroing-Out Negative Dumping Margins

BACKGROUND

On December 8, 2009, the Department of Commerce (“Department”) published the preliminary results of this review in the Federal Register.¹ The following events occurred after the

¹ See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results and Rescission in Part of the Antidumping Duty Administrative Review, 74 FR 64670 (December 8, 2009) (“Preliminary Results”).

Department published the Preliminary Results. The Department issued a second supplemental questionnaire to SeAH Steel Corporation (“SeAH”) on December 11, 2009, and SeAH responded on December 28, 2009. From January 18 through January 22, 2010, we conducted verification of SeAH’s reported home market sales information and from February 8 through February 10, 2010, we conducted the U.S. sales verification of SeAH at Pusan Pipe America (“PPA”). The Department released its verification reports for SeAH and PPA to interested parties on April 12, 2010. We received case briefs on April 26, 2010, from SeAH and Petitioners (United States Steel Corporation (“U.S. Steel”), Allied Tube and Conduit Corporation and TMK IPSCO Tubulars. On May 3, 2010, SeAH and U.S. Steel submitted rebuttal briefs. None of the parties requested a hearing.

CHANGES SINCE THE PRELIMINARY RESULTS

Based on our analysis of the comments received, we made the following changes in calculating dumping margins: (1) we revised the calculations from the Preliminary Results to account for minor corrections that SeAH submitted during the home market and CEP sales verifications; (2) we included SeAH’s allowance for doubtful accounts in the indirect selling expense calculation; (3) we reclassified the reported grades of certain pipes for product comparison purposes; (4) we treated all of SeAH’s letter of credit charges related to its U.S. sales as direct selling expenses; (5) we corrected the margin program by calculating SeAH’s dumping margin by comparing monthly weighted-average normal values (“NV”) to individual U.S. prices; and (6) excluded inventory valuation losses from SeAH’s cost calculations. For further details, see “Cost of Production and Constructed Value Calculation Adjustments for the Final Results – SeAH Steel Corporation,” and “Final Results Calculation Memorandum for SeAH Steel Corporation,” both dated June 14, 2010.

DISCUSSION OF THE ISSUES

Comment 1: Application of Quarterly Costs

In the Preliminary Results, the Department applied the quarterly cost methodology to SeAH’s reported costs because SeAH experienced significant changes in its total cost of manufacturing (“COM”) during the period of review (“POR”) and the sales prices and costs were reasonably linked.

SeAH argues that the Department’s practice is to only deviate from the use of annual weighted-average costs in rare cases where costs increased significantly and consistently during the POR, and a direct linkage between the increased costs and the sales prices can be established.² SeAH asserts that the Department’s application of new tests for using the quarterly costs methodology

² See Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part, 70 FR 67665 (November 8, 2005) and accompanying Issues and Decision Memorandum at Comment 1 (“Turkish Rebar Decision Memo 03/04”); 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 Decision Memo 03/04”); and Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France, 71 FR 6269 (February 7, 2006) and accompanying Issues and Decision Memorandum at Comment 2 (“Stainless Sheet from France Decision Memo 03/04”).

in this review is not supported by substantial evidence and is not in accordance with law because (1) SeAH's costs did not change consistently throughout the POR, (2) there is no direct linkage between sales prices and production costs within the same quarter, (3) the Department failed to apply the cost recovery test, and (4) the Department failed to apply the 90/60 day window period regulation.

Petitioners argue that the Department properly applied its alternative quarterly cost methodology in the Preliminary Results because SeAH's costs changed significantly during the POR and the changes in sales prices and costs are reasonably linked during the same period.³ Petitioners also argue that the Department properly applied the cost recovery test and appropriately determined not to apply 60/90 day window period regulation. As such, Petitioners assert that the Department should continue to use the quarterly cost methodology for the final results.

A. Significant Cost Changes

SeAH argues that the Department deviated from its established practice in its Preliminary Results by applying a new quarterly cost test that no longer required the cost changes to be consistent across the entire POR (i.e., in this case, the Department found that this part of the test was met so long as costs changed by 25 percent or more between any two quarters of the POR). SeAH asserts that in the line of cases between 2000 and 2005, the Department focused on whether costs for the primary raw material input changed significantly and consistently from the beginning to the end of the POR.⁴ SeAH cites Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States; Final Results of Redetermination Pursuant to Court Remand (March 3, 2008) and asserts that the Department previously stated that consistency is important because "to

³ 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, 746-748 (January 6, 2000) ("Brass Sheet and Strip from the Netherlands 97/98"); 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 Decision Memo 06/07"); Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review, 73 FR 75398 (December 11, 2008) and accompanying Issues and Decision Memorandum at Comment 4 ("SSPC from Belgium Decision Memo 06/07"); Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 74 FR 6365 (February 9, 2009) and accompanying Issues and Decision Memorandum at Comment 5 ("SSSS from Mexico Decision Memo 06/07"); Certain Welded Stainless Steel Pipes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 74 FR 31242 (June 30, 2009) and accompanying Issues and Decision Memorandum at Comment 1 ("SS Pipe from Korea Decision Memo 06/07"); Certain Pasta from Italy: Notice of Final Results of the Twelfth Administrative Review, 75 FR 6352 (February 9, 2010) and accompanying Issues and Decision Memorandum at Comment 5 ("Pasta from Italy Decision Memo 07/08"); Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 75 FR 6627 (February 10, 2010) and accompanying Issues and Decision Memorandum at Comment 6 ("SSSS From Mexico Decision Memo 07/08"); and Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fifteenth Administrative Review, 75 FR 13490 (March 22, 2010) and accompanying Issues and Decision Memorandum at Comment 3 ("15 AR CORE from Korea").

⁴ See, Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review, 65 FR 77852 (December 13, 2000) and accompanying Issues and Decision Memorandum at Comment 18 ("Pasta from Italy Decision Memo 98/99"); Turkish Rebar Decision Memo 03/04 at Comment 1; Wire Rod from Canada Decision Memo 03/04 at Comment 5; and Stainless Sheet from France Decision Memo 03/04 at Comment 2.

deviate from our normal, predictable, and consistent approach every time costs temporarily increase or decrease would create a situation in which we no longer have a practice, and which no longer allows for predictable results.” SeAH contends that the Department has abandoned its prior consistency requirement by using the quarterly costs even if production costs only spiked temporarily between quarters. SeAH argues that because the Department did not explain why consistency is no longer important the use of a quarterly cost methodology in this case is unlawful.⁵

Petitioners point out that in May 2008, the Department issued a request for public comment on the standards it should apply when deciding whether to rely on cost averaging periods of less than one year. After reviewing the comments it received, the Department refined certain aspects of its practice. Petitioners note that the Department examines whether there have been significant cost changes during the POR and, if so, whether changes in costs on a quarterly basis can be reasonably linked to the respondent’s sales prices during each quarter. The Department considers that there have been significant cost changes if the percentage difference in the quarterly costs between the lowest and highest quarter exceeds 25 percent. With respect to the second part of its analysis (*i.e.*, the linkage test), the Department will find that there is a reasonable correlation between the quarterly costs and the quarterly sales prices if sales and costs are generally trending in a consistent manner and the respondent “turns over its inventory relatively quickly.”⁶ Petitioners assert that not only has the Department applied this test consistently in recent cases, but the Court of International Trade (“CIT”) has reviewed and affirmed it.⁷ Petitioners argue that in the instant review, SeAH’s records showed that the percentage difference in quarterly COM from the high to low COM quarters for four out of five CONNUMs sold in the U.S. market and for all five CONNUMs sold in the home market during the POR clearly exceeds the 25 percent standard ordinarily applied by the Department.

B. Linkage between Costs and Sales Information

SeAH argues that the Department failed to explain why its previous requirement for a direct link between raw material input costs and the prices of the related sales transactions in the same quarter is no longer important. SeAH asserts that this direct linkage requirement was central to the Department’s test because it assured that in deviating from average annual costs in search of more accurate sales-below-cost test results, the Department would not actually create distortions. SeAH asserts that the Department sharply deviated from its established agency practice by applying a new test that abandoned the direct linkage requirement between costs and prices in favor of a “reasonable correlation” or “trended consistently” standard that was met so long as costs and prices were generally trending in the same direction.

SeAH also contends that the record evidence does not support that there is a reasonable correlation between SeAH’s costs and sales prices. SeAH argues that the Department’s

⁵ Huvis Corp. v. United States, 570 F.3d. 1347, 1353 (U.S. Court of Appeals for the Federal Circuit (“CAFC”) 2009) (“Huvis Corp”).

⁶ See SS Pipe from Korea Decision Memo 06/07 at Comment 1.

⁷ See Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States, 625 F. Supp. 2d 1339, 1343-1371 (CIT 2009) (ruling on remand results (Rebar from Turkey 7AR Redetermination 03/04)) (“Habas Sinai”).

comparison of quarterly average cost and price changes for the five largest U.S. and home market CONNUMs is flawed⁸ because the fact that costs and prices moved in the same direction for these CONNUMs says nothing about whether costs and prices are reasonably correlated in the same quarter. SeAH claims that there are large differences between cost and price changes in each quarter of the POR and, thus, the record evidence does not support the conclusion that the costs and prices reasonably correlate in the same quarter, which is what the Department's new test requires. SeAH also asserts that its inventory turnover period for raw materials and finished goods only shows SeAH's ability to pass through increased costs to its customers within those periods but it does not show SeAH's increased costs and prices are actually linked in the same quarter. According to SeAH, without a clear link between changes in quarterly costs and changes in prices in that quarter, there is no basis to assume that quarterly cost averaging more accurately matches costs and prices than would, for example, an annual cost period, 6-month cost periods, 3-month moving average cost periods, or quarterly costs lagged by a quarter.

Petitioners argue that the Department has properly applied its linkage test in this case and determined that there was a reasonable correlation between the changes in quarterly costs and SeAH's sales prices during each quarter. Petitioners state that the Department did this by analyzing SeAH's quarterly costs and its average sales prices for five CONNUMs sold in the U.S. market and five CONNUMs sold in the home market during the POR and the analysis showed that, for nine of ten CONNUMs analyzed, the change in the average quarterly cost trended consistently with the change in the average quarterly prices. Petitioners further assert that although SeAH's ability to turn over its raw material inventory quickly is not a direct indication that SeAH passed its increased cost of materials along to its customers during the quarter, it indicates that SeAH had the means to pass the increase in price along to the customers because there is a short period of time between SeAH's purchase of raw materials and their use in production. Also, Petitioners cite Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States; Final Results of Redetermination Pursuant to Court Remand (September 8, 2009) and contend that, contrary to SeAH's claim, the Department explained each aspect of its quarterly cost methodology and set forth in detail the reasons why each refinement to that methodology has been made. Thus, Petitioners maintain that the Department not only adequately explained the application of quarterly cost methodology before but also properly applied the quarterly cost methodology in this case.

Petitioners further argue that the record evidence clearly shows that the changes in SeAH's quarterly costs and quarterly sales prices were reasonably correlated during the POR. Petitioners contend that SeAH fundamentally misconstrued the meaning of "correlation." Petitioners state that the existence of a correlation between the variables of cost and price can only be analyzed by examining the changes in the quarterly costs and prices that took place over two or more quarters and not by examining whether there is a difference between the amount of the quarterly costs and quarterly prices in the same quarter. According to Petitioners, in 15 AR CORE from Korea at Comment 3, the Department found a reasonable correlation between the quarterly costs and quarterly prices as a result of "cost and price changes that clearly trended in the same

⁸ See Memorandum from Ji Young Oh to Neal M. Halper, entitled Cost of Production and Constructed Value Calculation Adjustment for the Preliminary Results – SeAH Steel Corporation, dated November 30, 2009 ("SeAH Preliminary Cost Analysis Memo").

direction throughout the POR.” Thus, Petitioners assert that SeAH’s interpretation of the linkage test is not supported by the Department’s consistent practice in applying that test. Petitioners further contend that SeAH missed the point of the Department’s assessment of inventory turnover time. Petitioners state that the Department’s examination of inventory turnover is to assess whether respondents are able to “revise their ... prices in response to highly volatile material costs” and allow for “current costs to be reflected quickly in their COM.”⁹ As such, according to Petitioners, these facts clearly satisfy the Department’s linkage test between changes in quarterly costs and changes in prices within a quarter.

C. Cost Recovery Test

SeAH argues the Department’s failure to apply the cost recovery test is contrary to law. SeAH states that under section 773(b)(2)(D) of the Tariff Act of 1930, as amended (“the Act”), the Department may disregard sales that are made at less than their cost of production (“COP”) provided that such sales “have been made within an extended period of time in substantial quantities” and “were not at prices which permit recovery of all costs within a reasonable period of time . . .” SeAH contends that the cost recovery provision directs that prices that are above the weighted-average per-unit COP for the POR “shall be considered to provide for recovery of costs within a reasonable period of time.” See Uruguay Agreements Act, Statement of Administrative Action, 103d Congress, 2d Session, House Document 103-316, Vol. 1 (September 27, 1994) (“SAA”) at 832. Accordingly, SeAH asserts that sales that are above the POR weighted-average per-unit COP cannot be excluded under the cost test. SeAH claims that legislative history confirms Congress’s intent that the cost recovery test is to be based exclusively on POR weighted-average costs citing the SAA and section 773(b)(2)(D) of the Act, and that these weighted-average costs be actual. SeAH argues that in accordance with Acciai Speciali Terni S.p.A. v. United States, 142 F. Supp. 2d 969, 997 (CIT 2001) (“Acciai”), the Department must apply the cost recovery test. In Acciai the plaintiffs challenged the Department’s interpretation of section 773(b)(2)(D) of the Act as foreclosing the use of a longer cost recovery period, arguing that the statutory language defined, but did not absolutely limit, the circumstances under which the Department was to conclude that prices had permitted for the recovery of costs. The Court disagreed, finding that the Department correctly interpreted the statute as providing for one cost recovery test in all circumstances. As such, SeAH maintains that the Department expressly and routinely recognized that the statute required it to conduct the cost recovery test using POR or period of investigation (“POI”) weighted-average costs even when it had determined to otherwise calculate COP using quarterly (or even monthly) weighted-average costs.¹⁰

Petitioners argue that the Department used the weighted-average per-unit cost of production for the POR in conducting its cost recovery test. As a result, the Department’s practice and its application of that practice in this case are fully consistent with Acciai and section 773(b)(2)(D)

⁹ See 15 AR CORE from Korea at Comment 3.

¹⁰ See Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Dynamic Random Access Memory Semiconductors of One Megabit and Above (DRAMs) From Taiwan, 64 FR 28983 (May 28, 1999) (“DRAMS Preliminary Determination 97/98”).

of the Act by calculating an adjusted weighted-average COM using indices for the POR that neutralized the distortion of significantly changing substrate costs.

D. Window Period Sales

SeAH contends that the Department's failure to apply its 90/60 day contemporaneity regulation is unsupported by substantial evidence, is contrary to law, and alters the Department's normal sales matching. SeAH argues that the matching period was shortened from six months to three months for all U.S. sales which resulted in less desirable matches. Thus, U.S. sales that would have been matched to home market sales of identical or similar products if the Department applied its normal 90/60-day window, are now matched to less similar home market products or to sales in a less contemporaneous month, as defined in 19 CFR 351.414(e). SeAH continues that the shortening of the contemporaneity window meant that a different order of preference was used depending upon the month of the U.S. sale. SeAH also cites 19 CFR 351.414(e), which sets forth the methodology to be used by the Department to match U.S. sales to monthly weighted-average comparison market sales prices and states that the Department's failure to apply the 90/60 day contemporaneity window not only distorts the dumping analysis, but is unlawful. SeAH admits that 19 CFR 351.414(e)(2) begins with the word normally, but maintains that nothing in the text of the regulation or in the preamble to the regulation suggests that the Department has unlimited discretion to alter the definition of contemporaneous month on a case-by-case basis. According to SeAH, as a result of the Department not allowing the 90/60-day window, the dumping margin changed substantially. SeAH also argues that there is no evidence to support the Department's conclusion that making price-to-price comparisons outside of a quarter as would happen under the Department's 90/60 day rule would lead to actual distortions in this case. Therefore, SeAH maintains that the Department's attempt to depart from the definition of contemporaneous month imposed by the regulation and its decision to disregard its own 90/60 day regulation are unsupported by substantial evidence and contrary to law.

Petitioners argue that the Department's regulations at 19 CFR 351.414(e)(1) state that when "normal value is based on the weighted average of sales of the foreign like product, the Secretary will limit the averaging of such prices to sales incurred during the contemporaneous month." Petitioners assert that SeAH has not provided any analysis or record evidence supporting its claim that the Department's failure to apply the 90/60 day window results in less desirable matches and less contemporaneous matches. Petitioners affirm that the Department specifically decided to limit the contemporaneity window in quarterly cost cases because not doing so would ignore the effects of changing prices. Petitioners contend that the record clearly demonstrates that SeAH's quarterly costs increased significantly during the POR and that SeAH's quarterly prices trended consistently with the changes in cost that took place. As such, the Department recognized that applying the 90/60 day regulation would have distortive effects on the calculation of SeAH's dumping margin. Thus, Petitioners maintain that the Department lessened the distortive effects of changes in sales prices which result from significantly changing costs by only allowing price comparisons between sales that were made within the same quarter.

E. Calendar Year Quarter Versus the POR Quarter

SeAH asserts that, based on the Department's reporting instructions, it reported all sales connected with U.S. sales entered for consumption during the POR. Accordingly, the sales date for its first U.S. entry during the POR was prior to the beginning of the POR and the sales date for its last U.S. entry during the POR pre-dated the end of the POR. Thus, according to SeAH, using the POR quarters results in a mismatch of sales and cost data. As such, SeAH maintains that if the Department continues to use the quarterly cost methodology for the final results, the Department should shift the cost reporting period by one month and use the calendar year quarter instead of the POR quarters.

Petitioners argue that the Department should conduct the cost test based on the POR quarters. Petitioners assert that the POR quarters would measure the POR production costs more accurately than the calendar year quarters which do not correspond to the POR. Thus, Petitioners maintain that the Department should continue to use the POR quarters for the final results.

Department's Position:

For the reasons articulated below, we disagree with SeAH. The use of the alternative quarterly cost-averaging methodology in this case is supported by record evidence and is in accordance with law. Moreover, the Department's reasoning for using the alternative cost-averaging methodology has been articulated before. Therefore, for these final results, we have continued to use the alternative cost-averaging methodology consistent with the reasoning set forth in our Preliminary Results.

The Department has a consistent and predictable methodology of calculating costs (i.e., COP, constructed value ("CV") and difference in merchandise ("DIFMER")) on a POR-average basis. As such, the Department's standard questionnaire requests that respondents report their costs on a POR-average basis. See Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review, 65 FR 77852 (Dec. 13, 2000) and accompanying Issues and Decision Memorandum at Comment 18 ("Pasta from Italy 98/99") and Wire Rod from Canada Decision Memo 03/04 at Comment 5 (explaining the Department's practice of computing a single weighted average cost for the entire period).

The Act does not dictate a specific method of calculating costs during the POR, nor does it provide a definition for the term "period" in calculating COP and CV. Thus, the Department has adopted a consistent and predictable approach in using annual-average costs over the entire POR with the result being a normalized, average production costs to be compared to sales prices covering the same extended period of time. See Color Television Receivers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 55 FR 26225, 26228 (June 27, 1990) (stating that the use of quarterly data would cause aberrations due to short-term cost fluctuation) and Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 58 FR 47253, 47257 (September 8, 1993) (explaining that the annual period used for calculating costs accounts for any seasonal fluctuation which may occur as it accounts for a full operation cycle). As the Department explained in those cases, the results of this approach smoothed out normal cost fluctuations that occur during an accounting period.

Before moving away from the normal method of calculating a POI or POR average cost, the change in production costs during the POR needs to be significant. The Department has articulated in several past proceedings that the use of an alternative cost-averaging period may be appropriate in situations where a reliance on a normal annual weighted average cost method would distort the dumping analysis due to significant cost changes. These situations include high inflation and raw material cost volatility. See Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Partial Rescission of Antidumping Duty Administration Review, 67 FR 66110 (October 30, 2002) and Brass Sheet and Strip from the Netherlands 97/98. As explained further below, the Department has applied the same standards to this case as in SSSS from Mexico Decision Memo 06/07, SSPC from Belgium Decision Memo 06/07, Pasta from Italy Decision Memo 07/08, and 15 AR CORE from Korea. The approach taken in these recent decisions more clearly defines the significance and linkage thresholds. As a result of applying these thresholds to the facts of this case, we affirm that our finding in this review that application of a quarterly cost averaging period is warranted and appropriate.

A. Significant Cost Changes

The administration of antidumping duty cases is better served through a reasonable numeric threshold for determining what constitutes a significant cost change. A numeric threshold for a significant change avoids confusion because it is transparent, can be applied consistently, and parties are better served when a predictable and transparent practice is in place. By establishing a standard practice, we ensure a more equitable and consistent application of the alternative calculation methodology. In SSPC from Belgium Decision Memo 06/07 and Rebar from Turkey Decision Memo 06/07, we established a threshold of a 25 percent change in cost to determine whether the change in cost was significant. In developing the 25 percent threshold for when the change in production costs is significant enough for us to consider deviating from our normal POI/POR average cost methodology, we looked to our practice for high inflationary economies for guidance. In high inflation cases, the Department has established a threshold of 25 percent annual inflation, which is used to determine when the Department deviates from its normal methodology of calculating an annual weighted average cost.

The distortion caused by high inflation on our normal annual weighted average cost calculation methodology is similar to that resulting from a significant change in material costs. The primary difference is that, in high inflationary economies, many components of the COM typically change from month to month whereas in non-high inflationary economies, significant cost changes are usually driven by one or two main inputs. For high inflation situations, we expect production costs and prices for all products generally to change significantly. Thus, we are able to look to a published index like the producer price index (“PPI”) or wholesale price index (“WPI”), specific to a country, in quantifying the degree of currency devaluation over a given period, and can make a threshold decision for the company as a whole. When the significant cost change is driven by one or two main inputs, the extent to which production costs change may vary widely from product to product because each product typically requires different quantities of a given input. As such, the cost change must be analyzed on a product specific basis. Furthermore, in high inflationary situations, the PPI or the WPI typically trend upward. Thus, calculating the percent change in the index from the beginning to the end of the POI/POR provides a good measure of the magnitude of change during the period. In the situation where

significant cost change is driven by one or two main inputs, the cost of the inputs driving the change may be increasing, decreasing, or trending in both directions throughout the period. Even though the change in costs from the beginning to the end of the POI/POR may not be significant, the change within the period may be significant.

Recognizing the similarities of the impact of high inflation and significant cost changes due to one or two main inputs on the cost-based antidumping computations, and taking into account the above noted differences between the two situations in SSPC from Belgium Decision Memo 06/07 and Rebar from Turkey Decision Memo 06/07, we developed a method for measuring the cost change and a significance threshold. In determining whether the change in production costs is significant, we analyzed, on a product-specific basis, the extent to which the total COM changed during the POR. We did this by analyzing, on a CONNUM-specific basis, the percentage difference between the lowest quarterly average COM and the highest quarterly average COM as a percentage of the low quarterly average COM. If the percentage difference exceeds 25 percent, we will normally consider the significant cost change threshold to be met. In performing this analysis, the use of quarterly average COMs is preferred over monthly average COMs because we want to ensure the change in cost is sustained for a reasonable time rather than for only an isolated month or two. We believe that this significance threshold is high enough to ensure that we deviate from our annual average cost methodology only in circumstances where changing input costs are clearly affecting the appropriateness of our annual average cost calculation.

In this review, we solicited quarterly cost information from SeAH in order to determine the magnitude of cost changes during the POR and whether it would be appropriate to use shorter cost averaging periods for the final results.¹¹ Consistent with our approach in SSPC from Belgium Decision Memo 06/07, Rebar from Turkey Decision Memo 06/07, SSSS from Mexico Decision Memo 06/07, Pasta from Italy Decision Memo 07/08, and 15 AR CORE from Korea, we analyzed the difference in COM for the five most frequently sold CONNUMs in each of the U.S. and home markets. Based on this analysis, we found that the difference between the lowest quarterly average COM and the highest quarterly average COM exceeded the 25 percent threshold. See SeAH Preliminary Cost Analysis Memo at 2. While SeAH disagrees with basing our finding of significance on a 25 percent change between any two quarters of the POR, it is the Department's view that using a comparison of quarterly average costs as the basis for a significance finding ensures, as noted above, that fluctuations in costs are sustained for a reasonable period of time. A change in costs that exceeds 25 percent, even if it was only between two quarters of the POR, is significant enough to create distortion when using a single annual average cost methodology. A single annual average cost methodology still results in costs being too high in the low cost quarter and too low in the high cost quarter. The analysis the Department conducted in this case does reflect the change in costs over the period and reflects trends during the POR because it measures how much costs have changed between the high and low cost quarter. This approach does not, as SeAH alleges, represent a departure from past practice. As noted previously, in SSPC from Belgium Decision Memo 06/07, SSSS from Mexico Decision Memo 06/07, Rebar from Turkey Decision Memo 06/07, Pasta from Italy Decision Memo 07/08, and CORE from Korea 07/08, the Department similarly based a finding

¹¹ The Department requested that SeAH provide quarterly average direct material costs, while continuing to report conversion costs (i.e., labor and overhead) on an annual average basis.

of significance on the percentage change between the high quarterly and low quarterly COM. Furthermore, while the cost changes may have trended consistently throughout the POR in previous cases such as Rebar from Turkey Decision Memo 06/07, we do not consider this to be a critical factor in our analysis, as explained above and in CORE from Korea 07/08, once the 25 percent cost change threshold has been met. We note that, while costs are changing significantly throughout the year based on our quarterly average analysis, the distortion caused by using a single annual average cost will be the same regardless of whether costs are trending upward, trending downward, or moving in both directions. Thus, as stated above, a change in costs that exceeds 25 percent, even if it was only between two quarters of the POR, is significant enough to create distortion when using a single annual average cost methodology. The Court has recently sustained the Department's similar comparison of the costs for the highest quarter to the costs in the lowest quarter in Habas Sinai v. United States.¹² Moreover, in SeAH Steel Corp v. United States¹³ the Court disagreed with SeAH and stated that "the Department's approach in these past proceedings are representative of the agency's long-standing and well-recognized test for use of alternative cost averaging period."

B. Linkage between Costs and Sales Information

Consistent with past precedent, since the Department found changes in SeAH's costs to be significant, we evaluated whether there is evidence of linkage between the cost changes and the sales prices during the shorter cost periods within the POR. In recent determinations, SSPC from Belgium Decision Memo 06/07, SSSS from Mexico Decision Memo 06/07, Pasta from Italy Decision Memo 07/08, and 15 AR CORE from Korea, the Department explained that our definition of linkage does not require direct traceability between specific sales and their specific production costs, but rather relies on whether there are elements which would indicate a reasonably positive correlation between the underlying costs and the final sales prices charged by a company. The Department acknowledges that being able to reasonably link sales prices and costs during a shorter cost period is important in deciding whether to depart from our normal annual average cost methodology. However, as stated in 15 AR CORE from Korea, requiring too strict a standard for linkage would unreasonably preclude this remedy for products where there is no pricing mechanism in place and it may be very difficult to precisely link production costs to specific sales.

We disagree with SeAH that there must be parity in the magnitude of the changes in prices and costs for the Department to find linkage. To have such parity in magnitude would equate to a constant profit margin for all customers and for all sales throughout the year. There are so many factors that affect pricing decisions from customer to customer, day to day, that the expectation that prices relative to costs should be in exact proportion throughout the year is unreasonable. For example, the extent to which sales are dumped or sold below costs can vary from customer to customer, month to month or product to product. Therefore, it would be unreasonable to assume that there should be parity in the magnitude of the price and cost differences throughout

¹² See Habas Sinai v. United States, Slip Op. 09-133 (CIT November 23, 2009) ("Habas Sinai v. United States") and second remand determination Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States; Final Results of Redetermination Pursuant to Court Remand (September 8, 2009).

¹³ See SeAH Steel Corp v. United States, Slip Op. 2010-60 (CIT May 19, 2010).

the year. It is for this reason that we have an established practice that sales prices and costs need only be reasonably correlated for there to be linkage. See SeAH Steel Corp v. United States where the Court affirmed the Department's quarterly cost methodology linkage test. In this case, we evaluated whether the sales prices during the shorter cost averaging period were reasonably correlated with the COM during the same period. As noted above, our definition of linkage does not require direct traceability between specific sales and their specific production costs. These correlative elements may be measured in a number of ways depending on the associated industry, the overall production process, the inventory tracking systems, company-specific sales data, and pricing mechanisms used in the normal course of business (e.g., surcharges, raw material pass through devices). SeAH, unlike the respondents in SSPC from Belgium 06/07 and SSSS from Mexico 06/07, does not have an alloy surcharge mechanism in place. Therefore, we looked to other correlative elements to determine whether sales and costs were reasonably linked.

To facilitate our analysis, we asked SeAH to provide a comparison, by quarter, of the weighted average sales prices for the five most frequently sold CONNUMs in the home market and the five most frequently sold CONNUMs in the U.S. market to the quarterly COM. See SeAH's October 27, 2009 questionnaire response submission at Exhibit 56. We also asked SeAH to compute its overall average POR inventory turnover for raw material inputs and for finished goods. The information provided by SeAH reveals that sales and costs for each of these CONNUMs generally trended in the same direction, and that the inventory turnover periods for raw materials and finished goods were relatively short.

The analysis at Attachments 4-15 of SeAH Preliminary Cost Analysis Memo shows cost and price changes that clearly trended in the same direction throughout the POR. Accordingly, this analysis demonstrates a reasonable correlation between changing costs and sales prices. In addition, the short average raw material and finished goods inventory turnover periods further support our conclusion that SeAH's COM and sales prices are reasonably correlated by the fact that SeAH purchased inputs relatively frequently and used the inputs in the production of merchandise under consideration relatively quickly, leading to the reasonable assumption that, on average, SeAH buys its respective raw materials and uses them in production within a three-month period. The finished goods inventory turnover ratio tells us that SeAH sells its production relatively quickly; therefore, costs in the quarter are reasonably representative of the sales that occurred within the same quarter. Quick inventory turnover allows SeAH to revise its respective prices in response to the highly volatile material costs and allows current costs to be reflected quickly in its COM. In summary, these correlative elements, taken together, are sufficient to establish a reasonable link between the changes in SeAH's COM and the changes in sales prices.

C. Cost Recovery Test

The Department properly deviated from its normal methodology in conducting the "below cost" and "cost recovery" tests in response to significant changes in the cost of production. These two tests stem from section 773(b)(1) of the Act, which authorizes the Department to disregard for purposes of determining normal value ("NV") "sales made at less than cost of production" that "(A) have been made within an extended period of time in substantial quantities; and (B) were not at prices which permit recovery of all costs within a reasonable period of time." The

Department normally calculates the costs of production using a single weighted-average cost for the entire period of review. See Thai Pineapple Canning Indus. Corp. v. United States, 273 F.3d 1077, 1084 (Fed. Cir. 2001). Accordingly, consistent with section 773(b)(1) of the Act, the Department usually compares a respondent's sales prices against a single weighted-average cost of production for the POR to determine whether sales were made at less than the COP and whether the sales prices permit recovery of all costs within a reasonable period of time. Because the use of a single period of review average properly captures the COP, the Department departs from its normal methodology only in certain situations where, as here, cost and price averages calculated over the entire period do not permit proper comparison. SeAH's cost changes throughout the POR were significant (i.e., the respondent's changes in costs during the POR were more than the threshold set by the Department) and sales during the shorter cost averaging period were reasonably linked with the COM during the same averaging period. The Department recognized that during a period of significant cost change, as was the case with SeAH in this review, a single annual average cost does not reasonably reflect costs associated with sales of the merchandise under review. In light of the foregoing, the Department deviated from its normal methodology of using a single unadjusted weighted-average cost period to avoid inappropriate and skewed results.

We disagree with SeAH that for purposes of the cost recovery test, the Department should compare home market prices to the same single period-wide average COP the Department found distortive from the sales below cost test. As we have discussed above, due to the significant change in COM throughout the POR, the use of an annual average cost becomes meaningless when used to test sales prices throughout the year. In the alternative, as detailed below, the Department used an annual average cost calculation approach that incorporates an indexing method that neutralizes the distortive effects that the significant change in cost has on the calculations.

Although we agree that Congress intended that the Department should normally use the single period average cost for the POI or POR, we disagree that Congress mandated the use of a single POR weighted-average cost when it leads to distortions. See section 773(f)(1)(A) of the Act (explaining that the costs must reasonably reflect the costs associated with the production and sale of the merchandise); see also SAA at 832 (stating that the determination of cost recovery is based on an analysis of factual weighted average prices and costs during the POR or POI).

In light of the statutory requirement that costs must reasonably reflect the costs associated the production and sale of the merchandise, Congress provided the Department with discretion to adjust a respondent's costs, as appropriate, in response to significant variations in unit costs. See SAA at 832. For example, the SAA gives an illustration of when unit costs may be significantly changed during the period when a major maintenance is performed and depressed in other years. While the list of illustrative examples in the SAA is not exhaustive, they illustrate that Congress intended that the Department should have discretion to adjust annual weighted-average costs, as appropriate, to address significant variations in per unit costs.

In this case, the Department reasonably exercised this discretion to address significant variations in the cost of a major input that dramatically changed the per-unit cost of manufacturing during the POR. The magnitude of cost changes from quarter to quarter during the POR was so

significant that the Department deviated from its normal methodology of using a single POR weighted-average cost in performing the sales below cost test because it would have resulted in a cost that does not reasonably reflect the costs associated with the production and sales of the merchandise. If we were to adjust for the distortion in performing the sales below cost test, but fail to adjust for the distortion in performing the recovery of costs test, it would lead to similarly distorted results.

In calculating costs for purposes of section 773(b)(1) of the Act, the Department is required use the costs that reasonably reflect the costs associated with the production and sale of the merchandise. Relying upon a single annual average cost during a period of significant cost change does not meet this requirement. Consequently, the Department adopted an alternative cost calculation approach. As requested by the Department, SeAH reported quarterly material costs, the primary driver of the significant changes in COM through the POR, and annual weighted average costs for all other cost elements. In the margin calculation program used for the preliminary analysis, the Department indexed the quarterly material costs to a common period cost level, thereby neutralizing the effect of the significant cost changes for the input between quarters. Then, consistent with the antidumping statute and our normal practice of high inflation cases, the Department calculated a POR weighted-average per-unit cost. Finally, the weighted average per-unit cost for the POR for the substrate input was indexed back to the appropriate quarter to keep the weighted-average per-unit cost consistent with the main input's significantly changing price levels occurring between quarters. This methodology addresses the statute's requirement of weighted-average costs for the period (*i.e.*, recovery of cost test) while preserving the indexed differences between quarters resulting from the significant price level changes.

Under the Department's indexing methodology, the CONNUM-specific costs reflect the POR weighted average of other materials, conversion costs, and average usage rates for the significantly changing input. The only cost component adjusted to reflect price level changes throughout the year is the price of the input experiencing significant cost change. Thus, the Department's methodology relies upon the respondent's actual weighted-average costs for the entire POR, while also neutralizing the distortion caused by the significant cost changes for the input at issue.

The rationale for the Department's methodology is consistent with the intent of the statute. If the Department were to use an unadjusted weighted-average per unit cost for the POR for purposes of the cost recovery test, sales prices which were determined to be below cost may be erroneously considered to have recovered costs based simply on the law of averages and timing of the sale. It is undisputed that the cost of the primary input, steel coils, significantly changed within the POR. In addition, a reasonable linkage between sales prices and costs has been established. When costs change significantly, and prices follow such cost changes, using an unadjusted annual average cost in performing the recovery of cost test will result in virtually all sales during the highest cost periods passing the recovery of cost test simply due to the timing of the sale in relation to the cost change cycle. This comparison says little about true cost recovery; rather it simply shows which sales were made during high cost periods. Even if the company were to expend cash daily from unprofitable below-cost sale prices that never catch up with rapidly raising costs, prices during the highest cost period will still almost always be higher than

the annual average costs. Accordingly, the test would erroneously show that the costs have been recovered, regardless of the true financial state of the company.

Furthermore, the antidumping statute does not require the Department to blindly rely upon unadjusted annual average costs in an environment of significant cost change. SeAH's unadjusted annual average cost does not reasonably reflect the costs associated with the production and sale of the merchandise as required by the antidumping statute. See section 773(f)(1)(A) of the Act. Due to the significant change in the COM the product throughout the year, using an unadjusted annual average cost, where low cost periods are inflated by the highest cost periods, and highest cost periods are deflated by low cost periods, the comparison of individual prices during the highest and lowest cost periods to a single average cost becomes meaningless, including for cost recovery purposes.

D. Window Period Sales

The Department's normal practice is to calculate a respondent's COP on a POI or POR average basis. However, in instances where raw material cost changes are significant and sales prices and costs are reasonably linked during the shorter cost periods, the Department will deviate from this norm and rely on quarterly average costs. Absent strong evidence showing that quarterly averaging periods are distortive, which SeAH has not provided, our practice is to use quarterly average cost periods when we determine it appropriate to deviate from our normal annual average methodology due to significantly changing costs. This quarterly cost averaging methodology has been upheld by the CIT.¹⁴ Moreover, record evidence shows that SeAH's COM changed significantly between the first and fourth quarters of the POR in most instances for substrate coils. See SeAH Preliminary Cost Analysis Memo at Attachments 1-3. Therefore, our decision to use quarterly average cost as opposed to POR cost is justified and consistent with the Department's established practice of applying the alternative cost averaging methodology.

We disagree with SeAH that eliminating the window period sales for price-to-price comparisons causes distortion in the dumping analysis and is contrary to law. For administrative reviews, the Department generally bases NV for the POR on monthly weighted average prices and compares them to individual export prices ("EP") or constructed export prices ("CEP"). Where no sales of the like product are made in the exporting country in the month of the U.S. sale, the Department will attempt to find a weighted average monthly price one month prior, then two months prior, and then three months prior to the month of the U.S. sale. See 19 CFR 351.414(e)(2)(ii). If unsuccessful, we will then look one month after and finally two months after the month of the U.S. sale. See 19 CFR 351.414(e)(2)(iii). This practice is commonly referred to as the "90/60" day contemporaneity window, and is identified in the Department's regulations at 19 CFR 351.414(e)(2). Where costs and prices are changing significantly due to high inflation or when applying the alternative cost averaging methodology due to significantly changing costs, the Department has in the past eliminated the "90/60" day window period and limited comparisons of U.S. price to home market sales made during the same month or quarter in which the U.S. sale occurred. That is, the sales "contemporaneity" period was modified to conform with the

¹⁴ See Habas Sinai, 625 F. Supp. 2d at 1343-1371; Nucor Corp. v. United States, Case No. 05-00616, Slip Op. 10-6 (CIT January 19, 2010) ("Nucor") (affirming remand determination applying quarterly cost methodology without comment).

shortened cost averaging period. See Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey, 61 FR 69067, 69071 (December 31, 1996) (reasoning that such a modification minimized the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales). See also Certain Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 42496, 42505-06 (August 7, 1997), Rebar From Turkey 7AR Redetermination 03/04, and Nucor.

In this case, as noted above, we have determined that the changes in SeAH's COM during the POR due to fluctuating raw material input costs are significant enough to depart from our normal annual average costing methodology. As in high inflationary economies, these significant changes in costs can lead to distortions in the Department's normal sales-below-cost test, as well as in the normal overall margin calculation. When significant cost changes have occurred during the POR, these same conditions are typically accompanied by changes in price as the market reacts to changing economic conditions. In this situation, we find that price-to-price comparisons should be made within the shorter cost averaging period to lessen the margin distortions caused by changes in sales price which result from significantly changing costs. As such, comparing home market sales from one quarter to U.S. sales during another quarter of the POR when the unadjusted home market price does not reflect the contemporaneous price changes that have occurred through the date of the U.S. sale distorts the dumping analysis. Therefore, it is appropriate to compare U.S. sales with contemporaneous NVs which were made in the ordinary course of trade. Accordingly, it is appropriate in this case to match sales only within the same quarter. Further, we maintain here the average-to-transaction preference for matches within the "month during which the particular U.S. sale under consideration was made." See 19 CFR 351.414(e)(2)(i). Therefore, we have not made comparisons outside of a quarter for the final results because of our above noted concerns with contemporaneity and that significant costs changes are typically accompanied by significant price changes. This is consistent with our practice in SSSS from Mexico Decision Memo 06/07, SSPC from Belgium Decision Memo 06/07, Rebar from Turkey 7AR Redetermination 03/04, Nucor, and 15 AR CORE from Korea where we made comparisons between U.S. and home market sales only if they were in the same quarter. See also SeAH Steel Corp v. United States where the Court affirmed the Department's deviation from the 90/60 window period rule.

With regard to SeAH's assertion that the inclusion of the window period would further the statutory preference for the use of identical product comparisons as articulated in Cemex S.A v. United States, 133 F.3d 897, 902-03 (Fed. Cir. 1998), we emphasize that our alternative cost averaging margin program attempts first and foremost to match U.S. sales to home market sales of identical products, but does so within the period (i.e., quarter) for which we have limited price-to-price comparisons. Accordingly, although this may change the number of similar matches relative to the number of identical matches, this result does not violate our preference for identical matches within the relevant period, while it properly addresses the effects of significant cost changes.

E. Calendar Year Quarter versus the POR Quarter

Since SeAH had entries into the United States during the POR with sale dates prior to the POR, the issue arose during the course of this review as to what cost to use in the sales-below-cost test for these pre-POR comparison market sales. While we agree with SeAH that the sales-below-cost test should be conducted with contemporaneous sales and costs, we disagree that it is appropriate to shift the cost reporting period for this reason. The Department derived the cost for these pre-POR sales by indexing the POR costs back to the pre-POR period. This indexing methodology achieves the contemporaneous sales and cost comparison for the sales-below cost test without shifting the cost reporting period. As such, the Department continued to use the production cost associated with the POR quarter for the final results.

Comment 2: Inventory Valuation Loss

In the Preliminary Results, we included an inventory valuation loss recognized by SeAH in its 2008 financial statements in the calculation of SeAH's general and administrative ("G&A") expense ratio. SeAH argues that the Department erroneously included this amount and should exclude it for purposes of the final results.

According to SeAH, the "loss" at issue is not an actual loss; rather, it is an allowance SeAH recorded in a balance sheet inventory contra account to recognize the difference between the year-end inventory value of raw materials and work-in-process ("WIP") recorded at historical cost and the current (i.e., lower) market price. SeAH claims that this "lower of cost or market" ("LCM") adjustment is required by Korean generally accepted accounting principles ("GAAP") as a conservative financial statement presentation measure. According to SeAH, while it records and accumulates the LCM adjustment in a contra account, it does not write down value of actual inventory. Instead, SeAH states that it continues to calculate its COP using the historical costs recorded in its cost accounting system. SeAH argues that, because its COM reflects the actual historical costs of raw materials and WIP, including the LCM adjustment in G&A would overstate its COP.

SeAH agrees with the Department's reasoning for including inventory valuation losses when a company actually writes down its inventory value. SeAH cites the Stainless Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review, 69 FR 6259 (Feb. 10, 2004) and accompanying Issues and Decision Memorandum at Comment 14, (where the Department explained its decision to include inventory write-downs on raw materials and WIP stating, "{w}e note that both raw materials and WIP, inventories are inputs into the cost of manufacturing the merchandise. It is the Department's practice to recognize the full amount paid to acquire production inputs, which are included in the raw materials and WIP inventories in determining the cost of producing the subject merchandise.").¹⁵ SeAH agrees that, if it had

¹⁵ SeAH also cites Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Taiwan, 65 FR 34658 (May 31, 2000) and accompanying Issues and Decision Memorandum at Comment 8 ("CR Flat Carbon Quality Product from Taiwan Decision Memo 98/99") (where the Department included a write-down because the company in question had reduced the inventory value by the amount of the write-down in its cost accounting system); and Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From Taiwan, 64 FR 56308 (October 19, 1999) at Comment 24 ("DRAM from Taiwan 07/08") (where the Department included write-downs

adjusted its raw material and WIP inventory, it would be appropriate to include the LCM adjustment in G&A or as some part of the COP. However, SeAH argues that, because it does not write down its inventory, but instead uses the actual historical cost of the raw materials and WIP in the calculation of the COP, no adjustment is required to capture the LCM adjustment. Therefore, SeAH argues that the Department should remove the allowance from the calculation of SeAH's COP for purposes of the final results.

Petitioners argue that the Department should include SeAH's LCM adjustment in the G&A expense ratio calculation. Petitioners assert that where a respondent incurs an LCM adjustment related to raw materials and WIP inventories as an element of its current costs per its financial statements, the Department's practice is to include the LCM adjustment in the G&A expense ratio calculation.¹⁶ Further, Petitioners contend that SeAH's LCM adjustment is actual realized costs that are reflected in its financial statements in accordance with Korean Accounting GAAP and not a "hypothetical loss."

Petitioners also argue that, contrary to SeAH's claim, including the LCM adjustment in the G&A expense ratio calculation does not overstate SeAH's reported costs. Petitioners assert the Department rejected a similar argument in DRAM from Taiwan 07/08 where a respondent argued that including an LCM adjustment would overstate its reported costs because its LCM adjustment is not reflected in the unit standard costs and, thus, the full COM the subject merchandise was reported. Petitioners also contend that the Department rejected another, similar argument in BSS from Netherlands Decision Memo 97/98, where a respondent argued that it used the metal acquisition costs in the reported costs and, thus, including an LCM adjustment would distort the reported costs.

Petitioners further assert SeAH's claim that the Department included the LCM adjustment in the G&A expenses only where the companies have actually written down the value of raw materials and WIP in their cost accounting system is unavailing because the Department's LCM adjustment was not contingent on the respondent having actually included the LCM adjustment

associated with raw materials and WIP in COP but not write-downs associated with finished goods).

¹⁶ See Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement in the Antidumping Duty Order, 74 FR 22885 (May 15, 2009) and accompanying Issues and Decision Memorandum at Comment 8 ("HR Flat Products from Thailand Decision Memo 06/07"); Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 69 FR 19153 (April 12, 2004) and accompanying Issues and Decision Memorandum at Comment 7 ("Wire Rod from Korea Decision Memo 01/02"); Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 68 FR 6713 (February 10, 2003) and accompanying Issues and Decision Memorandum at Comment 5 ("SSSS in Coils from Korea Decision Memo 00/01"); Stainless Steel Sheet and Strip from the Republic of Korea: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 66 FR 64950 (December 17, 2001) and accompanying Issues and Decision Memorandum at Comment 5 ("SSSS from Korea Decision Memo 99/00"); Stainless Steel Plate in Coils From the Republic of Korea: Rescission of Antidumping Duty Administrative Review, 66 FR 64019 (December 11, 2001) and accompanying Issues and Decision Memorandum at Comment 8 ("SSPC from Korea Decision Memo 00/01"); CR Flat Carbon Quality Product from Taiwan Decision Memo 98/99 at Comment 8; and 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) and accompanying Issues and Decision Memorandum at Comment 4 ("BSS from Netherlands Decision Memo 97/98").

in its cost accounting system. Petitioners contend that the LCM adjustment is a period cost and the Department consistently included the LCM adjustments as a component of a company's G&A expenses. Thus, Petitioners maintain that it is proper for the Department to include the LCM adjustment in the calculation of SeAH's G&A expense ratio for the final results.

Department's Position:

We agree with SeAH that the LCM adjustment should not be included in the calculation of SeAH's COP in this case.

Consistent with section 773(f)(1)(A) of the Act, it is the Department's practice to rely upon a company's normal books and records when they are prepared in accordance with the home country's GAAP and reasonably reflect the cost of producing and selling the subject merchandise. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from France, 67 FR 3143 (Jan. 23, 2002) and accompanying Issues and Decision Memorandum at Comment 13. In this case, SeAH's reported costs are based on its normal books and records and are in accordance with Korean GAAP. Because SeAH did not directly write down its inventory values and continued to use its actual inventory historical costs (i.e., the unwritten down raw material and WIP inventory values) in calculating production costs in its normal books and records, we find that SeAH's reported costs reasonably reflect the cost of producing and selling the merchandise under consideration.

We note that the Department's normal practice is to include write-downs of raw material and WIP inventory in COP when the inventory is actually written down. See, e.g., CR Flat Carbon Quality Product From Taiwan Decision Memo 98/99 at Comment 8 (where we stated, "CSC's claim that the Department's treatment will ultimately result in double-counting these costs is unsupported. These costs will only be included in the income statement one time. When the items are used in production, they will be recorded at the lower values to which they were adjusted."). Thus, when a company writes down its inventory and actually uses the lower valued inventory in a subsequent period to calculate its COP, to not include the write-down would result in these costs never being recognized.

We recognize, however, that the facts of this case are distinguishable from the facts in the cases cited by Petitioners. In the instant case, SeAH's raw materials and WIP inventory accounts are not directly written down and the actual historical cost of inventory is recognized in SeAH's normal books and records when consumed. In DRAM from Taiwan 07/08 and BSS from Netherlands Decision Memo 97/98, there is no indication that raw materials and WIP inventory were consumed at historical cost, as in SeAH's situation. We find that because SeAH's normal accounting records and its reported costs reflect the higher historical costs of unwritten down raw materials and WIP, including the LCM adjustment in the reported costs would result in the overstatement of costs. See Certain Welded Stainless Steel Pipes from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 75 FR 27987 (May 19, 2010) and accompanying Issues and Decision Memorandum at Comment 2. Consequently, the Department determined that there is no need to include the LCM adjustment in the G&A expenses for the final results of this administrative review.

Comment 3: Application of the Major Input Rule

Petitioners argue that the Department should continue to apply the major input rule for SeAH's purchase of steel substrates from its affiliated company, POSCO, for the final results. SeAH did not comment on this issue.

Department's Position:

We agree with Petitioners. During the POR, SeAH purchased carbon steel hot-rolled coil from its affiliated company, POSCO. In the Preliminary Results, in accordance with section 773(f)(3) of the Act, we adjusted SeAH's reported costs to account for purchases from its affiliated supplier at preferential prices. For the final results, we continued to apply the major input rule and to adjust SeAH's purchases of steel substrate from its affiliated supplier.

Comment 4: Allowance for Doubtful Accounts/Bad Debt

U.S. Steel argues that SeAH should include the allowance for doubtful accounts, which was made by SeAH's U.S. affiliate, PPA, in the calculation of SeAH's indirect selling expenses incurred in the United States ("INDIRSU"). U.S. Steel states that PPA's allowance for doubtful accounts in 2008 was based on the recommendation of its auditors that part of PPA's accounts receivable would be uncollectible.¹⁷

U.S. Steel asserts that it is the Department's practice to include allowances for doubtful accounts in INDIRSU when they are "foreseeable expenses that are reasonably anticipated based on historical experience."¹⁸ It argues that PPA's year-end allowance for doubtful accounts meets these criteria. U.S. Steel asserts the Department should add the entire allowance for doubtful accounts, or at least the amount accrued in 2008, to PPA's reported indirect selling expenses.

SeAH argues that the Department should not include PPA's allowance for doubtful accounts in the calculation of INDIRSU because these amounts do not relate to activity during the POR. SeAH states that the Department verified that no actual bad debt was incurred during the POR, and PPA's bad debt account balance remained the same from the beginning to the end of 2007,¹⁹ as well as from January through October 2008. SeAH asserts that because no bad debt was

¹⁷ See Memorandum to the File from Alexander Montoro and Patricia Tran through Nancy Decker, "Verification of the Constructed Export Price Sales Response of Pusan Pipe America in the Antidumping Duty Administrative Review of Circular Welded Non-Alloy Steel Pipe from the Republic of Korea" (April 9, 2010) at 19 ("PPA Verification Report").

¹⁸ See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 70 FR 73444 (December 12, 2005) and accompanying Issues and Decision Memorandum at Comment 3 ("SSSC from Mexico"); see also Notice of Final Results of Antidumping Duty Administrative Review: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Brazil, 70 FR 7243 (February 11, 2005) and accompanying Issues and Decision Memorandum at Comment 6 ("Line and Pressure Pipe Brazil").

¹⁹ See PPA Verification Report at 19 and U.S. Sales Verification Exhibit 21.

actually incurred, there is no basis for including it in SeAH's indirect selling expenses.²⁰

SeAH requests that if the Department includes bad debt allowances in the PPA's indirect selling expense ratio, then the revised and verified indirect selling expenses ratio calculation should be used.²¹ SeAH notes that the calculation presented by U.S. Steel uses the old numerator and not the revised numerator. Additionally, SeAH asserts that the inclusion of the entire bad debt allowance from 2007 and 2008 would overstate the bad debt allowance and would result in the inclusion of allowances unrelated to the POR. SeAH asserts the 2007 year-end allowance for doubtful accounts only relates to the November and December 2007 months of the POR. SeAH states that if this amount is included in PPA's indirect selling expenses then it should be pro-rated with 2/12 share of the 2007 amount being added to a 10/12 share of the 2008 amount, for the POR total, which would be added to the reported indirect selling expenses.

Department's Position:

It is the Department's practice to include a respondent's provision for bad debt in indirect selling expenses.²² The provision is usually based on the company's prior experience with non-payment by customers. During the POR, PPA incurred expenses at the end of 2008, as a result of PPA's auditor's recommendation that part of its accounts receivable would be uncollectible. These bad debt expenses are based on foreseeable expenses that are reasonably anticipated based on historical experience.²³

We find SeAH's citation to Hot-Rolled Steel from Romania to be misplaced. In that instance, the Department found that the respondent did not recognize any actual bad debt expense nor make any provision for bad debt during the POR. The reason for that was that the respondent maintained credit insurance policies, the cost of which it reported. That respondent received compensation from the insurance company for any actual bad debt losses, thereby eliminating any actual bad debt expenses. The same situation does not exist in the instant case as PPA did make a provision for bad debt and PPA did not have any credit insurance. While the provision for bad debt that PPA made was at year-end 2008, after the POR ended, a portion of that year-end adjustment is allocable to only 10 of 12 months of the POR.

Therefore, we are including SeAH's allowance for doubtful accounts in the indirect selling expenses. We have used the amount of PPA's provision expensed in each year. Specifically, we used a pro-rated 2/12 share for the 2007 provision and a pro-rated 10/12 share for the 2008

²⁰ See Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review and Rescission in Part of Administrative Review, 71 FR 30656 (May 30, 2006) and accompanying Issues and Decision Memorandum at Comment 3 (not including bad debt as part of U.S. indirect selling expenses due in part to the fact that respondents did not recognize any actual bad debt expenses during the POR) ("Hot-Rolled Steel from Romania").

²¹ See PPA Verification Report at 2 and U.S. Sales Verification Exhibit 1 at 5 and Exhibit 21 at 1a.

²² See SSSC from Mexico at Comment 3 and Line and Pressure Pipe from Brazil at Comment 6.

²³ Id.

provision. We agree with SeAH that including the entire allowance of doubtful accounts from both years would result in overstating the bad debt allowance.

Comment 5: Ordinary Pipe Versus Pressure Pipe Classification

According to U.S. Steel, the Department asked SeAH to categorize the grade of pipe it sold in the U.S. and home markets as follows: (1) ordinary pipe, such as ASTM A-53, which is used for low pressure conveyance of liquids and gases; (2) structural pipe, which is used for load-bearing applications or as fence tubing; and (3) conduit pipe, which is used for housing electrical wiring. Moreover, U.S. Steel contends, according to the Department's model-match criteria, all pipe with the ASTM A-53 specification is considered ordinary pipe. Nonetheless, despite these instructions, SeAH separated ordinary pipe into two different grades, "ordinary pipe and "pressure pipe." U.S. Steel urges the Department to reject SeAH's division of ordinary pipe into two grades.

U.S. Steel asserts that the Department has "considerable discretion" to establish model match categories,²⁴ as well as to decide products for matching purposes, even if such products are not physically the same in all respects.²⁵ U.S. Steel also notes that once a model match methodology is established, the Department's practice is not to change this methodology in future administrative reviews unless there are "compelling reasons" to revise it.²⁶ U.S. Steel asserts that the Department will revise an established model match only where a party demonstrates that (1) the current criteria are "not reflective of the subject merchandise," (2) there have been changes to the relevant industry, or (3) there is some other "compelling reason" that warrants a change. U.S. Steel argues that none of these criteria are met in this case.

U.S. Steel disputes SeAH's claim that pressure pipe and ordinary pipe can be distinguished based on their end uses.²⁷ U.S. Steel notes that SeAH's product brochure states that both ASTM A-53 Grade A and ASTM A-53 Grade B are "Steel Pipe for General Purposes"²⁸ and, although the brochure states that pipe with the KSD 3562 specification is used for "pressure service," it also states the "usage" of pipe with the KSD 3562 specification is "Ordinary Piping."²⁹

U.S. Steel further claims that evidence on the record does not support SeAH's assertion that pressure pipe can be "defined by the chemical and mechanical characteristics of the material."³⁰

²⁴ See SKF USA, Inc. v. United States, 537 F.3d 1373, 1379 (Fed. Cir. 2008); Pesquera Mares Australes Ltda. v. United States, 266 F.3d 1372, 1383 (Fed. Cir. 2001) ("Pesquera"); New World Pasta Co. v. United States, 316 F. Supp. 2d 1338, 1352 (CIT 2004).

²⁵ See Pesquera, 266 F.3d at 1383.

²⁶ Id. at 1384; Fagersta Stainless AB v. United States, 577 F. Supp. 2d 1270, 1276-77 (CIT 2008) ("Fagersta").

²⁷ See SeAH's Section B-C Supplemental Questionnaire Response ("SQR") (October 20, 2009) at 2.

²⁸ See SeAH's Section A Questionnaire Response ("QR") (March 5, 2009) at Exhibit A-27 at 59.

²⁹ See SeAH's Section A QR at Exhibit A-27 at 5 and 53.

³⁰ See SeAH's Section B-C SQR at 2.

U.S. Steel points out that although SeAH has classified them differently, the chemical requirements for BS 1387-H and the BS 3601-ERW 410 are almost the same, and the mechanical characteristics of the BS 1387 and the BS 3601-ERW 320 are also almost identical.³¹

Finally, U.S. Steel also argues that the Department should not accept SeAH's claim that pressure pipe is different from ordinary pipe because of the tests and treatments done on each pipe. U.S. Steel argues that although SeAH stated that all pressure pipe undergoes a non-destructive test, a hydraulic test, and a special heat treatment, while these tests are only optional for ordinary pipe,³² the Department found at verification that the non-destructive and hydraulic test as well as the heat treatment are performed "for all pressure and ordinary pipe."³³ U.S. Steel also argues that the cost and price data provided by SeAH does not support SeAH's claim that pressure pipe has a higher price because of the extra cost of heat treatment.³⁴

SeAH argues that its coding of pressure and ordinary pipe as separate grades should be followed in the final results because its response was fully consistent with the questionnaire and the Department's established model match criteria in this case. SeAH states that the Department has accepted the separate breakout for pressure and ordinary pipe by SeAH in all prior reviews of this order. SeAH contends that the Department's questionnaire did not instruct SeAH to treat pressure pipe and ordinary pipe as the same grade.³⁵ In particular, the reference to ordinary, structural and conduit pipe in the questionnaire was followed by "e.g.", meaning that these three grades were examples of the relevant grades of pipe and did not comprise the complete spectrum of grades that could be reported.

SeAH asserts that chemical and physical requirement differences between pressure and ordinary pipe support the consistent treatment of them as separate grades. SeAH explains its product brochure shows ordinary pipe (e.g., ASTM A-53A) has lower chemical requirements for carbon and manganese,³⁶ as well as lower physical requirements for tensile and yield strength, than

³¹ Id. at Exhibit 16. (The BS 1387-H and BS 3601-ERW 410 specifications share identical chemical requirements with respect to the maximum percentage of magnesium (1.2%), phosphorous (0.045%), and sulfur (0.045%). (With respect to carbon, the chemical requirements for BS 1387-H and BS 3601-ERW 410 specifications differ by only 0.01% or 0.2% versus 0.21%. The BS 1387 and BS 3601-ERW 320 specifications share identical requirements with respect to tensile strength (i.e., 320~460 N/mm²) and yield strength (i.e., 195 N/mm²).

³² Id. at 3.

³³ See Memorandum to the File from Alexander Montoro and Patricia Tran through Nancy Decker, "Verification of the Sales Response of SeAH Steel Corporation in the Antidumping Duty Administrative Review of Circular Welded Non-Alloy Steel Pipe from the Republic of Korea" (April 9, 2010) at 11 ("SeAH Verification Report").

³⁴ Id.

³⁵ See SeAH's Section B QR (April 7, 2009) at 5. In contrast to the low pressure usages for ordinary pipe, pressure pipe is used for high pressure applications. See SeAH's Rebuttal Brief (May 3, 2010) at Attachment 1 ("SeAH Rebuttal Brief").

³⁶ See SeAH's Section A QR at Exhibit A-27 at 59 (showing carbon requirement for A-53A (ordinary pipe) as 0.25 and for A-53B (pressure pipe) as 0.30; for manganese A-53A is 0.95 versus 1.20 for A-53A).

pressure pipe (e.g., ASTM A-53B). SeAH also argues that the American Iron and Steel Institute (“AISI”) makes a distinction for steel pipe based on six end uses, including ordinary and pressure.³⁷ Furthermore SeAH asserts that its product brochure separately lists “Carbon Steel Pipes for Ordinary Piping (SSP)” and “Carbon Steel Pipes for Pressure Service (SPPS, STPG).”³⁸

SeAH argues that U.S. Steel ignores recognized differences with respect to ASTM specifications, and uses an example involving BS 1387 and BS 3601. SeAH asserts that in addition to the testing requirement being different for the two BS specifications, they only constitute a small percentage of SeAH’s CONNUMs.

Regarding U.S. Steel’s argument about the additional cost of heat treatment resulting in pressure pipe having a higher market price than ordinary pipe, SeAH argues it never made such a claim. SeAH points to the verification report and notes it was talking about differences between ordinary and pressure pipe versus structural pipe.³⁹ In particular, the report states that both pressure and ordinary pipe require heat treatment and, therefore, both have a higher price than structural pipe.

Department’s Position:

While the Department’s general practice is not to change its model match methodology once it is established absent a compelling reason to do so,⁴⁰ each review must stand on its own merits. In this case, we have carefully reviewed the record evidence and have determined that ordinary and pressure pipe are distinct grades for purposes of this review, but that ASTM A-53 Grade A and ASTM A-53 Grade B are properly treated as ordinary pipe.

In addition to SeAH’s claims in its brief, questionnaire responses, and at verification, we have on the record: 1) the ITC Report; 2) a listing of the chemical and physical requirements for all specifications/grades subject to this review that were sold during the POR;⁴¹ and 3) the product brochure, which contains chemical, physical, and testing requirements, and shows how SeAH portrays/advertises its merchandise to potential customers. In analyzing this evidence, we sought to determine: 1) whether pipe that SeAH reported as “pressure” pipe should be treated as a separate grade⁴² or if it should be part of the “ordinary” pipe grade; and 2) if the pipe SeAH reported as “pressure” should receive a separate grade designation, and whether each of the

³⁷ See SeAH’s May 3, 2010, rebuttal brief at Attachment 1, which includes pages from the ITC Final Determination. See U.S. International Trade Commission Publication 4019 (July 2008), entitled Circular Welded Carbon-Quality Steel Pipe from China: Investigation Nos. 701-TA-447 and 731-TA-1116 (Final) (“ITC Final Determination”) at I-11-I-12.

³⁸ *Id.* at 4 (distinguishing between ordinary and pressure pipe) and 10-12.

³⁹ See SeAH Verification Report at 11.

⁴⁰ See *Fagersta* at 577 F. Supp. 2d at, 1276-77.

⁴¹ See SeAH’s Section B-C SQR at Exhibit B-15.

⁴² The grade field is one of the product characteristics used to define the product for matching purposes.

individual products reported as part of the “pressure” category (such as ASTM A-53 Grade B)⁴³ are appropriately reported as part of that “pressure” category. First, we describe SeAH’s claims and the evidence with these questions in mind, and then explain our conclusions based on the evidence.

SeAH argues that in contrast to the low pressure usages for ordinary pipe, pressure pipe is used for high pressure applications. SeAH points to the ITC report, which describes and lists the end uses of steel pipes and tubes both subject and non-subject. These uses include standard pipe, line pipe, structural pipe and tubing, mechanical tubing, pressure tubing, and oil country tubular goods. While there is a pressure tubing category, it is unclear if this category would include merchandise subject to this order. For example, boiler tubing falls into the pressure tubing category, but is excluded from the scope. We note that the ITC report also states that standard pipe is made primarily to ASTM A-53, A-135, *etc.*, as well as other specifications, such as BS-1387. While SeAH asserted that ASTM A-53 Grade B is an example of pressure pipe and ASTM A-53 Grade A is an example of ordinary pipe, there is no distinction in the ITC report between the two products. All ASTM A-53 is listed under standard pipe.⁴⁴ The only separate reference in the ITC report to ASTM A-53 Grade B is in an example regarding dual stenciled products. There it states that pipe in conformance with API Specification 5L Grade B (which requires higher test pressures and more restrictive weight tolerances than standard pipe) is automatically in conformance with the less restrictive pipe specification of ASTM A-53 Grade B.

Turning to SeAH’s statements in its questionnaire responses, at verification, and in its briefs, it is not clear that ordinary pipe can be distinguished from pressure pipe because of the tests and treatments done on each pipe. In questionnaire responses, SeAH reported that pressure pipe requires a non-destructive test and a hydraulic test, while these tests are optional for ordinary and structural pipe. SeAH also reported that “in order to endure the high pressure of the pressure pipe uses, it is necessary for pressure pipe to undergo heat treatment to seam the pipe, whereas this additional heat treatment is not required for either structural or ordinary pipe.”⁴⁵ In another section of the response relating to “Testing and Finishing” SeAH describes hydrostatic and ultrasound tests for pressure pipe, but nowhere does it discuss heat treatment or a heat treatment test.⁴⁶

At verification, SeAH stated that pressure and ordinary pipes undergo three tests: a heat treatment test, a non-destructive test, and a hydrostatic test. SeAH explained that the heat

⁴³ Each grade category (*e.g.*, ordinary, pressure, *etc.*) reported by SeAH includes individual specifications/grades (*e.g.*, ASTM A-53 Grade A, ASTM A-53, Grade B, *etc.*). Many of the individual specifications/grades SeAH reported are proprietary information. Therefore, for a full discussion of this issue, *see* Memorandum to File From Alexander Montoro Through Nancy Decker, “2007-2008 Antidumping Duty Administrative Review of Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results Calculation Memorandum for SeAH Steel Corporation” (June 14, 2010) (“Final Calculation Memorandum”).

⁴⁴ *See* SeAH Rebuttal Brief at Attachment 1 at I-11-I-12.

⁴⁵ *See* SeAH’s Section B-C SQR at 3.

⁴⁶ *See* SeAH’s Section D QR (April 7, 2009) at 7.

treatment test is when a heat treatment is performed on the pipe weld, and this strengthens the weld so it can withstand high pressure. Consistent with its statement at verification, in its brief, SeAH states that “ordinary and pressure pipe both are subject to heat treatment.”

Regarding the extent of the heat treatment, we note that ASTM A-53 Grade B requires heat treatment on its weld seam.⁴⁷ This does not indicate a full heat treatment is done for ASTM A-53 Grade B (or other pressure pipe) merely that the seam is heat treated. This is a less extensive operation than a full heat treatment in which the whole pipe is treated not just the seam. The evidence on the record is not clear whether full heat treatment is required for any of the products SeAH reported as pressure pipe. SeAH only discussed heat treating the seam and not the whole pipe.

Next, we describe relevant evidence from SeAH’s product brochure. Since all of the products reported in each grade category are not public information, a full discussion of this information is contained in the Final Calculation Memorandum.⁴⁸

- The table of contents of SeAH’s product brochure lists categories for: carbon steel pipes for ordinary piping; carbon steel boiler and heat exchanger tubes; oil country tubular goods; conduit pipe; and carbon steel tubes for structural purposes. There is not a category for pressure pipe in the table of contents of SeAH’s product brochure.⁴⁹
- Ordinary pipe goes from page 10 to page 16. On pages 10-16, there are subheadings for: carbon steel pipes for ordinary piping (SPP) KSD 3507-2001; carbon steel pipes for ordinary pipes (SGP) JIS G 3452-1997; carbon steel pipes for pressure service (SPPS, STPG) KS D3562-1999, JIS G3454-1988; steel tubes and tubular suitable for screwing to BS 21 pipe threads BS 1387-1985; and pipe, steel, black and hot-dipped zinc-coated welded and seamless ASTM A53-2001 (subheadings under test pressure for Grade A and Grade B). Thus, pressure pipe appears here to be a subset of ordinary pipe.
- On page 4 of the brochure, the table entitled “Main Products” contains categories of pipe and lists their uses and applicable specifications. In this table, Korea Standard (“KS”), Japanese Industrial Standards (“JIS”), BS, and ASTM are listed for ordinary piping. For pipes for pressure service, only KS and JIS are listed.
- On page 53, there is another table entitled “Main Products.” This table lists usage on one side and specifications on the other side. The categories for usage in this table are: ordinary piping; structural pipe; boiler and heat exchanger; conduit tubes; line pipe; casing & tubing; mechanical tubing. There is no pressure category in this table. The products listed under ordinary piping in this table include some products that SeAH reported as ordinary and some that SeAH reported as pressure pipe. The structural category includes some products SeAH reported as structural, as well as some reported in another category. See full discussion in the Final Calculation Memorandum.

⁴⁷ See Designation: A53/A 53M-07: Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless, American Society for Testing and Materials (ASTM International (“ASTM”)) (October 2008) at 2.

⁴⁸ See Final Calculation Memorandum.

⁴⁹ See SeAH’s Section A QR at Exhibit A-27 at 3.

- There are other charts in the brochure on pages 59-78, which list chemical and physical requirements, permissible variations in dimensions, and test requirements by product. The first chart is entitled, “List of Specifications of Electric-Resistance-Welded Tubes and Pipes for Piping.”⁵⁰ There is no heat treatment column in this chart. This table includes some products that SeAH reported as ordinary pipe and some that it reported as pressure pipe. ASTM A-53 Grades A and B are listed together, although they have separate lines for chemical, physical, and testing requirements. While BS 3601 is listed on this first page with ordinary pipes, it does have a subheading in the Application column, which says “Steel Pipe for General Pressure Purposes.” The second chart is entitled, “List of Specifications of Electric-Resistance-Welded Tubes and Pipes for Pressure Service.”⁵¹ This chart includes products SeAH reported as both pressure and ordinary. There is a heat treatment column in this table, which indicates certain products receive this treatment. It is unclear whether this is a full heat treatment or only heat treatment of the weld seam.

In addition to the information in SeAH’s product brochure, SeAH also provided a table with chemical and physical differences for all products which SeAH reported in its home market and U.S. sales databases.⁵² Not all products which SeAH sold in the home or U.S. markets during the POR are included in SeAH’s sales brochure. Regarding the chemical and physical requirements, while SeAH maintains that ordinary pipe (e.g., ASTM A-53 Grade A) has lower chemical and physical requirements than pressure pipe (e.g., ASTM A-53 Grade B), the list of requirements in the product brochure, as well as in SeAH’s Section B-C SQR, show differences for all products including those classified as either ordinary pipe or pressure pipe by SeAH. Regarding the products reported by SeAH as ordinary pipe and pressure pipe, our analysis shows that the chemical and physical requirements overlap. See full discussion on similarities and differences between all grades reported as ordinary and those reported as pressure pipe in the Final Calculation Memorandum. For comparison purposes, the physical characteristics of the products being matched do not have to be identical, and neither SeAH nor U.S. Steel has given a full explanation of why or what chemical and physical differences might matter in distinguishing pressure pipe.

Regarding U.S. Steel’s argument with respect to cost and price differences of ordinary and pressure pipe, due to the proprietary nature of much of this argument, see the Final Calculation Memorandum.

As the above summary shows, the evidence is mixed as to whether pressure pipe should be a separate grade from ordinary pipe for product matching purposes.⁵³ The ITC Report lists pressure pipe as a separate category, but it is unclear whether this category only includes boiler

⁵⁰ Id. at Exhibit A-27 at 59-62.

⁵¹ Id. at Exhibit A-27 at 63-67.

⁵² See SeAH’s Section B-C SQR at Exhibit B-15.

⁵³ We disagree with U.S. Steel that the questionnaire precludes respondents from reporting grades other than ordinary, structural, and conduit pipe. These grade types are given as examples.

tubing, which is excluded from the scope, or if it also includes any merchandise that SeAH reported in its sales databases. SeAH's product brochure at some points seems to treat pressure pipe as a separate category and at other times treats it as a subgroup under ordinary pipe. While nothing in the brochure indicates whether these pressure pipes are for high or low pressure service, the product brochure does include headings such as "pressure service" or "pressure purposes. Thus, SeAH does, at least in some instances, advertise pressure pipe as a separate category from ordinary pipe. With respect to heat treatment and testing, it is simply unclear as to whether there is a difference based on testing or heat treatment, and any heat treatment that is done may only be minor, *i.e.*, a heat treatment on the seam not the whole pipe. With respect to chemical and physical requirements, the list of requirements in the product brochure displays differences for all products, and overlap for those reported as ordinary or pressure pipe. As explained above, neither SeAH nor U.S. Steel has explained which differences in chemical or physical requirements are or are not significant for product matching purposes. Therefore, we cannot conclude whether pressure pipe can be distinguished from ordinary pipe based on differences in chemical and physical requirements.

As explained above, the Department has the discretion to change model match characteristics over time if it has compelling reasons to do so. In the most recent reviews of this order, SeAH has treated pressure pipe as a separate grade for product matching purposes and, thus, we would need compelling reasons to change that.⁵⁴ For the reasons explained above, the evidence on the record of this review is not compelling. Instead, it presents a mixed picture of whether ordinary and pressure pipe should be treated as separate grades. However, given that some evidence, including certain information in the product brochure, supports a distinct category of pressure pipe, we do not find a compelling reason to change our model match criteria in this review. Therefore, for these final results, we have continued to accept SeAH's separate designation of pressure pipe, but in light of the mixed evidence on this point, we will continue to examine this issue in the next administrative review.

Next, we turn to whether the products reported by SeAH as pressure pipe are properly characterized as such. We will discuss whether ASTM A-53 Grade B should be treated as pressure pipe in this memorandum, while the other specifications will be discussed in the Final Calculation Memorandum, due to the proprietary nature of the information.

Relying on the same evidence discussed above, we determine that ASTM A-53 Grade B should be classified as ordinary pipe. In particular, the ITC Report never distinguishes ASTM A-53 Grade B from Grade A. Moreover, SeAH's product brochure consistently treats ASTM A-53 Grade A and ASTM A-53 Grade B as ordinary pipe and not pressure pipe. For example, in the table on page 4 of the brochure entitled "Main Products," ASTM is listed under "Ordinary Piping" and not under "Pipes for Pressure Service." In addition, in the table on page 53, the products listed under ordinary piping include ASTM A-53. Also, the first chart on page 57 entitled, "List of Specifications of Electric-Resistance-Welded Tubes and Pipes for Piping," includes ASTM A-53 Grade A and Grade B.⁵⁵ While this chart does show differences in the

⁵⁴ See SeAH Rebuttal Brief at Attachment 2.

⁵⁵ *Id.* at Exhibit A-27 at 59-62.

chemical and physical requirements of ASTM A-53 Grade A and ASTM A-53 Grade B, these differences are not sufficient to give rise to a separate grade classification. Instead, they appear to be typical of the differences one would find between the many products that fall within the same grade classification. For example, chemical requirements are set in terms of minimums and maximums for the elements, giving the producer flexibility in meeting the requirements. This does not make the products different. They are both standard pipe for conveyance of liquids and gases. In addition, ASTM A-53 Grade A and ASTM A-53 Grade B are not identified anywhere in the product brochure as either “pressure service” or “pressure purposes,” whereas products reported as pressure pipe were at least portrayed as such in the product brochure. We are, therefore, reclassifying ASTM A-53 Grade B as ordinary pipe, while leaving the other products reported as pressure pipe for the final results. See full discussion in the Final Calculation Memorandum.

Because we cannot separate ASTM A-53 Grade B from other products also reported as pressure pipe for cost purposes, we have performed the cost test using the control number as reported. We have also assigned constructed value, where applicable, based on the control number as reported. For matching purposes, however, we have revised the control number for sales of ASTM A-53 Grade B so that they are treated as ordinary pipe rather than pressure pipe. As with the more general issue of whether pressure pipe should be treated as a separate grade, we will continue to examine the classification of particular products in the next administrative review.

Comment 6: Bank Charges Incurred: Letter of Credit Charges

U.S. Steel argues that the Department should apply partial adverse facts available (“AFA”) with respect to bank charges incurred by PPA that were directly related to U.S. sales. According to U.S. Steel, SeAH stated in its questionnaire response that these charges were not related to specific sales and, consequently, reported them as indirect selling expenses. However, the Department found otherwise at verification, at which point SeAH stated that it simply was not practical to break out the charges on a sales-specific basis.

U.S. Steel does not agree with SeAH that it was not practical to report bank charges on a sales-specific basis.⁵⁶ It points out that SeAH calculated a sale-specific amount for one sale by dividing the total letter of credit charges by the amount of the letter of credit, and that this type of calculation could have been used to report these charges as direct selling expenses for the rest of its U.S. sales.⁵⁷ U.S. Steel also disagrees with SeAH’s claim that the difference between reporting these charges as direct and indirect selling expenses is negligible⁵⁸ because the charges for the letter of credit used by SeAH⁵⁹ are not representative of the charges associated with a

⁵⁶ See PPA Verification Report at 19.

⁵⁷ Id.

⁵⁸ Id.

⁵⁹ Id. at 19 and U.S. Sales Verification Exhibit 21 at 43.

number of the letters of credit.⁶⁰ Based on its own calculations, U.S. Steel concludes that there is a significant difference between reporting these expenses as direct or indirect.⁶¹

U.S. Steel argues that the facts here warrant the application of partial AFA⁶² because SeAH withheld information and missed the Department's deadline by failing to report the sales-specific letter of credit charges as direct selling expenses in its U.S. sales database. U.S. Steel further asserts that SeAH impeded the proceeding because SeAH did not report the letter of credit charges as direct selling expenses in its original questionnaire response, and only at verification attempted to explain that it was not practical to provide the sales-specific letter of credit charges. Thus, SeAH made it impossible to verify this information. U.S. Steel suggests as partial AFA that the Department should apply the adverse inference that all of PPA's letter of credit charges were directly related to sales of subject merchandise.⁶³

SeAH argues that PPA's bank charges are properly treated as indirect selling expenses because, as demonstrated at verification, it was not practical and would have been overly burdensome to link them to specific sales. SeAH asserts that PPA explained that it opens letters of credit for all purchases of its merchandise, subject and non-subject, and the letter of credit is not specific to any purchase. SeAH insists the only way to report these charges as direct selling expenses would be track every purchase tied to each letter of credit and then segregate them between subject and non-subject purchases, and due to the large number of transactions and letters of credit, it was not practical to do so. SeAH claims that the Department has included bank charges (including letter of credit charges) as part of indirect selling expenses when they were for both subject and non-subject merchandise as in this case.⁶⁴

SeAH argues that the letter of credit sales ratio example at verification does not support U.S. Steel's argument.⁶⁵ According to SeAH, this example only shows it was possible to calculate a ratio of particular letter of credit charges to the total amount of the letter of credit, and not that it was practical to calculate a sales specific ratio for purchases of subject merchandise. SeAH asserts that U.S. Steel's calculation, which attempts to demonstrate that there is a significant difference in calculating this as a direct or indirect expense, is based on U.S. Steel's self-serving estimates of what the total sales amount was for the letter of credit in question. Consequently, SeAH argues against the use of partial AFA because PPA sufficiently showed that it was not practical to link letters of credit charges to the sales of subject merchandise so it was reasonable under the circumstances to include these bank charges under indirect selling expenses.

⁶⁰ See SeAH's Section B-C SQR at Exhibit C-29 and U.S. Steel Brief at Attachment 3.

⁶¹ See U.S. Steel Brief at 10-11.

⁶² See section 776(a)(2) of the Act.

⁶³ See U.S. Steel Brief at Attachment 3 and SeAH's U.S. Sales Database (October 19, 2009).

⁶⁴ See Notice of Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate Resin From Thailand, 70 FR 13453 (March 21, 2005) and accompanying Issues and Decision Memorandum at Comment 7 ("Resin from Thailand").

⁶⁵ See PPA Verification Report at 19 and U.S. Sales Verification Exhibit 21 at 43.

Department's Position:

PPA reported in its original questionnaire response that it incurred bank charges but did not report them as direct selling expenses.⁶⁶ In a supplemental questionnaire, we asked SeAH to demonstrate that these charges were all indirectly rather than directly related to sales of subject merchandise.⁶⁷ SeAH's response was that it had classified all of the expenses as indirect selling expenses because they did not relate to specific U.S. sales.⁶⁸ Thus, for the Preliminary Results, we included SeAH's bank charges in the calculation of its indirect selling expenses.

Pursuant to 19 CFR 351.401(c), the Department will treat as direct selling expenses all expenses that result from, and bear a direct relationship to, the particular sale in question. The sales documentation provided by SeAH at verification shows that letter of credit charges can be tied to specific U.S. sales.⁶⁹ In presenting the documentation, SeAH clarified that letter of credit charges relate to specific sales, but it would be impractical to segregate bank charges between subject and non-subject merchandise.

We agree with U.S. Steel that SeAH could have calculated sale-specific bank charges for its U.S. sales. If letter of credit charges can be tied to specific sales, it does not matter if these sales involve both subject and non-subject merchandise. The letter of credit would still be directly tied to specific sales and, therefore, they would be a direct expense. Because SeAH claimed for the first time at verification that it would be impractical to segregate bank charges between subject and non-subject merchandise, we did not fully explore this claim. Verification is an opportunity to confirm the veracity of information submitted in questionnaire responses, not to accept new information.

It is the Department's standard practice to treat bank charges for letter of credit as direct selling expenses. See Pineapple from Thailand and Structural Steel Beams from Korea. SeAH argues that in Resin from Thailand, the Department included bank charges as part of indirect selling expenses when they were for both subject and non-subject merchandise. However, in Resin from Thailand, the bank charges could not be directly attributed to a specific sale, unlike in this instance. Therefore, because PPA's letter of credit charges can be tied to specific U.S. sales, consistent 19 CFR 351.401(c) and with past practice, we will treat all of SeAH's letter of credit charges for its U.S. sales as direct selling expenses for the final results.

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to

⁶⁶ See SeAH's Section C QR (April 7, 2009) at Exhibit C-18.

⁶⁷ See Department's Supplemental B-C Questionnaire (September 21, 2009) at Question 67.

⁶⁸ See SeAH's Section B-C SQR at 28 and Exhibit C-29.

⁶⁹ See SeAH's Korean Sales Verification Exhibits at Exhibit 17 at 7 and U.S. Sales Verification Exhibit 21 at 43. See also Final Calculation Memorandum.

subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department “shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority” if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as AFA, information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

We find that SeAH failed to report the sales-specific letter of credit charges as direct selling expenses, thereby impeding the proceeding by withholding information that had been requested. In addition, SeAH failed to report certain information by the Department’s deadlines, because at verification for the first time, it acknowledged letter of credit fees were directly related to U.S. sales but stated that it was not practical to separate out bank charges associated with issuing letters of credit, to subject and non-subject merchandise. Therefore, pursuant to sections 776(a)(2)(A), (B), (C) and (D) of the Act, the Department is resorting to facts otherwise available.

In addition, in accordance with section 776(b) of the Act, the Department is applying an adverse inference in calculating this charge, because we find that SeAH did not cooperate to the best of its ability in responding to the Department’s questionnaire on this point. SeAH is in possession of the relevant information, but failed to provide the Department with accurate information regarding these expenses. As facts available, applying an adverse inference, we have employed an amount calculated by U.S. Steel in its demonstration that the difference between treating the expenses as direct or indirect is significant. Specifically, this calculation uses PPA’s information on bank charges related to another of its sales of subject merchandise. Although, SeAH contends this calculation is a “self-serving” estimate, we find that the calculation is not “self-serving” as it is based on PPA’s own data and achieves the purpose of an adverse inference, *i.e.*, to “induce respondents to provide the Department with complete and accurate information in a timely manner.”⁷⁰

⁷⁰ See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998).

Comment 7: Recalculating SeAH's Dumping Margin by Comparing Monthly Weighted-Average Normal Values to Individual U.S. Prices

SeAH asserts that the Department erroneously calculated SeAH's dumping margin in the Preliminary Results by comparing quarterly weighted-average normal values to individual U.S. prices.⁷¹ Instead, according to SeAH, the Department should calculate SeAH's dumping margin by comparing monthly weighted-average NVs to individual U.S. prices. SeAH cites to 19 CFR 351.414(c)(2) and section 777A(d)(2) of the Act, which together indicate the Department compares individual EPs or CEPs to weighted-average monthly prices (NVs). SeAH also points to the Preliminary Calculation Memorandum, in which the Department stated that "NV was based on monthly weighted-average selling prices in SeAH's comparison market, Korea, and on constructed value ("CV")."⁷²

Department's Position:

In the Preliminary Results, we inadvertently compared quarterly weighted-average NVs to individual U.S. price when calculating SeAH's dumping margin. This is inconsistent with past practice⁷³ and section 777A(d)(2) of the Act, which instructs the Department to compare monthly weighted-average NVs to an individual U.S. EP or CEP in a contemporaneous month. Therefore, we are correcting the margin program for these final results, and calculating SeAH's dumping margin by comparing monthly weighted-average NVs to individual U.S. prices.

Comment 8: Zeroing-Out Negative Dumping Margins

SeAH argues that the Department unlawfully continued to zero-out negative dumping margins when calculating SeAH's weighted-average margin in the Preliminary Results. SeAH contends that the Department's interpretation of section 771(35) of the Act as permitting zeroing in administrative reviews but not in investigations cannot be sustained under the two-step analysis established in Chevron.⁷⁴ SeAH argues that it is a well-established principle of statutory construction that an agency should interpret identical statutory language the same unless the statute indicates a different meaning is intended, citing to RHP Bearings v. United States⁷⁵ and SKF USA v. United States.⁷⁶ SeAH further contends that the argument that section 771(35)

⁷¹ See Memorandum to the File From Alexander Montoro Through Nancy Decker, "Preliminary Results Calculation Memorandum for SeAH Steel Corporation" (November 30, 2009) at SeAH Prelim Results CM Program at line 638 (where above cost sales are matched by CONNUM and by quarter) and SeAH Prelim Results Macro Program at lines 2667-2701 (where the monthly window ordering is turned off and the matching is restricted to identical quarters) ("SeAH Preliminary Calculation Memorandum").

⁷² See SeAH Preliminary Calculation Memorandum at 2.

⁷³ Id.

⁷⁴ See Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 843 (1984) ("Chevron").

⁷⁵ See RHP Bearings Ltd. v. United States, 288 F.3d 1334, 1346 (Fed. Cir. 2002).

⁷⁶ See SKF USA Inc. v. United States, 263 F.3d 1369, 1381-82 (Fed. Cir. 2001) ("SKF USA v. United States"), and see also National Organization of Veterans' Advocates, Inc. v. Secretary of Veterans Affairs, 260 F.3d 1365, 1379

should be interpreted as allowing for zeroing in reviews, but not in investigations, was rejected by the CAFC in Corus v. Department of Commerce,⁷⁷ which held that there was no statutory basis for distinguishing between investigations and administrative reviews with respect to zeroing. Finally, according to SeAH, nothing in the statute or its legislative history, supports the Department's interpretation of section 771(35) of the Act. SeAH concludes that the Department should recalculate SeAH's dumping margin in the final results without zeroing out negative margins.

U.S. Steel argues that the Department should continue to zero in calculating SeAH's dumping margin in the final results. According to U.S. Steel, the Department has already rejected the same arguments SeAH is making.⁷⁸ U.S. Steel argues that the statute requires the use of zeroing in investigations and administrative reviews, and that if zeroing is not used, then section 777A(d) of the Act, which establishes the comparison methodologies used in calculating dumping margins, will have no purpose because the margin will be the same regardless of the comparison method used. U.S. Steel states that section 777A(d) of the Act establishes the methodologies for calculating dumping margins: for antidumping investigations without targeted dumping, the average-to-average comparison methodology is used; for investigations with targeted dumping, the average-to-transaction methodology is used; and for administrative reviews, the average-to-transaction methodology is used.⁷⁹ It asserts that if zeroing is not used in these three situations, a company's dumping margin will be the same regardless of what methodology is applied because all positive margins will be offset by all negative margins. U.S. Steel argues this principle has been recognized by the government and by four World Trade Organization ("WTO") panels.⁸⁰

(Fed. Cir. 2001); Former Employees of Merrill Corporation v. United States, 483 F. Supp. 2d 1256, 1270 (CIT 2007); Sorenson v. Secretary of Treasury of U.S., 475 U.S. 851, 860 (1986); Helvering v. Stockholms Enskilda Bank, 293 U.S. 84, 87 (1934); Altix, Inc. v. United States, 167 F. Supp. 2d 1353 (CIT 2001).

⁷⁷ See Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347 (Fed. Cir. 2005), cert. denied, 546 U.S. 1089 (2006) ("Corus v. Department of Commerce").

⁷⁸ See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fourteenth Administrative Review and Partial Rescission, 74 FR 11082 (March 16, 2009) and accompanying Issues and Decision Memorandum at Comment 2 ("14 AR CORE from Korea"); Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fifteenth Administrative Review, 75 FR 13490 (March 22, 2010) and accompanying Issues and Decision Memorandum at Comment 1 ("15 AR CORE from Korea").

⁷⁹ See section 777A(d) of the Act, which was enacted in 1994 as part of the Uruguay Round Agreements Act ("URAA"), Pub. L. No. 103-465, 108 Stat. 4809 (1994) (effective January 1, 1995).

⁸⁰ See United States – Laws, Regulations and Methodology for Calculating Dumping Margins (February 13, 2006) at 70-71, paragraph 146; Opening Statement of the United States at the First Substantive Meeting of the Panel, United States – Zeroing (2006), WT/DS294 (March 16, 2005) at 5 paragraph 13; Report of the Panel, United States – Final Dumping Determination of Softwood Lumber from Canada – Resource to Article 21.5 of the DSU by Canada, WT/DS264 (April 3, 2006) at paragraph 5.33; Final Report of the Panel, United States – Measures Relating to Zeroing and Sunset Reviews, WT/DS322/R (September 20, 2006) at paragraphs 7.127, 7.138-7.140, and Report of the Panel, United States – Final Antidumping Measures on Stainless Steel from Mexico, WT/DS344/R (December 20, 2007) at paragraph 7.136.

U.S. Steel contends that Congress intended the Department to use zeroing because there would have been no reason for Congress to change the statute in 1994 if all three methodologies resulted in the same outcome. Additionally, U.S. Steel states, the Supreme Court and the CAFC have ruled that a statute must be interpreted so as to avoid rendering superfluous any provision of that statute.⁸¹ Therefore, U.S. Steel asserts, the statute must be interpreted to give effect to the various comparison methodologies established in section 777A(d) of the Act. As a result, U.S. Steel states that the statute requires the use of zeroing in the instant review. U.S. Steel argues that the Department's adoption of the Final Modification of Zeroing Methodology, in which it decided to abandon the use of zeroing in investigations does not affect the use of zeroing in administrative reviews. U.S. Steel asserts the Department has continued to apply and the courts have affirmed the use of zeroing in reviews,⁸² notwithstanding the Department's adoption of the Final Modification of Zeroing Methodology.⁸³ It notes that the same argument raised by SeAH here was rejected by the CIT⁸⁴ and also addressed in 15 AR CORE from Korea, where the Department stated that the Final Modification of Zeroing Methodology only affected antidumping investigations and it would continue to use zeroing in reviews.⁸⁵

Department's Position:

We have not changed the methodology for calculating the weighted-average dumping margin, as suggested by SeAH, in these final results. Section 771(35)(A) of the Act defines "dumping margin" as the amount by which the normal value exceeds the EP or CEP of the subject merchandise. Outside the context of antidumping 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 EP or CEP. As no dumping margins exist with respect to sales where NV is equal to or less than EP or CEP, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of section 771(35) of the Act.⁸⁶

⁸¹ See TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001); Duncan v. Walker, 533 U.S. 167, 174 (2001); New York Life Insurance Company v. United States, 190 F.3d 1372, 1382 (Fed. Cir. 1999); Ishida v. United States, 59 F.3d 1224, 1230 (Fed. Cir. 1995); I.N.S. v. Cardoza-Fonesca, 480 U.S. 421, 448 (1987).

⁸² See Timken Co. v. United States, 354 F.3d 1334, 1342-1345 (Fed. Cir. 2004) ("Timken"); JTEKT Corp. v. United States, Slip Op. 09-147 (CIT 2009) at 3-4; SKF USA Inc. v. United States, 491 F. Supp. 2d at 1364; Paul Muller Industrie GMDH & Co. v. United States, 435 F. Supp. 2d 1241, 1244-1245 (CIT 2006); NSK Ltd. v. United States, 416 F. Supp. 2d 1334, 1338-1339 (CIT 2006); NSK Ltd. v. United States, 29 CIT 1, 3-8 (2005).

⁸³ See Corus Staal BV v. United States, 502 F.3d 1370, 1374 (Fed. Cir. 2007) ("Corus v. United States"); Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of the Antidumping Duty Administrative Reviews and Rescission of Review in Part, 72 FR 58053 (October 12, 2007) and accompanying Issues and Decision Memorandum at Comment 1; affirmed in SKF USA Inc. v. United States, Slip Op. 09-121 (CIT 2009).

⁸⁴ See Dongbu Steel Co. v. United States, Court No. 07-00125, Slip Op. 2010-13 (CIT 2010); Corus Staal BV v. United States, 593 F. Supp. 2d 1373, 1384 (CIT 2008).

⁸⁵ See 15 AR CORE from Korea at Comment 1.

⁸⁶ See Timken, 354 F.3d at 1342; and Corus v. Department of Commerce, 395 F.3d at 1347-49.

Section 771(35)(B) of the Act defines weighted-average dumping margin as “the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate EPs and CEPs of such exporter or producer.” The Department applies these sections by aggregating all individual dumping margins, each of which is determined by the amount by which NV exceeds EP or CEP, and dividing this amount by the value of all sales. The use of the term aggregate dumping margins in section 771(35)(B) of the Act is consistent with the Department’s interpretation of the singular “dumping margin” in section 771(35)(A) of the Act as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the NV permitted to offset or cancel out the dumping margins found on other sales.

This does not mean that non-dumped transactions are disregarded in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped transactions examined during the POR; the value of such sales is included in the denominator of the weighted-average dumping margin, while no dumping amount for non-dumped transactions is included in the numerator. Thus, a greater amount of non-dumped transactions results in a lower weighted-average margin.

We disagree with SeAH that the Department’s interpretation of section 771(35) of the Act, with respect to zeroing, is inconsistent. In Chevron, the U.S. Supreme Court explained that, when the language and congressional intent behind a statutory provision is ambiguous, an administrative agency has discretion to reasonably interpret that provision, and that different interpretations of the same provision in different contexts is permissible.⁸⁷

The CAFC has found the language and congressional intent behind section 771(35) of the Act to be ambiguous.⁸⁸ Furthermore, antidumping investigations and administrative reviews are different proceedings with different purposes. Specifically, section 777A(d)(1) of the Act specifies particular types of comparisons that may be used in investigations to calculate dumping margins and the conditions under which those types of comparisons may be used, while for administrative reviews these comparisons are reflected in section 777A(d)(2) of the Act. The Department’s regulations further clarify the types of comparisons that will be used in each type of proceeding.⁸⁹ In antidumping investigations, the Department generally uses average-to-average comparisons, whereas in administrative reviews the Department generally uses average-to-transaction comparisons.⁹⁰ The purpose of the dumping margin calculation also varies significantly between antidumping investigations and reviews. In antidumping investigations, the primary function of the dumping margin is to determine whether an antidumping duty order will be imposed on the subject imports.⁹¹ In administrative reviews, in contrast, the dumping

⁸⁷ See Chevron, 467 U.S. at 864.

⁸⁸ See Timken, 354 F.3d at 1341-2.

⁸⁹ See 19 CFR 351.414.

⁹⁰ See 19 CFR 351.414(c).

⁹¹ See sections 735(a) and (c), and 736(a) of the Act.

margin is the basis for the assessment of antidumping duties on entries of merchandise subject to the antidumping duty order.⁹² Because of these distinctions, the Department's limiting of the Final Modification of Zeroing Methodology to antidumping investigations involving average-to-average comparisons does not render its interpretation of section 771(35) of the Act in administrative reviews inconsistent. Therefore, because section 771(35) of the Act is ambiguous, pursuant to Chevron, the Department may interpret that provision differently in the context of antidumping investigations involving average-to-average comparisons than in the context of administrative reviews.

Finally, SeAH's reliance on Corus v. Department of Commerce is misplaced. The CAFC in Corus v. Department of Commerce did not hold, as SeAH alleges, that section 771(35) of the Act could not be interpreted differently in antidumping investigations and administrative reviews. Rather, after acknowledging that antidumping investigations and administrative reviews were different proceedings, the CAFC held that the Department's zeroing methodology was equally permissible in either context.⁹³ Moreover, the CAFC has affirmed the Department's denial of offsets in the context of administrative reviews.⁹⁴ Specifically, the CAFC found that the Final Modification of Zeroing Methodology had no effect on the Department's ability to deny offsets in administrative reviews and that, thus, the judicial precedent upholding the Department's zeroing methodology in administrative reviews remains binding.⁹⁵ Following that precedent, the CIT recently rejected in Union Steel v. United States, Union Steel's identical interpretation of Corus v. Department of Commerce in the context of the thirteenth administrative review of that case.⁹⁶

⁹² See section 751(a) of the Act.

⁹³ See Corus v. Department of Commerce, 395 F.3d at 1347.

⁹⁴ See Corus v. United States, 502 F.3d at 1370.

⁹⁵ See Corus v. United States, 502 F.3d at 1375. See also SNR Roulements v. United States, 521 F. Supp. 2d 1395, 1398 (CIT 2007) (finding that, regardless of the Final Modification of Zeroing Methodology, no changed circumstances have occurred with respect to zeroing in administrative reviews).

⁹⁶ See Union Steel v. United States, 645 F. Supp. 2d 1298, 1309 (CIT 2009) ("Union Steel v. United States").

RECOMMENDATION

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

AGREE_____ DISAGREE_____

Paul Piquado
Acting Deputy Assistant Secretary
for Import Administration

Date