

DATE: March 15, 2010

MEMORANDUM TO: Kim Glas
Acting Deputy Assistant Secretary
for Import Administration

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

RE: Certain Corrosion-Resistant Carbon Steel Flat Products from the
Republic of Korea (Period of Review: August 1, 2007, through
July 31, 2008)

SUBJECT: Issues and Decisions for the Final Results of the 15th
Administrative Review of the Antidumping Duty Order on Certain
Corrosion-Resistant Carbon Steel Flat Products from the Republic
of Korea (2007-2008) (Final Results)

Summary

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

¹ On January 20, 2010, United States Steel Corporation (US Steel) filed case briefs (respectively, “US Steel’s Case Briefs”). On January 27, 2010, US Steel and Nucor Corporation (Nucor) (collectively, petitioners) filed rebuttal briefs (respectively, “US Steel’s Rebuttal Brief” and “Nucor’s Rebuttal Brief”). On January 20, 2010, Hyundai HYSCO (HYSCO), Pohang Iron & Steel Co., Ltd. (POSCO) and Pohang Coated Steel Co., Ltd. (POCOS) (collectively, the POSCO Group), and Union Steel Manufacturing Co., Ltd. (Union) (collectively, respondents), filed case briefs (respectively, “HYSCO’s Case Brief,” “the POSCO Group’s Case Brief,” and “Union’s Case Brief”). On January 27, 2010, respondents filed rebuttal briefs (respectively, “HYSCO’s Rebuttal Brief,” “The POSCO Group’s Rebuttal Brief,” and “Union’s Rebuttal Brief”). On January 20, 2010, LG Chem., Ltd. (LG Chem) submitted its case brief, stating that it supports the arguments submitted by Union Steel, POSCO, and HYSCO in their case briefs since LG Chem’s dumping margin would be based on the respondents subject to individual examination. Pursuant to 19 CFR 351.310, we conducted a public hearing on January 28, 2010. Participating in the hearing were Nucor, US Steel, HYSCO, POSCO, and Union.

I. Background

The Department of Commerce (the Department) initiated this administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products (CORE) from the Republic of Korea (Korea) on September 30, 2008, for each of the aforementioned respondents. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 73 FR 56795 (September 30, 2008). On September 8, 2009, the Department published the preliminary results of the antidumping duty administrative review for CORE from Korea. See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of the Antidumping Duty Administrative Review, 74 FR 46110 (September 8, 2009) (Preliminary Results). In this review we individually investigated three manufacturers/exporters of the subject merchandise: HYSCO, the POSCO Group, and Union. On December 16, 2009, the Department released post-preliminary analyses (post-preliminary analysis) for HYSCO and Union and on December 30, 2009, for the POSCO Group.

II. List of Comments

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III. Discussion of Interested Party Comments

A. General Issues

Comment 1: Treatment of “Negative Dumping Margins” (Zeroing)

Respondents urge the Department to recalculate their dumping margins without zeroing-out negative dumping margins in the final results. HYSCO argues that the WTO's dispute Settlement Body has consistently held against the Department's practice of zeroing in administrative reviews. HYSCO contends that the Department has already eliminated its practice of zeroing in original investigations, and has stated that the Department has the authority to terminate the use of zeroing in ongoing proceedings. Union argues that under Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984) (Chevron), the Department's interpretation of section 771(35) of the Tariff Act of 1930, as amended (the Act), is improper. Further, Union asserts that under Corus Staal BV v. Department of Commerce, 395 F.3d 1343 (Fed. Cir. 2005) (Corus), the Department may not treat administrative reviews differently than investigations with respect to zeroing.

US Steel argues that section 777A(d) of the Act requires that the Department set to zero all negative dumping margins calculated in antidumping proceedings. Petitioner claims that the Department's practice applied in the Preliminary Results is consistent with the intent of the statute, and has been upheld by the courts.

Department Position:

We disagree with respondents and will continue to deny offsets for any transaction where the normal value (NV) is less than or equal to the export price or constructed export price that may be found in these final results. These so called “transactions with negative margins” are simply non-dumped transactions.

Section 771(35)(A) of the Act defines “dumping margin” as the “amount by which the normal value exceeds the export price or constructed export price of the subject merchandise” (emphasis added). 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 export or constructed export price. As no dumping margins exist with respect to sales where NV is equal to or less than export price or constructed export price, the Department will not permit these non-dumped transactions to offset the amount of dumping found with respect to other sales. The Federal Circuit has held that this is a reasonable

interpretation of the statute.²

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 export prices and constructed export prices 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 normal value exceeds export price or constructed export price, and dividing this amount by the value of all sales. The use of the term aggregate dumping margins in section 771(35)(B) is consistent with the Department’s interpretation of the singular “dumping margin” in section 771(35)(A) as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which export price or constructed export price exceeds the normal value 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 period of review (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.

HYSCO has cited WTO dispute-settlement reports finding the denial of offsets by the United States to be inconsistent with the Antidumping Agreement. As an initial matter, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) has held that WTO reports are without effect under U.S. law, “unless and until such a {report} has been adopted pursuant to the specified statutory scheme” established in the Uruguay Round Agreements Act (URAA).³ Congress has adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.⁴ As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department’s discretion in applying the statute.⁵ Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports.⁶

Using that procedure, the Department has modified its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations.⁷ In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews.⁸ Thus, because the Final Modification only affected antidumping investigations involving average-to-average comparisons, the Department has continued to deny any offsets for non-dumped transactions in this administrative review.

² See Corus, 395 F.3d at 1347-49; Timken Co. v United States, 354 F.3d 1334, 1342 (Fed. Cir. 2004) (Timken).

³ Corus, 395 F.3d at 1347-49.

⁴ See, e.g., 19 U.S.C. § 3538.

⁵ See 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary).

⁶ See 19 U.S.C. § 3533(g).

⁷ Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Duty Investigation; Final Modification, 71 FR 77722 (December 27, 2006) (Final Modification).

⁸ See Final Modification, 71 FR at 77724.

We disagree that the Department's interpretation of section 771(35) of the Act, with respect to zeroing, is improper. 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.⁹

The Federal Circuit has found the language and congressional intent behind section 771(35) of the Act to be ambiguous.¹⁰ Furthermore, antidumping investigations and administrative reviews are different proceedings with different purposes. Specifically, in antidumping investigations, the Act specifies particular types of comparisons that may be used to calculate dumping margins and the conditions under which those types of comparisons may be used.¹¹ The Act discusses the types of comparisons used in administrative reviews.¹² The Department's regulations further clarify the types of comparisons that will be used in each type of proceeding.¹³ In antidumping investigations, the Department generally uses average-to-average comparisons, whereas in administrative reviews the Department generally uses average-to-transaction comparisons.¹⁴ 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.¹⁵ In administrative reviews, in contrast, the dumping margin is the basis for the assessment of antidumping duties on entries of merchandise subject to the antidumping duty order.¹⁶ Because of these distinctions, the Department's limiting of the Final Modification to antidumping investigations involving average-to-average comparisons does not render its interpretation of section 771(35) of the Act in administrative reviews improper. Therefore, because section 771(35) of the Act is ambiguous, 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.

Also, respondents' reliance on Corus is misplaced. The Court in Corus did not hold, as respondents allege, 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 Court held that the Department's zeroing methodology was equally permissible in either context.¹⁷ Moreover, the Federal Circuit has affirmed the Department's denial of offsets in the context of administrative reviews.¹⁸ Specifically, the Federal Circuit found that the Final Modification 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

⁹ See Chevron, 467 U.S. at 864.

¹⁰ See Timken, 354 F.3d at 1341-42.

¹¹ See section 777A(d)(1) of the Act.

¹² See section 777A(d)(2) of the Act.

¹³ See 19 C.F.R. § 351.414.

¹⁴ See 19 C.F.R. § 351.414(c).

¹⁵ See sections 735(a), (c), and 736(a) of the Act.

¹⁶ See section 751(a) of the Act.

¹⁷ See Corus at 1347.

¹⁸ See Corus Staal BV v. United States, 502 F.3d 1370 (Fed. Cir. 2007).

remains binding.¹⁹ Following that precedent, the Court of International Trade (CIT) recently rejected Union’s identical interpretation of Corus in the context of the thirteenth administrative review.²⁰

For the foregoing reasons, we have not changed our methodology with respect to the treatment of non-dumped transactions.

Comment 2: Home Market Revenue for the POSCO Group (Freight and Interest) and HYSCO (Interest)

The POSCO Group explains that certain customers requested extensions for their payment dates and the customers were charged interest until the balances were paid in full. The POSCO Group claims that it reported the per-unit interest revenue for these transactions. During the preliminary results, the POSCO Group argues that the Department incorrectly classified this revenue as a post-sale adjustment and added it to the gross unit price. The POSCO Group states that this interest revenue was a circumstance-of-sale adjustment incurred as a direct result of the sale, as instructed by the Department’s own questionnaire. For the final results, the POSCO Group asserts that the Department should include the interest revenue in the pool of direct selling expenses.

In addition, the POSCO group collects freight revenue from certain home market customers for certain transactions, and reported this freight revenue in its home market sales database. POSCO argues that the Department failed to add this amount to the gross unit price.

HYSCO states that for certain sales in the home market, HYSCO charged interest on certain customers’ outstanding balances until the customers paid their accounts in full. HYSCO states that it reported the interest revenue as “INTREVVH” in the home market sales file. HYSCO argues that the Department erred by treating INTREVVH as a post-sale price adjustment instead of a selling expense. HYSCO contends that the Department should treat INTREVVH as a circumstance-of-sale adjustment and include it in the direct selling expenses.

US Steel claims that the POSCO Group’s claim has no merit. As in Diamond Saw Blades from China,²¹ the petitioner asserts that “interest revenue should more appropriately be treated as “...a post-sale adjustment to price” rather than as a direct selling expense. Moreover, Petitioner asserts that just because the POSCO Group reported in its questionnaire a field for interest revenue (*i.e.*, Field 32.0) among those labeled as “selling expenses” and stated that this “expense will be used to make adjustments for different circumstances of sale” does not mean that the Department will treat interest revenue as a direct expense. Petitioner claims that respondents are instructed by the Department to report interest revenue “in a separate field on the sales database in order to allow for the adjustment to the selling price.” Petitioner also comments that in the

¹⁹See *id.* at 1375; see also SNR Roulements v. United States, 521 F. Supp. 2d 1395, 1398 (Ct. Int’l Trade 2007) (finding that, regardless of the Final Modification, no changed circumstances have occurred with respect to zeroing in administrative reviews).

²⁰See Union Steel v. United States, 645 F.Supp.2d 1298, 1309 (Ct. Int’l Trade 2009).

²¹See Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People’s Republic of China, 71 FR 29303 (May 22, 2006) (Diamond Sawblades from China), and accompanying Issues and Decision Memorandum at Comment 25.

past the Department did not treat interest income related to late payment of invoices as an offset to interest expense. Petitioner asserts that that interest earned on accounts receivable should be treated as an adjustment to the selling price.²²

US Steel also disagrees with HYSCO's proposal to treat interest revenue as a circumstance of sale adjustment. US Steel argues that it is the Department's practice to treat interest revenue as a post-sale price adjustment, rather than a direct selling expense.

Department Position:

We disagree with POSCO, HYSCO, and US Steel. During the Preliminary Results, HYSCO and the POSCO Group both reported INTREVVH as a circumstance of sale adjustment; specifically for certain customers who requested extensions for their payment dates and the customers were charged interest until the balances were paid in full. Moreover, during the Preliminary Results and the post-preliminary analysis, the POSCO Group reported freight revenue for certain home market sales, but the Department did not add it to the gross unit price.

Section 773(a)(6) of the Act provides that the Department shall increase the price used to establish normal value by the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States. Revenue received by a respondent on the provision of freight or the extension of credit is not included as an upward adjustment to normal value. In addition, section 351.401(c) of the Department's regulations directs the Department to use a price in the calculation of U.S. price and normal value that is net of any price adjustments that are reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable). The term "price adjustment" is defined under 19 CFR 351.102(b)(38) as a "change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates, and post-sale adjustments, that are reflected in the purchaser's net outlay." The definition specifies that the adjustment applies to changes in the price charged for subject merchandise, i.e., CORE.

In past cases, we have declined to treat expense-related revenues as additions to normal value. Rather, the Department's practice is to treat certain home market revenues as offsets to the associated selling expenses for which they were intended to compensate the seller. This was clearly explained in AFBs from France, Germany, etc.,²³ where the Department explained that "we treat certain revenue as an offset to the corresponding expenses 'that are associated with the same type of activity in our calculations.'"²⁴ This treatment of expense-related revenues on the

²² See Gray Portland Cement and Clinker from Mexico: Notice of Final Results of Antidumping Duty Administrative Review, 71 FR 2909 (January 18, 2006), and accompanying Issues and Decision Memorandum at Comment 9.

²³ See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Revocation of an Order in Part, 74 FR 44819 (August 31, 2009), and the accompanying I&D Memo at Comment 11.

²⁴ Id at 44822, citing Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 46584 (August 11, 2008) (OJ Brazil), and the accompanying I&D Memo at Comment 7, and Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 6857 (February 11, 2009) (PRC Bags) and the accompanying

normal value side of the comparison parallels the practice of such revenues on the U.S. price side of the comparison under section 772(c) of the Act and 19 CFR 351.102(b).

Thus, freight revenue is used as an offset to freight expenses. Likewise, interest revenue is treated as an offset to imputed-interest expenses. Accordingly, we have treated interest revenue as an offset to credit expenses, and freight revenue as an offset to movement expenses in our calculations for the final results.²⁵

Comment 3: Use of Quarterly Costs

A. Legal Frame Work

Union and HYSCO argue that, without notice and justification, the Department has adopted a new test for using quarterly costs. Union and HYSCO maintain that the Department's use of its quarterly cost methodology is contrary to past practice and that it distorts the dumping analysis. Union and HYSCO state that under the Department's established agency practice at the time this administrative review was initiated, a shorter cost averaging period was used only when record evidence clearly showed that costs had changed significantly and consistently during the POR, and that the changing costs could be directly, or at least accurately, linked to changes in sales prices in the same quarter.²⁶

Union and HYSCO maintain that the Department's deviation from its practice of one annual cost established in the 14 prior reviews of this order, is not supported by substantial evidence and is contrary to law, because the Department failed to adequately explain why it disregarded its prior practice in favor of the alternative quarterly cost methodology. Union also contends that the Department applied a test that no longer required that the change in costs be consistent as has been its past practice.

Petitioners maintain that the Department properly applied its alternative quarterly cost methodology because of significant cost and price changes during the POR.²⁷ Petitioners note

I&D Memo at Comment 6

²⁵ We added interest revenue to the gross unit price, capped by the amount of the credit expense which is deducted from gross unit price. We added freight revenue to the gross unit price, capped by the amount of the associated movement expenses, which are deducted from the gross unit price.

²⁶ See, e.g., 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, 746-48 (January 6, 2000) (Brass Sheet and Strip from the Netherlands 97/98); 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); 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).

²⁷ See, e.g., 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: Certain

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 quarters 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."²⁸ As noted, not only has the Department applied this test consistently in recent cases, but the CIT has reviewed and affirmed it.²⁹

B. Significance of Cost Changes

Union and HYSCO argue that the Department deviated from its established agency practice in its post-preliminary analysis by applying a new test that no longer required the cost changes to be consistent across the entire POR (i.e., in this case the Department allowed 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). 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.³⁰ Starting with Turkish Rebar Decision Memo 03/04, the Department's approach

Steel Concrete Reinforcing Bars From Turkey; 73 FR 66218 (November 7, 2008), and accompanying Issues and Decision Memorandum at Comment 2 (Rebar from Turkey Decision Memo 06/07 at Comment 2); 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 at Comment 4); 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 at Comment 5); Certain Welded Stainless Steel Pipes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review 74 FR31242 (June 30, 2009), and accompanying Issues and Decision Memorandum in at Comment 1 (SS Pipe from Korea Decision Memo 06/07 at Comment 1).

²⁸ See SS Pipe from Korea Decision Memo 06/07 at Comment 1.

²⁹ See, e.g., Habas Sina ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States, 625 F. Supp. 2d 1339, 1343-1371 (Ct. Int'l Trade 2009) (ruling on remand results (Rebar from Turkey 7AR Redetermination 03/04)) (Habas Sina).

³⁰ See, e.g., Notice of Final Results of Antidumping Duty Administrative Review and Determination to Revoke the Antidumping Duty Order in Part: Certain Pasta from Italy, 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum (Pasta from Italy Decision Memo 98/99). Union has limited its discussion to cases that were decided from 2000 to the present because this line of cases represents the Department's practice that existed at the time this review was initiated. In prior cases stemming back to 1986, the Department had not articulated a standard for deciding when to use shorter cost averaging periods but instead just analyzed whether costs or prices had deviated significantly during the POR/POI and then decided on a case-by-case basis whether to deviate from its normal practice of using annual average costs. See, e.g., Erasable Programmable Read Only Memories (EPROMs) from Japan: Final Determination of Sales at Less than Fair Value, 51 FR 39680, 39685 (October 30, 1986) (lagging costs by three-months to account for significant changes in costs and prices).

changed to an examination of the impact of using annual average costs versus quarterly or monthly average costs, *i.e.*, comparing the impact of one methodology versus the other.³¹ But regardless of which approach was used, the Department maintained that the cost changes had to be both significant and consistent in the POR.³² Union and HYSCO maintain that the analysis employed by the Department to determine the magnitude of cost changes (*i.e.*, comparing the highest to the lowest quarterly COMs for each of the five largest CONNUMs sold in the U.S. and home market) is flawed and does not support the conclusion that COM changed significantly over the POR as a whole. Union and HYSCO assert that there was not a steady and constant change in costs during the period. Union and HYSCO claim that the reported COM did not change 25 percent during the entire POR, but rather changed above 25 percent only when compared to the quarter with the lowest COM. Union asserts that the 25 percent significance threshold is met only in the fourth quarter, when the cost of raw material inputs changed. HYSCO asserts that the 25 percent significance threshold was never met because the Department used an incorrect methodology in calculating the threshold by not comparing the POR-average COM to the quarterly COM derived from the alternative quarterly cost method. Union states that this 25 percent threshold is not met when comparing the first and second, or even the first and third quarters. Union contends that the changes in its COM in most cases, changed between the third and fourth quarter. Union and HYSCO conclude that this pattern does not constitute the type of significant and consistent change that justifies a departure from the use of annual average costs. Union and HYSCO claim that in this case the changes in its COM were neither significant nor consistent throughout the entire POR.

Furthermore, Union points out that the Department's substrate coil purchase price analysis does not demonstrate that there were significant cost changes for the vast majority of Union's products. Union maintains that during the POR, costs did not change throughout the POR as the Department concluded, but only in the fourth quarter. Given that costs changed only in the fourth quarter, the Department's analysis suggests that nearly half of the impact of the raw materials costs during the fourth quarter would be on merchandise sold after the close of the POR (based on estimated turnover time from coil purchase to shipment of finished goods).

Union claims that the Department's analysis also shows that even in the fourth quarter, its COM did not change significantly, as defined by the Department, for six of the ten CONNUMs examined, including four of the five largest CONNUMs sold in the U.S. market.³³ Union argues that the Department's calculation of the percentage of sales represented by the four CONNUMs that exceed the threshold as a percent of Union's total home market and U.S. sales is erroneous. Union claims that the four CONNUMs that exceeded the 25 percent threshold were only compared to a minor amount of all U.S. sales reviewed.

Petitioners contend that the Department expressly rejected any requirement that changes in cost must take place consistently throughout every quarter of the POR in SS Pipe from Korea Decision Memo 06/07. Rather, the Department concluded that the proper test for measuring cost

³¹ See, *e.g.*, Wire Rod from Canada Decision Memo 03/04 at Comment 5; Stainless Sheet from France Decision Memo 03/04 at Comment 2. .

³² See, *e.g.*, Turkish Rebar 03/04 Decision Memo at Comment 1.

³³ See Memorandum from Christopher Zimpo to Neal M. Halper, entitled Cost of Production and Constructed Value Calculation Adjustments for the Post Preliminary Analysis – Union Steel Co. Ltd., dated December 16, 2009 at Attachment 1 (Post-Preliminary Analysis Memo-Union).

change significance is to assess whether there was a 25 percent change in costs from the lowest cost quarter to the highest cost quarter during the POR. Petitioners add that the Department applied this analysis in the Rebar from Turkey 7 AR Redetermination 03/04, which was affirmed by CIT.

Petitioners also maintain that the evidence showed that the price of the substrate coil changed dramatically throughout the POR and was the primary driver of the significant change in COM during the POR. Petitioners also contend that in Union's case, since part of the impact resulting from the significant cost change in substrate coil in the quarter may be outside the POR does not change the fact that costs changed meaningfully during the fourth quarter. Petitioners also assert that the Department analyzed the five CONNUMs with the largest sales volume in the home market and not the five CONNUMs used most frequently as matches to U.S. sales because the five CONNUMs analyzed would be most representative of Union's overall home market experience.

C. Linkage Between Cost and Sales Information

Union and HYSCO contend that the record evidence does not support that there is direct linkage between costs and sales prices, and that it would be rare if average costs and prices consistently went in the opposite direction. Union and HYSCO argue that the Department's statement that "the average quarterly cost trended consistently with the change in the average quarterly prices" when it compared quarterly average price and cost changes for the five largest U.S. and home market CONNUMs is flawed because it fails to consider whether there is any parity in the magnitude of the changes in costs or prices.³⁴ Union and HYSCO claim that the Department sharply deviated from its established agency practice in its post-preliminary analysis by applying a new test that abandoned the direct linkage requirement between costs and prices in favor of a "reasonable correlation" standard that was met so long as costs and prices were generally trending in the same direction. Union maintains that the main difference between this case and the SSPC from Belgium Decision Memo 06/07 and SSSS from Mexico Decision Memo 06/07 cases was that Union, unlike the respondents in those two cases, did not have any type of a surcharge mechanism for linking costs and prices. Union states the Department watered down its direct linkage test by requiring only that the average quarterly cost trended consistently with the change in the average quarterly prices.

Union and HYSCO further argue that the Department has 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. Union and HYSCO assert 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 create distortions.

Finally, Union and HYSCO maintain that 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

³⁴ See Post-Preliminary Analysis Memo - Union at 3; Memorandum from Gary Urso to Neal M. Halper, entitled Cost of Production and Constructed Value Calculation Adjustments for the Post Preliminary Analysis - Hyundai HYSCO, dated December 16, 2009, at 3 (Post-Preliminary Analysis Memo - HYSCO).

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 state that the Department has properly applied its linkage test and determined that there was a reasonable correlation between the change in quarterly costs and Union's and HYSCO's sales during each quarter. The Department did this by analyzing Union's and HYSCO's quarterly costs and their average sales prices for each of the ten highest volume CONNUMs and the analysis showed that for the ten CONNUMs analyzed, the change in the average quarterly cost trended consistently with the change in the average quarterly prices

D. Window Period Sales

Union contends that the Department's failure to apply its 90/60 day contemporaneity regulation is unsupported by substantial evidence, is contrary to law, and altered the Department's normal sales matching. Union argues that the matching period was shortened from six months to three months for all U.S. sales which resulted in less desirable matches. U.S. sales that had previously been matched to home market sales of identical or similar products in the preliminary results, where the Department applied its normal 90/60-day window, were now matched to less similar home market products or to sales in a less contemporaneous month, as defined in 19 CFR 351.414(e). Union 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. Additionally, Union argues that by eliminating the home market window periods surrounding the first and last months of the POR the substantial quantities test was distorted, resulting in the exclusion of below cost sales for CONNUMs where even 80 percent or more of the home market sales during the reporting period were made at above cost prices. Union states that the Department's failure to apply the 90/60 day contemporaneity window, not only distorts the dumping analysis, it is unlawful. Union 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. According to Union, as a result of the Department's not allowing the 90/60-day window, the dumping margin changed substantially. Union 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. Union further claims that the fact that the Department's regulation governing average-to-average comparisons, 19 CFR 351.414(d), provides authority to adjust the averaging period when prices differ significantly over the course of the period of investigation (POI) or POR underscores that no similar authority was identified in 19 CFR 351.414(e). Therefore, Union concludes that the Department's attempt to re-write 19 CFR 351.414(e)(2), by varying the definition of the contemporaneous month adopted in the post-preliminary analysis is unsupported by substantial evidence and contrary to law.

Petitioners argue that the Department's regulations 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 Union 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 it would distort the effects of changing prices.³⁵ Petitioners argue that because the Department's quarterly cost methodology allows for matches within a smaller three-month window, the matches are more contemporaneous than the Department's 90/60 day regulation.

E. Substantial Quantity and Recovery of Costs Test

Union and HYSCO claim the Department's failure to apply the cost recovery test is contrary to law. Union and HYSCO argue that under section 773(b)(2)(D) of the Act, the Department may disregard sales that are made at less than their cost of production 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 . . ." Union adds that the cost recovery provision directs that prices that are above the weighted-average per unit cost of production (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, sales that are above the POR weighted-average per unit COP cannot be excluded under the cost test. Union asserts 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. Union argues that in accordance with Acciai Speciali Terni S.p.A. v. United States, 142 F. Supp. 2d 969, 997 (Ct. Int'l Trade 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. Finally, Union and HYSCO assert that the Department expressly and routinely recognized that the statute required it to conduct the cost recovery test using POR or POI weighted-average costs even when it had determined to otherwise calculate COP using quarterly (or even monthly) weighted-average costs.³⁶

Petitioners argue the Department did use 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) of the Act by calculating an adjusted weighted-average COM (using indices) for the POR that neutralized the distortion of significantly changing substrate costs.

F. Calculation of the Index

Union and HYSCO assert that the Department has reallocated its actual quarterly manufacturing costs by applying an index that the Department developed based on the average quarterly cost

³⁵ See Post-Preliminary Analysis Memo - Union at 3.

³⁶ See, e.g., 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).

change for all substrate, therefore, constructing a cost that does not match their books and records, in violation of section 773(f)(1)(A) of the Act. Union and HYSCO claim that applying an index based on all purchases of substrate to CONNUM-specific material costs can lead to skewed results that affect both the COP and the DIFMER adjustment. The index between the first quarter (with an index of 1) and the other quarters is dependent on the quantities of the hot-rolled coil purchased in each quarter. According to Union, generally in its situation, comparable quantities are purchased in each period. The same cannot be said on a CONNUM-specific basis. As a result, the Department's methodology can lead to the misallocation of costs among CONNUMs. HYSCO argues that if the Department continues to use quarterly cost for the final results, the index calculation should only be based on the substrate costs used to manufacture the merchandise under consideration as opposed to the Department's current calculations which is based on substrate costs of both merchandise under consideration and merchandise not under consideration.

Petitioners argue that section 773(f)(1)(A) of the Act expressly states that costs should normally be based on the respondent's books provided such costs "reasonably reflect the costs associated with the production and sale of the merchandise." As the CIT has found, this means that the Department is not required to use "costs reflected in a respondent's records which are distortive."³⁷ Petitioners add that it should be noted that the Department's indexing methodology is similar to its practice in the hyperinflationary context that has been in effect for many years.³⁸

Department Position:

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

A. Legal Framework and Case Precedent

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 Pasta from Italy Decision Memo 07/08 at Comment 18; 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 adopted a consistent and predictable approach in using POI or POR-average costs—the result

³⁷ See, e.g., United States Steel Group v. United States, 24 CIT 757, 761 (2000).

³⁸ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia, 64 FR 73164, 73171-73 (December 29, 1999).

being a normalized, average production cost 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 fluctuations); see also 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 smoothes out normal cost fluctuations that occur during an accounting period. Moreover, we prefer to calculate costs on a POI or POR weighted average basis in an antidumping context because, as costs are calculated over shorter periods, it directly limits the periods of time over which sale prices can reasonably be matched, thus limiting price-to-price comparisons contrary to Department preference. 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 our 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, e.g., Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Partial Rescission of Antidumping Duty Administration Review, 67 FR 66110 (October 30, 2002); Brass Sheet and Strip from the Netherlands 97/98.

Union's and HYSCO's arguments that they could not have anticipated that the Department would apply its alternative cost averaging methodology in this review are unpersuasive. Both of the respondents should have been aware that the Department was in the process of implementing this new methodology in both POIs and PORs. Well before the initiation of this review on September 24, 2008, the Department published its request for comment³⁹ on the use of shorter than annual averaging periods. Additionally, on June 6, 2008⁴⁰ (again well before the initiation of this review), the Department published SSPC Belgium 06/07 Prelim where we explained that because of the significant cost changes in that case we were going to consider the use of quarterly costs for the final results. Since the date of the initiation of this review, there have been several cases in which we considered whether to deviate from our normal annual average cost methodology due to significant changes in the cost of manufacture (COM) throughout the cost reporting period. See Rebar from Turkey Decision Memo 06/07 at Comment 2; SSPC from Belgium Decision Memo 06/07 at Comment 4; Stainless Steel Sheet and Strip in Coils from Mexico 08/09; Final Results of Antidumping Administrative Review, 75 FR 6627 (February 10, 2010), and accompanying Issues and Decision Memorandum at Comment 6 (SSSS from Mexico Decision Memo 08/09); and 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). Because this issue has

³⁹ See, Antidumping Methodologies for Proceedings that Involve Significant Cost Changes Throughout the Period of Investigation (POI)/Period of Review (POR) that May Require Using Shorter Cost Averaging Periods; Request for Comment, 73 FR 26364 (May 9, 2008).

⁴⁰ See Stainless Steel Plate in Coils From Belgium: Preliminary Results of Antidumping Duty Administrative Review, 73 FR 32298, June 6, 2008 (SSPC Belgium 06/07 Prelim).

continued to arise in more and more cases, we recognize the importance of having a consistent approach to analyzing the issue and determining when to deviate from our normal annual average cost methodology. Accordingly, the Department has made a concerted effort to develop a consistent methodology for determining when the use of shorter cost averaging periods is more appropriate than the established practice of using annual cost averages, due to the occurrence of significant cost changes throughout the period of investigation POI or POR.

We disagree with Union's and HYSCO's argument that the Department's decision to use a quarterly cost averaging period in this case is not in accordance with law. As explained further below we have applied the same standards to this case as in Rebar from Turkey Decision Memo 07/08, SSSS from Mexico Decision Memo 06/07, SSPC from Belgium Decision Memo 06/07, and Pasta from Italy Decision Memo 07/08. 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 quarterly cost averaging periods is warranted and appropriate.

B. Significance of 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 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 ensured a more equitable and consistent application of the alternative cost calculation methodology. In Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review, 73 FR 75398 (December 11, 2008) (SSPC from Belgium Decision Memo 07/08) and Rebar from Turkey Decision Memo 08/09, we established a threshold of 25 percent change in cost for significance. 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 AD 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 08/09, 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.

Subsequent to the preliminary results in this case, we solicited quarterly cost information from Union and HYSCO 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.⁴¹ Consistent with our approach in SSPC from Belgium Decision Memo 07/08, Rebar from Turkey Decision Memo 08/09, SSSS from Mexico Decision Memo 08/09, and Pasta from Italy Decision Memo 08/09 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 Post-Preliminary Analysis Memo at 2 for both Union and HYSCO. While Union and HYSCO disagree 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

⁴¹ The Department requested that Union and HYSCO provide quarterly average direct material costs, while continuing to report conversion costs (i.e., labor and overhead) on an annual average basis.

respondent alleges, represent a departure from past practice. As noted previously, in SSPC from Belgium Decision Memo 07/08, SSSS from Mexico Decision Memo 08/09, Rebar from Turkey Decision Memo 08/09, and Pasta from Italy Decision Memo 07/08, the Department similarly based a finding of significance on the percentage change between the high quarterly and low quarterly COM.

Furthermore, while Union and HYSCO are correct that cost changes may have trended consistently throughout the POR in previous cases such as Rebar from Turkey Decision Memo 08/09, we do not consider this to be a critical factor in our analysis. 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.

C. Linkage Between Costs and Sales Information

Consistent with past precedent, if the Department finds changes in costs to be significant in a given investigation or administrative review, the Department subsequently evaluates whether there is evidence of linkage between the cost changes and the sales prices during the shorter cost periods within the POI or POR. In four recent determinations, SSPC from Belgium Decision Memo 07/08, SSSS from Mexico Decision Memo 08/09, Pasta from Italy Decision Memo 07/08, and Rebar from Turkey Decision Memo 08/09, 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. We believe that requiring too strict a standard for linkage, however, 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 Union and HYSCO 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 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.

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, 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). Union or HYSCO, unlike respondents in SSPC from Belgium 06/07 and SSSS from Mexico 06/07, do 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 Union and HYSCO 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 and the quarterly COM. See Union's October 16, 2009 questionnaire response at Exhibit 72, and HYSCO's October 16, 2009 questionnaire response at Exhibit SD3-3. We also calculated Union's and HYSCO's average overall POR inventory turnover for raw material inputs and for finished goods. The information provided by Union and HYSCO 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.

As noted previously, Union and HYSCO assert that, although the inventory turnover period may indicate how quickly raw material cost changes are reflected in the cost of finished goods, it says nothing about how quickly changes in cost of production are reflected in higher prices. We disagree with Union's and HYSCO's assertions. The analysis at Attachment 2 of both Union's and HYSCO's Post-Preliminary Analysis Memos show costs 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 Union's and HYSCO's COM and sales prices are reasonably correlated by the fact that Union and HYSCO purchase inputs relatively frequently and use the inputs in the production of merchandise under consideration relatively quickly, leading to the reasonable assumption that, on average, Union and HYSCO buy their respective raw materials and use them in production within a three-month period. The finished goods inventory turnover ratio tells us that Union and HYSCO sell their production relatively quickly; therefore, costs in the quarter are reasonably representative of the sales that occurred within the same quarter. Quick inventory turnover allows Union and HYSCO to revise their respective prices in response to the highly volatile material costs and allows current costs to be reflected quickly in their COM. In summary, these correlative elements, taken together, are sufficient to establish a reasonable link between the changes in Union's and HYSCO's COM and the changes in sales prices.

D. Window Period Sales

The Department's normal practice is to calculate a respondent's cost of production 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 Union 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 Court of International Trade. See Habas Sina, 625 F. Supp.

2d. at 1343-1371; Nucor Corp. v. United States, Case No. 05-00616, Slip Op. 10-6 (Ct. Int'l Trade January 19, 2010) (Nucor) (affirming remand determination applying quarterly cost methodology without comment). Moreover, record evidence shows that Union's COM changed significantly between the second and fourth quarters of the POR in most instances for substrate coils. See Post-Preliminary Analysis Memo-Union at Attachment 2. Therefore, our decision to use quarterly average cost as opposed to POI or POR cost is justified and consistent with the Department's established practice of applying the alternative cost averaging methodology.

We disagree with Union 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 EPs or CEPs. 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 shortened cost averaging period. See, e.g., 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 42946, 42505-06 (August 7, 1997); Rebar from Turkey 7AR Redetermination; and Nucor.

In this case, as noted above, we have determined that the changes in Union's and HYSCO'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 prices 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 as established in the sales-below-cost test. We note that although 19 CFR 351.414(d)(3) is applicable to the average-to-average methodology, the principle

pertaining to the use of a shorter period for averages is relevant to the average-to-transaction method for purposes of the averaging aspect of that methodology. 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 08/09, SSPC from Belgium Decision Memo 06/07, Rebar from Turkey 7AR Redetermination, and Nucor where we made comparisons between U.S. and home market sales only if they were in the same quarter.

With regard to the respondent’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. Substantial Quantity and Recovery of Costs 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 “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 period of review to determine whether sales were made at less than costs of production 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 cost of production, 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.

During the period of review, Union’s and HYSCO’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 Union and HYSCO 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 Union and HYSCO 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 the Congress intended that the Department should normally use the single period average cost for the POI or POR, we disagree that the Congress mandated the use of a single period of review 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 actual 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 period of review. The magnitude of cost changes from quarter to quarter during the period of review was so significant that the Department deviated from its normal methodology of using a single period of review 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 to 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, Union and HYSCO reported

quarterly material costs, the primary driver of the significant changes in COM throughout the POR, and annual weighted average costs for all other cost elements. In the margin calculation program used for the post-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 period of review weighted-average per unit cost. Finally, the weighted average per unit cost for the period of review for the substrate input was indexed back to the appropriate quarter to keep the weighted-average per unit costs 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 period of review 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 respondents' actual weighted-average costs for the entire period of review, 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 period of review 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 bleed 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.

We also disagree with Union and HYSCO concerning the intent of the statute in that the timing of sales should influence the results under the cost recovery test. The antidumping statute does not require the Department to blindly rely upon unadjusted annual average costs in an environment of significant cost change. Union's and HYSCO'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 cost of manufacturing 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.

F. Calculation of the Index

We disagree with Union and HYSCO that the Department violated section 773(f)(1)(A) of the Act and did not rely on the companies' costs as reflected in their normal books and records. Contrary to the respondents' claims, the Department fully relied on actual cost data from each of the respondents to develop the indices. We then applied the indices, which we calculated from Union and HYSCO's actual cost data, to each respondent's reported quarterly actual substrate costs. All of the data upon which we relied to calculate the indices and the quarterly substrate costs to which we applied the indices were from each of the companies' normal accounting records as required by section 773(f)(1)(A) of the Act.

Because the change in the substrate cost was significant and because we were able to reasonably link the quarterly COMs to the quarterly sales prices, the Department relied on its alternative quarterly cost averaging methodology to alleviate distortions in the dumping analysis. We disagree with Union and HYSCO that we reallocated their actual quarterly costs when we used our indexing methodology. To the contrary, our alternative cost averaging methodology indexed each company's actual quarterly substrate cost to a common beginning of the period cost level. We then calculated the POR average substrate cost, as in constant substrate price level, in order to neutralize the significant substrate cost changes between quarters. We then restated the POR-average substrate cost, as stated in a constant substrate price level, to each respective quarterly price-level to keep the weighted-average per unit costs consistent with changing price-levels between quarters. The Department's use of indices in the alternative quarterly cost averaging methodology was necessary to comply with statute's requirement of weighted-average costs for the period for the cost recovery test while preserving the differences between quarters resulting from the significant price level changes. As petitioners point out, this alternative cost averaging methodology is very similar and consistent with the Department's high-inflation methodology. That is, under the Department's well established and long-standing high-inflation methodology, we index the monthly reported costs to a common beginning of the period cost level. The methodology used for all three respondents in this review is virtually identical with the exception that the alternative cost methodology indices are quarterly rather than monthly.⁴²

We disagree with Union and HYSCO that the indices should be based solely on the cost of the substrate which was used to produce the merchandise under consideration. Similar to our normal methodology for calculating raw material costs, as long as the same input is used to produce both subject and non-subject merchandise, we do not make any distinction between the cost of each. Thus, in computing the substrate indices in accordance with our alternative cost calculation methodology, we included the cost of all comparable inputs consumed regardless of whether it was used to produce subject or non-subject merchandise.

⁴² While the Department applied an alternative cost averaging methodology to all three respondents in this review, only Union and HYSCO objected to its use.

Comment 4: Laminated Products

In its case brief, Union claims that the Department erred in assigning laminated products the same product matching code as certain other products and, thus, failed to account for the commercially significant differences between laminated products and painted products. Union alleges that the record shows that the prices and costs of laminated products are significantly higher than that of the painted products. Union urges the Department to assign a separate product matching code to laminated products in the final results.

Union argues that laminated products are not painted products and should not be treated as if they were. Moreover, laminated products do not fit within any of the other product “Type” listed in the questionnaire. As a result, Union argues that the Department should revise its model-match criteria and establish a separate category for laminated products.

Union points out that the physical differences between laminated and painted CORE products results from different production process. Different equipment is used to apply laminate than is used to apply paint; in addition, the process of applying lamination is more complicated than the process of applying paint. Union states that as a result of these differences, it has created a separate brand name for its laminated products.

According to Union, the production costs and sales prices of laminated products are substantially higher than other painted products because PET film and PVC film are more expensive than the various paints used for other color-coated products, including PVDF, and require more complicated processing. Union points out that the cost differences between laminated products and other painted products meet the 20-percent DIFMER cap as provided in the Department’s Policy Bulletin No. 92.2, Differences in Merchandise, 20 percent Rule. See Import Administration Policy Bulletin, Number 92.2, Differences in Merchandise; 20% Rule, July 29, 1992.

Union also compared the average prices for laminated products with painted and other products. According to Union, this shows that laminated products are on average, twice as expensive as other painted products.

In US Steel’s Rebuttal Brief, the petitioner argues that laminated and painted products fall under “Type = 60.”⁴³ The petitioner asserts that in a remand proceeding for the 13th review the Department rejected Union’s request to treat laminated products as a separate coating type. See Union Steel v. United States, CIT Ct. No. 08-101, Final Results of Redetermination Pursuant to Remand (Dec. 28, 2009) (13AR Remand Results). The petitioner claims that Union’s argument that the existing matching hierarchy does not include a category that encompasses laminates, that there are significant physical differences between laminated products and painted products, that these products are put to different end uses, and that its own product brochures treat laminates differently are without merit.

⁴³ Type 60 refers to coated/plated with metal: painted, or coated with organic silicate, all other (i.e., other than PVDF).

The petitioner asserts that the Department has “considerable discretion” to establish model matching categories. They also note that the Department may consider products identical even though the product may not be the same in all respects. The petitioner argues that the Department may consider merchandise to be identical for matching purposes as long as those differences are not “commercially significant.” See Pesquera Mares Australes Ltda. V. United States, 266 F.3d 1372, 1383-84 (Ct. Intl Trade 2004) (Pesquera). The petitioner claims that commercially significant refers to industry standards and not customer preferences. Furthermore, the petitioner argues that there is no compelling reason to change the model match. See Fagersta Stainless AB v. United States, 577 F. Supp. 2d 1270, 1278-1279 (Ct. Intl Trade 2008) (Fagersta).

The petitioner reasons that there are other category types which encompass laminated products, such as type = 50 covering painted or coated with PVDF and type = 60 painted or coated covering all other coatings. Neither of these categories is made up purely of painted products. The petitioner argues that the CORE industry refers to “paint types” as a wide variety of coatings including laminates. The petitioner refers to Union’s response which identifies pre-painted products as including both paints and laminates. See Union’s Section B-D Response at Section D, 3 (Public Version) and Union’s Section A Response at Ex. A-28 (Public Version) (Union’s product brochure).

The petitioner claims that the physical differences between laminated and painted CORE are extremely minor. The petitioner asserts that laminates and paint are applied to finished CORE products to give color and other aesthetic and corrosion-resistant properties to steel. See Union’s Section A response at Ex. A-28 (Public Version). The petitioner notes that Union did not place any information on the record to support its claim that they have established “brand names” for laminated products. The petitioner further asserts that painted products are put to the same end-use as laminated products. For instance, Union stated in a supplemental response that painted and laminated products are for appliances and construction. See Union’s April 9, 2009, supplemental questionnaire response at 14 (Public Version). Finally, the petitioner asserts that the Department’s model match methodology is based on the physical characteristics of the merchandise, not on the production process. See Stainless Steel Sheet and Strip in Coils from France, 64 FR 30820, 30828 (June 8, 1999).

Finally, the petitioner asserts that any cost differences and price differentials between laminated and painted products do not warrant distinct model match categories. See Fagersta, 577 F. Supp. 2d at 1280-81. First, costs and prices can vary significantly from review to review relative to those of other products. The petitioner states that it is the Department’s intention to rely on significant physical differences between products that will remain stable. Moreover, the petitioner comments that the costs could even vary within the same type of coating. Second, the petitioner cites to analyses the Department has taken in the twelfth and thirteen administrative reviews which states that prices of laminates and painted products are comparable. See 13AR Remand Redetermination at 4 (Public Version). Third, the petitioner disagrees with Union’s assertion that the difference-in-merchandise test should be a factor in deciding model match criteria. The petitioner again argues that the physical differences between laminates and paints are extremely minor and lack both industry recognition and commercial recognition. Moreover,

they argue that the same conclusion was raised and rejected in the Fagersta case. See Fagersta, 577 F. Supp. 2d at 1281.

In Nucor's Rebuttal Brief, they argue a party seeking to change the Department's model match criteria "bears the burden of demonstrating the necessity for a change in Commerce's model match program. See Oy v. United States, 22 CIT 786, 791-792 (1998). Nucor asserts that the Department considers merchandise to be "identical" even if there are minor differences in physical characteristics, if those minor differences are not commercially significant." See Pesquera, 266 F.3d at 1383-84. Nucor explains that laminated products have existed since the beginning of this proceeding in contrast to Union's claim that laminated products are significantly different than painted products. Nucor asserts that the Department has rejected a similar argument. See Notice of Final Results of the Twelfth Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 72 FR 13086 (March 20, 2007) (amended at 72 FR 208015), and accompanying Issues and Decision Memorandum at Comment 1(c) (CORE 12th Review Decision Memo). Nucor claims that Union has not identified how the minor physical differences between laminated and other painted CORE products render them non-comparable. Further, Nucor highlights Union's statement that laminated and painted products are produced on the same line and the only difference is the attaching of PET and PVC film instead of the color painting process. Additionally, Union does not distinguish between laminated and painted products in its product brochure. See Union's December 8, 2008, QR at Exhibit A-28. Moreover, Nucor disagrees with Union's claim that there are substantial differences in cost between laminated products and other painted products. Furthermore, Nucor argues that the CIT has already rejected any comparison between model match criteria using the DIFMER test as an appropriate means of determining model match criteria. Finally, Nucor asserts that differences between the prices of laminated CORE products and other painted CORE products are not recognized in the marketplace. See CORE 12th Review Decision Memo, and accompanying Issues and Decision Memorandum at Comment 1.

Nucor argues that Union presents no new evidence of industry-wide changes in laminated products. Nucor cites the 12th administrative review in this proceeding, where the Department determined that there is no common industry recognition on what constitutes laminated CORE products. Furthermore, Nucor argues that the definition used for laminated varies between respondent company. See Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 7513 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

Nucor asserts that the Department generally refrains from revising the model match criteria. They argue that the Department should be consistent across reviews as decided by the Department in the investigation and previous reviews. In addition, Nucor claims that the Department would have to undertake an examination of whether to apply revisions to the model match criteria for all companies. Moreover, Nucor states that respondents could improperly benefit by being allowed to alter the model match criteria. For example, respondents could change the model match so that higher priced products are not included in the price-to-price

comparisons in such a manner as to lower the margins calculated. See Timken Co. v. United States, 630 F. Supp. 1327, 1338 (Ct. Int'l Trade 1986).

Department Position:

The Department's practice is not to alter a model-match methodology developed at an earlier stage of a proceeding absent "compelling reasons" for the modification. See Fagersta, 577 F. Supp. 2d at 1277 ("Commerce's stated position that it will not modify an existing model-match methodology absent 'compelling reasons' has been recognized as a reasonable means of interpreting the statute"); SKF USA Inc. v. United States, 491 F. Supp. 2d 1354, 1363 (Ct. Int'l Trade 2007) ("Commerce does indeed express its preference for maintaining a stable methodology across reviews unless compelling reasons exist."), *aff'd*, 537 F.3d 1373 (Fed. Cir. 2008); see also Mittal Steel USA, Inc. v. United States, 2007 WL 2701369, *2 (Ct. Int'l Trade Aug. 1, 2007) (explaining that Commerce's purpose in requiring compelling reasons for modifications to model-match criteria is to maintain consistency). The Department refrains from revising the model-match criteria unless there is evidence that the criteria "'are not reflective of the merchandise in question,' that there have been changes in the relevant industry, or that 'there is some other compelling reason present which requires a change.'" See Fagersta, 577 F. Supp. 2d at 1277 (citing CORE 12th Review Decision Memo at Comment 1(b)).

In the 12th administrative review, the Department engaged in a detailed analysis of the sales and cost information submitted by the parties on the record of that review to support its continued reliance on the model-match methodology classifying laminated CORE within the painted category. See Analysis Memo for Laminated CORE Products, March 12, 2007 (12th Review Analysis Memo), attached as Attachment 3 to the Final Analysis Memo for Laminated CORE Products, March 15, 2010 (Laminated Analysis Memo), at Attachment 2. As part of that analysis, the Department compared the prices, costs and customers for laminated and painted CORE products separately for each respondent company. See id.

Union Steel asserts that there are physical characteristics that differentiate laminated and other painted CORE products. See Union's Case Brief at 34. Specifically, Union Steel claims that the physical differences render laminated products non-comparable with other painted products. As discussed below, although we agree that there are certain physical differences between laminated and other painted products, we disagree that these differences result in a significant commercial difference that would render the products non-comparable. In fact, there are physical differences that exist within each of the "other painted products." For example, in describing the physical characteristics of the products, the product brochure identifies several characteristics that are unique to each product.⁴⁴ Additionally, laminated products are included with painted and other products in the same product brochure, which is used by the company to market their products to customers.⁴⁵ If laminated CORE were such a different or unique product as claimed by Union Steel, the Department might reasonably expect to see record evidence that laminated CORE is marketed separately. The record evidence, however, supports the opposite conclusion.

The physical variations between laminated and other painted products within the "painted"

⁴⁴ See Union's January 14, 2009, Section A response at Exhibit A-28.

⁴⁵ See id.

category do not necessarily preclude product comparisons. These differences are not significant enough to warrant a major methodological revision to the established model-match criteria. When evaluating the differences between laminated and other painted CORE products articulated by Union, we reviewed record evidence that showed the similarities between these products, as well as the differences between these products. We found that there were differences in physical characteristics, end uses, costs and selling prices across all of these products.⁴⁶ However, there were also many common characteristics across all of these products. For instance, most of them undergo many of the same production processes. Union lists a number of production stages, some of which both laminated and other painted products pass through.⁴⁷ Furthermore, the Department's analysis of the record evidence shows that both laminated and other painted products are frequently sold through the same distribution channels to the same customers.⁴⁸ We also note that the reported gross unit price for a number of laminated sales is identical to the reported gross unit price of other painted products.⁴⁹ Moreover, we find that the range of costs for laminated and other painted CORE products coincide with each other.⁵⁰ The record shows that there are many differences and similarities between laminated and other CORE products, just as there are among and between all products. Thus, the differences between laminated and other painted products that are grouped within the same CONNUM are not greater than the differences observed for other products that are grouped into a single CONNUM, e.g. PVDF.

Furthermore, with regard to Union's contention that the DIFMER test be used to determine model match criteria, that is not the Department's practice. The Department applies a difference in merchandise adjustment when there are no products sold in the home market with identical model-match criteria, in which case the products which are most similar to the product sold in the U.S. are identified. For products which are identified based on the Department's product matching criteria as most similar, an adjustment is made to the home market sales price to account for the actual physical differences between the products sold in the U.S. and the home market or third country market. The 20 percent threshold for the DIFMER adjustment relies on period-specific costs, which may fluctuate over time, to make specific-adjustments in a proceeding; whereas the model-match criteria are meant to maintain consistency of product matching across segments of an antidumping proceeding. Revisiting our model match any time sales comparisons failed the DIFMER test would undermine this purpose.

Based on the Department's analysis, we disagree that certain physical differences between laminated and other painted products result in a "meaningful commercial difference" that would render the products non-comparable. Additionally, although there may be different end uses for laminated and other painted products, we disagree that this necessarily means that the products are non-comparable. As is evident from price lists and product brochures, each painted product is not uniquely end-use specific; instead, the end use of the painted products is frequently interchangeable.⁵¹ The Department does not find that the physical variations at issue preclude

⁴⁶ See Union's January 14, 2009, Section A response at Exhibit A-17.

⁴⁷ See *id.* at Exhibit A-27.

⁴⁸ See Laminated Analysis Memo.

⁴⁹ See *id.*

⁵⁰ See *id.*

⁵¹ See Union's January 14, 2009, Section A response at Exhibit A-17 and Exhibit A-287.

product comparisons. Thus, we find that the differences are not significant enough to warrant a major methodological revision to the established model-match criteria. See Pesquera, 266 F.3d at 1383-84.

B. Company Specific Issues

HYSCO

Comment 5: Date of Sale

US Steel argues that the Department should use invoice date as the date of sale. US Steel contends that invoice date is the presumptive and normal date of sale, and that HYSCO must demonstrate that shipment date is a more appropriate date for date of sale. US Steel states that HYSCO has failed to demonstrate that its reported shipment date is the actual date of sale. US Steel argues that HYSCO has acknowledged that price was subject to change up to the date of invoice, after the date of shipment. US Steel further maintains that HYSCO has not provided documentation showing that prices were fixed at the time of shipment.

HYSCO argues that the Department should not adjust HYSCO's date of sale. HYSCO asserts that the Department's practice is to find that the date of sale cannot occur after the date of shipment. HYSCO maintains that the Department has taken this position with respect to HYSCO in all prior administrative reviews, and that HYSCO's selling practices in the current review are consistent with those in past reviews.

Department Position:

The Department agrees with HYSCO that the date of shipment is the correct date of sale. The Department's regulations state that "{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale." See 19 CFR 351.401(i). It is the Department's normal practice to *not* consider dates subsequent to the date of shipment from the factory as appropriate for date of sale because once merchandise has been shipped, the material terms of sale are established.⁵² In the instant case, we see that the quantity is fixed at the time of shipment. Further, HYSCO provided documentation showing the booking of the sale price and quantity, i.e. the material terms of sale, on the date of shipment, before issuing an invoice to the customer.⁵³ The entries into HYSCO's accounting system are consistent with the amounts billed on the final invoice. Thus, in the instant case, we find that the material terms of sale are fixed on date of shipment.

⁵² See Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 64 FR 38756, 38768 (July 19, 1999), and accompanying Issues and Decision Memorandum at Comment 5.

⁵³ See HYSCO's April 10, 2008, supplement questionnaire response at exhibit 14.

Comment 6: Liquidation Instructions

HYSCO states that during the POR, HYSCO sold subject merchandise through two affiliates in the United States, HYSCO America Company (HAC) and HYSCO USA, Inc. (HHU). HYSCO maintains that in prior administrative reviews, the Department has applied the special rule set forth under section 772(e) of the Act to HYSCO's sales through HAC, and calculated constructed export price (CEP) based solely on HYSCO's sales through HHU. HYSCO states that, consistent with prior reviews, it did not report sales through HAC. HYSCO claims that one sale was made to the U.S. through HHU, in which the unaffiliated U.S. customer acted as importer of record. HYSCO maintains that it is inappropriate to apply this entry to entries of subject merchandise through HAC.

US Steel argues that the Department should not revise its liquidations instructions for HYSCO. Petitioner reasons that the Department may use the price of identical or other subject merchandise sold to an unaffiliated customer for purposes of determining the dumping margin for merchandise considered under the special rule. US Steel maintains that the application of the margin calculated for other importers is sufficient to apply to HYSCO's subject merchandise that falls under the special rule.

Department Position:

The Department agrees with HYSCO. Beginning in the 13th administrative review of CORE, and continuing until this review, the Department has applied the special rule for merchandise with value added after importation. See 19 CFR 351.402(c). For shipments through HAC that were further manufactured, we applied the rate calculated for other sales, *i.e.* sales through HHU, for the calculation of the antidumping duty margins. See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 51584, 51586 (September 10, 2007) (CORE 13 Prelim) (unchanged in the final results); Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 52267, 52270 (September 9, 2008) (CORE 14 Prelim) (unchanged in the final results). There is no information on the record that would suggest that HYSCO has changed or modified their business practices as compared to the two prior administrative reviews of this antidumping order. In regard to petitioner's argument, we find that HYSCO's sales through HHU are a more appropriate basis than the methodology proposed by US Steel because it maintains consistency with the Department's treatment of this issue in prior reviews. As a result, the Department will continue to apply the liquidation instructions to HYSCO and its two affiliates, HHU and HAC, consistent with the findings in the two prior reviews of CORE from Korea.

Comment 7: Major Input Adjustments

HYSCO argues that the Department should not make a major input adjustment for the final results. HYSCO asserts that if the Department bases its analysis on POR-wide (rather than quarterly) data, the difference between the transfer and market price is insignificant and should be disregarded by the Department. Additionally, HYSCO states that even if the Department

continues to base its analysis on the quarterly data, the record demonstrates that it purchased the affiliated inputs at arm's length based on the Department's "98-102" arm's length test.

Petitioners state that the Department correctly determined that it should apply the major input rule to HYSCO's purchases of inputs from its affiliated suppliers. The petitioners claim that when the Department evaluated HYSCO's major input data and applied 19 CFR 351.413 it found that regardless of whether POR average or quarterly costs are used, the differences in transfer and market prices are not insignificant. The petitioners also argue that the Department should not apply the standard from its "arm's-length test" to determine if the major input rule adjustment is insignificant because to do so would be a misapplication of the standard used by the Department when assessing whether sales of the foreign like product to affiliated companies should be included in the determination of normal value.

Department Position:

We disagree with HYSCO that the difference between its affiliated suppliers' transfer price and the market prices of the substrate coil during the POR was insignificant. See Post-Prelim Analysis Memo-HYSCO at Attachment 3.

Section 777A(a) of the Act provides the Department discretion in whether to disregard adjustments that are insignificant. The Department's regulations at 19 CFR 351.413 states "Ordinarily, under 777A(a)(2), an 'insignificant' adjustment is any individual adjustment having an *ad valorem* effect of less than 0.33 percent, or any group of adjustments having an *ad valorem* effect of less than 1.0 percent, of the export price, constructed export price, or normal value, as the case may be." Information on the record demonstrates that on both a quarterly and annual basis the transfer price between HYSCO and its affiliated suppliers is below market prices and is not insignificant.⁵⁴ Therefore, the Department does not find that the criteria of 19 CFR 351.413 are satisfied. In this case, the Department is exercising the discretion granted to it in the Act and have accordingly made an adjustment to certain affiliated party purchases in accordance with the major input rule. Therefore, for these final results we have continued to apply the Department's major input adjustment.

We disagree with HYSCO that the Department should allow a "98-102 arm's-length" range when analyzing the affiliated purchases of substrate. The Department uses the 98 to 102 percent "arm's length" range in determining whether to rely on sales between affiliated parties or require downstream sales and cost information. However, this has never been the standard relied upon by the Department in applying the major input rule. In applying the major input rule, we require that affiliated party prices are above the affiliates cost of production and market prices.

The calculation HYSCO provided in its January 20, 2010 brief to support its argument that the overall POR difference between transfer price and market value was below the Department's threshold for making an adjustment is erroneous. The calculation is incorrect in that it does not take into consideration substrate purchases from both of HYSCO's affiliates during the POR. Instead, it is calculated based on only one affiliate. HYSCO's Post-Preliminary Analysis Memo at Attachment 3 shows the by-quarter percent adjustment of each affiliate, as well as the overall

⁵⁴ See HYSCO's October 16, 2009, section D supplemental response at Exhibit SD3-4.

quarterly percent adjustment. Based on this analysis, the Department has continued to apply the major input adjustments to HYSCO's affiliated substrate purchases for the final results.

The POSCO Group

Comment 8: Inadvertent Omission of Certain U.S. Sales from POSCO's Margin Calculations in the Post-Preliminary Analysis

The POSCO Group asserts that the Department omitted certain U.S. sales from its margin calculation, specifically, certain merchandise that were sold prior to the POR and entered into the United States during the POR. The POSCO Group explains that the Department's analysis was limited to sales that were sold during the POR. The POSCO Group claims that the certain omitted sales were back-to-back CEP sales and insists the Department should include the POSCO Group's entire sale that entered the United States. Otherwise, the POSCO Group claims that the Department should clarify to which universe of sales it will include when using the alternative quarterly cost methodology.

US Steel also comments that, in the Department's post-preliminary calculation memorandum, the Department noted that the POSCO Group reported its U.S. sales based on entry date, and therefore, the POSCO Group's U.S. sales should include those sales that entered during, but were sold prior to, the POR. Moreover, petitioner argues that in order to include these sales in the Department's quarterly cost methodology, the Department must include a pre-POR quarter in the final results.

Department Position:

The Department agrees with the POSCO Group and US Steel. The Department inadvertently omitted certain sales from the U.S. margin program during the POSCO Group's post-preliminary analysis.⁵⁵ For the final results, the Department will include those omitted sales of the POSCO Group's to the margin program.

Comment 9: The Treatment of Certain SAS Programming for the POSCO Group

The POSCO Group asserts that the Department in the Preliminary Results adjusted the POSCO Group's reported U.S. and home market sales files to collapse CTYPE1H/U code "30" with CTYPE1H/U "60" and it created revised control numbers (CONNUMs) to reflect the change. The POSCO Group asserts that the Department inadvertently used the variable name "RCONNUMH" to create the revised CONNUM for the U.S. market sales database instead of "RCONNUMU." The POSCO Group states that the Department should use the correct variable as it did in the post-preliminary analysis for the final results.

⁵⁵ See Memorandum from Victoria Cho to James Terpstra, entitled Quarterly Cost Calculation Memorandum for Pohang Iron & Steel Co., Ltd. and Pohang Coated Steel Co. in the 2007/2008 Administrative Review on Corrosion-Resistant Carbon Steel Flat Products from Korea, dated December 30, 2009; see also Memorandum from Ji Young Oh to Neal M. Halper, entitled Cost of Production and Constructed Value Calculation Adjustments for the Post Preliminary Analysis – The POSCO Group, dated December 29, 2009.

The petitioner did not comment on this issue.

Department Position:

The Department agrees with the POSCO Group and will use the correct variable “RCONNUMU” as named in the post-preliminary analysis for these final results. In the Preliminary Results, the wrong variable was inadvertently used to rename the CONNUM in the U.S. market. To correctly collapse CTYPE1U, the Department will use the changes made as part of the post-preliminary analysis.

Comment 10: The Department’s Calculation of POCOS’ Loans in the Calculation of the Home Market Interest Rate

US Steel urges the Department to exclude the interest expense associated with loans obtained for export financing from calculating POCOS’ home market interest rate. Petitioner argues that export loans are based on the unique risks associated with exporting and POCOS’ interest rate does not reflect the usual and reasonable commercial behavior with respect to borrowing for sales in the home market. Petitioner argues that in other cases the Department has excluded the interest expense associated with loans obtained for export financing.⁵⁶ For the final results, Petitioner recommends that the Department recalculate the POSCO Group’s home market short-term interest rate to exclude POCOS’ interest expense for export loans.

The POSCO Group argues that in calculating its short-term interest rate associated with Korean won borrowings for POCOS, POSCO included all loans denominated in Korean won. The POSCO Group asserts that this reporting methodology was accepted by the Department in the fourteenth administrative review. Moreover, the POSCO Group argues that there is no evidence that POCOS’ loans were used solely for export sales or subsidized as in the cases cited by petitioner. The POSCO Group claims that the Department excluded export loans in previous cases mentioned by petitioner because it verified that the loans in questions were explicitly tied to export sales.⁵⁷ In addition, the POSCO Group states that the Department has, in the past, included export loans in calculating short-term interest expense for the purpose of determining home market credit expense.⁵⁸

Department Position:

We agree with the POSCO Group and, thus, no change is needed for the final results. When calculating its home market credit expense, the POSCO Group used short-term interest rates associated with Korean Won borrowings and included all loans denominated in Korean Won.

⁵⁶ See Certain Steel Concrete Reinforcing Bars from Turkey; Final Results of Antidumping Duty Administrative Review, 66 FR 56274 (November 7, 2001), and accompanying Issues and Decision Memorandum at 6; Porcelain on-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review, 58 FR 43327, 43333 (August 16, 1993); see also Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review, 55 FR 21061, 21062 (May 22, 1990).

⁵⁷ See id.

⁵⁸ See Extruded Rubber Thread From Malaysia, Final Results of Antidumping Duty Administrative Review, 62 FR 33588 (June 20, 1997), and accompanying Issues and Decision Memorandum at Comment 5.

The relevant facts have not changed since the fourteenth review of CORE. In calculating short-term interest rates the Department will not consider the loans that are entirely associated with activities outside the respective market.⁵⁹ Here, the Korean Won denominated loans in question were not tied solely to export sales and the POSCO Group reported all of its credit expenses based on short-term interest rates denominated in Korean Won. Accordingly, we find that these Korean Won denominated loans are appropriately considered in determining the short-term home market interest rate.

Comment 11: The Department's Calculation of POSAM's Indirect Selling Expense

US Steel argues that the POSCO Group's allocation of its U.S. indirect selling expense (ISE) incurred by its U.S. affiliate, POSAM, using payroll information accepted by the Department in prior administrative reviews should be rejected for the final results because it improperly excludes certain expenses that pertain to general company administration and it is unreasonable and distortive.

Petitioner asserts that according to pursuant to section 772(d)(1)(D) of the Act, the POSCO Group cannot attribute ISEs to specific transactions and allocate ISE over all sales of the subject merchandise. Petitioner comments that the Department normally calculates ISE ratio of subject merchandise sale to total sales and then applies that ratio to the total ISE reported for the POR. Petitioner asserts that the Department may accept another methodology if it determines that the alternative methodology is both reasonable and non-distortive. Petitioner states that the POSCO Group, however, clearly failed to meet its burden here.

Petitioner asserts that the expenses associated with POSAM's investment management should not be excluded from the Department's calculation of INDIRSU. Petitioner contends that it is the Department's practice to include G&A expenses that are incurred in support of the respondent's U.S. sales affiliate, such as expenses associated with investment management.⁶⁰ Moreover, Petitioner contends that the facts in this review are different from those from the prior reviews. Because there is no evidence as to how to allocate the function of the one employee and its investment management functions, Petitioner states that there is no way to allocate such expenses in a way that would not produce distortions. Thus, Petitioner urges the Department to allocate the POSCO Group's INDIRSU using the relative sales value methodology for the final results.

The POSCO Group asserts that the Department should continue to use its U.S. ISE calculation methodology for POSAM consistent with the twelfth and fourteenth administrative reviews. The POSCO Group claims that it calculated its INDIRSU ratio by segregating the sales of products purchased from POSCO, sales of non-subject merchandise, and management of POSAM's U.S. investments. Then, the POSCO Group explains that it uses payroll expenses of the employees performing these activities and then allocated common expenses incurred in each of the three categories of employees' activities.

⁵⁹ See Stainless Steel Sheet and Strip in Coils From Italy: Final Results of Antidumping Duty Administrative Review, 67 FR 1715 (January 14, 2002), and accompanying Issues and Decision Memorandum at Comment 4.

⁶⁰ See Aramide Maatchappij V.o.F. v. United States, 901 F. Supp. 353, 360 (Ct. Int'l Trade 1995).

The POSCO Group argues that POSAM does not solely function as a selling company, but it also employs an individual that is fully dedicated to managing POSAM's investments. The POSCO Group claims that this activity is not a selling activity and thus this employee's salary was properly excluded by the POSCO Group from the pool of selling expenses used to calculate its INDIRSU ratio.⁶¹ Thus, the POSCO Group states that for the purposes of calculating INDIRSU, the Department should only include those expenses and sales revenues associated with POSAM's payroll, which is related to the sale of subject merchandise during the POR.

The POSCO Group argues that the CIT has repeatedly sustained the Department's decisions in which the Department accepted alternative calculation methodologies for ISE.⁶² The POSCO Group asserts that the CIT agreed that the Department's decision was reasonable and appropriate to allocate ISEs using alternative methodologies, observing that "Commerce explained that the circumstances in this case made it more appropriate to allocate certain ISEs using methodologies other than sales value."⁶³

Department Position:

The Department agrees with the POSCO Group. As in the prior administrative reviews, the POSCO Group correctly allocated its U.S. ISE and calculated its U.S. ISE ratio related to the sale of subject merchandise. When calculating INDIRSU, the Department excludes those expenses that are not related to selling subject merchandise.⁶⁴ The POSCO Group has demonstrated that the expenses associated with POSAM's investment manager were not related to selling subject merchandise, but only related to managing investments. The POSCO Group's payroll methodology is not distortive as Petitioner claims because the POSCO Group correctly calculated INDIRSU by excluding those expenses that were not associated with the sale of subject merchandise or its selling activities. Thus, the POSCO Group correctly calculated its INDIRSU by excluding expenses related to POSAM's sales of non-subject merchandise and its non-selling activities. Therefore, for these final results, a change to the POSCO Group's calculation of INDIRSU is not warranted.

Comment 12: Financial Expense Ratio Calculation

In the post-preliminary analysis, the Department made an adjustment to exclude gains and losses on the disposition and valuation of trading securities from the calculation of POSCO's financial expense ratio. POSCO argues that the Department should include these items in the calculation of financial expense ratio since they represent short-term interest income. POSCO asserts that the disposition and valuation of trading securities are integral components of POSCO's short-

⁶¹ See Antifriction Bearings and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part, 69 FR 55574 (September 15, 2004), and accompanying Issues and Decision Memorandum at Comment 4.

⁶² See Micron Tech., Inc. v. United States, 23 CIT 55 (1999) (appeal arising out of the Department's determination in Dynamic Random Access Memory of One Megabit or Above from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 61 FR 20216 (May 6, 1996)).

⁶³ Id. at 62.

⁶⁴ See Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Spain, 67 FR 35482 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 12; see also Diamond Sawblades from China at Comment 20.

term monetary management for general operations. POSCO maintains that these securities are acquired principally for the purpose of reselling in the short term and are classified under Korean Generally Accepted Accounting Principles (GAAP) as “trading securities.” POSCO contends that the trading securities at issue are beneficiary certificates such as public and corporate bonds and had maturities of less than one year. Thus, POSCO maintains that including these gains and losses in the calculation of financial expense ratio is in accordance with Department’s practice and the Department should not adjust POSCO’s reported financial expense ratio for the final results.⁶⁵

Petitioners argue that the Department correctly excluded the gains and losses on disposition and valuation of trading securities from the calculation of POSCO’s financial expense ratio. Petitioners assert that the amounts in question are clearly gains and losses from POSCO’s investment activities and the Department’s practice is to exclude investment income from the financial expense ratio calculation.⁶⁶ Petitioners also claim that the income item addressed in Cold-Rolled Carbon Steel Flat Products from Korea, the case cited by POSCO, was related to interest income rather than investment income. Furthermore, petitioners contend that the Department made the same adjustment in the prior administrative review and POSCO did not raise this issue in its case brief in the prior proceeding. Thus, petitioners maintain that the Department should continue to adjust POSCO’s reported financial expense ratio for the final results.

Department Position:

We agree with petitioners. The Department has determined that POSCO’s gains and losses on the disposition and valuation of trading securities are from investment activities and, therefore, it is not appropriate to include these items in the financial expense ratio calculation. In accordance with section 773(f)(1)(A) of the Act, the Department has relied on the records of POSCO since their records are kept in accordance with the GAAP of Korea and reasonably reflect the costs associated with the production and sales of the merchandise.

We reviewed POSCO’s audited financial statements found in the section D supplemental questionnaire response of August 7, 2009 at exhibit 1. According to POSCO’s audited financial statements, the trading securities were classified separately from cash and cash equivalents and short-term financial instruments on the balance sheet. We noted that the trading securities were classified as investments in the security investment section of the financial statement notes. Consequently, we find that the gains and losses at issue are from an investment trading activity and do not represent interest income related to financing the company’s general operation. The

⁶⁵ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Korea, 67 FR 62124 (October 3, 2002), and accompanying Issues and Decision Memorandum at Comment 8 (Cold-Rolled Carbon Steel Flat Products from Korea).

⁶⁶ See Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea, 71 FR 29310 (May 22, 2006), and accompanying Issues and Decision Memorandum at Comment 38 (Diamond Sawblades from Korea); Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy, 67 FR 1960 (January 15, 2002), and accompanying Issues and Decision Memorandum at Comment 1; and Stainless Steel Wire Rod from Taiwan: Final Results of Antidumping Duty Administrative Review, 66 FR 52587 (October 16, 2001), and accompanying Issues and Decision Memorandum at Comment 3.

Department's normal practice is to exclude gains and losses from investing activities from the financial expense ratio calculation. See Diamond Sawblades from Korea; Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 67 FR 55780 (August 30, 2002), and accompanying Issues and Decision Memorandum at Comment 40; see also CORE 14 Prelim (unchanged in the final results). Furthermore, POSCO's reliance on Cold-Rolled Carbon Steel Flat Products from Korea is misplaced. In that case, the Department verified that the items at issue were short-term interest income generated from money market accounts.⁶⁷ Consequently, for the final results, the Department continues to exclude the gains and losses on disposition and valuation of trading securities from the financial expense ratio calculation.

Comment 13: Margin Calculation Error for Applying General and Administrative Expense Ratio

During the POR, POCOS, an affiliated company, received cold-rolled coils from POSCO and produced the merchandise under consideration. POSCO and POCOS were collapsed for reporting purposes. In the post-preliminary analysis, the Department reapplied POSCO's reported general and administrative (G&A) expense ratio to each CONNUM for the margin calculation because each CONNUM's reported total cost of manufacturing (TOTCOM) was recalculated to reflect the alternative cost averaging calculation methodology. However, the collapsed cost file did not identify the portion of each CONNUM's TOTCOM relating to cold-rolled coils transferred from POSCO versus POCOS' TOTCOM. Thus, the Department derived an overall weighted-average G&A expense ratio for the collapsed entity and applied this ratio to each CONNUM's recalculated TOTCOM for the post-preliminary results (i.e., quarterly cost TOTCOM). POSCO argues that its reported G&A expense was the result of weight-averaging the G&A expense of two companies based on cold-rolled coil transfers and further processing costs. As a result, the Department's overall weighted-average G&A expense ratio for the collapsed entity does not reflect the slight variation of product-specific G&A expenses, as they were originally reported. POSCO asserts that the Department should allocate POSCO's G&A expense to transferred cold-rolled coils and POCOS' G&A expense to POCOS' TOTCOM for producing the merchandise under consideration.

Petitioners did not comment on this issue.

Department Position:

We agree with POSCO that the Department's post-preliminary method does not reflect the slight variation of G&A expense for each CONNUM as they were originally reported. POSCO submitted on the record a combined cost file for the collapsed entity in addition to individual company cost files. For the final results, we have used POSCO's submitted combined cost file to calculate a CONNUM specific entity-wide G&A expense ratio to apply to each CONNUM's weighted-average annual indexed TOTCOM. This methodology preserves allocated G&A expense differences between CONNUMs based on the cost of cold-rolled coil and POCOS'

⁶⁷ We find that, while the trading securities are separately classified as investments, the money market fund is classified under cash and cash equivalents. See POSCO's August 7, 2009, section D supplemental questionnaire response at exhibit 1A, pages 3, 12-13 and 18.

further processing. Specifically, we used the combined cost file to calculate each CONNUM's G&A expense ratio by dividing each CONNUM's reported G&A expense by each CONNUM's reported TOTCOM. Each CONNUM's G&A expense ratio from the combined cost file was then applied to each CONNUM's indexed weighted-average annual TOTCOM in the collapsed cost file which the Department used for the margin calculation in the final results.

Union

Comment 14: Window Period Sales

Union states that it reported all of its U.S. sales of subject merchandise that entered the United States during the period of review (*i.e.*, August 1, 2007, through July 31, 2008). Union's U.S. sales have sale dates from May, 2007, through July, 2008. Union states that it reported home market sales from February 1, 2007, through September 30, 2008, the period beginning three months before the first U.S. sale, and ending two months after the last U.S. sale. Union asserts that the Department set the window period for exactly three months before the first U.S. sale, and exactly two months after the last U.S. sale, thus excluding the early portion of February and late portion of September from the analysis. Union contends that it is the Department's practice to calculate the window period using the three full months before and the two full months after the first and last U.S. sale as it did in the previous review. Union argues that the Department should set the window period to begin on February 1, 2007, and end September 30, 2008.

Department Position:

We disagree with Union. Union is referring to the calculation methodology used in the preliminary results, on August 31, 2008. However, on December 16, 2009, the Department implemented the use of quarterly cost in the calculation of the antidumping duty margins for the instant case in which we eliminated using any window period. In the previous review, the Department calculated Union's antidumping margin using POR-average costs. In implementing quarterly costs, the Department explained that we have not made price-to-price comparisons outside of a quarter in our margin calculation. See Post-Preliminary Analysis Memo-Union at section C ("Elimination of the Window Period for Price-to-Price Comparisons"). Moreover, the Department's practice of eliminating the window period when implementing quarterly costs has been upheld by the CIT. See Nucor, Slip Op. 10-6 at 1-2.

Comment 15: Treatment of Overrun Sales

US Steel argues that the Department should not have excluded certain overrun prime merchandise sold in the home market from the margin calculation. The petitioner claims that these sales were not outside the ordinary course of trade.

The petitioner cites several cases where the Department states it is the Department's practice to disregard home market sales not made in the ordinary course of trade. See US Steel's Case Brief at 4. Examples from the SAA include "merchandise produced according to unusual product specifications, merchandise sold at aberrational prices, or merchandise sold to unusual terms of sale." SAA at 834. The petitioner states that the Department normally looks at qualitative and

quantitative factors, such as different standards and uses, the comparative volume of sales and number of customers, the difference in price and profitability of the sales at issue, and whether the sales were overruns or seconds. See Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Final Results of Antidumping Duty Administrative Review, 73 FR 31961 (June 5, 2008), and accompanying Issues and Decision Memorandum at Comment 2. Furthermore, the burden is on the party seeking to exclude sales from the margin calculation that the sales are outside the ordinary course of trade. See NTN Corp. v. United States, 306 F. Supp. 2d 1319, 1344-47 (Ct. Int'l Trade 2004).

In its proprietary case brief, the petitioner argues that certain qualitative factors demonstrate that the standards and uses of the merchandise are similar for certain overrun sales. Next, the petitioner argues that Union's classification alone of a product as an overrun is not dispositive. The Department also looks at whether or not a product is a second, as well as other factors to determine if a product is sold in the ordinary course of trade. See Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey, 70 FR 73447 (December 12, 2005), and accompanying Issues and Decision Memorandum at Comment 2. Finally, the petitioner argues that the marketing of overruns does not differ from the sale or marketing of non-overruns as in previous reviews. See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea Notice of Final Results of the Thirteenth Administrative Review, 73 FR 14220 (March 17, 2008), and accompanying Issues and Decision Memorandum at Comment 10.

The petitioner argues that the Department uses quantitative factors, such as price and profit to help determine whether or not a product should be considered an overrun. See US Steel's Case Brief for Union at 9-10. In addition, the petitioner states that the Department considers the volume of sales and the number of customers. The petitioner provides an analysis by volume of sales and customers to support their contention. See US Steel's Case Brief for Union (proprietary version) at 10-12. Moreover, the petitioner argues that, even if overruns are a very small percentage of the total volume of Union's prime sales, that factor would not dictate that the sales are outside the ordinary course of trade. See Small Diameter Carbon and Alloy Seamless Standard Line, and Pressure Pipe from Romania: Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part, 70 FR 7237 (February 11, 2005), and accompanying Issues and Decision Memorandum at Comment 14.

Union explained in its rebuttal brief that an overrun is surplus production left over after production for an export order is completed. The merchandise is then entered into inventory for sale in the domestic market. Union asserts that this is the first time the petitioner argued that overrun sales should be included. Union states that the Department has consistently treated overrun sales as outside the ordinary course of trade since the final results in the second administrative review. See, e.g., Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea, 67 FR 11976 (March 18, 2002), and accompanying Issues and Decision Memorandum at Comment 7. Union notes that, in the twelfth review, the petitioner objected when the Department inadvertently included overrun sales. Union also notes that, in the thirteenth review, the petitioner requested that the Department include overrun sales sold through the e-business sales channel, but the request was denied. Moreover, Union argues that the petitioner has not

identified any changes in Union's sales practices that would support a change in the current review.

Finally, Union points out that, in the second review, the Department found that the product characteristics and costs associated with POSCO's overrun prime merchandise were the same as those associated with non-overrun prime merchandise. Union also notes that the Department found that the profit and percentage of overrun sales in POSCO's home market sales were more than insignificant. However, the Department rejected POSCO's request to include the overrun sales in its margin calculation. See Certain Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18404, 18436-37 (April 15, 1997).

Department Position:

We agree with the petitioner. Specifically, we have included all of Union's sales identified as overrun sales in our margin calculation. The Department's practice is to re-examine sales which may be outside the ordinary course of trade based on the record evidence in the current review, as opposed to prior reviews. See Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 17581, 17585 (April 10, 1997). Therefore, we have re-examined the record and found that circumstances surrounding Union's overrun sales warrant the inclusion of these sales in our margin calculation. As the petitioner argues, there are various factors that the Department looks at to determine whether a sale identified as an overrun will be treated as a sale made out of the ordinary course of trade.

First, Union did not meet any of the factors as mentioned in the SAA, such as merchandise produced according to unusual product specifications, merchandise sold at aberrational prices, or merchandise sold to unusual terms of sale. On page 3 of Union's February 5, 2009, Section B questionnaire response, Union states, "{o}verruns are domestic sales of merchandise originally produced for export orders." Union's response gives no indication, and neither does the sales information submitted for Union, that overruns are unusual product specifications, sold at aberrational prices, or sold with unusual terms. Furthermore, on page 6 of Union's June 24, 2009, supplemental questionnaire response, Union states, "By definition, an overrun is surplus production left over after production for an export order is completed, which is entered into inventory and sold "as is" in the domestic market. Accordingly, merchandise classified as overruns did not undergo any additional production processes that were not also applied to the original export order." Moreover, according to Union's response, "Union's and UNICO's sales in the home market are made from inventory." See Union's January 24, 2009, Section A questionnaire response at 25.

Second, as noted by the petitioner, the Department examines various other factors, such as price and profit differentials between sales of overruns and ordinary production and whether the number of buyers, the sales volume and quantity of overruns are dissimilar. Consistent with that approach, we agree with US Steel's analysis that the record evidence supports the conclusion that Union's sales identified as overruns are not made outside of the ordinary course of trade. See US Steel's Case Brief for Union (proprietary version) at 10-12.

Comment 16: Union's General and Administrative and Financial Expense Ratios

Petitioners argue that it is the Department's well-established practice to use the financial statements for the fiscal year that most closely corresponds to the POR. As a result, the Department should use Union's fiscal year 2008 financial statements for G&A expenses and Union's parent company's, Dongkuk Steel Mill Co., Ltd. (DSM), 2008 consolidated financial statements to calculate the interest expense ratio. Petitioners point out that both Union's and DSM's 2008 financial statements overlap the POR by seven months, whereas the 2007 financial statements for both companies overlap the POR by only five months. Petitioners add that in the past—including the immediately preceding administrative review in this case (i.e., CORE 14 Prelim) the Department selected the financial statements that overlap the POR by seven months rather than the financial statements that overlap the POR by only five months.

Union argues that the 2007 financial statements are the statements that “most closely correspond” to the home market sales reporting period. Union asserts US Steel does not take into account the Department's contemporaneous product matching regulation (known as the “90/60-day rule”) and thus, the actual home market sales reporting period runs from March 2007 through September 2008. See 19 CFR 351.414(e)(2). As a result, the majority of this period falls within 2007 (10 months out of 19).

Union also argues that the use of the 2007 statements is consistent with the Department's past practice in this and other cases. Union cites Light-Walled Rectangular Pipe and Tube from Mexico: Notice of Final Determination of Sales at Less Than Fair Value, 69 FR 53677 (September 2, 2004) (LWR from Mexico), where the Department was faced with a period of investigation that evenly straddled two fiscal years. In that case, the Department determined to use the earlier fiscal year. See LWR from Mexico, and accompanying Issues and Decision Memorandum at Comment 24.

Finally, Union states that the use of DSM's 2008 financial statements would significantly distort the calculation of Union's interest expense because of a huge change in the net foreign currency transaction and translation loss between the two fiscal years due to depreciation of the won. Union argues that because foreign currency transaction and translation losses are considered period costs by the Department, these expenses can only be determined at the end of the fiscal year, when the year-end exchange rate is known. In this case, the fiscal year ended on December 31, 2008, five months after the close of the POR, and even longer after the production of all Union's merchandise sold during the POR. Union claims that it would have had no way of factoring in these aberrational year-end costs when Union set its home market sales prices during the POR.

Department Position:

We agree with petitioner and have revised Union's COP to include G&A and financial expense ratios based on the 2008 fiscal year financial statements.⁶⁸ The Department's standard practice

⁶⁸ We note that all three respondents have the same fiscal year and we are using the 2008 fiscal year financial statements for each of them.

in calculating the G&A expense ratio is to use “the full-year G&A expense and cost of goods sold reported in the company’s unconsolidated, audited fiscal year financial statements for the fiscal year that most closely corresponds to the period of investigation or period of review.” Antidumping Manual, Ch. 9 at 7, available at <http://ia.ita.doc.gov/admanual>. Similarly, the Department typically calculates a company’s net financial expenses ratio by using “the full-year net financial expenses and cost of goods sold reported in the consolidated, audited fiscal year financial statements for the period that most closely corresponds to the period of investigation or period of review ” Id. The Department consistently applies those principles in its administrative proceedings. See, e.g., Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review, 72 FR 51791 (September 11, 2007), and accompanying Issues and Decision Memorandum at Comment 1; Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review, 67 FR 78417 (December 24, 2002), and accompanying Issues and Decision Memorandum at Comment 8 (Steel Butt-Weld Fittings from Taiwan Decision Memo).

The POR in this segment runs from August 1, 2007 through July 31, 2008. Union’s 2007 fiscal year financial statements cover the period January 1, 2007 through December 31, 2007. The period covered by Union’s 2008 fiscal year financial statements is January 1, 2008 through December 31, 2008. Thus, the 2008 financial statements overlapped seven months of the POR, whereas the 2007 financial statements overlapped only five months of the POR. Because Union’s 2008 financial statements included a greater portion of the POR, we find these statements the more appropriate basis for the G&A and financial expense ratios.

The use of the 2008 fiscal year financial statements for the G&A and financial expense ratios is consistent with the Department’s practice. In virtually all past cases, the Department has determined which financial statements most closely correspond to the POR by examining which financial statements overlap the POI/POR by the greatest number of months. See, e.g., Steel Butt-Weld Fittings from Taiwan Decision Memo, and accompanying Issues and Decision Memorandum at Comment 8. Union disputes this long-standing practice, relying primarily upon LWR from Mexico, in which the Department relied on financial statements from the earlier of two fiscal years. In LWR from Mexico, however, the period of review was split equally between two fiscal years, with six months in each. See LWR from Mexico, and accompanying Issues and Decision Memorandum at Comment 24. Despite Union’s efforts to downplay the math, the majority of the POR in this case took place in Union’s 2008 fiscal year. Union contends that the Department’s normal practice is undermined by its treatment of the G&A expense and financial expense issues in prior segments of the proceeding. The Department acknowledges that in prior administrative reviews it may have inadvertently accepted Union’s reporting based on the earlier set of the financial statements for its calculations of G&A and financial expense ratios. However, we note that in the 2006/2007 administrative review, the segment immediately preceding this review, the Department used Union’s later financial statements because they most closely correspond to the POR. Despite Union’s claim that in prior administrative reviews the financial statements for later fiscal years were not available when it submitted the information to the Department, in this review, however, the financial statements for the later period are available.

We disagree with Union’s attempt to cloud the Department’s normal practice with its claim that

the Department should include the home market sales “window” period, which includes the 90 days before and 60 days after the POR, when determining which financial statement most closely corresponds to the POR. Our past practice has been to consistently ignore the window period when determining which financial statement most closely corresponds to the POR. As Union’s reported cost information is based on its costs incurred during the POR only, determining which fiscal year most closely corresponds to the POR should also be analyzed based on the POR only.

Union also contends that reliance upon 2008 fiscal year financial statements led to distortions in the margin calculation because it could not have factored into its home market prices post-period of review events, such as year-end adjustments and changes in net foreign currency transactions and translations. Union fails to substantiate its assumption that it was completely unaware of pending end-of-fiscal year 2008 adjustments when setting home market prices during the POR. Moreover, if taken to its logical extension, Union’s contention would lead to absurd results. For instance, if the period of review was December 1, 2007, through November 30, 2008, rather than August 1, 2007, through July 31, 2008, Union would still be making the same argument that in setting home market prices it could not account for post-period events such as year-end adjustments at the close of the January-December fiscal year, even though the POR and Union’s 2007 fiscal year would have overlapped by 11 months. From Union’s view, the Department would not be able to use a company’s annual financial information even if there was near perfect symmetry between the POR and that company’s fiscal year. Union’s claim that it had no way to factor in year-end adjustments related to foreign currency transactions and translation is unpersuasive. As evidenced by the financial statements, Union’s parent, DSM, is a multinational company continuously buying and selling in foreign currencies creating significant positions susceptible to foreign currency gains and losses on translations. It is not reasonable for the Department to assume that, as part of normal business operations, DSM and Union were unaware of the changing foreign currency positions. Although DSM may record in its books and records the affects of foreign currency translations at the end of the fiscal year, foreign exchange transaction gains and losses and borrowing activity occur throughout the year. Accordingly, we disagree that the company was oblivious from January to July 2008 of the impact that their foreign currency positions and transactions would have on the fiscal year income statement results. For seven months of the POR in 2008, the foreign exchange gains and losses and interest expenses were generally known. Arguably, the year-end 2008 financial statements are a better reflection than their year-end 2007 counterparts, which fail to include the effect of foreign currency changes for the majority of the POR. Likewise, year-end adjustments are normally comparable from year to year, and any out of the ordinary adjustments are normally known prior to the end of the year.

Although the decline in the value of the Korean Won occurred more rapidly in the post POR period of 2008, this in of itself is not conclusive. The financial expense ratio is influenced by many factors, not simply the movement of exchange rates. Other factors, such as the timing of costs and sales, the timing and extent of borrowing, and the length of time short-term and long-term receivables and payables are outstanding, all contribute to the company’s net financial expense. Normally, large multinational companies like DSM try to minimize the risk associated with exchange rate changes by hedging their exposure to any one foreign currency. The notes to DSM’s 2008 audited financial statements state that DSM engages in foreign currency swaps and hedging contracts in order to try to minimize its exposure to foreign currency fluctuations. See

Union's September 26, 2009, section D supplemental response at Exhibit D-29. The fact that the company's hedging results did not turn out favorably is no reason for the Department to deviate from its normal practice in using the audited financial statements for the fiscal year that most closely relates to the POR.

Finally, Union proposes an alternative approach used almost 15 years ago and under different circumstances for calculating its G&A and financial expense ratios by weight-averaging the 2007 and 2008 data. In support of its proposal, Union cites to Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada; Final Results of Antidumping Duty Administrative Reviews, 61 FR 13815, 13829 (March 28, 1996) (CTL Plate from Canada 93/94), in which the Department used annual 1993 and 1994 financial statements, and verified an actual POR financial expense. Admittedly, the Department "deviat[ed] from [its] normal practice" because of the unique circumstances presented by the verified information in that review. See CTL Plate from Canada 93/94 at 13829. In addition to being almost 15 years old and clearly not consistent with recent practice, the POR for CTL Plate from Canada 93/94 was from February 4, 1993 through July 31, 1994. That POR covered 11 months of one fiscal year 1993, and 7 months of fiscal year 1994. In other words, the POR covered a majority of two different fiscal years. Absent similar circumstances in this case, the Department has reasonably determined that a departure from its normal practice of selecting the single set of fiscal year financial statements that most closely correspond to the POR is not warranted.

Recommendation:

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

Kim Glas
Acting Deputy Assistant Secretary
for Import Administration

Date