

DATE: March 14, 2011

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

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

SUBJECT: Issues and Decisions for the Final Results of the 16th Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea (2008-2009) (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 II.A and II.B, infra. Outlined below is the complete list of the issues in this review for which we have received comments from the interested parties.

I. Background

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 22, 2009, for each of the aforementioned respondents. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 74 FR 48224 (September 22, 2009). On September 14, 2010, the Department published the preliminary results of the antidumping duty administrative

¹ On January 14, 2011, United States Steel Corporation (US Steel) filed case briefs (US Steel's Case Briefs). On January 14, 2011, Hyundai HYSCO (HYSCO), Pohang Iron & Steel Co., Ltd. (POSCO) and Pohang Coated Steel Co., Ltd. (POCOS) (collectively, the POSCO Group), Union Steel Manufacturing Co., Ltd. (Union), and Dongbu Steel (Dongbu) (collectively, respondents), filed case briefs (respectively, HYSCO's Case Brief, the POSCO Group's Case Brief, Union's Case Brief, and Dongbu's Case Brief). On January 14, 2011, LG Hausys, Ltd., and LG Hausys America, Inc. (collectively, LG) submitted its case brief, stating that it supports the arguments submitted by Union and Dongbu in their case briefs because LG's dumping margin would be based on the respondents subject to individual examination. On January 21, 2011, US Steel and Nucor Corporation (Nucor) (collectively, petitioners) filed rebuttal briefs (respectively, US Steel's Rebuttal Brief and Nucor's Rebuttal Brief). On January 21, 2011, respondents filed rebuttal briefs (respectively, HYSCO's Rebuttal Brief, the POSCO Group's Rebuttal Brief, Union's Rebuttal Brief, and Dongbu's Rebuttal Brief).

review for CORE from Korea. See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of the Sixteenth Antidumping Duty Administrative Review, 75 FR 55769 (September 14, 2010) (Preliminary Results).

In this review we individually examined four manufacturers/exporters of the subject merchandise: HYSCO, the POSCO Group, Dongbu and Union. On December 7, 15, and December 21, 2010, respectively, the Department released verification reports for Union, HYSCO, and the POSCO Group. See Verification of the Sales Response of Hyundai HYSCO in the Antidumping Review of Corrosion Resistant Carbon Steel Flat Products (CORE) from the Republic of Korea from Jolanta Lawska, International Trade Compliance Analyst, to Melissa Skinner, Office Director (December 15, 2010) (HYSCO's Sales Verification Report); Verification of the Sales Response of Union Steel Manufacturing Co., Ltd. in the Antidumping Review of Corrosion Resistant Carbon Steel Flat Products from the Republic of Korea (Union's Verification Report); and Verification of the Sales Response of the POSCO Group in the Antidumping Review of Corrosion Resistant Carbon Steel Flat Products (CORE) from the Republic of Korea (The POSCO Group's Verification Report).

On November 29, December 6, and December 17, 2010, respectively, the Department released cost verification reports for the POSCO Group, HYSCO, and Union. See Verification of the Cost Response of the POSCO Group in the Administrative Review of the Antidumping Duty Order on Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea (POSCO's Cost Verification Report); Verification of the Cost Response of Hyundai HYSCO in the Antidumping Duty Administrative Review of Corrosion-Resistant Carbon Steel Flat Products from Korea (December 6, 2010) (HYSCO's Cost Verification Report); and Verification of the Cost Response of Union Steel Manufacturing Co., Ltd. in the Administrative Review of the Antidumping Duty Order on Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea.

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III. Discussion of Interested Party Comments

A. General Issues

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

HYSCO and the POSCO Group state that the World Trade Organization’s (WTO) Dispute Settlement Body has held that the Department’s practice to set to zero negative dumping margins in administrative reviews is inconsistent with the WTO Antidumping Agreement. See United States – Measures Relating to Zeroing and Sunset Reviews – Recourse to Article 21.5 of DSU by Japan, WT/DS322/AB/RW (August 21, 2009) (US-Zeroing (Japan)). HYSCO, the POSCO Group, Union and Dongbu state that the Department has eliminated the practice of zeroing in investigations. See Antidumping Proceedings: Calculation of the Weighted-Averaged Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722 (December 27, 2006) (Final Modification of Dumping Margin Calculation). Union and Dongbu further argue that the Department incorrectly interprets the statutory provision for zeroing differently in reviews, but not in investigations.

HYSCO claims that the Department has signaled its intention to eliminate zeroing in administrative reviews. See Antidumping Proceedings: Calculation of the Weighted-Averaged Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Proposed Rule, 75 FR 81533 (December 28, 2010) (Proposed Modification).

HYSCO, the POSCO Group, Union, and Dongbu contend that the Department should not engage in the practice of zeroing for calculating HYSCO, the POSCO Group, Union and Dongbu’s final margins in the instant review, and should allow negative margins to offset positive margins for the final calculations of their antidumping duty margin calculations.

US Steel and Nucor assert that the Department should continue to set to zero any observations with negative dumping margins. US Steel and Nucor argue that zeroing is required by statute in section 777A(d) of the Tariff Act of 1930, as amended (the Act), and that, by not zeroing, section 777A(d) of the Act will be rendered meaningless. Citing TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001), and Duncan v. Walker, 533 U.S. 167, 274 (2001), US Steel and Nucor contend that a statute must be interpreted so as to avoid rendering superfluous any provision of that statute.

US Steel argues that even if zeroing is not required by the statute, the courts have upheld the Department’s use of zeroing in administrative reviews. US Steel reasons that Final Modification of Dumping Margin Calculation has no bearing on the Department’s use of zeroing in administrative reviews, as upheld by the CAFC in Corus Staal BV v. United States, 502 F.3d 1370, 1374 (Fed. Cir. 2007) (Corus II). Nucor maintains that in drafting the Uruguay Round Agreements Act (URAA), Congress specifically mandated different standards for use in investigations and reviews. Nucor argues that the decision in Corus Stall BV v. U.S. Department of Commerce, 395 F.3d 1343, 1347 (Fed. Cir. 2005), cert. denied 126 S. Ct. 1023, 163 L. Ed. 2d 853 (2006) (Corus I), the Federal Circuit acknowledged that there are differences between antidumping duty investigations and administrative reviews, and that the Department did not

need to discontinue zeroing in reviews if it discontinued zeroing in investigations. US Steel and Nucor reason that if the Department does not zero, the resulting margin will be the same if the investigation method or the review method of calculation is used.

Nucor argues that the Department has proposed a modification to the zeroing practice in administrative reviews, but that the proposal is not final and may be altered or changed and does not justify a change in methodology in the instant review. US Steel and Nucor maintain that the Department has addressed zeroing in previous reviews of CORE from Korea, and has stated that it would continue to use zeroing in administrative reviews.

Department Position:

We have not changed our calculation of the weighted-average dumping margin as suggested by the respondent for these final results of review.

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.” 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 normal value is greater than export or constructed export price. As no dumping margins exist with respect to sales where normal value is equal to or less than export or constructed export price, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The CAFC has held that this is a reasonable interpretation of the statute. See, e.g., Timken Co. v. United States, 354 F.3d 1334, 1342 (Fed. Cir. 2004) (Timken); Corus I.

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 sales are disregarded in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped merchandise 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 merchandise is included in the numerator. Thus, a greater amount of non-dumped merchandise results in a lower weighted-average margin.

The CAFC explained in Timken that denial of offsets is a “reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to mask sales at less than fair value.” Timken, 354 F.3d at 1343. As reflected in that opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner interpreted by the Department. No U.S. court has required the Department to demonstrate “masked dumping” before it is entitled to invoke this interpretation of the statute and deny offsets to dumped sales. See, e.g., Timken, 354 F.3d at 1343; Corus I; Corus II; and NSK Ltd. v. United States, 510 F.3d 1375 (Fed. Cir. 2007).

The respondents have cited WTO dispute-settlement reports (WTO reports) finding the denial of offsets by the United States to be inconsistent with the Antidumping Agreement. As an initial matter, the CAFC 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 URAA. See Corus I, 395 F.3d at 1347-49; accord Corus II, 502 F.3d at 1375; NSK. Congress has adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports. See, e.g., 19 U.S.C. § 3538. As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department’s discretion in applying the statute. See 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary). Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports. See 19 USC § 3533(g); see, e.g., Final Modification of Dumping Margin Calculation. With regard to the denial of offsets in administrative reviews, the United States has not adopted any change to its methodology pursuant to this statutory procedure.

Further, the Proposed Modification, cited by respondents, does not provide a basis for changing the Department’s approach of calculating weighted-average dumping margins in the instant administrative review. See Proposed Modification. The Proposed Modification is only a proposal that remains subject to review of comments from the public and statutory consultation requirements involving congressional committees, among others. 19 U.S.C. § 3533(g)(1). It does not provide legal rights or expectations for parties in this review. The Proposed Modification further makes clear that, in terms of timing, any changes in methodology will be prospective only, and “will be applicable in . . . all {administrative} reviews pending before {Commerce} for which a preliminary results is issued more than 60 business days after the date of publication of {Commerce’s} Final Rule and Final Modification.” Proposed Modification, 75 FR at 82535. Additionally, the Proposed Modification would not apply to this administrative review because, normally, “{a} final rule or other modification . . . may not go into effect before the end of the 60-day period beginning on the date which consultations {between the Trade Representative, heads of the relevant departments or agencies, and appropriate congressional committees} under paragraph 1(E) begin . . .” 19 U.S.C. § 3533(g)(2). Because the final results of review will be completed prior to the effective date of the final rule, any change in the treatment of non-dumped sales, pursuant to the Proposed Modification, if implemented, would not apply to this review.

Moreover, with respect to US-Zeroing (Japan) as well as United States-Final Anti-Dumping Measures on Stainless Steel from Mexico, WT/DS344/AB/R (Apr. 30, 2008) and United States-Continued Existence and Application of Zeroing Methodology, WT/DS350/AB/R

(Feb. 9, 2009), the steps taken in response to these WTO reports do not require a change to the Department's methodology in the instant administrative review.

For all these reasons, the various WTO reports regarding "zeroing" do not establish whether the Department's denial of offsets in this administrative review is consistent with U.S. law. Accordingly, and consistent with the Department's interpretation of the Act described above, in the event that any of the export transactions examined in this review are found to exceed normal value, the amount by which the price exceeds normal value will not offset the dumping found in respect of other transactions.

Comment 2: Treatment of Laminated Products in Model Match

Union argues that the Department's comparison between export price and normal value must be as similar as possible. See SKF USA Inc. v. United States, 876 F. Supp. 275, 279 (Ct. Int'l Trade 1995). Union asserts that the Department establishes physical characteristics of the subject merchandise and the foreign like product for use as the model-matching criteria to ensure that the merchandise sold in the U.S. market is being compared with a suitable home market product for calculating the dumping margin and antidumping duties. See ArcelorMittal USA Inc. v. United States, Ct. No. 06-00085, 2008 Ct. Intl Trade LEXIS 62, at *7 (Ct. Int'l Trade May 15, 2008) (citing Koyo Seiko Co. v. United States, 66 F.3d 1204, 1209 (Fed. Cir. 1995)). Therefore, in this case, Union argues that the Department should consider laminated CORE products as a separate product type in the Department's physical characteristics, because the Department's current classification distorts the resulting dumping margin. Union further asserts that such a correction would render the classification of the physical characteristics for use as the model-matching criteria consistent with the recent decision of the United States Court of International Trade (CIT) in Union Steel v. United States, Ct. No. 08-00101, Slip Op. 11-3 (Ct. Int'l Trade January 11, 2011) (Union Steel v. United States).

Union argues that laminated CORE products, by their very nature, are not painted, and that the Department should create a separate classification (as represented by an additional code in the CTYPEH/U fields). Union states that non-laminated, painted CORE products are painted most commonly by a paint containing polyester resin, whereas laminated CORE products are coated by a plastic film. Union argues that laminated CORE products do not fit within any of the four codes in the Department's questionnaire for the CYTPEH/U field: (1) clad, (2) coated/painted with polyvinylidene fluoride (PVDF) type paint, (3) coated/painted with other types of paint, and (4) not coated/painted.

Union argues that laminated CORE products have substantially different physical characteristics from non-laminated, painted CORE products. Union contends that laminated CORE products require different production processes and have different end uses when compared with non-laminated, painted CORE products. According to Union, laminated CORE products allow for different patterns, textures, and finishes. Union states that the laminated CORE products also allow for different formability and durability compared to non-laminated, painted CORE products. Union states that it produces and sells two types of laminated CORE products, either by applying a coating of Polyethylene Terephthalate (PET) film which is thermally sealed over a primer-coated CORE substrate, or colored Polyvinyl Chloride (PVC)

film which is attached to the CORE substrate using an adhesive. Union states that both laminated CORE products and non-laminated, painted CORE products are produced on the same line, but by using different equipment. Union also explains that the laminating process involves more expensive inputs and a more complicated processing technology. In addition, Union contends that it assigns different product codes and established distinguishing brand names for its laminated CORE products. See Union's section A response (January 21, 2010) at Exhibit A-26.

Union argues that the Department should examine whether the physical differences have an impact on the cost and price of subject merchandise when the classification of the physical characteristics are determined. 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 4. Union contends that the record of this review demonstrates significant cost and prices differences between laminated CORE products and non-laminated, painted CORE products. In Exhibit 2 of Union's Case Brief, Union argues that the per-unit cost for laminated CORE products are substantially higher than for non-laminated, painted CORE products. Union further argues that the Department, under its policy, should not consider comparing laminated CORE products and non-laminated, painted CORE products because the variable manufacturing cost exceeds 20 percent of the total cost of manufacturing. See U.S. Department of Commerce Policy Bulletin No. 92.2, Difference in Merchandise, 20 percent Rule, available at <http://ia.ita.doc.gov/policy/bull92-2.txt>. In addition, Union provides a comparison of the differences in average unit price between laminated CORE products and non-laminated, painted CORE products at Exhibit 3 of Union's Case Brief. Finally, Union demonstrates that the prices for laminated CORE products are higher than the prices for non-laminated, painted CORE products in the home market, and they are even higher in the U.S. market than the prices for non-laminated, painted CORE products.

US Steel submits in its rebuttal brief that, although Union classified laminated CORE products as a separate code in the CTYPEH/U fields in its response, in its questionnaire, the Department correctly instructed Union to report laminated CORE products as type 60 which is the category for painted CORE products defined as "Coated/plated with metal: Painted, or coated with organic silicate, All Other (i.e., other than PVDF)" in the Department's questionnaire. See the Department's Antidumping Duty Questionnaire (December 7, 2009) at Field 3.1. US Steel contends that Union's laminated CORE products have coating consisting of PET or PVC, which falls within type 60 as defined by the "all other" category for painted CORE established by the Department. Moreover, US Steel maintains that the Department established the classification of the physical characteristics for use as the model-matching criteria during the original investigation and first administrative review. US Steel asserts that Union also acknowledges that there are no industry standards recognizing the difference between non-laminated, painted CORE products and laminated CORE products.

First, US Steel argues that the Department has "considerable discretion" to establish the classification of the physical characteristics for the subject merchandise model match categories by citing several court decisions, including Pesquera Mares Australes Ltda. V. United States, 266 F.3d 1372, 1383 (Fed. Cir. 2001) (Pesquera). US Steel argues further that the Department may consider products to be identical even though the products are not physically the same in all

respect. US Steel contends that products may be considered identical and have minor physical differences as long as the differences are not commercially significant. See Pesquera, 266 F.3d at 1383-1384. Furthermore, US Steel contends that the minor physical differences are not commercially significant if there are no industry standards distinguishing between such products. See Pesquera and Fagersta Stainless AB v. United States, 577 F. Supp. 2d 1270, 1278-1279 (Ct. Int'l Trade 2008) (Fagersta). Specifically, US Steel asserts that Union has not demonstrated that (i) the existing criteria are not "reflective of the subject merchandise," (ii) there have been changes in the relevant industry, or (iii) there is some other "compelling reason" that requires a change.

Second, US Steel argues that the "all other" painted or coated category covers laminated products. US Steel points out that categories "50" and "60" as established by the Department are not limited to just types of paint as suggested by Union. US Steel asserts that code type "50" covers products that have been painted or coated with PVDF, and code type "60" covers products painted or coated with all other materials other than PVDF. Therefore, US Steel contends that laminated CORE products are included in type 60, because the "all other" painted or coated category, since it is coated with a coating other than PVDF. US Steel also contends that "paint" or "paint types" is a term of art used to refer to a wide variety of coating including laminates. See Union's Section D response (February 3, 2010) at 3 and Union's Section A response (January 21, 2010) at Exhibit A-28.

Third, US Steel argues that there are only minor physical differences between CORE coated with laminate and CORE coated with paint. US Steel contends that the record indicates that laminated CORE products and non-laminated, painted CORE products are fundamentally the same regardless of minor differences, such as the various types of patterns, textures, and finishes which are available on laminated CORE products. US Steel cites to Union's section A response at Exhibit A-28 to support its contention that both laminate and paint are applied to impart a corrosion-resistant property to the steel. US Steel also notes that Union categorizes both laminated CORE products and non-laminated, painted CORE products as "pre-painted steel" in its product brochure, which indicates that all "pre-painted steel" products can achieve the same level of surface quality. See Union's section A response (January 21, 2010) at Exhibit A-28. Furthermore, US Steel contends that no brochures showing brand-name laminated CORE products have been placed on the record. US Steel also contends that the record indicates that laminated CORE products and non-laminated, painted CORE products are not put to different end uses as suggested by Union. US Steel cites Union's section A response at Exhibit A-28, which states that Union's "pre-painted steel" products are mainly used for "building exteriors and interiors, home appliances, and doors." US Steel additionally maintains that the Department's classification of identical merchandise is based on the physical characteristics of the merchandise, not on the production process. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From France, Part II, 64 FR 30820 (June 8, 1999), and accompanying Issues and Decision Memorandum at Comment 4. Moreover, Union has identified no industry standard that defines laminated CORE products. Therefore, the minor physical characteristics do not rise to the level of commercial significance in Pesquera.

Fourth, US Steel argues that Union's alleged cost and price differences do not warrant a revision to the established classification of physical characteristics. US Steel contends that even

significant cost and price differences are not dispositive. See Fagersta, 577 F. Supp. 2d at 1280-1281. US Steel submits that cost and prices can vary significantly from review to review because of economic conditions. Therefore, US Steel asserts that the Department in its analysis should rely upon significant physical differences between products that will remain stable, and not upon cost or price differences that can fluctuate over time. In addition, US Steel contends that the cost and price differences presented by Union are only based on the experience of a single producer. Moreover, US Steel asserts that the differences in cost can range for laminated CORE products as they do for non-laminated, painted CORE products, a factor that further demonstrates why reliance on a cost comparison would be misplaced. Furthermore, US Steel maintains that the prices for laminated CORE products and non-laminated, painted CORE products are within the same range, and that some laminated CORE products are even priced identically to some non-laminated, painted CORE products. Finally, US Steel contends that certain customers purchased both laminated CORE products and non-laminated, painted CORE products, which demonstrates that there are common distribution channels.

US Steel also contends that Union's reference to the difference-in-merchandise (i.e., DIFMER) test is misplaced because the test only applies where the merchandise has physical differences that the Department has recognized as substantial so as to warrant separate physical characteristic classifications. See Fagersta, at 1281. In this case, US Steel asserts that the physical differences between laminated CORE products and non-laminated, painted CORE products are extremely minor and lack both industry recognition and commercial significance. Moreover, US Steel contends that this argument regarding use of the DIFMER test to determine whether certain physical differences are significant is not appropriate. See Fagersta, 577 F. Supp. 2d at 1281.

Finally, US Steel argues that Union's reliance on the CIT's recent decision in Union Steel is misplaced. US Steel contends that the CIT remanded to the Department the decision to deny Union's request to revise the classifications of the physical characteristics in the 13th administrative review of this order. US Steel also asserts that the CIT stated that the Department "may reopen the record to re-investigate" to reconsider whether the physical differences between non-laminated, painted CORE products and laminated CORE products are minor and commercially insignificant. Therefore, US Steel contends that Union's reliance on the CIT's remand to the Department is misplaced at this time.

Nucor submits in its rebuttal brief that although the CIT recently remanded the Department's final results in the 13th administrative review with regards to its treatment of laminated CORE products being physically different from non-laminated, painted CORE products, Nucor maintains that the Department properly decided to reject any changes to the physical characteristic classifications. Nucor argues that Union did not meet the burden of proof to demonstrate that a change to the Department's physical characteristic classifications is necessary. See Rautaruukki Oy v. United States, 22 CIT 786, 791-92 (1998). Nucor contends that the Department only revises physical characteristic classifications when the current classification codes are not reflective of the subject merchandise in question, there have been industry-wide changes that merit a change, or there is some other compelling reason to change the classification codes. 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) (12th Review of CORE), and accompanying Issues and Decision Memorandum at Comment 1.

First, Nucor argues that the current classification of physical characteristics is reflective of the subject merchandise. Nucor contends that the CAFC has found that merchandise does not need to be identical under the Act. See Pesquera, 266 F.3d at 1383-84. Nucor claims that Union failed to identify how the physical differences between laminated CORE products and non-laminated, painted CORE products render them not identical on a commercial basis.

Nucor contends that the “all other” painted category (i.e., type 60) is a basket category that includes all other paintings and coatings including laminates. Nucor claims that the Department has already determined in the 12th Review of CORE that the physical differences between laminated CORE products and non-laminated, painted CORE products do not result in meaningful commercial differences. Nucor also asserts that Union has failed to identify any new physical characteristics, and maintains that the Department had previously commented that the laminate is applied to CORE for aesthetic reasons. 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) (11th Review of CORE), and accompanying Issues and Decision Memorandum at Comment 1.

Nucor contends that Union admits that laminated CORE products and non-laminated, painted CORE products are produced on the same line. Nucor argues that the only difference between the products is the attachment of PET or PVC film instead of the color painting process. See Union’s section B response (Feb. 3, 2010) at 6. In addition, Nucor complains that Union’s product brochure does not distinguish between laminated CORE products and non-laminated, painted CORE products, and that the product brochure does not support Union’s claim that there are different end uses. See Union’s section A response (January 21, 2010) at Exhibit A-28.

Furthermore, Nucor claims that there are no substantial differences in the costs between laminated CORE products and non-laminated, painted CORE products. Nucor asserts that the type of coating represents a continuum of products and that there is no meaningful commercial difference between the range of costs for laminated CORE products and non-laminated, painted CORE products. Moreover, Nucor contends that the Department is not required to take cost differences into account when the products being compared are identical. See Fagersta, 577 F. Supp. 2d at 1281.

In addition, Nucor reasons that Union’s weighted-average cost analysis is irrelevant. Nucor says that Union’s analysis only demonstrates that a portion of one type of product is weighted at one end of the range. It also does not show that there is an overlap between the two types of coatings that is recognized by the marketplace. In addition, Nucor contends that basic economies of scale dictate that cost advantages are incurred as production of particular products increase. Furthermore, Nucor contends that, if the physical differences were commercially significant, there would be little to no overlap in price. See Memorandum from Dennis McClure, through James Terpstra to Melissa Skinner, re: Preliminary Analysis Memo for Laminated CORE Products (September 7, 2010) at 2.

Nucor claims that, even if cost differences exist between laminated CORE products and non-laminated, painted CORE products, these differences are not recognized in the marketplace, a factor that is critical in determining whether the classification of the physical characteristics is reasonable. See Pesquera, 266 F.3d at 1383-84. Therefore, according to Nucor, there is no clear distinction between laminated CORE products and non-laminated, painted CORE products in the marketplace.

As with the weighted-average cost analysis, Nucor claims that the weighted-average price analysis provides no clear dividing line between laminated CORE products and non-laminated, painted CORE products. For instance, Nucor states that the larger the sales volume of a particular product, the lower the per unit price of the product. In addition, regardless of volume, Nucor contends that the total average price of laminated CORE products and non-laminated, painted CORE products is not significant. Moreover, Nucor contends that Union's analysis is flawed because it views cost and price without regard to disparities or similarities in quantities produced or sold, and without regard to other differences between the products which may account for the cost and price differences.

Second, Nucor argues that Union and the other respondents presented no evidence that the proposed classification of physical characteristics for laminated CORE products is accepted industry-wide. For example, Nucor points to the 11th Review of CORE at Comment 1 and the 12th Review of CORE at Comment 1 where the Department notes that the respondent companies' use of the term "laminated" varies. Nucor also contends that Union only states that it has established brand names for its own laminated CORE products in its response.

Finally, Nucor argues that Union provides no other compelling reason to change the classification of the physical characteristics. Nucor maintains that the Department has been consistent in its treatment of its physical characteristic classifications throughout this proceeding, and avoided problems associated with changing these classifications. See 11th Review of CORE and 12th Review of CORE. Nucor contends that Union is requesting the Department to modify the classifications because it is beneficial to alter the results of the model matching process. See Timken v. United States, 630 F. Supp. 1327, 1338 (Ct. Int'l Trade 1986).

Department Position:

The Department agrees with Union and has altered its physical characteristic classifications with respect to laminated CORE products which will be used for the model-matching criteria in these final results. In order to determine whether U.S. sales have been sold at less than normal value, the Department compares the export price, or constructed export price, of the U.S. sales with the normal value which is based upon the price of the "foreign like product." 19 U.S.C. § 1677b.

"Foreign like product," in descending order of preference, means:

- (A) The subject merchandise and other merchandise which is identical in physical characteristics with and was produced in the same country by the same person as, that merchandise.

(B) Merchandise-

- (i) produced in the same country and by the same person as the subject merchandise,
- (ii) like that merchandise in component material or materials and in the purposes for which used, and
- (iii) approximately equal in commercial value to that merchandise.

(C) Merchandise -

- (i) produced in the same country and by the same person and of the same general class or kind as the subject merchandise,
- (ii) like that merchandise in the purposes for which used, and
- (iii) which the administering authority determines may reasonably be compared with that merchandise.

19 U.S.C. § 1677(16); see also NSK Ltd. v. United States, 217 F. Supp. 2d 1291, 1299-1300 (Ct. Int'l Trade 2002) ("section 1677(16) establishes a descending hierarchy of preferential modes that Commerce must select for matching purposes").

The statute is "silent with respect to the methodology Commerce must use to match a U.S. product with a suitable home market product." SKF Inc. v. United States, 537 F. 3d 1373, 1379 (Fed. Cir. 2008) (quoting Koyo Seiko Co., Ltd. v. United States, 66 F.3d 1204, 1209 (Fed. Cir. 1995)). Thus, the Department has considerable discretion in interpreting the statute and developing an appropriate model-match methodology. See Pesquera, 266 F.3d at 1384. Notably, the Department has interpreted the word "identical" in the statute to mean the same with "minor differences in physical characteristics, if those minor differences are not commercially significant," and this interpretation has been upheld as a "permissible construction of the statute." Id.; see also Union Steel, Slip Op. 11-3 at 9.

Once the method for classifying the physical characteristics of the subject merchandise has been developed at the early stage of a proceeding, the Department does not alter the methodology absent "compelling reasons" for the modification. See Fagersta, 577 F. Supp. 2d at 1277. As part of its classification of physical characteristics developed in the early segments of this proceeding, the Department determined that CORE products should be separated into four "CTYPE" categories: clad, unpainted, painted, and other painted. During the development of these categories, certain parties requested that the Department create an additional category for laminated CORE products. The Department did not do so, and determined that laminated CORE products be included in the category of other painted CORE products. Consequently, for the purpose of defining identical merchandise in prior segments of the proceeding, the Department

has considered laminated CORE products to be within the other painted category. See, e.g., 12th Review of CORE at Comment 1(c).

Based upon the parties' arguments and the evidence on the record of this review, the Department has reconsidered this issue. As a result, for purposes of this review, the Department finds that the physical differences between laminated CORE products are commercially significant when compared to non-laminated, painted CORE products. First, as noted by Union in its response, "laminated steel (code "30") is a corrosion-resistant steel (i.e., carbon steel coated with metal) with either a coating of PET film that is thermally sealed on a heated, primer-coated CORE substrate after it passes through a drying oven or a colored PVC film attached to the CORE substrate using an adhesive. Compared to normal painted products, laminated products have physical properties such as unrestricted expression of various patterns, superior durability, environmentally-friendly material, etc." See Union's questionnaire response (dated February 3, 2010) at 5-6. Moreover, the normal CORE products do not include the lamination process. Id. at 6. This is in contrast to non-laminated, painted CORE products, where the CORE substrate is run through color painting lines instead of the lamination line. See Union's Verification Report at 10 and Exhibit 11 at 13-15.

Second, record evidence establishes that the cost of production for laminated CORE products is higher than for non-laminated, painted CORE products. See Union's Case Brief at Exhibit 2. The record also demonstrates that the [average] price of laminated CORE products is significantly higher than for non-laminated, painted CORE products. Id. at Exhibit 3. As noted by Union in its response, "[l]aminating the steel substantially increases both the production costs and the sales prices of laminated products vis-à-vis other painted products." See Union's Questionnaire Response (dated February 3, 2010) at 6. The Department considers evidence of cost and price differences to be indicative of commercially significant physical differences between laminated CORE products and non-laminated, painted CORE products. As a result, the Department finds that the considerable differences in cost and price between laminated CORE products and non-laminated, painted CORE products provide additional evidentiary support that the physical differences between the two products are commercially significant.

In addition, laminated CORE products and non-laminated, painted CORE products are marketed differently in Union's brochure, which is further indication of commercially significant differences between the two products. The record evidence demonstrates that Union differentiates between laminated CORE products and non-laminated, painted CORE products in its brochures. For example, the record describes three lines of PET-film laminated CORE products marketed by Union, "Unipet," "Unilux," and "White Board," each of which is listed on the page of Union's brochure labeled "High-tech Steel" and not on the page labeled "Pre-painted Steel." See U.S. Steel's April 2, 2010, submission at Exhibit T. The Department finds that it is meaningful that Union's product brochure contains information that differentiates the physical differences between laminated CORE products and non-laminated, painted CORE products. Therefore, the Department finds that Union's marketing materials also support the conclusion that there are commercially significant physical differences between laminated CORE products and non-laminated, painted CORE products.

Petitioners are correct to note that the Department avoids altering its classification of the physical characteristics of the subject merchandise and the foreign like product without a compelling reason to do so. See Fagersta, 577 F. Supp. 2d at 1277. That preference, however, does not absolve the Department of its obligations to comply with the statutory requirements of 19 U.S.C. § 1677(16)(A). See Union Steel, Slip Op. 11-3 at 26. In the 13th administrative review of this order, the CIT found the Department's previous methodology to classify laminated CORE products with painted CORE products to be "contrary to law" based upon a factual record very similar to that present here. Id. at 28. The CIT found that the record of that review – which consisted of questionnaire responses, product brochures, and evidence of cost and price differences similar to the record of this review – did not on the whole contain substantial evidence establishing that the physical differences between laminated CORE products and non-laminated, painted CORE products are minor and commercially insignificant. Id. at 19-25. Based upon the forgoing analysis of the evidence and arguments on the record of this review and in light of the recent CIT decision in Union Steel, the Department has decided to alter the classification of the physical characteristics, and thereby, the model-matching criteria so that laminated CORE products and non-laminated, painted CORE products are not considered as identical products under 19 U.S.C. 1677(16)(A).

B. Company-Specific Issues

HYSCO

Comment 3: Liquidation Instructions

HYSCO states that the Department's draft liquidation instructions issued with the preliminary results do not indicate the draft importer-specific assessment rates assigned to Hyundai HYSCO USA (HHU) and HYSCO America Company (HAC), and, therefore do not state clearly that the same assessment rate will be applied to imports of HYSCO's two affiliates, HHU and HAC. HYSCO requests that the Department clarify in its liquidation instructions to U.S. Customs and Border Protection (CBP) that the same importer-specific assessment rate determined for HHU will also be applied to entries of subject merchandise produced by HYSCO and imported by HAC, as consistent with previous administrative reviews of the CORE from Korea antidumping duty order.

HYSCO notes that during the POR HYSCO sold subject merchandise through two affiliates in the United States, HAC and 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 argues that, consistent with prior reviews, it is appropriate to apply the assessment rate calculated for HHU to imports by HAC. Petitioners did not comment on this issue.

Department Position:

The Department will continue to issue the liquidation instructions to HYSCO and its two affiliates, HHU and HAC, consistent with the findings in the prior reviews of CORE from Korea. We note that, for the purpose of the preliminary results, the Department's draft liquidation instructions did not specify what assessment rate will be applied to imports of HHU and HAC due to the preliminary stage of this review. For the final results, the Department's final liquidation instructions to CBP will properly indicate that, for all shipments of subject merchandise produced by HYSCO and imported by HHU and HAC, the importer-specific assessment rate determined for HHU will also be applied to entries of subject merchandise imported by HAC.

Beginning in the 13th administrative review of CORE from Korea, 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), unchanged in 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); 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), unchanged in Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fourteenth Administrative Review and Partial Rescission, 74 FR 11082 (March 16, 2009); Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fifteenth Administrative Review, 75 FR 13489 (March 22, 2010), and accompanying Issues and Decision Memorandum at Comment 6. Thus, the Department will continue to issue liquidation instructions to CBP regarding shipments from HYSCO and imported by its two affiliates, HHU and HAC, consistent with the findings in the prior reviews of CORE from Korea.

Comment 4: Cost Adjustments Made by HYSCO

HYSCO's reported cost file contained negative values in other materials, direct labor, or fixed overhead for certain control numbers (CONNUMs). In the preliminary results, the Department made an adjustment to use the weighted-average value of other material, labor, and fixed overhead costs from the remaining CONNUMs, as facts available, for the CONNUMs with negative values. Subsequent to the preliminary results, the Department issued a supplemental questionnaire to which HYSCO explained that these negative values were caused by zinc cost allocation errors, reversals of bonus accruals, and cancellation of production orders. In order to correct these negative values, the Department requested, and HYSCO added, adjustment fields COMADJ1 for the zinc cost allocation errors, COMADJ2 for the reversal of bonus accruals, and COMADJ3 for the cancellation of production orders in the cost file.

HYSCO argues that the Department should eliminate the facts available adjustment applied in the preliminary results. Further, HYSCO does not dispute including the adjustment field related to the zinc cost allocation errors (*i.e.*, COMADJ1) in the final results but argues that the adjustment fields for the reversal of bonus accruals (*i.e.*, COMADJ2) and the cancellation of production orders (*i.e.*, COMADJ3) should not be included in the final results. According to HYSCO, the reported product-specific costs are derived from its normal books and records which are consistent with Korean generally accepted accounting principles (GAAP). HYSCO contends that it accrued the bonus expenses over a period, and then adjusted the accrual to the actual expenses in accordance with Korean GAAP. HYSCO claims that including the reversal of bonus accruals adjustment field would result in costs that are inconsistent with the company's normal accounting records. To support its position, HYSCO cites 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) (Rebar from Turkey), and accompanying Issues and Decision Memorandum at Comment 13, and argues that it is appropriate to include accrual reversals when a company is making the corresponding accruals. Thus, HYSCO maintains that the adjustment field COMADJ 2 should be disregarded for the final results.

With respect to the adjustment for the cancellation of production orders, HYSCO contends that when a production order for a finished product is cancelled, the production order quantity and value is reversed, and the product is reintroduced into production as a semi-finished product. Consequently, according to HYSCO, all costs previously associated with that product are subsequently attributed to the new finished product and no costs are misallocated. HYSCO further states that while the production cancellations are associated with the specific products, COMADJ3 allocates the value of these cancellations over all products manufactured during the POR. HYSCO argues that because these cancellations are associated with specific products, it is inappropriate to spread the cancellation values to all products produced during the POR. HYSCO also refutes petitioner's argument that only the second part of this adjustment should be disregarded. HYSCO contends that adopting petitioner's argument would lead to double counting costs because the costs of the cancelled product would be recounted in the new product as well as in the old product. Thus, HYSCO maintains that the COMADJ3 should be entirely disregarded for the final results.

US Steel argues that the Department should include the entire adjustments related to the zinc cost allocation errors and the reversal of bonus accruals in the final results. However, for the adjustment related to the cancellation of production orders, petitioner asserts that while the Department should disregard the second part of the adjustment calculation (*i.e.*, allocating the value of product-specific cancellations over all products produced during the POR), the first part of COMADJ3 should be included in the final results (*i.e.*, removing the quantity and value of the cancelled products from the weighted-average CONNUM cost).

US Steel contends that the adjustment associated with the zinc cost allocation errors corrects misallocated zinc costs during the POR and the adjustment related to the reversal of bonus accruals is linked to the bonus accruals recorded in the previous POR. As such, petitioner argues that both adjustments should be included in the final results. To support its position, petitioner cites AK Steel Corp. v. United States, 21 CIT 1204, 1212-1213 (1997) and contends that offsetting the current POR costs with the accrual reversals related to prior period accruals

distorts the current period costs. Further, according to US Steel, the facts in Rebar from Turkey are different from this case and thus HYSCO's reliance on Rebar from Turkey is misplaced.

Regarding the production order cancellation adjustment, US Steel asserts that HYSCO adopted a two- step calculation approach and the Department should include the first part of the calculation in the final results (*i.e.*, removing the negative values related to cancelled products from the weighted-average CONNUM cost). US Steel argues that although the costs of cancelled products are transferred to the finished products, it is inappropriate to include negative values associated with the cancelled products in the calculation of CONNUM-specific weighted-average production costs. US Steel cites Notice of Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil, 71 FR 7517 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 2, and argues that the Department's established practice is to calculate CONNUM-specific costs using the cost of finished production. Nevertheless, according to the US Steel, the Department should disregard the second part of the calculation in the final results (*i.e.*, allocating the value of product-specific cancellations over all products manufactured during the POR). US Steel asserts that because the production order cancellations are specific to products, their negative impact should not be allocated to all products produced during the POR. Thus, US Steel maintains that the Department should only disregard the second part of the adjustment calculation in the final results.

Department Position:

We agree with US Steel in part. HYSCO's reported cost file contained negative values in other material, direct labor, or fixed overhead for certain CONNUMs, and, in order to correct these negative values, HYSCO, at the Department's request, added three adjustment fields in the cost file. HYSCO explained that these negative values are caused by the misallocation of zinc costs, reversal of bonus accruals associated with the bonus accruals recorded from January 2008 to June 2008 (*i.e.*, prior to the POR), and cancellation of production orders. See HYSCO's Cost Verification Report at 8-10. We find that it is appropriate to include the adjustment field COMADJ 1 for the zinc cost allocation errors in the final results because this adjustment corrects the misallocation of zinc costs during the POR.

We also determined that it is appropriate to include the adjustment field COMADJ2 for the reversal of bonus accruals in the final results. From January 2008 to June 2008, HYSCO recorded an estimated bonus amount in its accounting records. Subsequently (*i.e.*, in August 2008), HYSCO lowered its estimate of the amount of bonus it will pay for the year in 2008. As a result, HYSCO recorded a negative expense amount in August 2008 to bring the net bonus expense to the correct amount for the year. See HYSCO's Cost Verification Report at 9-10. We note that this situation is akin to a company making estimated monthly depreciation expense entries throughout the year, then recording an amount in the last month of the year to bring the annual amount to the proper value. We find that the total net bonus expense for the year should be spread throughout the year. As such, we have included the adjustment field, COMADJ2, in the final results.

However, we find that it is not appropriate to include the adjustment field COMADJ3 for the cancellation of the production orders in the final results. When HYSCO decides to make certain finished products available for consumption, it "cancels" the production order related to

the finished product and reduces the specific product's production quantity and value in its normal books and records. HYSCO then reclassifies the quantity and value to semi-finished products which are then available as inputs to produce new products. Subsequently, when these semi-finished products are used as inputs, the relevant quantities and costs are absorbed by the new products. See HYSCO's Cost Verification Report at page 10. Since these cancelled products at issue are in effect semi-finished products that are used in the production of finished goods, we find their treatment in their normal books and records reasonable. As such, we find it unnecessary to include the adjustment field COMADJ3 for the final results.

Comment 5: Whether the Department Should Treat All Products that Passed Through the Continuous Galvanizing Line as Temper-Rolled

Petitioners argue that all products going through the continuous galvanizing line (CGL) should be treated as temper-rolled regardless of HYSCO's customers' orders because the temper rolling is a part of the CGL process. Petitioners claim that HYSCO's continuous annealing line (CAL), similar to the CGL, has an integrated temper rolling mill and all products that go through the CAL are temper-rolled because there is no option to bypass the temper rolling mill. Petitioners contend that it is inconceivable that certain products selectively bypass the temper rolling process at the CGL considering the similarity of the temper rolling process set up at the CGL and CAL. Petitioners argue that HYSCO has not accounted for the cost differences attributable to temper rolling. Petitioners contend that if HYSCO does not temper roll certain products, it is improper for HYSCO to spread the temper rolling costs to all products that go through the CGL. Petitioners assert that while HYSCO claims that the temper rolling costs are miniscule and these costs do not need to be separately reported, the Department has rejected such arguments in Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 49622 (September 28, 2001) (Hot-Rolled Products from Thailand), and accompanying Issues and Decision Memorandum at Comment 8.

Petitioners further argue that reporting products as being temper-rolled based on the customer's purchase order cannot be accepted and that the Department has rejected such an approach in Hot-Rolled Products from Thailand. Petitioners also cite to Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review, 64 FR 13148, 13153 (March 17, 1999) (Gray Portland Cement from Mexico), and accompanying Issues and Decision Memorandum at Comment 4, and assert that it would be unreasonable to match products on an "as sold" basis because reporting product characteristics on an "as sold" basis, rather than on an "as produced" basis, would lend itself to manipulation. Petitioners contend that section 771(16)(A) of the Act, expresses a clear preference for matching sales in the U.S. with sales in the home market of merchandise based on "identical in physical characteristics" and, as such, treating temper-rolled products as otherwise would be contrary to law. Thus, petitioners maintain that the Department should treat all products passing through the CGL process as temper rolled and match accordingly.

HYSCO contends that petitioners's arguments are based on a misunderstanding of the factual record and the Department should reject petitioners's request. According to HYSCO, the temper rolling is achieved by skin-passing the product at both the CGL and the CAL, and

HYSCO could identify whether to temper roll a product based on the customer's order.² HYSCO states that while the temper rolling process is a part of the CGL and CAL, this simply means that the relevant equipment is located in these production lines and the temper rolling equipment can be turned on or off based on individual production orders. HYSCO argues that, for both the CGL and the CAL, depending on its customer orders, either the temper rolling roller could be lifted away from the coil and does not touch the coil or the roller could be engaged to apply pressure to the surface of the coil to make the surface smooth.³ As such, if a customer does not request the temper rolling process, the coil bypasses the temper rolling process. Consequently, HYSCO asserts that petitioners's claim that there is no option to bypass the temper rolling process is fundamentally incorrect.

Further, HYSCO argues that the cost differences between products that have been through the temper rolling and those that have not is minuscule relative to the total cost of manufacturing. HYSCO cites to Sodium Metal from France: Notice of Final Determination of sales at Less Than Fair Value and Negative Critical Circumstances, 73 FR 62252 (October 20, 2008), and accompanying Issues and Decision Memorandum at Comment 1, and contends that the Department has long recognized that there may not be appreciable cost differences associated with product characteristics that are nonetheless commercially significant. According to HYSCO, the temper rolling costs are fully captured in the reported costs and the Department has the data necessary to adjust the reported costs to account for the temper rolling cost differences if the Department concludes such an adjustment to be necessary. HYSCO also asserts that US Steel's reliance on Hot-Rolled Products from Thailand and Gray Portland Cement from Mexico is misplaced because the facts in these cases are different from this case.

Department Position:

We agree with petitioners in part. In this case, petitioners presume that all products that go through the CGL are temper-rolled because of the location of the temper rolling machines, the similarity of the temper rolling process set-up at the CGL and CAL, and the lack of reported cost differences for the temper rolling product characteristic. Nevertheless, the Department finds that the above reasons do not necessary support the petitioners's conclusion that all products that go through the CGL are temper rolled.

At verification, HYSCO explained that the temper rolling machines are located at the CGL and the CAL and that these machines can be turned on or off, based on the individual customers' production orders. Thus, if a product does not need to be temper rolled, the temper roller is lifted from the coil and does not touch the coil. On the other hand, if a product needs to be temper rolled, the roller is engaged and applies pressure to the surface of the coil. However, HYSCO did not report cost differences for the temper rolling product characteristic because the temper rolling costs are reflected in the reported CGL costs. See HYSCO's Cost Verification Report, at page 18. HYSCO also explained that it obtained the temper rolling status of products based on reviewing customer orders and production records. See HYSCO's section A-C supplemental questionnaire response, (June 23, 2010) at 18. Furthermore, at both the sales and cost verifications, the Department examined the reported product physical characteristics and

² HYSCO refers to its supplemental section A-C response (June 23, 2010 18).

³ HYSCO notes that this method of placing the temper rolling equipment within production line processes and applying the roller based on the customer's production order is common throughout the industry.

supporting documents for products manufactured during the POR and found that HYSCO appropriately reported the product physical characteristics to the Department. See HYSCO's Sales Verification Report at 7-8 and HYSCO's Cost Verification Report at 18-19. Consequently, the record of this review does not support the conclusion that all products that go through the CGL and the CAL are temper-rolled.

We find that petitioners's reliance on Hot-Rolled Products from Thailand and Gray Portland Cement from Mexico is misplaced. In Hot-Rolled Products from Thailand, the respondent miscoded the temper rolling product characteristic in the reported costs, which is unlike this case. In Hot-Rolled Products from Thailand, the respondent would sometimes automatically temper roll products regardless of the customers' requests and reported the temper rolling characteristic according to customers' orders rather than actual production. Thus, in Hot-Rolled Products from Thailand, the temper rolling characteristic recorded in the customers' orders was different from the actual production. In Gray Portland Cement from Mexico, while the respondent produced cement meeting the physical requirements of one type, they sold that same cement as another type. Thus, the product characteristics identified on the sales invoices were different from the actual production. However, in this case, there is no difference between the customers' orders and actual production with respect to the temper rolling product characteristic. Section 771(16)(A) of the Act expresses preference for matching sales in the U. S. with sales in the home market of merchandise that is identical in physical characteristics. Consequently, we relied on HYSCO's reported temper rolling product characteristic for the final results.

The Department's long-standing practice is to determine product costs and make product comparisons based on the physical characteristics of the merchandise specified in the Department's questionnaire. See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India, 69 FR 47111, 47114 (August 4, 2004) (unchanged in Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India, 69 FR 76916 (December 23, 2004)). See also Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil, 71 FR 2183 (January 13, 2006), and accompanying Issues and Decision Memorandum at Comment 23. However, HYSCO's reported costs do not differentiate the production costs associated with the temper rolling product characteristics and instead spreads the temper rolling costs over all products whether the product is temper-rolled or not. Consequently, HYSCO's methodology overstates the production costs for non-temper-rolled products and understates the production costs for temper rolled products. Since HYSCO provided sufficient information related to the temper rolling process, we were able to increase the reported costs to account for the temper rolling cost for those products that were temper rolled and decrease the cost of products which were not temper rolled.

THE POSCO GROUP

Comment 6: POSCO's Average Warranty Expense for U.S. Price

US Steel argues that the POSCO Group did not provide the schedule of warranty expenses for the last three fiscal years. Furthermore, US Steel states that the POSCO Group did not report a per-unit warranty cost for each fiscal year as instructed by the Department's questionnaire. In addition, US Steel explains that it is the Department's normal practice to collect the respondent's POR-specific warranty expenses as well as warranty expenses for the most three recently completed fiscal years, and to deduct the three-year average warranty expense from U.S. price. Moreover, US Steel points out that the POSCO Group incurred warranty expenses during the 14th administrative review.⁴

The POSCO Group rebuts that it did not incur warranty expenses during the POR, and the POSCO Group further claims that the warranty expense reported during the 14th administrative review was an unusual U.S. warranty claim, and the Department adjusted its warranty claim, allocating warranty expenses over all of the POSCO Group's U.S. sales because it recognized that the warranty claim paid in that POR would clearly distort the calculation.⁵ The POSCO Group asserts that its reporting methodology is consistent with prior administrative reviews and, as in prior reviews, the Department should accept its reporting methodology.

Department Position:

We note that the POSCO Group did not incur U.S. warranty expenses during this POR;⁶ however, it is the Department's practice to collect POR-specific warranty expenses as well as warranty expenses for the three most recently completed fiscal years. In circumstances where the POR warranty expenses for the current POR differ significantly from the three-year historical average, we find that it is appropriate to rely on the three-year historical average to best represent the company's overall experience with respect to warranty claims. Therefore, for the final results, the Department will deduct the POSCO Group's three-year average U.S. warranty expense from U.S. price and allocate the POSCO Group's U.S. warranty expense across its entire U.S. sales.⁷

Comment 7: The Department's Treatment of Service Fees in its Home Market Indirect Selling Expenses

US Steel claims that certain service fees in the POSCO Group's home market indirect selling expenses (INDIRSH) are clearly related to movement expenses and the Department should exclude these expenses from the calculation of INDIRSH.

⁴ See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fourteenth Administrative Review and Partial Rescission, 74 FR 11082 (March 16, 2009) (CORE), and accompanying Issues and Decision Memorandum at Comment 13.

⁵ See id.

⁶ See the POSCO Group's Verification Report.

⁷ See the POSCO Group's March 14, 2011, "Calculation Memorandum for Pohang Iron & Steel Company, Ltd. (POSCO), and Pohang Coated Steel Co., Ltd. (POCOS) (collectively, the POSCO Group)," from Victoria Cho to the File (the POSCO Group's Calculation Memo).

The POSCO Group states that excluding these line items would have little to no impact on its reported INDIRSH ratio. However, the POSCO Group claims if the Department elects to make such adjustments, then the Department must also make a corresponding adjustment to the reported domestic indirect selling expenses factor (DINDIRSU) reported on the U.S. sales file.

Department Position:

We agree with US Steel. It is clear that the line items in question are movement expenses. For the final results, the Department will adjust the POSCO Group's INDIRSH and DINDIRSU to reflect the required changes.⁸

Comment 8: The POSCO Group's Home Market Warranty Expenses for Non-Prime Merchandise with Certain Gross Unit Prices

US Steel argues that certain sales of prime-quality merchandise reported by the POSCO Group with home warranty expenses (WARRH) should be changed to sales of non-prime-quality merchandise. US Steel states that it is the Department's practice to treat damaged merchandise as sales of non-prime-quality merchandise because "net price reported (gross unit price less warranties) is representative of non-prime merchandise."⁹

The POSCO Group asserts that the Department has never in prior reviews of CORE from Korea compared U.S. sales (all prime-quality products) with home market sales of non-prime-quality merchandise, which US Steel suggests. The POSCO Group claims that this in effect will eliminate sales from the calculation of normal value.

In Hot-Rolled Products from Thailand and Cold-Rolled from Brazil,¹⁰ the POSCO Group argues that the Department reviewed the actual warranty claims and found that the nature of the claims indicated failure in the production process, which is a failure that would normally result in the classification of a product as being of non-prime quality. The POSCO Group further contends that the Department in those two cases found warranty adjustments for these sales, which could be traced on a transaction-basis.

The POSCO Group rebuts that nowhere did the Department develop a specific threshold, as US Steel suggests, for determining that a certain level of warranty expense indicates that the product should be classified as being of non-prime quality. In addition, the POSCO Group

⁸ See the POSCO Group's Calculation Memo.

⁹ See Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products from Thailand, 66 FR 49622 (September 28, 2001) (Hot-Rolled from Thailand), and accompanying Issues and Decision Memorandum at Comment 13.

¹⁰ See Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, 65 FR 5554, 5570 (February 4, 2000) (Cold-Rolled from Brazil).

asserts that the Department's long-standing practice is to rely on the characteristics of the products as produced, rather than sold.¹¹

Department Position:

We have examined the record and found that the POSCO Group properly reported certain sales in the home market as involving prime-quality merchandise. The appropriate product to which U.S. sales should be matched is the home market product that is physically identical to the merchandise produced for U.S.-market sales.¹² With respect to US Steel's argument, we find that warranty expenses exceeding a certain amount of the gross unit price is not a sufficient basis to re-classify merchandise from prime to non-prime. Based on the specific differences in the characteristics between prime and non-prime merchandise, as reflected in the POSCO Group's records, we continue to find that it was appropriate for the Department to accept the POSCO Group's sales as reported. During verification of the POSCO Group, the Department conducted sample traces and found no evidence that calls into question the proper classification and reporting of the POSCO Group's prime sales. Moreover, we verified that the warranty expenses were properly reported.¹³ Therefore, we find that a re-classification of the sales in question is not warranted.

Comment 9: The Allocation of POSCO's Home Market Warranty Expense Over All Home Market Sales

The POSCO Group reported its warranty expenses (WARRH) on a transaction-specific basis. However, US Steel asserts that the POSCO Group has no evidence on the record that the warranty terms offered by the POSCO Group at the time of sales varied by customer. US Steel argues that the POSCO Group negotiates with each customer on an ad hoc basis if it reports that the merchandise in question is defective.

The POSCO Group rebuts that it reported warranty expenses on a transaction basis, consistent with the Department's instructions and practice. See 19 CFR 351.401(g). The POSCO Group claims that it reported warranty expenses on a transaction-specific basis because it can link its warranty adjustments to specific sales.¹⁴

The POSCO Group claims that, in evaluating expenses which are inherently unpredictable at the time of sale, the Department may rely on foreseeable expenses that can be

¹¹ See Gray Portland Cement from Mexico and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review, 64 FR at 13148, 13154. (March 17, 1999) (Cement from Mexico).

¹² See id.

¹³ See the POSCO Group's Verification Report at page 13.

¹⁴ See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Taiwan, 64 FR 30592 (June 8, 1999) (Stainless Steel from Taiwan), and accompanying Issues and Decision Memorandum at Comment 16.

reasonably anticipated based on the historical experience of a company.¹⁵ Moreover, the POSCO Group argues that the Department sometimes relies on a company's historical experience when it determines that warranty expenses incurred in the reporting period are unrepresentative. However, in this administrative review, the POSCO Group asserts that for steel products, warranty claims are generally related to the physical appearance of the product, rather than failure of the product to perform the required functions over an extended period of time. Furthermore, the POSCO Group applies each warranty claim against the specific coil of the sold subject merchandise, and, therefore, it was able to report warranty expenses on a transaction-specific basis.

The POSCO Group further states that no adjustment to the POSCO Group's reported home market warranty expense is necessary for this review because the POSCO Group incurred no home market warranty expenses, nor has US Steel demonstrated that its experience in the POR was aberrational.

Department Position:

Consistent with our practice during the 14th administrative review of CORE,¹⁶ and aforementioned in Comment 6 of that same review, warranty expenses should not be allocated on a transaction-specific basis. For the final results, the Department will deduct the POSCO Group's three-year average U.S. warranty expense from U.S. price and allocate the POSCO Group's home market warranty expenses over all home market sales.¹⁷

Comment 10: The Treatment of POSAM's Other Expenses in its U.S. Indirect Selling Expenses

US Steel asserts that the POSCO Group did not include in its reported U.S. indirect selling expenses (INDIRSU) the expenses that were classified by its U.S. sales affiliate, POSCO America Corp. (POSAM), in its financial statements as "Other, Net." US Steel argues that the Department should include the operating expenses attributable to POSAM in the POSCO Group's calculation of INDIRSU.

US Steel also claims that it is the Department's practice to deduct G&A expense incurred by a respondent's U.S. sales affiliate from the CEP price as a selling expense.¹⁸

¹⁵ See Honey from Argentina: Final Results, Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 71 FR 26333 (May 4, 2006) (Honey from Argentina), and accompanying Issues and Decision Memorandum at Comment 1.

¹⁶ See CORE 14 at Comment 13.

¹⁸ See Aramide Maatschappij V.o.F. v. United States, 901 F.Supp. 353, 360 (CIT Int'l Trade 1995); see also Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review, 75 FR 57456 (September 21, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

The POSCO Group asserts that it followed the reporting methodology it has been using since the 12th administrative review in calculating its per-unit INDIRSU, which the Department has repeatedly accepted and the U.S. Court of International Trade has affirmed. Specifically, POSAM's reporting methodology,¹⁹ which includes U.S. operating expenses consisting of payroll and related expenses, with little overhead. The POSCO Group states that POSAM has separate employees to handle sales of subject merchandise sourced from POSCO and POCOS and sales of non-subject merchandise sourced from the POSCO Group, including the management of POSAM's investments.

The POSCO Group further argues that US Steel disregards that POSAM is not solely a selling entity. The POSCO Group claims that the expenses cited by US Steel are appropriately excluded from its INDIRSU calculation because they are related to POSAM's non-operating activities. The POSCO Group claims that POSAM has separate employees to handle sales of subject merchandise sourced from POSCO and POCOS, sales of non-subject merchandise sourced from the POSCO Group, and its management of investments. The POSCO Group concludes that its overall allocation methodology of operating expenses not related to subject merchandise is consistent with the Department's practice.²⁰

Department Position:

The Department agrees with the POSCO Group. As in the prior administrative reviews, the POSCO Group correctly allocated its U.S. indirect selling expenses, (ISE) and calculated its U.S. indirect selling expense ratio related to the sale of subject merchandise. When calculating INDIRSU, the Department excludes those expenses that are not related to selling subject merchandise.²¹ The POSCO Group has demonstrated that the expenses associated with POSAM's investments were not related to selling subject merchandise. The POSCO Group's payroll methodology is not distortive as US Steel 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 11: The Treatment of the POSCO Group's Actual Interest Expense in INDIRSU

US Steel claims that the POSCO Group reported different values for its U.S. imputed credit expense from what was actually reported in its financial expenses for sales of subject

¹⁹ The POSCO Group utilized payroll expenses of the employees performing these activities and then allocated common expenses, such as rent and depreciation, in direct proportion to the payroll expenses incurred in each of the three categories of employee activities.

²⁰ See Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea, 66 FR 3540 (January 16, 2001), and accompanying Issues and Decision Memorandum at Comment 1; see also section 772(d)(1) of the Act.

²¹ 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.

merchandise. Specifically, US Steel asserts that the Department should include a portion of POSAM's interest expense in the INDIRSU ratio calculation, which includes POSAM's total interest expense. Furthermore, US Steel argues that the Department should include the difference between the POSCO Group's actual financial expenses and imputed credit expenses in the calculation of INDIRSU for the finals results.²²

The POSCO Group claims that US Steel is incorrect suggesting that the Department use POSAM's consolidated interest expense as the starting point for its calculation, rather than the interest expense incurred for its U.S. operations. The POSCO Group claims that a substantial portion of POSAM's consolidated interest expense is incurred by POSAM's Mexican subsidiary, POSMEX, an entity that has nothing to do with U.S. sales of subject merchandise, but whose financial results are consolidated with POSAM's. Moreover, the POSCO Group states that it has consistently excluded expenses that are related directly to non-subject merchandise and to non-selling activities in calculating its INDIRSU correctly.

In Antifriction Bearings,²³ the POSCO Group notes that the Department rejected the respondent's allocation methodology for INDIRSU because the methodology "does not bear any relationship to the manner in which {it} incurs the expenses in question, thereby leading to distorted allocations." Likewise, the POSCO Group asserts here that its equity cannot be tied to certain assets; and debt to other assets, even if specific assets are financed by and secured by a mortgage. As a basic accounting concept, the POSCO Group claims that debt and equity jointly finance all assets and interest is payment made to the holders of the debt used to finance the entity's assets. The POSCO Group claims that an analysis of POSAM's balance sheets under the fungibility principle demonstrates that a significant portion of POSAM's debt, and the corresponding interest expense, relates to its investment in the joint venture, not to assets that give rise to sales activity.

The POSCO Group states that the Department has often relied on the relative cost of sales as a means of allocating interest expense. However, the POSCO Group asserts that in this instant case, the cost of sales of the various activities or product lines is not available in the record. In Sweaters from Korea,²⁴ the Department has long recognized that it is normal to allocate interest expense over cost of sales, but that it can be altered when circumstances require. The POSCO Group asserts that allocating interest expense in proportion to assets is appropriate in this instance.

Lastly, the POSCO Group asserts that US Steel's suggested changes in order to avoid double counting allocate a significant portion of imputed credit expenses, which are directly

²² See Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea, 66 FR 3540 (January 16, 2001), and accompanying Issues and Decision Memorandum at Comment 1.

²³ See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 64 FR 35590 (July 1, 1999) (Antifriction Bearings), and accompanying Issues and Decision Memorandum at Comment 4.

²⁴ See Final Determination of Sales at Less Than Fair Value: Sweaters Wholly or in Chief Weight of Man-Made Fiber from the Republic of Korea, 55 FR 32659, 32667 (August 10, 1990) (Sweaters from Korea).

related to sales of subject merchandise, to sales of non-subject merchandise, and to investment (non-selling) activities. The POSCO Group argues that following US Steel's suggested changes during the final results would greatly reduce the amount of imputed interest expense that must be deducted from actual interest expense.

Department Position:

We agree with the POSCO Group. In calculating INDIRSU, US Steel's suggestion to allocate the POSCO Group's total imputed credit expense reported on the U.S. sales database amongst POSAM's three departments is inaccurate. We agree with the POSCO Group that the sales database relates only to the sales of subject merchandise and as a result, US Steel's suggested allocation methodology would add a significant portion of imputed credit expenses, e.g., investments and sales of non-subject merchandise, which are not related to subject merchandise. Therefore, for the final results, no changes from the Preliminary Results are warranted.

Comment 12: Beginning Inventory Variances for Semi-finished Goods

According to the petitioners, POSCO calculated the reported manufacturing costs using standard costs and variances incurred during the POR. POSCO included the beginning inventory variances (BIV) associated with raw materials in the reported costs in order to calculate the actual cost of raw materials. However, POSCO excluded the semi-finished goods BIV because POSCO claimed that BIV associated with semi-finished goods are unrelated to the manufacturing costs incurred during the POR. See POSCO's second supplemental section D response (August 10, 2010) at 4. The petitioners contend that the Department should include the semi-finished goods BIV in the calculation of POSCO's manufacturing costs.

The petitioners claim that it is the Department's normal practice to treat expenses associated with both raw materials and semi-finished goods as cost of production. See Static Random Access Memory Semiconductors From Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 65 FR 55005 (September 12, 2000) (SRAM from Taiwan), and accompanying Issues and Decision Memorandum at Comment 7 and Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 69 FR 19153 (April 12, 2004) (SSWR from Korea), and accompanying Issues and Decision Memorandum at Comment 7. The petitioners assert that the Department has determined that while variances in finished goods inventory are properly not included in a respondent's costs, variances associated with semi-finished goods should be included. See Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement in the Antidumping Duty Order, 74 FR 22885 (May 15, 2009) (Hot-Rolled Steel from Thailand), and accompanying Issues and Decision Memorandum at Comment 8. The petitioners argue that the Department for the final results should include the BIV associated with semi-finished goods in POSCO's reported manufacturing costs.

POSCO contends that for the preliminary results, the Department did not adjust POSCO's reported manufacturing costs. POSCO maintains that the cost reporting methodology used in this current sixteenth administrative review was first adopted in the tenth administrative

review, and since then the Department made no adjustments to its reported manufacturing costs. POSCO points out that, subsequent to the preliminary results, the Department conducted cost verification and found that POSCO has accurately reported the actual CONNUM-specific cost of manufacturing. POSCO maintains that nothing in the Department's cost verification report indicates that the BIV associated with semi-finished products may have been inappropriately omitted. See POSCO's Cost Verification Report.

POSCO states that the standard cost of manufacturing of semi-finished products is recorded at a current standard cost and that the value is periodically updated, generally each quarter. See POSCO's second supplemental section D response (August 10, 2010) at 4 and 5. POSCO sets standard costs as a means to estimate production costs associated with individual products and later determines actual costs and calculates the variances. Then, it will adjust those standard costs for the next period, based on a combination of prior actual experience and anticipated changes. The revised standard costs become the basis for calculating manufacturing variances in the next period. POSCO explains that BIV is the difference between the prior standard cost and the current standard cost. POSCO claims that this variance is not related to the company's manufacturing and is not recognized as a cost of manufacturing in the normal course. POSCO rather asserts that it represents an adjustment to the inventory balance because POSCO maintains its inventory ledgers based on standard costs. See Cost Verification Report at Exhibit 4 at page 26. POSCO asserts that it has appropriately excluded the BIV associated with semi-finished goods from the reported cost of manufacturing.

POSCO contends that the petitioners' reliance on SRAM from Taiwan and SSWR from Korea are misplaced. According to POSCO, in SRAM from Taiwan, the respondent differentiated in its treatment of "work-in-process (WIP)" and "WIP on hand" variances and included the WIP variance but excluded the "WIP on hand" variance from the reported costs. Respondent reasoned that "WIP on hand" can be sold and, therefore was equivalent to finished goods. In other words, it appears that the company considers the variance to be a cost of manufacturing in the normal course of business. POSCO claims that the variance at issue here is completely unrelated to manufacturing. POSCO asserts that in SSWR from Korea, the issue concerned the appropriate treatment of "inventory loss" in the calculation of G&A expense while, in this case, the issue is whether to include the beginning inventory variances associated with semi-finished goods in the reported cost of manufacturing.

Department Position:

We agree with the petitioners. We have determined that the BIV associated with semi-finished goods that reenter the production process should be included in the reported manufacturing costs because the revised standard costs of the semi-finished goods inventory do affect the manufacturing cost variances incurred during the POR.

POSCO has a standard cost accounting system. POSCO calculates product-specific standard costs for all of its semi-finished and finished products on a quarterly basis. Sometimes, these product-specific standard costs are even revised within the quarter. POSCO calculates several manufacturing cost variances in addition to the BIV. See the list of variances calculated by POSCO in the Cost Verification Report at 9-10. While POSCO allocates the monthly

manufacturing cost variances to both the cost of goods sold and inventory, POSCO only allocates the BIV entirely to the cost of goods sold. For reporting purposes, POSCO included all of the POR manufacturing cost variances in the reported product costs, but excluded the entire BIV.

The manufacturing cost variance calculates the difference between the actual costs and standard manufacturing costs while the BIV results from POSCO changing its standard costs carrying value for semi-finished and finished goods inventory from one period to the next. POSCO changed the standard costs of its semi-finished and finished goods inventory throughout the POR (i.e., quarterly and in some instances monthly) and not just at the beginning of its fiscal year or at the beginning of the POR. Because the BIV reflects the difference between the current quarter's standard cost carrying value and the previous quarter's standard cost carrying value, the standard cost carrying value on October 1, 2008, is not the same standard cost carrying value on September 30, 2008. The BIV also occurs when the standard costs are revised within the quarter. In that case, the standard cost at the beginning of a particular month is not the standard cost at the end of the previous month.

As stated earlier, POSCO in its normal books and records calculates numerous manufacturing cost variances in addition to the BIV. The sum of all the manufacturing cost variances for a given period and the old standard costs for the semi-finished and finished goods produced reflects the company's total actual cost of goods manufactured. Said another way, the sum of the new standard costs and the manufacturing cost variances does not equal the actual cost of goods manufactured during a given period. To exclude the semi-finished goods consumed BIV, as POSCO has done, results in a cost that is the sum of the new standard costs plus all the manufacturing cost variances which were calculated using the old standard costs. The BIV of the semi-finished goods consumed during the POR relates to the cost of goods manufactured while the BIV of the semi-finished and finished goods sold relates to the cost of goods sold. In its normal books and records, POSCO expenses the BIV in the period when the standard costs are changed. Therefore, contrary to POSCO's claim, the portion of the BIV that relates to semi-finished goods consumed is a part of the total actual cost of manufacturing. See the Memorandum to Neal M. Halper, Director, Office of Accounting, through Theresa C. Deeley, Lead Accountant, from Sheikh M. Hannan, Senior Accountant, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Final Results - Pohang Iron and Steel Co. Ltd. and Pohang Coated Steel Co. Ltd." dated March 14, 2010 (Final Cost Memo) at Attachment 1 which includes a demonstration that the BIV of semi-finished goods consumed is an actual cost of manufacturing, which must be included in the COP and CV. By excluding the BIV related to the semi-finished goods consumed from the reported costs, POSCO has not recognized the total actual cost of manufacturing for the period.

In this case, POSCO's semi-finished goods are similar to the respondent's "WIP on hand" in the SRAM from Taiwan case. Like the "WIP on hand," the semi-finished goods manufactured by POSCO are either sold, used for other purposes, or reenter the production process. We determined that the BIV associated with semi-finished goods that reenter the production process should be included in the reported manufacturing costs because the revised standard cost does affect the manufacturing variance in the subsequent period. Moreover, POSCO's fiscal year is from January 1 to December 31 and the four fiscal quarters are January 1

to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31. The POR is from August 1, 2008, to July 31, 2009, and covers POSCO's five fiscal quarters. As explained above and demonstrated in attachment 1 of the Final Cost Memo, the BIV of one quarter within the POR affects the manufacturing cost variance of the next quarter also within the POR. Therefore, for the final results, we included the BIV associated with semi-finished goods that reentered the production process during the POR, in the reported manufacturing costs.

Comment 13: Reported Costs

According to the petitioners, at the cost verification the Department discovered that POSCO incorrectly calculated its total extended manufacturing costs for the POR. See Cost Verification Report at 17. As a result, POSCO's reported costs were understated. The petitioners contend that, to remedy this error, the Department should increase the reported costs of POSCO by the understated percentage.

POSCO contends that the understatement percentage is miniscule and may have resulted from an inherent limitation of the overall cost reconciliation methodology, and not from any understatement of costs. POSCO claims that neither the Department's verifiers nor the petitioners identified any specific omission, nor do they note any specific deficiencies in POSCO's reporting methodology. POSCO argues that the Department has no basis to make the revision suggested by the petitioners. However, POSCO maintains that in any event, the suggested adjustment would be limited to products manufactured by POSCO's color department and would not apply to all products manufactured by POSCO. See Cost Verification Report at 17.

Department Position:

We disagree with the petitioners. The main objective of the cost reconciliation is to determine whether the company's overall costs have been appropriately included or excluded from the reported costs. The cost reconciliation takes a "top down" approach (e.g., financial statements to per-unit cost), starting with cost of sales from the financial statements and proceeds step-by-step down through the cost of manufacturing for the reporting period to the summation of the reported per-unit costs. See Cost Verification Report at 12. The Department summed the quantities and extended manufacturing cost of each control number in the color department cost database and noted that POSCO understated both the total quantity and the total cost by extremely small percentages. See Cost Verification Report at 17. After analyzing the effects of POSCO's understatements of the quantity and value, we found that POSCO did not understate the reported average per-unit manufacturing cost of the merchandise under consideration. See Final Cost Memo at 2. As such, for the final results, we did not adjust POSCO reported costs as suggested by the petitioners.

Comment 14: General and Administrative Expense Ratio Calculation

According to POSCO, the Department for the preliminary results excluded the gains on the disposition and valuation of trading securities from the calculation of POSCO's general and administrative (G&A) expense ratio because the Department determined that these amounts

resulted from the company's investment activities. See Preliminary Results and the Memorandum to Neal M. Halper, Director, Office of Accounting, through Theresa C. Deeley, Lead Accountant, from Sheikh M. Hannan, Senior Accountant, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Pohang Iron and Steel Co. Ltd. and Pohang Coated Steel Co. Ltd." dated September 7, 2010 (Preliminary Cost Memo) at page 1 and attachment 1.

POSCO points out that in the final results of the prior administrative review of this case, the Department adopted a similar position and noted that the trading securities were classified separately from cash and cash equivalents and short-term financial instruments on the balance sheet, and instead, were classified in the security investment section of the notes to the financial statements. Consequently, the Department concluded that the gains and losses at issue were from an investment trading activity and were unrelated to financing the company's general operations. See Notice of Final Results of the Fifteenth Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 75 FR 13490 (March 22, 2010) (CORE 15), and accompanying Issues and Decision Memorandum at Comment 12.

POSCO contends that the Department did not identify the basis for its conclusion in any of these above instances and argues that the Department should include the gains on the disposition and valuation of trading securities in the calculation of G&A expense ratio because POSCO uses "trading securities" as an integral component of short-term monetary management for general operating purposes.

POSCO maintains that the statute directs the Department to rely on a company's normal books and records if such records are kept in accordance with home country GAAP, but only if those practices are not distortive. See section 773(f)(1)(A) of the Act. Thus, the company's nominal categorization of the trading securities is not controlling in the Department's evaluation. POSCO points out that with respect to whether it is appropriate to include or exclude a particular item in the G&A calculation, the Department has long held that it will review the nature of the activity and the relationship between this activity and the operations of the company. 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) (Cold-Rolled Carbon Steel Flat Products from Korea), and accompanying Issues and Decision Memorandum at Comment 8. POSCO asserts that the record clearly demonstrates that it uses "trading securities" as an integral component of short-term monetary management for general operating purposes.

POSCO acknowledges that on its balance sheet trading securities are separately reported from cash and cash equivalent and short-term financial instruments. However, POSCO claims that the record here clearly demonstrates that trading securities are not categorized as investments in its financial statements. POSCO explains that its financial statements notes provided at Note 2 are a summary of significant accounting policies and the basis of presenting financial statements, under which there is a section entitled "Investment in Securities." According to POSCO, this is simply a convention that permits the company to discuss various accounting policies with respect to the various types of securities that it holds. POSCO continues that this section confirms that trading securities are acquired principally for the

purpose of selling in the short-term and that they are classified as current assets. See POSCO 2009 fiscal year audited unconsolidated financial statements submitted at Exhibit SD-3B of POSCO's First Supplemental Section D Response of June 14, 2010 and POSCO's Section D response (January 20, 2010) at 64. POSCO further states that Note 6 provides a schedule showing the composition of trading securities, which consists of beneficiary certificates, while "Investment securities," are separately described in Note 7, which also provides extensive details and schedules, showing the company's investments in equity securities, bonds, and capital. POSCO claims that the company's cash flow statement from operating activities identifies both the gains on disposal of trading securities and gains on valuation of trading securities as "cash provided by operating activities." POSCO reiterates that trading securities are not part of the company's investment activities, but rather form an integral part of the company's cash flow management for its general operations. POSCO concludes that its inclusion of these amounts was fully in accordance with the Department's practice, and therefore, for the final results should not be excluded from the G&A expense ratio calculation.

Petitioners argue that the Department correctly excluded the gains on disposition and valuation of trading securities from the calculation of POSCO's G&A expense ratio. Petitioners assert that the amounts in question are clearly gains from POSCO's investment activities and the Department's practice is to exclude investment income from the G&A expense ratio calculation.²⁵ The petitioners point out that in the prior administrative review of this case POSCO claimed that gains from beneficiary certificates are not investment activities and that the Department rejected this claim. See CORE 15 at Comment 12. 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. Moreover, the petitioners contend that where these gains appear in the operating activities of the cash flow statement is irrelevant. Thus, the Department should continue to exclude the gains on the disposition and valuation of trading securities from the calculation of POSCO's G&A expense ratio.

Department Position:

We agree with the petitioners. In the prior administrative review of this case, POSCO included gains and losses on the disposition and valuation of trading securities in the calculation of its financial expense ratio, and claimed that these items represent short-term interest income. For the final results, the Department rejected POSCO's claim and determined that these gains and losses on the disposition and valuation of trading securities are from POSCO's investment activities and, therefore, it is not appropriate to include these items in the financial expense ratio calculation. See CORE 15th Review Decision Memo at Comment 12.

In the current administrative review of this case, POSCO included the gains on the disposition and valuation of trading securities in its G&A expense ratio calculation, and claims that it uses "trading securities" as an integral component of its short-term monetary management for general operating purposes. Consistent with the past decision and the Department's well established practice, we continue to determine that these gains on the disposition and valuation

²⁵ 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) (Diamond Sawblades from Korea), and accompanying Issues and Decision Memorandum at Comment 38.

of trading securities are from POSCO's investment activities and should be excluded from the G&A expense ratio calculation.

It is the Department's well established practice to exclude investment related gains or losses from the calculation of cost of production (COP) and constructed value (CV). In calculating COP and CV, we seek to capture the cost of production of the foreign like product and subject merchandise, and to exclude the cost of investment activities. See Notice of Final Results of Antidumping Duty Administrative Review, and Final Determination to Revoke the Order In Part: Individually Quick Frozen Red Raspberries from Chile, 72 FR 6524 (February 12, 2007), and accompanying Issues and Decision Memorandum at Comment 6. The Department does not include items that are related to the investment activities of the company, either in the G&A expense ratio calculation or in the net financial expense ratio calculation because investment activities do not relate to the general production operations of the company. Instead, investment activities are separate profit making activity. See Diamond Sawblades from Korea at Comment 38.

We relied on POSCO's 2009 fiscal year unconsolidated audited financial statements submitted at exhibit SD-3B of POSCO's First Supplemental Section D Response of June 14, 2010, to substantiate our determination that trading securities relates to POSCO's investment activities. These financial statements are prepared in accordance with Korean GAAP and POSCO calculated the G&A expense ratio based on the amounts reported in these financial statements.

The current asset section of POSCO's balance sheet shows separate line items for trading securities, current portion of available-for-sale securities, and current portion of held-to-maturity securities. In addition, the non-current asset section of the balance sheet shows a line item for "investment securities, net." Note 7 to the financial statements explains that the "investment securities, net" includes available-for-sale securities less the current portion, held-to-maturity securities less the current portion, and equity method accounted investments. In Note 2 to the financial statements, trading securities are classified as investments in the security investment section along with available-for-sale securities and held-to-maturity securities. According to Note 2, trading securities are current assets because trading securities are acquired principally for the purpose of selling in the short-term. Available-for-sale and held-to-maturity securities can either be current or non-current assets depending on when these securities will be disposed or mature.

While it is true that Note 6 provides a schedule showing the composition of trading securities and Note 7 provides a schedule showing the composition of the "investment securities, net," these separate notes do not preclude trading securities from being investment vehicles. The independent auditors, for clarity, provided separate notes because trading securities are current assets while the available-for-sale securities and held-to-maturity securities can either be current or non-current assets.

The location of these items in POSCO's cash flow statement has no bearing on the underlying nature of the assets. POSCO prepares the cash flow statement using the indirect method. This method derives the net cash from operating activities by adjusting the net income

for items that affected the net income but did not affect the cash. Under this method, POSCO deducts the gains from the disposition and valuation of trading securities and gain on disposal of net investment from the net income along with other adjustments to calculate the net cash provided from operating activities. As such, these gains from the disposition and valuation of trading securities did not generate cash²⁶ from operating activities as claimed by POSCO. POSCO classified disposal of trading securities, disposal of available-for-sale securities, and redemption of current portion of held-to-maturity securities as cash flow from investing activities. It is clear from the financial statements that POSCO in its normal books and records classifies trading securities along with available-for-sale securities and held-to-maturity securities as investments.

In accordance with section 773(f)(1)(A) of the Act, the Department has relied on the records of POSCO because its records are kept in accordance with the GAAP of Korea and reasonably reflect the costs associated with the production and sales of the merchandise. Consequently, we find that the gains and losses at issue are from an investment activity and do not form an integral part of the company's cash flow management for its general operation. Therefore, for the final results, the Department continued to exclude the gains on disposition and valuation of trading securities from the G&A expense ratio calculation.

Furthermore, POSCO's reliance on Cold-Rolled Carbon Steel Flat Products from Korea is misplaced. In that case, consistent with our normal practice, the Department included the short-term interest income as an offset to interest expense.

UNION

Comment 15: Cost-Recovery Test when Using a Quarterly-Cost Methodology

Although Union supports the Department's use of quarterly costs, Union argues that the Department did not apply the requisite cost-recovery test and, as a result, excluded sales as below cost which were below the quarterly average COP regardless of whether such sales were above the POR weighted-average COP. Union states that, pursuant to sections 773(b)(1)(A) and (B) of the Act, the Department may disregard sales which "have been made within an extended period of time in substantial quantities" which "were not at prices which permit recovery of all costs within a reasonable period of time." Union also argues that section 773(b)(2)(D) of the Act mandates that prices which are above the POR weighted-average COP "shall be considered to provide for recovery of costs within a reasonable period of time" even if priced below cost at the time of sale. Additionally, citing the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994) at 832, Union argues that, because Congress intended the cost-recovery test is to be based on POR weighted-average costs exclusively, the Department does not have the authority to rely on other time periods.

²⁶ We note that the proceeds from the disposal of trading securities generate cash and not the gain (i.e., the difference between the proceeds from disposal and the book value of the trading securities) from disposal of trading securities. In addition, the gain on valuation of trading securities does not generate cash because this gain represents the difference in value between two balance sheet dates.

Citing Chevron U.S.A., Inc. v. Nat'l Res. Def. Council, Inc., 467 U.S. 837, 843 (1984) and Allied Pacific Food (Dalian) Inc. v. United States, 587 F. Supp. 2d 1330, 1354-1361 (CIT 2008), Union argues that the Department must follow the plain language of the Act and apply the cost-recovery test. Additionally, citing Acciai Speciali Terni S.P.A. v. United States, 142 F. Supp. 2d 969, 997 (CIT 2001) (Acciai), Union argues that the CIT has recognized that the Department must give effect to the unambiguous congressional intent that section 773(b)(2)(D) of the Act specifies when particular prices provide for cost recovery within a reasonable period of time. Moreover, citing SeAH Steel Corp. v. United States, 704 F. Supp. 2d 1353, 1368, n.18 (CIT 2010) (SeAH), Union asserts that the CIT has stated that, because section 773(b)(2)(D) of the Act requires that prices above the POR weighted-average COP be considered to provide for the recovery of costs within a reasonable period of time, the Department may not compare prices to a weighted-average per-unit COP for a different time period. Accordingly, Union concludes that, for these final results, the Department should apply the cost-recovery test to sales which were excluded as below cost and, if such sales are above the POR weighted-average per-unit COP, include them in the dumping margin calculation.

Nucor and US Steel argue that, because the Department's methodology complies with statutory requirements, the Department should continue to apply the methodology for the final results. Citing, e.g., CORE 15 at Comment 3, Nucor argues that Union's arguments have been rejected by the Department previously. Citing, e.g., CORE 15 at Comment 3e, Nucor explains that, the Department has recognized that, in situations where significant cost changes during the POR warrant the application of the quarterly-costing methodology, it is necessary to address the distortive impact such changes have on the annual average cost calculation used in the cost-recovery test.

US Steel explains that the Department used the POR weighted-average per-unit COP as adjusted to reflect significantly changing coil costs in the cost-recovery test. Similarly, citing Certain Welded Stainless Steel Pipes From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 74 FR 31242 (June 30, 2009) (SSP Korea), and accompanying Issues and Decision Memorandum at Comment 1e, Nucor contends that "indexing the significantly changing raw material costs . . . and then indexing the weighted average annual per-unit cost for the input to the appropriate period (similar to the Department's high inflation 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 and the end of the period resulting from the significant price level changes."

Citing the Final Results of Redetermination Pursuant to Court Remand, Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States, Slip Op. 09-55 (Ct. Int'l Trade 2009) at 19-20, US Steel states that the use of an adjusted POR weighted-average per-unit COP in the cost-recovery test avoids the distortive effects that the significant change in raw material costs would otherwise have on the dumping margin calculations. Nucor contends that, if the Department did not address the distortive effect of changing costs while conducting the cost-recovery test, but did address the distortion while conducting the sales-below-cost test, the results would be distorted. Accordingly, Nucor argues that the Department's methodology balances the statutory mandate to use POR weighted-average costs with the need to address the distortive effect of rapidly changing costs. Moreover, US Steel argues that the Department's

methodology not only complies with all statutory requirements, but, citing Lasko Metals Prods. v. United States, 43 F.3d 1442, 1443 (Fed. Cir. 1999), also fulfills the Department's duties to use the best information available and determine margins as accurately as possible. Citing CORE 15 at Comment 3, Nucor argues that the Department's methodology is consistent with the legislative history.

US Steel argues that Union is wrong to argue that "sales that were found to be below the quarterly average COP were excluded as below cost regardless of whether those excluded sales were above the weighted average per-unit COP for the period of review." Indeed, citing CORE 15 at Comment 3, US Steel states that the Department has explained that the purpose of comparing sales prices to an adjusted POR weighted-average COP rather than the quarterly average cost of production is that the "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."

US Steel argues that, because the Department has considered all of Union's sales to provide for the recovery of costs within a reasonable period of time if they were priced above the adjusted POR weighted average COP, the Department's methodology is consistent with Acciai. Nucor and US Steel also argue that Union's reliance on SeAH is misplaced. Specifically, citing SeAH, 704 F. Supp. 2d at 1369, Nucor and U.S. Steel explain that the CIT, rather than rule that the Department's cost-recovery methodology was inconsistent with statutory requirements, remanded the issue to the Department for an explanation of how the methodology comported with statutory requirements. Finally, citing Habas Sinai Ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States, 2009 Ct. Intl. Trade LEXIS 139, 31 Int'l Trade Rep. (BNA) 2374 (2009) and Nucor Corp. v. United States, 2010 Ct. Intl. Trade LEXIS 6, 32 Int'l Trade Rep. (BNA) 1128 (2010), Nucor argues that the CIT has determined that the Department's previous explanations of its cost-recovery methodology were sufficient.

Department Position:

The Department applied the statutorily required cost-recovery test in the Preliminary Results. As explained in the Preliminary Results, the Department determined that it was appropriate to use quarterly costs to calculate Union's antidumping margin. See Preliminary Results, 75 FRat 55773. The Department also explained that, pursuant to sections 773(b)(2)(B), 773(b)(2)(C), and 773(b)(2)(D) of the Act, the Department disregarded below-cost sales which were made within an extended period of time in "substantial quantities" at prices which would not permit the recovery of all costs within a reasonable period of time. Id. at 55774. Additionally, the Department stated that, in accordance with section 773(b)(2)(D) of the Act, when determining whether sales were made at prices which would permit the recovery of all costs within a reasonable period of time, the Department based its comparison of prices to either the indexed POR weighted-average COP or POR weighted-average COP, as appropriate. Id.

The "below cost" and "cost recovery" tests used in the Department's calculations stem from section 773(b)(1) of the Act, which authorizes the Department to disregard for the purposes of determining normal value ("NV") "sales made at less than cost of production" that "(A) have been made within an extended period of time in substantial quantities; and (B) were not at prices

which permit recovery of all costs within a reasonable period of time.” The Department normally calculates the costs of production using a single weighted-average cost for the entire period of review. See Thai Pineapple Canning Indus. Corp. v. United States, 273 F.3d 1077, 1084 (Fed. Cir. 2001). Accordingly, consistent with section 773(b)(1) of the Act, the Department usually compares a respondent’s sales prices against a single weighted-average COP for the period of review to determine whether sales were made at less than the COP and whether the sales prices permit recovery of all costs within a reasonable period of time. Because the use of a single period of review average properly captures the cost of production, the Department departs from its normal methodology only in certain situations where, as here, unadjusted cost and price averages calculated over the entire period do not permit proper comparison.

Union’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. Indeed, Union supports the use of quarterly costs in this review. See Union’s Case Brief at 15. The Department has explained previously that, during a period of significant cost change, as was the case with Union in this review, a single annual average cost does not reasonably reflect costs associated with sales of the merchandise under review and leads to skewed results. See, e.g., CORE 15 at Comment 3. Accordingly, consistent with the Department’s practice, to avoid inappropriate and skewed results, the Department deviated from its normal methodology of using a single unadjusted weighted-average cost period and compared Union’s home-market sales prices to an indexed POR weighted-average per-unit COP. See, e.g., id. Importantly, because the Department compared Union’s sales prices to an indexed weighted-average per-unit cost of production for the POR COP (stated in terms of each quarter’s materials price level), Union is mistaken in its contention that “sales that were found to be below the quarterly average COP were excluded as below cost regardless of whether those excluded sales were above the {un-indexed} weighted average per unit cost of production for the period of review.” See Union’s Case Brief at 17.

We disagree with Union 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 determined was distortive for purposes of 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 period of investigation or POR, we disagree that the Congress mandated the use of a single unadjusted 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 factual weighted average prices and costs during the POR or POI).

In light of the statutory requirement that costs must reasonably reflect the costs associated with 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 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, because it would have resulted in a cost that does not reasonably reflect the costs associated with the production and sales of the merchandise. See Memorandum entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – Union Steel Co., Ltd.," dated September 7, 2010 at pages 1-2. 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 an unadjusted 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 reported quarterly coil costs, the primary driver of the significant changes in COM through the POR, and annual weighted average costs for all other cost elements. In the margin calculation program used for the preliminary analysis, the Department indexed the quarterly coil 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 weighted-average per-unit cost for the POR. Finally, the weighted average per-unit cost for the period of review for the coil input was indexed back to the appropriate quarter to keep the weighted-average per-unit cost consistent with the main input's significantly changing price levels occurring between quarters. This methodology addresses the statute's requirement of weighted-average costs for the period (i.e., recovery of cost test) while preserving the indexed differences between quarters resulting from the significant price level changes.

Under the Department's indexing methodology, the CONNUM-specific costs reflect the 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. Such results say little about true cost recovery; rather it simply shows which sales were made during high cost periods. Even if the company were to expend cash daily from unprofitable below-cost sale prices that never catch up with rapidly raising costs, prices during the highest cost period will still almost always be higher than the annual average costs. Accordingly, the test would show that the costs have been recovered, regardless of the true pricing behavior of the company.

Furthermore, the antidumping statute does not require the Department to blindly rely upon unadjusted annual average costs in an environment of significant cost change. Union'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 an unadjusted single average cost becomes meaningless, including for cost recovery purposes. Finally, Union's reliance on SeAH is misplaced. In SeAH, the CIT did not hold that the Department's use of an indexed POR weighted-average per-unit COP figure was contrary to law. Instead, the CIT simply remanded the issue so that the Department could demonstrate that the methodology complied with the Act. See SeAH, 704 F. Supp. 2d at 1366-1370

Comment 16: Scrap Offset

US Steel argues that, because record evidence demonstrates that Union reduced its POR cost of manufacturing (COM) by an amount in excess of total POR revenue from scrap sales, the Department should revise Union's reported scrap offset. US Steel argues that the discrepancy arises because, even though Union uses the prior month's scrap sales price to value scrap revenue in its normal books and records, Union revalued scrap revenue to the current monthly scrap sales price for reporting purposes. Citing section 773(f)(1)(A) of the Act and Notice of Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order: Brass Sheet and Strip From the Netherlands, 65 FR 742 (January 6, 2000) (Netherlands Brass Sheet), and accompanying Issues and Decision Memorandum at Comment 4, US Steel states that the Department relies upon a company's normal books and records when such records are prepared in accordance with the requisite GAAP and reasonably reflect the cost of producing and selling the subject merchandise. US Steel argues that, because Union has not demonstrated how its normal books and records fail to reflect the cost of producing and selling the subject merchandise reasonably, there is no basis for

Union to adjust its scrap revenue to the current monthly scrap sales price. US Steel asserts that the Department should increase Union's COP to reflect the disallowable adjustment.

Union argues that the premise of US Steel's argument is flawed. Specifically, Union explains that, contrary to US Steel's assertion, both the amounts reported in Union's schedule of scrap sales and cost reconciliation are valued using the appropriate current monthly average scrap sales price. Union states that it explained in its questionnaire response that, for convenience purposes, it uses the prior month's average scrap sales price in its cost-accounting system to value the scrap generated during the production process and that, for reporting purposes, it used the appropriate current monthly scrap sales price to value its scrap offset. Accordingly, Union explains that the alleged discrepancy, rather than stemming from the difference between the prior and current monthly average scrap sales prices, is attributable to the difference between scrap sold during the POR and scrap produced during the POR.

Union also argues that US Steel's reliance on Netherlands Brass Sheet is misplaced. Specifically, Union argues Netherlands Brass Sheet involved a situation where the respondent omitted an item from its submitted cost files even though the respondent included the item in its normal cost calculations which it prepared in accordance with the relevant GAAP. Union explains that, unlike the respondent in Netherlands Brass Sheet, it has included all items in its reported costs which are recorded in its normal books and records and has simply revised its methodology for reporting its scrap offset in order to reflect its costs accurately. Union asserts that such revisions are specifically contemplated in the Department's standard questionnaire. Accordingly, Union concludes that the Department should not revise Union's reported scrap offset.

Department Position:

We have revised Union's reported COM figures to reflect a recalculation of Union's scrap offset total. Section 773(f)(1)(A) of the Act requires the Department to base costs on a respondent's normal books and records kept in accordance with the applicable GAAP unless such costs are unreasonable. See Polyvinyl Alcohol From Taiwan: Final Determination of Sales at Less Than Fair Value, 76 FR 5562 (February 1, 2011), and accompanying Issues and Decision Memorandum at Comment 4. While Union's adjustment attempts to apply a more contemporaneous value to the scrap offset, the slight difference between the value of the scrap offset in Union's normal books and records and value of the scrap offset in its submitted costs demonstrates that the methodology in Union's normal books and records is not unreasonable. Accordingly, we have adjusted Union's reported COM figures to reflect our disallowance of Union's proposed adjustment to the figures recorded in its normal books and records.

Comment 17: General and Administrative Expenses

US Steel argues that the Department should exclude certain income items, which were identified in the Department's cost verification report, from Union's G&A-expense rate calculation. Specifically, US Steel argues that the Department should exclude the following items: gains on disposition of investment assets, gains on transactions and valuations of forward contracts, reversal of allowance for doubtful accounts, and certain components of miscellaneous

income. Citing e.g., Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Final Results of Antidumping Duty Administrative Review, 72 FR 9924 (March 6, 2007) (Korea OCTG), and accompanying Issues and Decision Memorandum at comment 1, US Steel argues that it is the Department's practice to exclude investment-related gains and losses, as well as a reversal of bad debt allowance, from the G&A-expense rate calculation. Additionally, citing Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fourteenth Administrative Review and Partial Rescission, 74 FR 11082 (March 16, 2009) (CORE 14), and accompanying Issues and decision Memorandum at Comment 4, US Steel argues that it is the Department's practice to exclude gains related to transactions and valuations of forward contracts from the G&A-expense rate calculation.

Citing Certain 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) (Romania Pipe), and accompanying Issues and Decision Memorandum at Comment 2, US Steel argues that the Department's practice is to include miscellaneous income and expenses in the G&A-expense rate calculation only when such items are related to general production operations. US Steel argues that a portion of Union's miscellaneous income is not related to Union's general production operations. For example, US Steel argues that the fee which Union received in exchange for guaranteeing a loan for an overseas branch is not related to Union's production activities. Accordingly, US Steel argues that the Department should exclude a portion of Union's miscellaneous income from the G&A-expense rate calculation.

Union explains that the Department's cost verification report identifies the income items mentioned above as well as the corresponding expense items. Union argues that, if the Department excludes the identified items from its G&A-expense rate calculation, the Department should also exclude "other bad debt expenses" from the calculation. Citing, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Glycine from India, 73 FR 16640 (March 28, 2008) (India Glycine), and accompanying Issues and Decision Memorandum at Comment 2, Union states that the Department considers bad-debt expenses to be indirect selling expenses rather than G&A expenses. Union explains that, even though it included bad-debt expenses in its indirect selling expense calculation, it had also classified its "other bad debt expenses" as non-operating expenses and included them in its G&A-expense rate calculation.

US Steel argues that the Department should not exclude Union's "other bad debt expenses" from Union's G&A-expense rate calculation. Specifically, US Steel asserts that Union's argument that "other bad debt expenses" should be excluded because Union had included bad debt expenses in its indirect selling expense calculation as well lacks merit. Citing, e.g., Notice of Final Results and Recision in Part of Antidumping Duty Administrative Review; Oil Country Tubular Goods, Other Than Drill Pipe, From Argentina, 68 FR 13262 (March 19, 2003), and accompanying Issues and Decision Memorandum at Comment 3, U.S. Steel explains that the Department's established practice is to treat bad debt expenses as indirect selling expenses where such expenses are generally related to merchandise sales. US Steel explains that Union's financial statements classify a portion of bad debt expenses as an operating expense and the remaining portion as non-operating expenses. US Steel argues that, while Union reported the operating portion of bad debt expenses as a component of indirect selling expenses, it reported

the non-operating portion as a component of its G&A expenses. US Steel argues that Union's own classification indicates that the expense is not related to sales of merchandise. Additionally, US Steel asserts that Union's chart of accounts supports a conclusion that the "other bad debt expense" relates to items other than merchandise sales.

Department Position:

The Department has revised Union's G&A-expense rate calculation for these final results. Consistent with the Department's practice, the Department has removed gains and losses related to Union's disposition of investment-related assets from Union's G&A-expense rate calculation. See Korea OCTG at Comment 1. In addition, because the Department has explained previously that currency forward contracts are part of a consolidated entity's overall foreign currency exposure and cash management, we have removed gains and losses related to transactions and valuations of forward contracts from Union's G&A-expense rate calculation. See CORE 14 at Comment 4. Additionally, consistent with both the Department's practice and our decision in the Preliminary Results, we have excluded Union's reversal of the allowance for doubtful accounts from Union's G&A-expense rate calculation. See Notice of Final Results of Antidumping Duty Administrative Review: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Brazil, 70 FR 7243 (February 11, 2005), and accompanying Issues and Decision Memorandum at Comment 6, and Preliminary Results, 75 FR at 55774.

We have also excluded two items of miscellaneous income from Union's G&A-expense rate calculation. We have excluded an item of interest income because such income, if short-term in nature, is included in the financial-expense rate calculation. See Polyethylene Retail Carrier Bags From Thailand: Final Results of Antidumping Duty Administrative Review, 74 FR 65751 (December 11, 2009), and accompanying Issues and Decision Memorandum at Comment 4. We have also excluded the income which Union received from its overseas affiliate for guaranteeing a loan. The Department includes income and expenses in a company's G&A-expense rate calculation when the item is related to a company's general operations. See Stainless Steel Bar From Brazil: Final Results of Antidumping Duty Administrative Review, 74 FR 33995 (July 14, 2009), and accompanying Issues and Decision Memorandum at Comment 3. In this case, Union received income for providing a service which enabled its overseas affiliate to obtain a loan and, thus, affected the consolidated entity's financing expenses directly. It would be inappropriate to reduce Union's G&A expenses by inter-company income which is not only unrelated to Union's general operations, but is also directly related to Union's activities related to furthering the consolidated entity's overall financing strategy. See Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52055 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 7 (explaining that the controlling member in each consolidated group has the power to determine the financial costs of each individual member and that the removal of inter-company transactions reveals the groups true financing costs).

We have not excluded Union's "other bad debt expenses" from Union's G&A-expense rate calculation. Although we agree with Union that the Department's normally classifies bad debt expenses as indirect selling expenses, record evidence does not indicate that such treatment

would be appropriate in the current administrative review for “other” bad debt expense. The Department has explained that the reason that it classifies bad debt expenses as indirect selling expenses rather than G&A expenses is because the expenses relate to a company’s sales. See India Glycine at Comment 2. Union’s income statement includes two categories of bad debt expenses. The first category of bad debt expenses, which Union included in its POR indirect selling expense calculation, is included in the operating portion of Union’s income statement. The second category, which is at issue here, is labeled “other bad debt expenses” and is classified as a non-operating expense on Union’s income statement. This account name and classification, coupled with the fact that Union itself included the line item in its submitted G&A-expense rate calculations, supports a conclusion that the expenses may not be related to Union’s sales.

Because it is unclear from the face of Union’s financial statements whether the “other bad debt expenses” should be classified as either a selling or G&A expense, Union should have presented evidence to demonstrate that the fiscal year total related to sales and, hence, should be excluded from its G&A-expense rate calculation. Section 351.401(b)(1) of the Department’s regulations provides that “{t}he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment.” Further, the CAFC has explained that the burden of evidentiary production belongs “to the party in possession of the necessary information.” See Zenith Electronics Corp. v. United States, 988 F.2d 1573, 1583 (Fed. Cir. 1993). See also NTN Bearing Corp. of Am. v. United States, 997 F.2d 1453, 1458 (Fed. Cir. 1993) (“{e}ven though Commerce specifically did not ask for the {information} that would have enabled it to make such an exclusion determination for {respondent’s merchandise}, it was {the respondent’s} burden to supply the information in the first instance along with its request for a substantial value-added exclusion”). Accordingly, because Union has not presented evidence to demonstrate that the “other bad debt expenses” are not related to Union’s general operations, we have included the item in Union’s G&A-expense rate calculation.

Comment 18: Cost of Goods Sold (COGS) Denominator

US Steel argues that the COGS denominator used in Union’s G&A-expense rate calculation should be adjusted to reflect the full amount of FY 2009 scrap revenue as reflected in Union’s sales reconciliation. Union states that the cost verification report does not indicate any errors in Union’s calculations and that the Department should continue to use the COGS denominator, as adjusted by the Department to reflect the major-input adjustment, which it used in the preliminary results.

Department Position:

Because the Department calculates G&A-expense rates on a fiscal year basis, we agree with US Steel that the COGS denominator should be adjusted to reflect FY scrap revenue rather than the total POR scrap revenue. Accordingly, we have recalculated the denominator used in the G&A-expense rate calculation.

Comment 19: Financial Expenses

Union explains that the Department's cost verification report noted that Union excluded valuation gains and losses from financial derivatives as well as gains and losses from financial derivatives transactions. Union also explains that the Department's cost verification report indicates that the excluded items relate to interest swap contracts, currency swaps, and currency futures contracts. Citing CORE 14 at Comment 4 and Certain Frozen Warmwater Shrimp from Thailand: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 54847 (September 9, 2010), and accompanying Issues and Decision Memorandum at Comment 5, Union explains that the Department has included such expenses in a respondent's financial-expense rate calculation previously. Accordingly, Union argues that, if the Department excludes the comparable items from Union's G&A-expense rate calculation, the Department should include these items in Union's financial-expense rate calculation.

Neither US Steel nor Nucor commented on this issue.

Department Position:

We agree with Union that the gains and losses attributable to interest swap contracts, currency swaps, and currency future swaps should be included in Union's consolidated financial-expense rate calculation. The Department includes foreign exchange gains and losses, interest, and currency swap gains and losses in the financial-expense rate calculation because such items relate to a company's overall cash management. See CORE 14 at Comment 4. The Department has explained previously that forward contracts are part of a consolidated entity's management of its foreign currency exposure in any one currency and, thus, are linked and directly associated with cash management. See id. Similar to forward contracts, interest swap contracts, currency swaps, and currency future swaps are hedging vehicles used by entities to manage interest-rate and foreign exchange exposure. Accordingly, we have included the gains and losses related to Union's overall cash management activities.

DONGBU

Comment 20: Calculation of Home Market Short Term Interest Rate

US Steel argues that Dongbu miscalculated the home market interest rate used for calculating the imputed credit adjustment for home market sales. Citing the Notice of Final Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Carbon Steel Flat Products From France, Part II, 67 FR 62114 (October 3, 2002) (French Cold-Rolled), and accompanying Issues and Decision Memorandum at Comment 7, US Steel maintains that it is the Department's position to exclude overdraft charges from the interest rate calculation of short-term interest rate. US Steel contends that Dongbu included bank overdraft charges in the short-term interest rate calculation without demonstrating that the overdraft charges are linked to obtaining short-term financing. US Steel maintains that the Department should recalculate the home market, short-term interest rate excluding the bank overdraft charges.

Dongbu argues that the Department should continue to include bank overdraft charges in the home market, short-term interest rate calculation. Dongbu maintains that the bank overdraft charges included in the home market, short-term interest rate calculation are the interest expenses

included in Dongbu's bank overdraft interest account. Dongbu asserts that they directly relate to short-term financing as they are incurred when Dongbu overdraws its bank account. Dongbu maintains that the bank overdraft interest has been included in the calculation of the home market, short-term interest rate for Korean respondents in all of the CORE reviews.

Dongbu argues that US Steel did not raise this issue previously in this review. Dongbu contends that if US Steel had concerns regarding the calculation of the home market, short-term interest rates, US Steel should have raised those concerns with the Department while Dongbu had the opportunity to respond.

Dongbu asserts that US Steel's reliance on French Cold-Rolled is misplaced. Dongbu argues that in French Cold-Rolled, the Department did not include bank overdraft charges in its short-term interest rate calculation because it was not possible to identify the loans to which the charges were applied. Dongbu reasons that the Department's position in French Cold-Rolled does not establish a practice of excluding bank overdraft charges in the short-term interest rate calculation. Dongbu maintains that the Department should continue to include bank overdraft charges in its home market, short-term interest rate calculation.

Department Position:

The Department agrees with Dongbu and no change is necessary in the final results. The Department finds that US Steel's reliance on French Cold-Rolled is misplaced. In French Cold-Rolled, the Department found that the overdraft charges were immaterial to the calculation of the interest rate. Further, the Department found that the overdraft charges could not be linked to the specific loans to which they were applied. By contrast, in this review, Dongbu reported the overdrafts in conjunction with specific loan periods. See Dongbu's Section B response (February 3, 2010) at Exhibit B-17. The Department finds that there is no evidence suggesting that the overdrafts are not linked to specific loans.

Dongbu reported that the short term interest rate takes into account costs associated with bank overdrafts and other short-term borrowings. See id. at 38. Further, the Department finds that the bank overdrafts are not one-time fees, but are re-paid over time. See id. at Exhibit B - 17. As a result, they are more appropriately considered a cost of borrowing. Thus, the Department will not recalculate Dongbu's home market, short-term interest rate for this review.

Comment 21: Reported U.S. Customs Duty

US Steel states that Dongbu reported U.S. customs duty (USDUTYU) for all U.S. sales in U.S. channels of distribution 1 and 2. US Steel argues that Dongbu did not report the duty amounts correctly. US Steel asserts that the Department should use facts available with an adverse inference to recalculate the U.S. duty amounts for Dongbu's channel 1 and 2 sales.

Dongbu maintains that US Steel misunderstands how Dongbu calculated the USDUTYU amounts that it reported in the U.S. sales database. Dongbu claims that it reported per-unit amounts for U.S. customs duties on an invoice basis. Dongbu asserts that, for the observations which US Steel claims have been incorrectly reported, the total U.S. customs duties reflected on

the entry summary document relate to more than one line item on the related invoice. Dongbu states that it allocated the customs duties between the different line items to reflect the proportional amount paid for each observation. Dongbu argues that it has accurately reported its U.S. customs duty amounts and that the Department should continue to use the reported USDUTYU amounts for the final results.

Department Position:

The Department agrees with Dongbu. The Department requires that respondents report U.S. customs duty in the unit amount of any customs duty paid on the subject merchandise, i.e. duty paid per metric ton. See Dongbu's section C response (February 3, 2010) at 35. Dongbu stated that it "allocated the actual amount of fees paid based upon the ratio of the value of each product to the total value of the line item." See id. at 36. Thus, Dongbu correctly responded to the Department's directions for reporting of the USDUTYU field.

Dongbu provided documentation supporting its USDUTYU calculations. See id. at exhibit 11. The Department notes that the USDUTYU amount presented in Dongbu's questionnaire response was correctly reported in the U.S. market database used to calculate the final margins. The documentation for the observations that US Steel maintains are incorrect are contained in Dongbu's July 16, 2010, supplemental questionnaire response at Exhibit 33. For each of the observations that US Steel claims are incorrectly calculated, it is clear that the entry documentation is for entries listed on separate pages. Thus, the Department finds that Dongbu appropriately allocated the customs duty paid on U.S. sales.

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