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Administrative Review
POR: 11/01/2010-10/31/2011
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Office 1: CWP Team

DATE: June 5, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Gary Taverman
Senior Advisor
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the 2010-2011 Administrative Review of Circular Welded Non-Alloy Steel Pipe from the Republic of Korea

Summary

We have analyzed the case and rebuttal briefs of interested parties in the 2010-2011 administrative review of the antidumping duty order on circular welded non-alloy steel pipe (CWP) from the Republic of Korea (Korea). As a result of our analysis, we have made changes to the dumping margin calculations. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments and rebuttal comments by parties:

Targeted Dumping Allegation
Cost Reallocation
Conversion Factors
G&A
Date of Sale
Pipe Grade
Warranty Expense
Interest Revenue

Company Abbreviations

Husteel – Husteel Co., Ltd.
HYSCO – Hyundai HYSCO
U.S. Steel – United States Steel Corporation
Wheatland – Wheatland Tube Company
The petitioners – U.S. Steel and Wheatland

The respondents – Husteel and HYSCO

Other Abbreviations

A-A – average-to-average
A-T – average-to-transaction
AD – antidumping duty
CAFC – Court of Appeals for the Federal Circuit
CBP – U.S. Customs and Border Protection
CEP – constructed export price
CIT – Court of International Trade
COM – cost of manufacture
CONNUM – control number
CV – constructed value
DIFMER – differences in the merchandise
EP – export price
G&A – general and administrative
GAAP - generally accepted accounting practices
I&D Memo – Issues and Decision Memorandum adopted by a *Federal Register* notice of final determination of an investigation or final results of review
NV – normal value
POR – period of review
SAA – Statement of Administrative Action accompanying the URAA, H.R. Doc. 103-316, Vol. 1 (1994)
SG&A – selling, general, and administrative expenses
The Act – The Tariff Act of 1930, as amended
T-T – transaction-to-transaction
URAA – Uruguay Round Agreements Act
WTO – World Trade Organization

Background

On December 7, 2012, the Department of Commerce (the Department) published the preliminary results of the administrative review of the AD order on CWP from Korea, covering the period November 1, 2010, through October 31, 2011.[1] The administrative review covers two producers/exporters of the subject merchandise to the United States: Husteel and HYSCO.

Following the *Preliminary Results*, the Department requested and received additional information from Husteel and HYSCO. Specifically, we sent supplemental questionnaires to Husteel and HYSCO on December 12, 2012, and December 17, 2012, and received timely responses on January 9, 2013, and January 11, 2013, respectively. We sent an additional supplemental questionnaire to HYSCO on January 17, 2013, and received a timely response on January 24, 2013.

[1] *See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2010–2011*, 77 FR 73015 (December 7, 2012) (*Preliminary Results*).

Husteel, HYSCO, U.S. Steel, and Wheatland submitted case and rebuttal briefs on February 19, 2013, and February 27, 2013, respectively. Husteel and Wheatland requested a hearing on January 7, 2013, but withdrew their hearing requests on February 28, 2013, and March 8, 2013, respectively. Thus, no hearing was held.

On March 25, 2013, the Department extended the time limit for the completion of the final results of this review to June 5, 2013, as permitted by section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).[2]

Scope of the Order

The merchandise subject to the order is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in the order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of the order except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit.[3]

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

[2] *See* the memorandum entitled "Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review" dated March 25, 2013.

[3] *See Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube From Brazil, the Republic of Korea, Mexico, and Venezuela*, 61 FR 11608 (March 21, 1996). In accordance with this determination, pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A-53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the AD order.

Discussion of the Issues

TARGETED DUMPING ALLEGATION

Comment 1: The respondents argue that the Department lacks the statutory authority to apply an alternative comparison method based on a targeted dumping analysis in administrative reviews. The respondents claim that section 777A(d)(1)(B) of the Act limits the application of an alternative comparison method to investigations only. According to HYSCO, *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987), states that, "where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." Citing *Andrus v. Glover Construction Co.*, 446 U.S. 608, 616-17 (1980), in which the U.S. Supreme Court stated that "{w}here Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent," Husteel argues that the alternative method is an exception from the normal calculation method that cannot be extended to administrative reviews as there is no indication that Congress intended the Department to do so. Citing *La Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986) and *Marine Harvest (Chile) S.A. v. United States*, 244 F. Supp. 2d 1364, 1379 (CIT 2002), Husteel argues further that the Department has no authority to apply an alternative comparison method in administrative reviews, nor is it entitled to deference under *Chevron*, because the Department has no legislative authority nor an ambiguous statute to interpret. Consequently, Husteel states that the *Final Modification for Reviews* has no basis in law. Similarly, HYSCO explains that the Department cannot overcome the lack of statutory authority on policy grounds or on some other basis because "an agency literally has no power to act . . . unless and until Congress confers power upon it," citing *FAG Italia S.p.A. v. United States*, 291 F.3d 806, 816 (Fed. Cir. 2002) (*FAG Italia S.p.A.*).

Citing, *e.g.*, *Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 9668 (February 11, 2013), the petitioners argue that neither the statute nor the SAA prohibits the Department from applying an alternative comparison method based on a targeted dumping analysis in an administrative review. U.S. Steel explains that the statute permits the use of the A-T comparison method if targeted dumping exists in an investigation because the statute generally requires the use of the A-A comparison method which can mask targeted dumping. U.S. Steel explains further that, because the statute allows the Department to use the A-T comparison method in all reviews regardless of the existence of targeted dumping and the SAA prefers the use of the A-T comparison method in administrative reviews, there is no need for a statutory provision permitting the use of the A-T comparison method as an alternative comparison method based on a targeted dumping analysis in administrative reviews. According to U.S. Steel, the Department stated that, although section 777A(d)(1)(B) of the Act does not govern the Department's use of an alternative comparison method in administrative reviews, because the issues arising under 19 CFR 351.414 in an administrative review are analogous to the issues in an investigation, the analysis used in investigations is instructive in examining whether to apply an alternative comparison method in administrative reviews. Wheatland contends that *FAG Italia S.p.A.* is inapposite in this review because, unlike the duty absorption issue in *FAG Italia S.p.A.*, it is necessary to apply some comparison method to calculate a weighted-average

dumping margin in this review.

Department's Position: The Department has the statutory authority to determine the comparison method to be applied in the Department's dumping calculations in this administrative review, and the analysis to be used in making such a determination. The Department has used a targeted dumping analysis to make such determinations in the context of investigations and it is reasonable to use the same analysis to address this issue in administrative reviews. 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." The definition of "dumping margin" calls for a comparison of normal value and EP or CEP. Before making the comparison called for, it is necessary to determine how to make the comparison.

Section 777A(d)(1) of the Act identifies three methods by which we may compare NV and EP or CEP, and places certain restrictions on our selection of a comparison method in investigations. The statute places no such restrictions on our selection of a comparison method in administrative reviews. Our regulations describe the methods by which normal value may be compared to EP or CEP in AD investigations and administrative reviews, *i.e.*, A-A, T-T, and A-T.[4] These comparison methods are distinct from each other. When using T-T or A-T comparisons, a comparison is made for each export transaction to the United States. When using A-A comparisons, a comparison is made for each group of comparable export transactions for which the EPs or CEPs have been averaged together (*i.e.*, for an averaging group). The Department's regulations at 19 CFR 351.414(c)(1) address the ambiguity in the statute concerning the choice of a comparison method in the context of administrative reviews. In particular, the Department has determined that in both AD investigations and administrative reviews, the A-A method will be used "unless the Secretary determines another method is appropriate in a particular case."

The AD statute, the SAA, and our regulations do not address directly whether we should use an alternative comparison method in an administrative review and on what basis such a determination should be reached.[5] In light of the statute's silence on this issue, we indicated that we would consider whether to use an alternative comparison method in administrative reviews on a case-by-case basis, but declined to "speculate as to either the case-specific circumstances that would warrant the use of an alternative methodology in future reviews, or what type of alternative methodology might be employed."[6] At that time, we also indicated that we would look to practices we employed in AD investigations for guidance on this issue.[7]

In investigations, the Department examines whether to use an A-T method by using an analysis consistent with section 777A(d)(1)(B) of the Act:

> The administering authority may determine whether the subject merchandise is

[4] *See* 19 CFR 351.414 (b).
[5] *See* section 777A(d)(1)(B) of the Act; SAA, at 842-43; 19 CFR 351.414.
[6] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8107 (February 14, 2012) (*Final Modification for Reviews*).
[7] *Id.* at 8102.

> being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if
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> (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and
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> (ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).

Although section 777A(d)(1)(B) of the Act does not strictly govern our examination of this question in the context of an administrative review, we nevertheless find that the issue arising under 19 CFR 351.414(c)(1) in an administrative review is, in fact, analogous to the issue in investigations. Accordingly, we find the analysis that has been used in investigations instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.

The SAA does not demonstrate that we should consider the above criteria and the possible need to apply an alternative comparison method to account for such pricing behavior in investigations only. The SAA does discuss section 777A(d)(1)(A)(i) of the Act, concerning the types of comparison methods that we may use in investigations. That provision, however, is silent on the question of choosing a comparison method in administrative reviews. Section 777A(d)(1)(A) of the Act does not require or prohibit us from adopting a similar or a different framework for choosing a comparison method in administrative reviews as compared to the framework required by the statute in investigations. The SAA states that "section 777A(d)(1)(B) provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an average-to-average or transaction-to-transaction methodology cannot account for a pattern of prices that differ significantly among purchasers, regions or time periods."[8] Like the statute, the SAA does not limit the proceedings in which we may undertake such an examination.

The silence of the statute with regard to application of an alternative comparison method in administrative reviews does not preclude us from applying such a practice. Indeed, the court has stated that the "court must, as we do, defer to Commerce's reasonable construction of its governing statute where Congress leaves a gap in the construction of the statute that the administrative agency is explicitly authorized to fill or implicitly delegates legislative authority, as evidenced by the agency's generally conferred authority and other statutory circumstances."[9] Further, the court has stated that this "silence has been interpreted as 'an invitation' for an agency administering unfair trade law to 'perform its duties in the way it believes most suitable' and courts will uphold these decisions '{s}o long as the {agency}'s analysis does not violate any statute and is not otherwise arbitrary and capricious.'"[10] We find that the above discussion of the extension of the statute with respect to investigations is a logical, reasonable and deliberative

[8] *See* SAA at 843.
[9] *See, e.g., Pakfood Public Co., Ltd. v. United States*, 753 F. Supp. 2d 1334, 1342 (CIT 2011).
[10] *See, e.g., PSC VSMPO-AVISMA Corporation v. United States*, 755 F. Supp. 2d 1330, 1338 (CIT 2011).

method to fill the silence with regard to administrative reviews.

Further, our revision of our practice with regard to administrative reviews, and to follow our WTO-consistent practice for investigations, was a deliberate decision on our part pursuant to the authority provided in section 123 of the URAA. Specifically, we solicited public comments, consulted with the appropriate congressional committees, and issued preliminary and final determinations. This decision was made in order to implement several adverse WTO reports in which it was found that the United States was not meeting its WTO obligations. As such, the wisdom of legitimate policy choices made in that context is not subject to judicial review.[11]

Comment 2: Citing, *e.g.*, *United States – Continued Existence and Application of Zeroing Methodology*, Report of the Appellate Body, WT/DS350/AB/R (Feb. 4, 2009), HYSCO argues that even a finding of targeted dumping and the resulting application of the A-T comparison method does not justify the use of zeroing under the WTO rulings which found against the Department's zeroing practice in administrative reviews. Citing, *e.g.*, *Dongbu Steel Co., Ltd., v. United States*, 635 F.3d 1363 (Fed. Cir. 2011) (*Dongbu*), and *JTEKT v. United States*, 642 F.3d 1378 (Fed. Cir. 2011) (*JTEKT*), HYSCO argues further that the CAFC has also held that the Department's inconsistent treatment of zeroing in investigations and administrative reviews is not reasonable because the Department's decision to implement an adverse WTO report alone is not a sufficient reason to interpret section 771(35) of the Act differently in investigations and administrative reviews. HYSCO requests that, if the Department finds that HYSCO engaged in targeted dumping for the final results, that the Department not use zeroing because the use of zeroing is against WTO rulings and CAFC precedents.

Husteel argues that *Dongbu* and *JTEKT* prohibit the Department from applying the A-T comparison method with zeroing in this administrative review without providing a reasonable explanation other than the one that the CAFC has already rejected. Otherwise, Husteel contends, the statute must be interpreted consistently in investigations and administrative reviews. Also, Husteel claims that the use of the A-T comparison method in an administrative review undermines the *Final Modification for Reviews* in which, according to Husteel, the Department changed its practice to bring the United States into compliance with the WTO findings that zeroing is prohibited in administrative reviews. Husteel explains that finding targeted dumping so as to revive zeroing is inconsistent with the WTO decisions.

The petitioners contend that HYSCO's reliance on *Dongbu* and *JTEKT* is misplaced. According the petitioners, the Department stated in *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012), and the accompanying I&D Memo at Comment 1, and *Polyethylene Terephthalate Film, Sheet, and Strip From Taiwan: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 9668 (February 11, 2013), and the accompanying I&D Memo at Comment 1, that the CAFC (1) questioned the Department's different interpretations of section 771(35) of the Act in investigations and administrative reviews, not the use of zeroing methodology in administrative reviews; (2) did not state that the Department's decisions in these proceedings were unlawful; and (3) asked for more explanation to support the Department's different interpretation of section 771(35) of the Act. In other

[11] *See Suramerica de Aleaciones Laminadas, C.A. v. United States*, 966 F.2d 660, 665 (Fed. Cir. 1992).

words, *Dongbu* and *JTEKT* acknowledge the Department's discretion to use zeroing in administrative reviews as long as it provides a reasonable explanation for doing so, which the Department has done and the CIT has affirmed, according to the petitioners.

The petitioners argue that the WTO does not prohibit the use of zeroing in administrative reviews involving targeted dumping. U.S. Steel claims that the Department stated in the *Final Modification for Reviews* that it is not appropriate, desirable, or necessary to go beyond the WTO findings in the particular reports at issue and to impose a total prohibition of zeroing regardless of comparison method or case-specific circumstances because the WTO findings at issue address only certain types of comparisons in particular circumstances. U.S. Steel explains that the Department can use the same criteria it examines in investigations under section 777A(d)(1)(A) and (B) of the Act. According to Wheatland, the WTO has hinted that zeroing should be allowed in the targeted dumping context to resolve the mathematical equivalence problem. Wheatland states that this means that the WTO would allow the A-A comparison method and the A-T comparison method to produce different results such that the latter methodology is not rendered superfluous.

Department's Position: The CAFC has recognized that there is a basis to apply zeroing in the context of targeted dumping even if we do not apply zeroing in other types of investigations.[12] At issue in *U.S. Steel Corp.* was the Department's implementation of an adverse WTO report. As part of this implementation, the Department ceased zeroing *only* in investigations using A-A comparisons. The CAFC sustained this implementation and held that the Department could discontinue zeroing in the context of A-A comparisons in investigations. Rejecting appellant's contention that the statute was rendered meaningless unless the Department applied zeroing in *all* comparisons, the CAFC held that the statute retained its meaning in part because the Department intended to use zeroing in the context of targeted dumping.[13] Further, as the CAFC explained, the domestic industry would still have an adequate remedy for targeted dumping because "Commerce has indicated that it likely intends to continue its zeroing methodology" in the context of average-to-transaction comparisons performed under section 777A(d)(1)(B) of the Act.[14]

This reasoning echoed the CIT's decision that the Department's cessation of zeroing in connection with A-A comparisons in investigations was reasonable because the Department would still continue to use zeroing in investigations involving A-T comparisons, thus continuing to afford the petitioners the same types of protections that they received under the Department's prior practice.[15] Both the CIT and the CAFC have recognized that the Department intended to use zeroing with A-T comparisons in investigations and did not determine that doing so was problematic. To the contrary, both the CIT and the CAFC held that zeroing in the context of targeted dumping in investigations was *consistent* with the Department *not zeroing* when A-A comparisons are used in investigations, and indeed, saved the integrity of the statute as a whole.

Furthermore, even absent the *U.S. Steel Corp.* decision, we may interpret the statute as

[12] *See U.S. Steel Corp. v. United States*, 621 F.3d 1351, 1360 (Fed. Cir. 2010) (*U.S. Steel Corp.*).
[13] *Id.*
[14] *Id.*
[15] *See U.S. Steel Corp. v. United States*, 637 F. Supp. 2d 1199, 1214-15 (CIT 2009).

permitting the use of zeroing for purposes of an alternative comparison method using A-T comparisons but not requiring the use of zeroing for other types of comparisons. The CAFC and the CIT have held that different methodologies employed by the Department in different segments of the proceeding justify different interpretations of the statute.[16] Specifically, in *Union Steel I* and *Union Steel II*, the CIT and the CAFC upheld the explanation that the Department provided for zeroing in administrative reviews but *not zeroing* in investigations because the Department used the A-T comparison method in the first and the A-A comparison method in the second.[17] This reasoning was affirmed by the CIT in other cases[18] and is equally applicable here. Because we use the A-T comparison method to address masked dumping in our investigations while our other investigations generally use the A-A comparison method, we are justified in interpreting the statute to permit zeroing in the first context but not require it in the second.

Further, as the CAFC explained in *Union Steel II*,[19] *Dongbu* and *JTEKT* do not call into question our zeroing methodology in administrative reviews. The CAFC remanded for the Department to explain its resolution of ambiguity in section 771(35) of the Act by reference to the context of the comparison method being applied, specifically, the A-A comparison method in investigations and the A-T comparison method in administrative reviews.[20] The Department has now provided its explanation in numerous proceedings justifying its interpretation of section 771(35) of the Act where offsets are granted when using the A-A comparison method and offsets are not granted when using the A-T comparison method. As noted above, the CAFC has sustained our resolution of the statutory ambiguity in section 771(35) of the Act.[21] The CIT also has affirmed this explanation on several occasions.[22]

Our decision with respect to zeroing in this administrative review is consistent with the *Final Modification for Reviews*. We implemented the *Final Modification for Reviews* in accordance with section 123 of the URAA to change our practice related to zeroing in administrative reviews to make it consistent with certain WTO panel and appellate body determinations. Neither the *Final Modification for Reviews* nor the WTO decisions addressed the issue of zeroing where an alternative comparison method is applied to address the case-specific circumstances presented

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[16] *See Union Steel v. United States*, 823 F. Supp. 2d 1346, 1360 (CIT 2012) (*Union Steel I*) (affirming the Department's explanation) and *Union Steel v. United States*, Nos. 2012-1248, -1315, 2013 U.S. App. LEXIS 7554 (Fed. Cir. Apr. 16, 2013) (*Union Steel II*) (affirming *Union Steel I*).

[17] *See Union Steel II*, 2013 U.S. App. LEXIS 7554, at *5-7; *Union Steel I*, 823 F. Supp. 2d at 1360.

[18] *See, e.g., Fischer S.A. Comercio v. United States*, 885 F. Supp. 2d 1366, 1373 (CIT 2012) (*Fischer*); *Camau Frozen Seafood Processing Imp. Exp. Corp. v. United States*, 880 F. Supp. 2d 1348 (CIT 2012) (*Camau*); *Grobest & I-Mei Industrial (Vietnam) Co. v. United States*, 853 F. Supp. 2d 1352 (CIT 2012) (*Grobest*); *Far Eastern New Century Corp. v. United States*, 867 F. Supp. 2d 1309, 1312 (CIT 2012) (*Far Eastern New Century Corp.*); *Thai Plastic Bags Indus. Co. v. United States*, 2013 Ct. Intl. Trade LEXIS 25, Slip Op. 2013-21 (Ct. Int'l Trade Feb. 11, 2013) (*Thai Plastic Bags*).

[19] *See Union Steel II*, 2013 U.S. App. LEXIS 7554, at *5.

[20] Since the CAFC issued its opinions in *Dongbu* and *JTEKT*, the Department has revised its practice in administrative reviews to follow that in AD investigations. *See Final Modification in Reviews*. As a result, the effect of the request posed by the court is an explanation of the different interpretations of section 771(35) of the Act between the average-to-average comparison methodology and the average-to-transaction comparison methodology without reference to AD investigations or administrative reviews. *See also Dongbu*, 635 F.3d at 1371, and *JTEKT*, 642 F.3d at 1381-1383.

[21] *See Union Steel II*, 2013 U.S. App. LEXIS 7554, at *5-7.

[22] *See Union Steel I*; *Grobest*; *Far Eastern New Century Corp.*; *Camau*; *Fischer;* and *Thai Plastic Bags*.

here. Furthermore, no WTO decision has addressed the use of an alternative comparison methodology applied pursuant to section 777A(d)(1)(B) of the Act or the second sentence of article 2.4.2 of the WTO Antidumping Agreement. HYSCO's arguments are, therefore, unpersuasive.

Comment 3: The petitioners oppose the Department's use of the third step of the targeted dumping analysis in the *Preliminary Results*. According to the petitioner, this third step examines whether the volume of subject merchandise found to be targeted is insufficient for the Department to determine that a respondent engaged in targeted dumping. The petitioners argue that this third step was not in the two-step analysis laid out in *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) (the *Nails* test). According to the petitioner, the Department expressly rejected the third step in *Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) (*Multilayered Wood Flooring*), and the accompanying I&D Memo at Comment 4, because, once the Department finds any instance of targeted dumping, the Department has determined that the A-T comparison method is necessary to fully analyze the extent of dumping. The petitioners explain that the statute does not require the third step and that this third step is an arbitrary and unwarranted measure that undermines the purpose of the statutory provision for targeted dumping to uncover masked dumping. The petitioners claim that the Department did not specify the percentage of targeted U.S. sales that is necessary to find a pattern of targeted dumping. The petitioners also claim that the Department has never suggested the application of this additional third step beyond the *Nails* test in the targeted dumping analysis. Wheatland suggests that, if the Department decides to use this third step for the final results, the *de minimis* level for this third step should be set at 0.5 percent, as the *de minimis* level for antidumping and countervailing duty margin is 0.5 percent under 19 CFR 351.106.

Husteel states that the addition of the third step is recognition that price differences for a small amount of sales do not justify application of the targeted dumping remedy to all of a respondent's sales. According to Husteel, the statute neither compels nor prohibits the Department from applying this third step. Husteel explains that the Department stated in *Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations; Request for Comment*, 73 FR 26371, 26372 (May 9, 2008), that it is considering the application of the third step. Citing *Borden, Inc. v. United States*, 4 F. Supp. 2d 1221, 1228 (CIT 1998) (*Borden, Inc.*), Husteel describes the third step as a reasonable and warranted measure to find targeted dumping not based on some price variances that could reasonably be expected in a large dataset over an annual POR but based on a true pattern of lower priced sales which reasonably indicates a targeted dumping behavior. Husteel contends that not applying the third step would lead to an arbitrary and unwarranted result like finding targeted dumping in cases where the total amount of allegedly targeted sales is insignificant. With respect to the petitioners' arguments based on *Multilayered Wood Flooring*, Husteel argues that the Department has changed its positions on targeted dumping in many past instances. With respect to the percentage threshold for the third step, Husteel contends that 0.5 percent is too low. Husteel recommends that the Department set the *de minimis* threshold at five percent and make it consistent with the minimum threshold in the second stage of the *Nails* test.

HYSCO argues that the so-called third step is actually a part of the second step of the *Nails* test in which the Department examines whether a significant pattern of targeted dumping exists with more than five percent of sales that meet or exceed the second step of the *Nails* test. HYSCO claims that this test is a part of the *Nails* test conducted to satisfy the statutory criteria for finding targeted dumping, not a third step outside the two-prong *Nails* test as the petitioners insist. HYSCO explains that *Multilayered Wood Flooring* did not reject the five-percent threshold for deciding whether a pattern of targeted dumping has occurred. According to HYSCO, *Multilayered Wood Flooring* stated that if "the share of the sales that meets this test exceeds 5 percent of the total sales volume of subject merchandise to the allegedly targeted customer, the significant-difference requirement is met and the Department determines that customer targeting has occurred." HYSCO claims that the Department determined that "a pattern of significant price differences does not exist" where a "low volume of U.S. sales {is} found to have passed the *Nails* test" in *Polyethylene Terephthalate Film, Sheet, and Strip From India: Final Results of Administrative Review of the Antidumping Duty Order; 2010-2011*, 78 FR 9670 (February 11, 2013), and the accompanying I&D Memo at Comment 1.

Department's Position: For sales under the targeted dumping analysis, merely passing the *Nails* test is not sufficient to satisfy the pattern requirement of section 777A(d)(1)(B)(i) of the Act. In *Certain Stilbenic Optical Brightening Agents From Taiwan: Final Determination of Sales at Less Than Fair Value*, 77 FR 17027, 17027-28 (March 23, 2012), we stated as follows:

> In the *Preliminary Determination*, based on the methodology we adopted in *Nails*, as modified in *Bags* and *Wood Flooring* to correct certain ministerial errors, we found that the overall proportion of TFM's U.S. sales during the POI that satisfy the criteria of section 777A(d)(1)(B)(i) of the Act was insufficient to establish a pattern of export prices for comparable merchandise that differ significantly among certain customers or regions. Accordingly, the Department determined that the criteria established in 777A(d)(1)(B)(i) of the Act had not been met and applied the average-to-average methodology to all sales.

The CIT also stated in *Borden, Inc.*, 4 F. Supp. 2d at 1228, as follows:

> Under the appropriate circumstances Commerce has the discretion to *not* apply the targeted dumping exception to its normal methodology, even upon a finding of targeted dumping.

Section 777A(d)(1)(B) of the Act states that we "may" determine whether to use the A-T comparison method to calculate the weighted-average dumping margin if the two criteria, (i) and (ii), are satisfied. Therefore, even if both prongs are met, the statute does not obligate us to use the A-T comparison method or any alternative method to calculate the weighted-average dumping margin.

We consider the sufficiency of the amount of sales found to be targeted is a proper criterion for determining that the record evidence supports finding that a pattern of prices that differ significantly exists. In *Multilayered Wood Flooring*, we stated that "establishing a *de minimis*

standard would not be appropriate because once the Department finds any instances of targeted dumping, the Department has determined that application of the A-T comparison methodology is necessary to fully analyze the extent of the dumping that is taking place." However, we realized that addressing masked dumping and the application of an alternative comparison methodology were an important and emerging area that would require careful consideration. Therefore, after we developed the *Nails* test, we have continued to evaluate and refine our practice in this area.[23] In recent reviews including this review, we exercised our to refine the *Nails* test to properly address masked dumping.[24] Although we have previously rejected attempts to impose a *de minimis* standard when evaluating the results of the *Nails* test, it has been our practice to analyze this issue on a case-by-case basis and our decision with respect to the existence of a pattern of significantly different EPs or CEPs is consistent with our past cases.[25] Our consideration of this case-specific information is in accordance with our continuing efforts to refine the *Nails* test to properly address masked dumping.

Comment 4: Husteel argues that the Department's targeted dumping analysis is arbitrary and unreasonable because it is not based on valid statistical techniques and is biased toward an affirmative finding of targeted dumping in most cases other than those in which all sales prices are identical.

First, Husteel contends that the test should include a check to determine whether sales prices are normally distributed. Citing, *e.g.*, *Encyclopedia of Mathematics Education* 507 (Louise S. Grinstein and Sally I. Lipsey eds., Routledge Falmer 2001), Husteel explains that the 33 percent threshold is based on the fact that, in a "normal" database, one standard deviation would capture 68 percent of the data points but the Department's analysis does not test whether the database in fact meets the mathematical test for normality. Husteel explains that, as the CIT held in *Daewoo Electronics Co., Ltd. v. United States*, 760 F. Supp. 200, 206-207 (CIT 1991), the Department's statistical analysis must be tested against the data and should not assume that the data conforms to particular mathematical models. Husteel contends that, for example, the use of a confidence interval based on a t-distribution would recognize the importance of inherent variations in the pricing data between allegedly targeted and non-targeted customers to determine whether a pattern of significantly different export prices exist. According to Husteel, the t-test is a widely used statistical measure and can be easily implemented with the SAS software.

Second, Husteel contends that the test does not follow the statutory requirement that it test for patterns in "export prices" because it relies on weight-averaged prices. According to Husteel, section 772(a) of the Act requires the analysis of individual "export prices" for a targeted dumping finding, where "export price" is defined as "the price at which" the merchandise is sold, not the average price. However, Husteel states, the Department's analysis is based on the weighted-average price for all sales of a CONNUM to the alleged target, not the variation in individual prices. Husteel claims that as a result the standard deviation and the gap become

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[23] *See, e.g., Withdrawal of the Regulatory Provisions Covering Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930, 74931 (December 10, 2008) (*Interim Final Rule*).

[24] *See Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea; Final Results of Antidumping Duty Administrative Review; 2010 to 2011*, 78 FR 16247 (March 14, 2013) (*COREs 18*), and accompanying I&D Memo at Comment 1.

[25] *Id.*

larger with a more dispersed dataset. Husteel explains that, by weight averaging prices in this manner, the Department unnecessarily shrinks the results of these two mathematical functions and greatly increases the chance that outlying sales will be found targeted. Husteel argues the Department's use of average prices runs counter to the purpose of unmaking targeted dumping.

Third, Husteel argues that the way the second step of the *Nails* test (the gap test) determines whether the prices "differed significantly" is arbitrary because how this second step attempts to accomplish this objective is not apparent. Husteel insists that it is arbitrary to assign such importance to the gap between the alleged target's price and the next higher non-targeted price while disregarding any lower prices. Husteel states that, in a dispersed dataset, whether that gap will be higher or lower than the weighted-average gap of the non-targeted prices is completely random, because the gap would be higher or lower 50 percent of the time. Husteel claims that requiring that five percent of an alleged target's sales must pass the gap test to find targeting practically guarantees that the gap test will result in finding targeting in a more-or-less evenly dispersed dataset because it is random whether that gap will be higher or lower than the weighted average gap of the non-targeted prices. Husteel asserts that the Department's methodology also does not establish a pattern of prices that differ significantly from non-targeted prices.

Fourth, Husteel claims that the gap test unreasonably relies on sales that are targeted but not dumped. Husteel explains that the Department's targeted dumping methodology finds non-dumped sales to be targeted but the Department has not explained how an exporter could be engaged in targeted dumping with respect to sales made not less than fair value. Citing, *e.g.*, 2010-2011 Administrative Review of Polyethylene Terephthalate Film Sheet and Strip from Taiwan: Post-Preliminary Calculations for Shinkong Synthetic Fibers Corporation and its subsidiary Shinkong Materials Technology Co., Ltd., Case No. A-583-837 (December 20, 2012), Husteel states that, although there is some indication in its margin program that the Department may be considering the percentage of targeted sales that are at dumped prices as part of its analysis, there is no indication as to what percentage of targeted sales needs to be dumped in order to support the use of the A-T comparison method with zeroing. In this review, according to Husteel, only a limited universe of its sales to the United States that were found to be targeted were dumped while a large percentage of its sales that were found targeted were not dumped, even under the petitioners' state-based regional targeted dumping analysis, and the Department has not explained how such a limited universe of dumped sales can support the use of the A-T comparison methodology with zeroing to all of Husteel's sales.

Fifth, Husteel opposes the Department's determination of the price gap using the difference between the weighted-average price of the alleged targeted group and the next higher weighted-average price in the non-targeted group that is above the weighted-average price of the alleged targeted group. Husteel contends that the Department outlines this approach in *Multilayered Wood Flooring* and the accompanying I&D Memo at Comment 4 and objects to such an approach because such calculation methodology disregards non-targeted sales prices that are lower than allegedly targeted sales prices. Husteel argues that this methodology does not establish a pattern of prices that differ significantly from non-targeted prices.

Sixth, according to Husteel, because SAA at 843 states that Congress's intent for the use of the

A-T comparison method specified in section 777A(d)(1)(B) of the Act is to capture targeted dumping, the Department cannot apply the A-T comparison method to all sales – targeted and non-targeted. Husteel explains that section 777A(d)(1)(B) of the Act allows the Department to apply the targeted dumping remedy to the targeted sales when "(i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and (ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii)." Husteel argues that the use of the language "such differences" in the statute indicates that the Department should apply the A-T comparison method to only those sales transactions that meet both the pattern and the significant difference requirements only after the Department explains why the significant price differences could not be taken into account using the A-A or T-T comparison methods. Husteel contends that the Department cannot reasonably explain why non-targeted sales could not be taken into account using the A-A comparison method because non-targeted sales are not suspected of targeted dumping and, thus, not covered by 777A(d)(1)(B) of the Act.

Finally, Husteel argues that the Department's current practice of applying the A-T comparison method to all targeted and non-targeted sales is inconsistent with 19 CFR 351.414(f)(2) (2007) and the Department's refusal to use such methodology in *Antidumping Duties; Countervailing Duties*, 61 FR 7308, 7350 (February 27, 1996), and *Antidumping Duties; Countervailing Duties*, 62 FR 27296 (May 19, 1997). According to Husteel, the Department explained in *Antidumping Duties; Countervailing Duties*, 61 FR 7308, 7350 (February 27, 1996), that "in many instances such an approach would be unreasonable and unduly punitive" and that if targeted dumping accounted for only one percent of a company's total sales, there would be no basis to apply the A-T comparison method to the remaining 99 percent of the sales. Husteel states that the Department explained in *Antidumping Duties; Countervailing Duties*, 62 FR 27296 (May 19, 1997), that statute provides for the use of the A-T comparison method only to address targeted dumping and, even though there could be an exceptional case where a pervasive targeted dumping would necessitate the use of the A-T comparison method, the A-T comparison method would normally be applied only to targeted sales. Husteel contends that the Department changed its position without explanation.

Department's Position: In several past cases, the Department has addressed targeted dumping allegations by employing the *Nails* test for each respondent subject to an allegation to determine whether a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions or time periods existed within the U.S. market.[26] The *Nails* test involves a two-step process, as described below, that determines whether we should consider whether the A-A comparison method is appropriate in a particular situation.

In the first stage of the test, the "standard-deviation test," we determined the volume of the

[26] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip From the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 29700 (May 21, 2013), and accompanying I&D Memo at Comment 1, and *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea; Final Results of Antidumping Duty Administrative Review; 2010 to 2011*, 78 FR 16247 (March 14, 2013), and accompanying I&D Memo at Comment 1.

allegedly targeted group's (*i.e.*, purchaser, region or time period) sales of subject merchandise that are at prices more than one standard deviation below the weighted- average price of all sales under review, targeted and non-targeted. We calculated the standard deviation on a product-specific basis (*i.e.*, by CONNUMs) using the weighted-average prices for the alleged targeted group and the groups not alleged to have been targeted. If that volume did not exceed 33 percent of the total volume of the respondent's sales of subject merchandise for the allegedly targeted group, then we did not conduct the second stage of the *Nails* test. If that volume exceeded 33 percent of the total volume of the respondent's sales of subject merchandise for the allegedly targeted group, on the other hand, then we proceeded to the second stage of the *Nails* test.

In the second stage, in which we conduct the gap test, we examined all sales of identical merchandise (*i.e.*, by CONNUM) sold to the allegedly targeted group which passed the standard-deviation test. From those sales, we determined the total volume of sales for which the difference between the weighted-average price of sales for allegedly targeted group and the next higher weighted-average price of sales to the non-targeted groups exceeds the average price gap (weighted by sales volume) for the non- targeted groups. We weighted each of the price gaps between the non-targeted groups by the combined sales volume associated with the pair of prices for the non-targeted groups that defined the price gap. In doing this analysis, the allegedly targeted group's sales were not included in the non-targeted groups; the allegedly targeted group's average price was compared only to the average prices for the non-targeted groups. If the volume of the sales that met this test exceeded five percent of the total sales volume of subject merchandise to the allegedly targeted group, then we determined that targeting occurred and these sales passed the *Nails* test.

As explained in the *Preliminary Results*, if we determine that a sufficient volume of U.S. sales were found to have passed the *Nails* test, then we consider whether the A-A comparison method could take into account the observed price differences. To do this, we evaluate the difference between the weighted-average dumping margin calculated using the A-A comparison method and the weighted-average dumping margin calculated using the A-T comparison method. Where there is a meaningful difference between the results of the A-A comparison method and the A-T comparison method, the A-A comparison method would not be able to take into account the observed price differences, and the A-T comparison method would be used to calculate the weighted- average margin of dumping for the respondent in question. Where there is not a meaningful difference in the results, the A-A comparison method would be able to take into account the observed price differences and the A-A comparison method would be used to calculate the weighted-average dumping margin for the respondent in question.

For the following reasons, we do not agree with Husteel's seven arguments described above.

First, Husteel asserts that the first stage of our *Nails* test[27] is flawed because it fails to test whether the overall price data follow a normal distribution. In response to the respondent's challenge to our implicit assumption with respect to the distribution of data under the *Nails* test, the CIT upheld our use of standard deviation in the *Nails* test and rejected the respondent's

[27] The first stage of the *Nails* Test determines whether allegedly targeted sales are made at prices more than one standard deviation below the weighted-average price of all sales under review.

arguments that the test arbitrarily assumed a normal distribution of data.[28] Consistent with this CIT decision, we find that the respondent's prices do not need to be tested to determine whether they are normally distributed.

Second, Husteel asserts that the *Nails* test analyzes weighted-average prices by CONNUMs, rather than individual prices in violation of the statute.[29] We have already rejected similar arguments that the *Nails* test's reliance on weighted-average pricing is unlawful.[30] In *Washers from Korea*, the Department found that the focus of the statute is not on the variation of transaction-specific sales prices *per se*, or even on a difference between individual transactions to a particular group. Rather, the statute is explicitly concerned with export prices that "differ significantly *among* purchasers, regions, or periods of time."[31] In "testing to see whether customers have been targeted, the relevant price variance . . . is the variance in prices across *customers*, not *transactions*" (emphasis added).[32] Using weighted averages allows us to disregard meaningless variations and focus instead on uncovering a pattern of prices *among* groups as required under section 777A(d)(1)(B)(i) of the Act.

Moreover, averaging is a well-recognized tool within our dumping analyses. Section 777A(d)(1)(A) of the Act expressly provides for the use of *both* A-A comparisons and T-T comparisons in investigations without favoring one method over the other as more accurate. Given that the statute focuses on variation for comparable merchandise *among* purchasers, *among* regions, and *among* time periods, rather than variations between individual transactions, Husteel has not demonstrated that weight-averaging individual sales prices for each group is unreasonable.

Similarly, in *Multilayered Wood Flooring*, the Government of China argued that the statute suggests that individual prices should be used instead of average prices. We explained in response that the statute allows us to apply its targeted dumping analysis if "there is a pattern of EPs (or CEPs) for comparable merchandise . . ."[33] We indicated that we were exercising our discretion to interpret EPs as an average of the individual prices to the customer.[34] Furthermore, we found that it was appropriate to rely on weighted-average export prices, rather than individual prices, because the second step of the *Nails* Test, *i.e.*, the gap test, is performed on a weighted-average basis.[35] Because Husteel provides no compelling reason on this issue, consistent with *Coated Paper from PRC* and *Multilayered Wood Flooring*, we continue to rely on weighted-average prices in the *Nails* test in the final results.

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[28] *See Mid Continent Nail Corp. v. United States*, 712 F. Supp. 2d 1370 (CIT 2010).

[29] Section 777A(d)(l)(B) of the Act describes " a pattern of export prices … that differ significantly among purchasers, regions, or periods of time," and section 772(a) of the Act defines export price as " the price at which the subject merchandise is … sold."

[30] *See Multilayered Wood Flooring*, and accompanying I&D Memo at Comment 4. *See also Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers From the Republic of Korea*, 77 FR 75988 (December 26, 2012) (*Washers from Korea*), and accompanying I&D Memo at Comment 3.

[31] *See* section 777A(d)(1)(B)(i) of the Act (emphasis added).

[32] *See Certain Coated Paper Suitable for High Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Determination of Sales at Less than Fair Value*, 75 FR 59217 (September 27, 2010) (*Coated Paper from PRC*), and accompanying I&D Memo at Comment 3.

[33] *See* section 777A(d)(1)(B)(i) of the Act.

[34] *See Coated Paper from PRC*, and accompanying I&D Memo at Comment 3.

[35] *Id*.

Third, Husteel argues that it is not clear how or why the second step of the *Nails* Test, *i.e.,* the gap test, accomplishes the goal of determining whether the prices "differed significantly" for a given pattern of price differences. Husteel states that the price gaps that the Department is measuring should be more or less random, such that nothing meaningful can be determined from the relative size of those gaps.

We have previously rejected this argument and explained that the "gap test qualifies whether a degree of separation between a low targeted price and the next lowest non-targeted price is sufficient in determining the significant difference in prices with respect to the targeted sales.[36] We explained further that, while randomness might explain the gaps in a hypothetical dataset, this is not true of the gaps in a targeting situation.[37] Because Husteel provides no additional reason on this issue, consistent with *Nails*, we made no changes to the *Nails* test used in the *Preliminary Results* for the final results.

Fourth, Husteel argues that the limited universe of its sales that were dumped cannot support the use of the A-T comparison methodology with zeroing to all of its sales and that the non-dumped sales should be excluded from the targeted dumping analysis. We disagree. Section 777A(d)(1)(B)(i) of the Act, to which we refer for guidance in the context of applying this analysis in this administrative review, describes whether there is a "pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time." Section 777A(d)(1)(B) of the Act does not refer to a pattern of dumped sales or dumping margins; nor does it call for a comparison of the export prices or constructed export prices to normal value prior to determining whether there is a pattern. Similarly, the *Nails* test, affirmed in *Mid Continent Nail Corp.*, seeks only to determine whether a pattern of EPs or CEPs for comparable merchandise that differ significantly among purchasers, regions, or time periods exists within the U.S. market. The CIT has found that this test does not "violate the statutory language" of section 777A(d)(1)(B)(i) of the Act.[38] Therefore, we find that we have acted consistently with Congress's intent.

Fifth, we have explained in several past cases how the gap test identifies significant differences in prices.[39] For example, in *Multilayered Wood Flooring*,[40] we found that the only limitations that section 777A(d)(l)(B) of the Act places on the application of the alternative A-T comparison method are the satisfaction of the criteria set forth in the provision.[41] We designed and used the gap test in the *Nails* test to determine whether the identified pattern of different prices satisfies the significance requirement. For the gap test, we first examine all sales of identical merchandise (*i.e.*, by CONNUMs) by a respondent to the allegedly targeted group. From those sales, we determine the total volume of sales for which the difference between the weighted-average price of sales to the allegedly targeted group and the next higher

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[36] *See Certain Steel Nails from the United Arab Emirates: Final Determination of Sales at Less than Fair Value*, 77 FR 17029 (March 23, 2012) (*Nails from the UAE*), and accompanying I&D Memo at Comment 2.
[37] *Id.*
[38] *See Mid Continent Nail Corp. v. United States*, 712 F. Supp. 2d 1370 (CIT 2010).
[39] *See, e.g., Multilayered Wood Flooring*, and accompanying I&D Memo at Comment 4.
[40] *Id.*; *see also Carrier Bags from Taiwan*, and accompanying I&D Memo at Comment 1.
[41] *See Nails from UAE*, and accompanying I&D Memo at Comment 3.

weighted-average price of sales to a non-targeted group.[42] We weight each of the price gaps in the non-targeted group by the combined sales volume associated with the pair of prices to non-targeted groups that make up the price gap. If the share of the sales that meets this test exceeds five percent of the total sales volume of subject merchandise to the allegedly targeted group, then the significant difference requirement is met and we determine that targeting has occurred and those sales have passed the *Nails* test.[43] In such case, we will evaluate the extent to which applying the A-T comparison method to all U.S. sales unmasks dumping not accounted for using the A-A comparison method.[44] As such, our gap test is well designed and not arbitrary.

Furthermore, in responding to Government of the People's Republic of China's comment, we made two modifications to the SAS program to run the price gap in *Multilayered Wood Flooring*. In the first modification, we changed the SAS program by comparing the targeted price with only the lowest non-targeted price above the targeted price. While revising the SAS program, we found another error in the SAS code.[45] We corrected the SAS program by assigning a simple price gap (the difference between the previous non-targeted weight averaged price and the non-targeted weight averaged price for a given CONNUM) to calculate a weighted-average gap.[46] Our continuing effort to refine the gap test in order to properly capture and meet the significant difference requirement of the statute is clear. Therefore, our comparison to the next highest price to a non-targeted group in the gap test is not arbitrary, nor did it inaccurately disregard potential comparison prices below the average price to the allegedly targeted group. Moreover, as stated above, in *Mid Continent Nail,* the CIT has found that this test "do{es} not violate the statutory language" of section 777A(d)(l)(B)(i) of the Act.[47] Therefore, we have acted consistently with the statute and Congressional intent.

Because we calculate the standard deviation in the standard deviation test based on weighted-average sales prices to the allegedly targeted and non-targeted groups, we have found that it is appropriate and consistent to perform the gap test on the same basis.[48] We do not agree with Husteel's argument that our gap test is flawed because it does not consider the weighted-average sales prices of non-targeted groups that are below the weighted- average sales price of the allegedly targeted group. In addition, Husteel does not demonstrate why the significant-difference requirement can only be met by the use of gaps that both "look up" and "look down."[49]

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[42] *See Coated Paper from PRC,* and accompanying I&D Memo at Comment 6. The next higher price is the weighted-average price to the non-targeted group that is above the weighted-average price to the alleged targeted group. For example, if the weighted-average price to the alleged targeted group is $7.95, and the weighted-average prices to the non-targeted group are $8.30, $8.25, and $7.50, we would calculate the difference between $7.95 and $8.25.

[43] *Id.* at Comment 4.

[44] *See Carrier Bags from Taiwan* and the accompanying I&D Memo at Comment 1, and *OCTG from China*, and accompanying I&D Memo at Comment 2.

[45] We found that the weight-averaged non-targeted price gap was calculated based on incorrect cumulated non-targeted price gap values.

[46] *See Multilayered Wood Flooring*, and accompanying I&D Memo at Comment 4.

[47] *See Mid Continent Nail Corp. v. United States*, 712 F. Supp. 2d 1370 (CIT 2010).

[48] *See, e.g., Multilayered Wood Flooring*.

[49] *See Nails from UAE*.

Sixth, with regards to Husteel's argument that pursuant to the clear Congressional intent stated in section 777A(d)(1)(B) of the Act and the SAA, the A-T comparison method can only be used with respect to targeted sales in this review, we disagree. The Act states that the A-T comparison method may be appropriate where there is "a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time."[50] Since we did not find a significant pattern for Husteel, this issue is moot for Husteel.

However, because we found that "a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time" exists with respect to HYSCO, we continue to use the A-T comparison method to calculate the weighted-average dumping margin for HYSCO in the final results. Section 777A(d)(1)(B) of the Act expressly provides that the A-T comparison method is an "[e]xception" to using either the A-A or the T-T comparison method. Section 777A(d)(1)(B) further states that we may invoke this exception where two conditions are met: (1) a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and (2) the administering authority explains why such differences cannot be taken into account using the A-A or the T-T comparison method. Beyond these two conditions, nothing in the statute restricts our application of the A-T comparison method. No language in the statute suggests that application of this exception should or should not be limited to certain sales.

We have previously rejected arguments similar to those of Husteel and we have found that, where targeting is found, the A-T comparison method has been applied to all sales.[51] For example, in *Multilayered Wood Flooring*,[52] we found that the statute does not limit the A-T comparison methodology to targeted sales alone:

> The Department disagrees with the . . . suggestion{} to modify the Department's current targeted dumping test and only apply the A-T method to the percent of sales affected by targeted dumping and not the entire U.S. sales database. . . The only limitations that Section 777A(d)(l)(B) of the Act places on the application of the alternative A-T comparison methodology are the satisfaction of the two criteria set forth in the provision. When the criteria for application of the alternative A-T comparison methodology are satisfied, section 777A(d)(1)(B) of the Act does not limit application of the alternative A-T comparison methodology to certain transactions. Rather, the provision expressly permits the Department to determine dumping margins by comparing weighted-average {normal values} to the {export price or constructed export price} of individual transactions.[53]

Here, applying the A-T comparison method to all of HYSCO's sales is the most effective way to unmask dumping, and to implement the statute's goal. Targeted and non-targeted sales are not independent; rather, an exporter who engages in targeting can offset its dumped sales with other

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[50] *See* section 777A(d)(1)(B)(i) of the Act.
[51] *See Nails from UAE*, and accompanying I&D Memo at Comment 3.
[52] *See Multilayered Wood Flooring*, and accompanying I&D Memo at Comment 4*; see also Carrier Bags from Taiwan* and the accompanying I&D Memo at Comment 1.
[53] *See Multilayered Wood Flooring*, and accompanying I&D Memo at Comment 4.

profitable sales. The CAFC has recognized that in such circumstances profitable sales will "serve to 'mask' sales at less than fair value."[54] Because these non-dumped sales play an important role in an exporter's pricing practice, we find it reasonable to apply the remedy to *all* sales that may be involved in masked dumping. By applying the A-T methodology to all sales (including the profitable sales that the exporter used to mask its dumping), we eliminate the offsetting that masks dumping.

The SAA does not show a clear Congressional intent to apply the A-T comparison method only to a portion of a respondent's sales. Rather, we may apply the A-T comparison method to all of a respondent's sales where targeting is identified in order to ensure that respondents cannot conceal masked dumping on sales to a particular group by making higher-priced sales to the non-targeted group that offset the dumping.[55]

Finally, 19 CFR 351.414(f)(2) (2007) has been withdrawn and thus no longer binds us.[56] Husteel cannot now reanimate19 CFR 351.414(f)(2) (2007) to defeat our subsequent decisions. Moreover, our previous practice does not make our current interpretation of the statute unreasonable. We may change our approach so long as we provide an adequate explanation for doing so.[57] As we explain here, applying the A-T comparison method to all of respondents' sales in order to unmask dumping that would otherwise be concealed.

Consistent with SAA, the Department's decisions in *Multilayered Wood Flooring*, and in *Nails from UAE*, we continue to choose the appropriate comparison methodology and to apply it uniformly for all comparisons between normal value and EP or CEP.[58]

Comment 5: The petitioners argue that the Department conducted the regional targeted dumping analysis by regions based on U.S. Census Bureau divisions, not by states identified by Wheatland. The petitioners request that the Department conduct the regional targeted dumping analysis by regions based on states as Wheatland alleged, not by regions based on U.S. Census Bureau divisions. The petitioners claim that, if the Department conducted a state-based regional targeted dumping analysis, it would have found that the respondents engaged in regional targeted dumping during the POR.

Wheatland states that the Department has recognized that the statutory term "region" may be interpreted based on the specifics of each case necessitating either a broad or a narrow definition of a region. According to Wheatland, the Department conducted a regional targeted dumping analysis based on U.S. Census Bureau divisions as well as U.S. Census Bureau regions in *Purified Carboxymethylcellulose From Finland: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 11817 (February 20, 2013) (*Carboxymethylcellulose*), and the accompanying I&D Memo at Comment 3. Wheatland explains that the Department has

[54] *See U.S. Steel Corp.*, 621 F.3d at 1361.
[55] *See* SAA at 842.
[56] *See Multilayered Wood Flooring*, and accompanying I&D Memo at Comment 4.
[57] *See Huvis Corp. v. United States*, 570 F.3d 1347, 1354-55 (Fed. Cir. 2009) (holding that the Department may change its past practice when there are good reasons for the new policy); s*ee also Nakornthai Strip Mill Pub. Co. v. United States*, 587 F. Supp. 2d 1303, 1307-08 (CIT 2008) ("Commerce has 'discretion to change its policies and practices as long as they are reasonable and consistent with their statutory mandate . . . .'").
[58] *See, e.g., Nails from UAE*, and accompanying I&D Memo at Comment 4.

the discretion to define the statutory term "region" as states because doing so furthers Congressional intent to use the A-T methodology to unmask dumping.

U.S. Steel states that the Department conducted the regional targeted dumping analysis by grouping states that are allegedly targeted and states that are not allegedly targeted into one region defined by U.S. Census Bureau. U.S. Steel argues that this analysis distorts the results of the regional targeted dumping analysis and masks state-specific targeted dumping. U.S. Steel claims that the regional targeted dumping analysis based on states reflects the commercial reality of how merchandise is sold in the United States. U.S. Steel explains that, because there can be significant differences in the commercial and regulatory environments and the tax laws between states that affect whether and how sales of particular merchandise are made, states have far more geographical significance in selling activities than U.S. Census Bureau divisions do. U.S. Steel contends that the use of states as regions allows examining only those states where the respondents actually sold the subject merchandise, whereas the use of U.S. Census regions includes states to which the respondents did not sell the subject merchandise or sold the subject merchandise without targeting.

The respondents support the Department's use of U.S. Census Bureau region, not states, in the regional targeted dumping analysis. Citing section 777A(d)(1)(B)(i) of the Act, which provides that the Department may use the A-T methodology if "there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or period of time . . . ," Husteel argues that use of states in the regional targeted dumping analysis is inconsistent with the plain language of the statute and the Department's practice. Husteel claims that Congress knows that the term "region" is different from the term "state" and intentionally used the term "region" because, if Congress intended to allow a state-based targeted dumping analysis, it would have included such language in the statute.

According to the respondents, the Department has never conducted a regional targeted dumping analysis based on states. The respondents contend that the Department has always used U.S. Census Bureau region, U.S. Census Bureau division, or both. HYSCO claims that the petitioners have not demonstrated that the regional targeted dumping analysis based on states is necessary. In these past cases, Husteel explains, the Department interpreted the statutory term "region" to mean a well-known and uniformly recognized geographic area of the United States. Husteel claims that such an interpretation is reasonable because it provides interested parties with a level of predictability regarding how the Department will analyze regional targeted dumping allegations and because it also prevents parties from defining region in whatever way that results in finding targeted dumping. Husteel argues that defining region based on a recognized geographic area of the United States, not by individual state, is consistent with the ordinary understanding of the meaning of a "region." Husteel contends that defining region in any way to unmask targeted dumping would justify defining region to encompass specific congressional districts, counties, or zip codes as long as a variation in prices can be identified. According to Husteel, *Borden, Inc.* held that price variances alone between two areas do not equal a pattern indicative of targeted dumping.

The respondents argue that the petitioners provided no support for their requests that the regional

targeted dumping analysis be based on states. Husteel describes the petitioners' requests for the Department to consider the "commercial reality" of each state as self-serving and undefined. HYSCO contends that the petitioners did not explain how state-specific tax laws and regulations affect the respondents' U.S. sales prices, if at all. HYSCO also argues that, even if the Department conducts the regional targeted dumping analysis based on states, the results would not constitute a significant pattern of targeted dumping because they will not meet the five-percent threshold in the second step of the *Nails* test.

HYSCO requests the Department to conduct the targeted dumping analysis for each target group, *i.e.*, customer, region, and time period, separately in order to avoid double and triple counting sales as targeted. HYSCO explains that conducting a targeted dumping analysis with the target groups combined, *i.e.*, targeted dumping in customer, region, and time period combined together, would result in double and triple counting sales as targeted and produce a distorted outcome.

U.S. Steel alleges that even the regional targeted dumping analysis using U.S. Census Bureau regions shows that HYSCO engaged in regional targeted dumping in one particular region. U.S. Steel requests that the Department conduct the regional targeted dumping analysis for this particular region and find that HYSCO engaged in targeted dumping in this region for the final results. According to U.S. Steel, one other region which the Department examined for regional targeted dumping in the *Preliminary Results* did not show any pattern of regional targeted dumping. HYSCO provides no specific comments in response to this allegation by U.S. Steel. HYSCO states that the Department correctly determined that HYSCO did not engage in targeted dumping. HYSCO requests that the Department continue to apply the A-A comparison methodology without zeroing for the final results. HYSCO explains that, because there have been no changes to its databases after the *Preliminary Results*, no factual basis exists for the Department to find targeted dumping for HYSCO in the final results.

Department's Position: For the final results, we agree with U.S. Steel and Wheatland that we should follow the targeted dumping allegation submitted by Wheatland and define the allegedly targeted regions according to the states named in the allegation. For our targeted dumping analysis and the *Nails* test, our practice has been to define the allegedly targeted groups in accordance with the targeted dumping allegation. However, we have continued to define the non-targeted groups based on U.S. Census Bureau divisions exclusive of the specific states which are allegedly targeted. While the statute does not define the term "region" used in section 777A(d)(1)(B)(i) of the Act, we have consistently relied upon the regions and/or divisions defined by the U.S. Census Bureau as the statutory "region."[59] Even though we did not provide a concrete definition of "region," the region which we have used for the targeted dumping analysis has always encompassed several states and it has not been an individual state.[60] The petitioners have not provided any compelling reasons for abandoning U.S. Census regions or divisions entirely in favor of an analysis that examines individual states as regions.

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[59] *See, e.g.*, *Carboxymethylcellulose*, and accompanying I&D Memo at Comment 3, *Nails from the UAE*, and accompanying I&D Memo at Comment 1, and *Lightweight Thermal Paper from Germany: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 27498, 27499-500 (May 13, 2008), unchanged in *Lightweight Thermal Paper from Germany: Notice of Final Determination of Sales at Less Than Fair Value*, 73 FR 57326 (October 2, 2008).

[60] *Id.*

Therefore, we have made certain changes to our analysis. In its allegations, Wheatland alleged that Husteel targeted its sales to a certain number of states and that HYSCO targeted its sales to a certain number of states. We agree with the petitioners that the targeted dumping analysis we conducted in the *Preliminary Results* relied upon certain U.S. Census divisions that encompass the alleged targeted states, with each division covering multiple states (including one of the states alleged in each division). This approach treated any sales in the division, regardless of the state in which the merchandise was sold, as though they were also alleged to have been targeted. For the final results, we have defined the allegedly targeted regions by the states identified in the targeted dumping allegation, and continued to use Census divisions in defining the non-alleged groups with the exclusion of the allegedly targeted states.

For Husteel, we did not find a sufficient volume of sales which passed the *Nails* test to consider whether the A-A comparison method could take the observed price differences into account. Therefore, we used the A-A comparison method to calculate the margin for Husteel.

For HYSCO, we did find a sufficient volume of sales which passed the *Nails* test, such that we considered whether the A-A comparison method could take the observed price differences into account. When we examined the weighted-average dumping margins calculated using the A-A comparison method and the A-T comparison method, we found a meaningful difference in the results such that we find that the A-A comparison method cannot account for such differences. Therefore, we used the A-T comparison method to calculate the weighted-average dumping margin for HYSCO.[61]

COST REALLOCATION

Comment 6: In the *Preliminary Results*, the Department found that Husteel's reported per-unit costs exhibited significant variations that appeared to be unrelated to the physical characteristics of the products under review. The Department preliminarily determined that these cost divergences were associated with Husteel's use of a production run specific cost calculation methodology which among other things unreasonably burdened specific production runs with costs associated with general factory-wide production issues. To mitigate these distortive cost fluctuations, the Department revised Husteel's reported per-unit costs by weight-averaging direct material costs among products of the same grade and size, and conversion costs among products of the same thickness, surface finish, and end finish.

Husteel argues that the Department's preliminary decision to disregard its reported costs is contrary to both the antidumping statute and established Department policy, and is unsupported by the record. Husteel points out that in conformity with section 773(f)(1)(A) of the Act the Department's long-standing practice is to rely on a company's normal books and records if those records are kept in accordance with GAAP and reasonably reflect the costs associated with the production and sale of the merchandise under consideration.[62] Another long-standing Departmental practice, according to Husteel, is the requirement for costs to be weight-averaged

[61] Even with the alternative methodology U.S. Steel proposes with respect to HYSCO, the results are the same.
[62] Husteel cites, *e.g.*, *Certain Frozen Warmwater Shrimp from Ecuador: Final Results of Antidumping Duty Administrative Review*, 74 FR 47201 (September 15, 2009), and accompanying I&D Memo at Comment 5.

on a control-number specific basis.[63] With these practices in mind, Husteel submits that it is without question that the company has relied on the product-specific costs from its normal books and records for reporting to the Department. Furthermore, Husteel notes that the product-specific costs from its normal books capture all of the product characteristics defined by the Department in establishing CONNUMs for this case. Thus, in order to comply with the Department's request for a single weighted-average cost for each CONNUM, Husteel merely weight-averaged the POR control-number-specific costs from its normal books.

According to Husteel, the Department's express purpose for relying on a single weighted-average cost of production per CONNUM is to average out the normal anomalies that occur as a company records thousands of transactions over a year. Moreover, Husteel notes that the failure of a respondent to report on a control-number-specific basis has often resulted in the Department's application of adverse facts available.[64] In view of these points, Husteel reiterates that it relied on the costs from its normal books which are kept on a CONNUM-specific basis. Hence, Husteel proffers that it has relied on a reporting methodology that is not only compliant with Department practice but has been employed by Husteel since the initial investigation in 1991 and is currently being used by HYSCO, the other respondent in this review. Accordingly, Husteel concludes that the Department should accept its cost reporting methodology in the current review.

Having established that its costs are based on its normal books and records, Husteel next argues that the Department failed to demonstrate that the company's reported costs do not reasonably reflect the costs associated with producing the merchandise under consideration. Specifically, Husteel alleges that the Department has neither explained nor provided evidence to support its conclusion that the cost differences among seemingly similar products are attributable to general production issues rather than to the physical characteristics of the products. In fact, Husteel contends that the Department cannot support its conclusion. According to Husteel, the record clearly demonstrates that the variations in the product-specific per-unit costs calculated in its normal books accurately reflect actual differences in the products' physical characteristics.

While conceding that the Department's second supplemental questionnaire did point out specific instances where fabrication costs varied significantly across products that differed only in wall thickness, Husteel counters that its pre-preliminary response to the Department explained that each unusual variance was either related to an improper surrogate or to calculation errors, all of which were corrected in its supplemental response. In addition to addressing these specific issues in its supplemental response, Husteel also elaborated that any residual cost differences among relatively similar CONNUMs could arise for a number of reasons including differences in coil costs, rework costs, and pipe size. In its brief, Husteel questions that there is any link between these explanations and the Department's conclusion that general production conditions, rather than the physical characteristics of the products, could create cost differences in raw materials costs. Rather, Husteel argues, it is the nature of its cost accounting system which traces the actual raw material inputs to specific finished products that accounts for cost

[63] Husteel cites the Department's section D questionnaire, Case No. A-580-809, dated February 6, 2012, at 2.
[64] Husteel cites, *e.g., Stainless Steel Bar from India: Final Results of the Antidumping Duty Administrative Review, and Revocation of the Order, in Part,* 76 FR 56401 (September 13, 2011), and accompanying I&D Memo at Comment 6.

differences among similar CONNUMs.

Because its raw material costs reflect the actual inputs required to produce the specific physical characteristics desired in the finished product, Husteel claims that no adjustment by the Department is necessary. Nevertheless, citing to *Shrimp from Ecuador*, Husteel contends that even where raw material costs varied between products that differed only in characteristics that should not impact raw material costs, *e.g.*, container weight, the Department still found that no adjustment was necessary since the reported costs reflected the annual weighted-average raw material costs. In the instant case, Husteel proffers that it has reported POR weighted-average raw material costs. Furthermore, these costs reflect the actual raw material inputs required to produce the end finish, surface finish, and wall thickness, *i.e.*, the physical characteristics, of the finished products. Thus, Husteel concludes that there is no basis for a revision of its reported costs.

In Husteel's opinion, it is the Department's reallocated costs that are distortive and fail to reflect the products' physical characteristics. In particular, Husteel submits that by re-allocating raw material costs based only on two of the physical characteristics, *i.e.*, grade and nominal pipe size, and fabrication costs based on the residual physical characteristics, *i.e.*, surface finish, end finish, and pipe thickness, the Department incorrectly assumes that there is no difference in the cost of raw materials consumed for black and galvanized pipe, coupled and plain pipe, and pipes of differing wall thicknesses. To disprove the Department's conclusion, Husteel points out that galvanized pipe and coupled pipe require additional raw materials, *i.e.*, zinc coating and couples, while pipes of varying thicknesses require hot-rolled coil inputs of differing thicknesses. According to Husteel, the record clearly demonstrates that hot-rolled coil costs vary significantly according to thickness.[65] Thus, Husteel argues that contrary to the Department's preliminary conclusions, surface finish, end finish, and pipe thickness all impact a product's raw material costs. Consequently, Husteel contends that the cost differences under question are associated with the actual cost differences in the raw materials consumed to produce the various products and are not attributable only to general production issues. Accordingly, Husteel concludes that its normal books and records accurately reflect the raw material costs incurred in producing each unique CONNUM; therefore, the company's reported costs should be relied on for the final results.

Wheatland argues that the Department should continue to adjust Husteel's costs in the final results in order to mitigate the cost distortions that are unrelated to the physical characteristics of the reported products. While Husteel implies that the Department's reallocation of the costs from the company's normal books is impermissible under section 773(f)(1)(A) of the Act, Wheatland counters that the statute also requires that those costs "reasonably reflect the costs associated with the production and sale of the merchandise." In instances where a respondent's costs do not comport with the statute's requirement, Wheatland contends that it is the Department's normal practice to mitigate the distortions by reallocating costs evenly across all products.[66] Thus, according to Wheatland, the Department's reallocation of Husteel's costs in

[65] Husteel cites Husteel's January 9, 2013 Fourth Supplemental Questionnaire Response (Husteel's 1/9/13 Response) at Exhibit D-61.

[66] Wheatland cites, *e.g., Certain Steel Nails from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value,* 77 FR 17029 (March 23, 2012), (*Nails from the UAE*), and accompanying I&D Memo at

this case is consistent with that practice. Even so, Wheatland opines that the Department's reallocation does not violate the statute's directive for using a company's normal books and records since the adjusted costs still reflect the total costs from Husteel's accounting system, but these total costs are now allocated to products in a less distortive manner.

Wheatland also refutes Husteel's assertion that there is no record evidence to support that the cost differences are attributable to anything other than differences in physical characteristics. In fact, Wheatland notes that Husteel itself acknowledged that certain production issues could produce significant overhead cost differences, while raw material costs could be driven up by the particular size of a production run and whether it involved any rework.[67] Moreover, Wheatland points out that under Husteel's normal cost accounting methodology, *i.e.*, costs are allocated on a production run basis, per-unit cost differences can be created by timing differences and arbitrary monthly fluctuations in material prices. According to Wheatland, these are the very types of cost differences that the Department found to be unrelated to the products' physical characteristics in *PRCBs from Thailand* and *Nails from the UAE*.

Indeed, contrary to Husteel's claim that there is no record evidence of cost distortions, Wheatland proffers that there are multiple examples from Husteel's cost file of nearly identical CONNUMs that have been reported with significant cost differences. Although Husteel addressed the cost variations for the pairs of CONNUM specifically identified by the Department, Wheatland argues that these pairs were only illustrative of the types of cost differences that exist in the cost file. According to Wheatland, there are in fact many instances of such cost deviations which appear unrelated to the nearly identical physical characteristics of the underlying products. In support, Wheatland provides a comparison of all CONNUMs that are identical except for wall thickness which demonstrates a significant number of unexplained cost differences.

Wheatland also addresses Husteel's complaints regarding the Department's raw material allocation methodology by stating that because the record does not contain the detailed information necessary to reallocate material costs to each product individually, the Department is faced with a choice between imperfect alternatives. However, Wheatland argues that the Department's allocation methodology is far less distortive than the unadjusted costs reported by Husteel. In fact, Wheatland alleges that Husteel's reported costs are so distortive that there are numerous instances where, for example, a comparison of CONNUMs identical in every respect except for surface finish (*i.e.*, galvanized versus black pipe), shows that the black pipe had significantly higher raw material costs than the galvanized pipe. Similarly, there are instances where, for CONNUMs identical in every respect except end finish, the non-coupled pipe had significantly higher raw material costs than the coupled pipe. Hence, Wheatland concludes that while Husteel may report different raw material costs for products with different surface and end

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Comment 9, where the Department reallocated product-specific direct material costs that varied due to timing differences rather than differences in physical characteristics; and, *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 76 FR 12700 (March 8, 2011) (*PRCBs from Thailand*), and accompanying I&D Memo at Comment 1, where the Department reallocated conversion costs that varied because of the size and relative efficiencies of individual production runs unconnected with differences in physical characteristics.

[67] Wheatland cites Husteel's September 26, 2012 Second Supplemental Response (Husteel's 9/26/12 Response) at 9 and November 16, 2012 Third Supplemental Response (Husteel's 11/16/12 Response) at 6.

finishes, these differences are arbitrary and are not attributable to the physical characteristics themselves. Consequently, Wheatland believes that the reallocated costs, while not ideal, are clearly preferable to the reported costs.

Finally, Wheatland disagrees with Husteel's claim that it was inappropriate for the Department to not consider differing hot rolled-coil wall thicknesses in its material cost reallocation. The record clearly supports that the hot-rolled coil input costs do not vary significantly by thickness. After analyzing Husteel's hot-rolled coil purchases, Wheatland argues that the data fail to show any clear relationship between the price and thickness. Rather, Wheatland concludes that the hot-rolled coil purchases vary far more substantially based on non-physical parameters such as the month of purchase. For example, again limiting its comparisons to products that vary in thickness only, Wheatland contends that sometimes the thinner product was costlier, while sometimes the thicker product was costlier. Thus, similar to cost differences found in CONNUMs that differed only in surface and end finishes, the cost differences among hot-rolled coils of varying thicknesses were, according to Wheatland, attributable to factors unrelated to differences in physical characteristics. Again, Wheatland argues that the Department's reallocation mitigates the distortions in Husteel's normal books and, therefore, is the preferable approach.

Department's Position: We disagree with Husteel and have continued to reallocate the company's raw material and fabrication costs to mitigate cost differences that are unrelated to the reported products' physical characteristics. However, in doing so, we have revised the *Preliminary Results* reallocation of raw material costs among products with common grade and nominal pipe size to reflect a reallocation of costs among products with common grade, nominal pipe size, surface finish, and coupled versus non-coupled end finish (*i.e.*, incorporating only those variations within end finish that result in additional raw material inputs). We have continued to reallocate fabrication costs among products with common thickness, surface finish, and end finish.

When the Department must evaluate a respondent's submitted costs, section 773(f)(1)(A) of the Act advises that "costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise." Accordingly, the Department is instructed to rely on a company's normal books and records if two conditions are met: 1) the books are kept in accordance with the home country's GAAP; and, 2) the books reasonably reflect the cost to produce and sell the merchandise. In the instant case, it is unchallenged that the unadjusted per-unit costs are derived from Husteel's normal books and that those books are in accordance with Korean GAAP. Hence, the question facing the Department is whether the per-unit costs from Husteel's normal books reasonably reflect the cost to produce and sell the merchandise under consideration.

At the outset of a case, the Department identifies the physical characteristics that are the most significant in differentiating between products. These are the physical characteristics that define unique products, *i.e.*, the CONNUMs, for sales comparison purposes. The level of detail within each physical characteristic (*e.g.*, the multiple different grades or sizes of a product)

reflects the importance the Department places on comparing the most similar products in a price-to-price comparison. Thus, under sections 773(f)(1)(A) and 773(a)(6)(c)(ii) and (iii) of the Act, a respondent's reported product costs should reflect meaningful cost differences attributable to these different physical characteristics. This ensures that the product-specific costs we use for the sales-below-cost test, CV, and the DIFMER adjustment accurately reflect the precise physical characteristics of the products whose sales prices are used in the Department's dumping calculations.

The physical characteristics identified in this case are pipe grade, nominal pipe size, pipe wall thickness, surface finish, and end finish.[68] Based on our analysis of Husteel's reported cost database, the Department continues to find that the fluctuation in costs between CONNUMs cannot be wholly explained by the differences in the physical characteristics of those CONNUMs.[69] As noted by Wheatland, simplified examples of these inconsistencies include black pipes reported with higher costs than galvanized pipe, or non-coupled pipes reported with higher costs than coupled pipes, where all other physical characteristics between the products are identical. Hence, these pipes differ only in the fact that they consumed additional material, *i.e.*, zinc or couples; however, the pipes that consumed the additional material were reported with lower costs than the pipes that had not consumed the additional material.[70] As another illustration, there are pipes that are identical with exception of wall thickness, that demonstrate significant cost differences that appear to be disproportionate to or to move in directions dissimilar to the variation in wall thickness.[71]

With regard to raw material costs, these unusual variations appear to be related to the manner in which Husteel calculates product-specific costs in its normal accounting records.[72] Specifically, in its normal books Husteel calculates production run specific costs that reflect the monthly weighted-average cost of the inputs consumed.[73] The Department notes that under certain conditions, *e.g.*, fluctuating raw material prices, inefficient production runs, and limited production of specific CONNUMs, this methodology could result in unusual cost variations. Nevertheless, Husteel maintains that the cost differences between its reported products reflect only the physical differences in the types and variety of raw materials consumed. With regard to galvanized and coupled products, the Department agrees with Husteel. Each of these physical characteristics requires additional raw materials, *i.e.*, zinc and couples.[74] Hence, the Department has revised its weight-averaging methodology to recognize the impact of the additional cost of these inputs on the pipes that consume them. Specifically, in the final results, the Department has weight-averaged raw material costs by pipe grade, nominal pipe size, surface finish, and coupled versus non-coupled end finish.

However, with regard to Husteel's contention that the hot-rolled coil prices vary significantly by

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[68] *See, e.g.*, the Department's February 6, 2012, Section B Questionnaire at B-9 and B-10.
[69] *See,* Wheatland's February 27, 2013, rebuttal briefs at Attachments 1-3 and Final Cost Calculation Memo at Attachment 1.
[70] *Id.*
[71] *Id.*
[72] As noted by Husteel, the per-unit costs are calculated on a control-number-specific basis in its normal books.
[73] *See* Husteel's April 4, 2012, Section D Response (Husteel's 4/4/12 Section D Response) at 25 and the sample cost calculation at Exhibit D-23 of Husteel's 9/26/12 Response.
[74] *See* Husteel's 4/4/12 Section D Response at 22.

thickness, the Department finds that the evidence available on the record does not support this assertion. In particular, the Department's review of the hot-rolled coil purchases by material type, thickness, and width for the months of December 2010, May 2011, and November 2011, *i.e.*, the beginning, midpoint, and end of the POR, failed to show a consistent correlation between the thickness of the coil and the price of the coil. In its analysis, the Department first compared the weighted-average monthly coil prices noting no consistent pricing patterns.[75] For example, when comparing varying thicknesses of the same coil type, the Department noted that the thinnest of the coils examined might command the lowest price at the beginning of the POR, while at the midpoint and end of the POR the same coil commanded the highest price. To state it another way, the Department observed that an increase in thickness, where month and material type were constant, created the following scenarios: 1) the prices also continued to increase; 2) prices first decreased and then increased; or 3) prices first increased and then decreased. In addition, we noted that the cost differences for the varying thicknesses of coil purchased were for the most part small.

These initial comparisons were based on Husteel's overall monthly weighted-average hot-rolled coil purchases by material type, thickness, and width. However, for select purchases, the Department was able to drill down to the contract or purchase order level.[76] While the overall comparisons above collapsed the prices charged by multiple vendors and multiple purchase orders (or contracts), here, the Department was able to examine how a specific supplier's pricing varied on individual purchase orders. Based on the information available on the record, the Department found that within the same coil grade the price variation among differing coil thicknesses was so minimal as to be virtually non-existent.

Thus, the record fails to support Husteel's contention that hot-rolled coil thicknesses have a significant impact on raw material costs. We note that the thickness ranges examined in the hot-rolled coil contracts covered 80 percent of the pipe thicknesses ranges produced by Husteel during the POR.[77] To clarify, the Department's intent in these exercises was to consider the impact of hot-rolled coil thicknesses on a pipe's raw material costs, not to consider the impact of processing hot-rolled coils of varying thicknesses into pipe. With the exception of raw material yield losses, the impact of processing coils of varying thicknesses into pipes are captured in fabrication costs, which for these final results have been reallocated among products of the same thickness.

While the hot-rolled coil thickness ranges consumed by Husteel did not exhibit significant price differences, the Department did find that there was an overall upward trend in market prices of hot-rolled coil throughout the POR.[78] Although a comparison of the high and low quarter hot-rolled coil purchase prices failed to meet the Department's 25 percent quarterly cost

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[75] For this comparison all widths within a coil type and thickness were collapsed.

[76] *See* Final Cost Calculation Memorandum at Attachment 1.

[77] *Id.* This percentage was determined based on a sort of the cost database which included all pipes produced to thicknesses that fell within the thickness ranges of the contracts that were reviewed.

[78] *See* Husteel's 4/4/12 Section D Response at Exhibit D-6 and Final Cost Calculation Memorandum at Attachment 1 where the weighted-average monthly cost by coil type and thickness were compared for the months of December 2010, May 2011, and October 2011. The percentage differences were calculated by comparing the highest and lowest weighted average price for coils of the same type and thickness.

threshold,[79] the POR hot-rolled coil prices were not stable. Furthermore, the Department finds that this fluctuation in POR hot-rolled coil prices in conjunction with Husteel's cost accounting methodology, which assigns batch-specific results and coil consumption costs on a monthly weighted-average basis as opposed to annual weighted-average basis, are the main drivers of the unusual cost variations observed in Husteel's cost database.[80]

The Department has faced similar situations where CONNUM's costs were highly dependent on either specific production runs or on the timing of the main raw material purchases under a cost allocation methodology that reflects a narrow population of the main raw material purchases (*e.g.*, coil-specific, first in first out, monthly weight-averages, *etc*) when allocating raw material costs to the products produced. For example, in *UK Bar*, the Department found that the respondent's costs from its normal books and records were distortive. In that case, the respondent assigned a specific billet purchase price to each job order within a CONNUM, and because it produced and sold each product only a limited number of times during the cost reporting period, the specific billet costs did not represent the unit cost normally experienced by the company to produce the product during that time period.[81] Similarly, in *Nails from the UAE*, the Department reallocated the respondent's direct material costs from its normal books and records because the product-specific cost differences were related to timing differences rather than differences in physical characteristics.[82] In fact, the CIT has upheld our reallocation of costs for the sales-below-cost test, the CV calculations, and the DIFMER adjustment where a respondent's reported costs reflect cost differences due to factors other than physical characteristics.[83]

Under section 773(b)(1)(B) of the Act, the Department tests whether sales in the home market were made at prices which permit recovery of all costs within a reasonable time period. In doing so, the Department's normal practice is to use POR annual average costs to calculate COP. The Department uses annual average costs in order to even out swings in the production costs experienced by the respondent over short periods of time. This way, we smooth out the effect of fluctuating raw material costs, erratic production levels, major repairs and maintenance, inefficient production runs, and seasonality.[84]

Fluctuations in raw material costs, in particular, can be influenced by discretionary business practices such as the inventory valuation method used by the company (*e.g.*, first-in, first-out, weighted-average, specific identification, *etc*), purchase transaction terms, purchase dates, the

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[79] *See* Husteel's 4/4/12 Section D Response at Exhibit D-6.

[80] Under section 773(b)(1)(B) of the Act, we test whether sales in the home market were made at prices which permit recovery of all costs within a reasonable time period. In doing so, the Department's normal practice is to use POR annual average costs to calculate COP.

[81] *See Stainless Steel Bar from the United Kingdom: Final Results of Antidumping Duty Administrative Review*, 72 FR 43598 (August 6, 2007) (*UK Bar*), and accompanying I&D Memo at Comment 1.

[82] *See Nails from the UAE* at Comment 9.

[83] *See Thai Plastic Bag Indus. Co., Ltd. v. United States*, 752 F. Supp. 2d 1316, 1324-25 (CIT 2010).

[84] *See, e.g., UK Bar* at Comment 1, *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 70 FR 67665, (November 8, 2005), and accompanying I&D Memo at Comment 1; *Color Television Receivers from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 55 FR 26225 (June 27, 1990) at Comment 10; *Grey Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 58 FR 47253, 47256 (September 8, 1993), and accompanying I&D Memo at Comment 3.

raw material inventory turnover period, the extent to which raw materials are purchased pursuant to long-term contracts, and whether finished merchandise is sold to order or from inventory. Over a reasonable period of time, these factors tend to smooth out, resulting in an average cost that reasonably reflects the COP for sales of a particular product made during the POR. In this instance, however, Husteel normally allocates hot-rolled coil costs to products at the weighted-average monthly cost of the particular coil (*i.e.*, by type, thickness, and width of coil). While Husteel then weight-averaged its POR monthly control-number-specific per-unit costs, Husteel produced and sold certain CONNUMs a limited number of times during the cost reporting period. As a result, cost differences emerged between products that were related to the timing of production, *i.e.*, the monthly production efficiency and market price of the coil consumed, rather than related to the physical characteristics of the pipe produced. For example, consider a galvanized pipe that was produced only in a month where hot-rolled coil prices were at their lowest and a similar pipe that is identical in all characteristics except galvanizing, *i.e.*, it is plain pipe, that is produced only in a month where hot-rolled coil prices were at their highest. Under Husteel's normal methodology, the plain pipe has been reported to the Department with a higher raw material cost than the galvanized pipe. Hence the timing of the hot-rolled coil purchase and the timing of the pipe production would influence the cost of the pipe rather than the pipe's physical characteristics.

Based on the foregoing discussion, *i.e.*, the fact that the reported costs for different products do not reflect cost differences that logically result from differences in the products' physical characteristics, the Department finds that Husteel's raw material costs do not reasonably reflect POR average costs.[85] Consequently, the Department determines that in this review period, Husteel's methodology results in arbitrary cost differences between CONNUMs, which are independent of the physical differences between products.

How we revise costs for the same type of issue can vary by case based on the record evidence. We strive to use the most relevant data to adjust costs in each situation. So, although our adjustment to correct the problem may vary based on record evidence, our decision in this case is in line with case precedent.[86] Thus, for these final results, the Department has reallocated Husteel's reported raw material costs among products of the same pipe grade, nominal pipe size, surface finish, and end finish (coupled-versus non-coupled pipe). We have continued to reallocate fabrication costs among products of the same thickness, surface finish, and end finish.

While Husteel argues that its current methodology has not only been reported to Department since 1991 but is also being used by the other respondent in this review, the Department disagrees that such a rationale supports the continued use of Husteel's reported per-unit costs in the current review. The Department's determination to reallocate the costs from Husteel's normal books is specific to the circumstances in the instant review. Under Husteel's normal cost allocation methodology, the level of fluctuation in its reported POR material costs along with limited production of a large number of CONNUMs created cost differences unrelated to the physical characteristics. These conditions may not have been present in past reviews nor may they be in future reviews. Similarly, such large distortions were not observed in the costs

[85] *See, e.g.*, Final Cost Calculation Memo at Attachments 3-5.
[86] *Id.*

reported by the other respondent in this review. Thus, the Department's decision to adjust the costs from a company's normal books and records is made pertinent to the facts of each case and is not contingent on prior methodologies submitted to and accepted by the Department or on other respondents' methodologies.

Husteel proffers as support for its reported costs *Shrimp from Ecuador* where Husteel claims there were cost variations between products that differed only in characteristics that should not impact raw material costs, *e.g.*, container weight, but the Department did not adjust the reported costs since they reflected the annual weighted-average raw material costs. Husteel claims that it likewise has reported POR weighted-average raw material costs hence no adjustment is necessary. While Husteel correctly reports that the respondents' costs were not adjusted in *Shrimp from Ecuador*, the Department declined to adjust the costs because the respondents' "reported cost differences are associated with differences in the physical characteristics," and the "the reported raw material cost for their value-added products was based on the annual average cost for the shrimp count sizes that went into producing each value-added product."[87] In fact, contrary to Husteel's assertions the Department's position commences with "{w}e disagree with the Domestic Producers that container weight does not have an impact on the raw material costs." Furthermore, the respondents in *Shrimp from Ecuador* relied on annual weighted-average raw material costs, whereas Husteel's methodology relies on a weighted-average of the monthly control-number-specific raw material costs only from the months in which a particular product was produced. If raw material prices are relatively stable and production runs are always the same efficiency or if products were produced evenly over all months of the POR, such a methodology would not result in cost distortions. However, as explained in the preceding paragraphs, such was not found to be the case in the instant review.

CONVERSION FACTORS

Comment 7: In reporting to the Department, Husteel provided CONNUM-specific factors that convert the per-unit costs from its normal books from an actual to theoretical weight basis, which, according to Husteel, is consistent with the theoretical basis of reporting used in its sales records. In its brief, Wheatland argues that the conversion factors are distortive and are based on actual weights for which the record offers contradictory information. As such, Wheatland contends that the record fails to support the conversion factors and they should not be used in the calculation of Husteel's costs for the final results.

As an initial matter, Wheatland claims that Husteel revised its methodology for calculating the conversion factors two weeks before the *Preliminary Results* without a specific solicitation from the Department. In doing so, Husteel abandoned its original ratios which were based on the actual and theoretical wall thicknesses of the products within each CONNUM in favor of "more accurate" ratios that were instead based on the actual and theoretical weights of the products. While Husteel maintains that the actual weights are from its production records, Wheatland questions the accuracy of such "actual" weights since Husteel does not weigh each pipe, but rather only weighs a sample of pipes from each product produced.

Wheatland also claims Husteel's statements about its freight providers evoke further doubt

[87] *See Shrimp from Ecuador* at Comment 5.

regarding the accuracy of the actual weights. First, Wheatland contends that Husteel failed to adequately explain why the actual weights from its production records are not used for reporting shipping weight. According to Wheatland, such a practice inexplicably leads to Husteel voluntarily paying higher shipping costs where theoretical weight is higher than actual weight. Furthermore, Wheatland also finds it curious that Husteel's freight providers would measure the actual weight of the shipments but charge based on the theoretical weights stated on the pipe invoices. Wheatland then notes Husteel's explanation that the shipments are weighed to confirm that they are consistent with the stated weights and that the weights are "almost always" found to be within an acceptable range. Using this information, Wheatland reasons that if the purported theoretical weight on the shipping invoice is essentially the true actual weight, and there are no significant differences between the theoretical and actual weights per shipping records, then there is no need for a conversion factor. Indeed, since they are confirmed by a third party, Wheatland argues that the shipping weights, *i.e.*, the theoretical weights in Husteel's sales records, are a more reliable measure of the actual weights than the "actual weights" reported in the company's production records. Moreover, contrary to the findings by the shipping providers, the comparisons of the theoretical and "actual weights" relied on in the conversion factor calculations demonstrate that there is an unacceptable range of variance between the theoretical weights from Husteel's sales records and the "actual weights" from Husteel's production records. Based on this conflicting data, Wheatland concludes that the actual weights from Husteel's production records along with the newly proposed conversion factors are unreliable.

After questioning the veracity of the actual weights used in the conversion factors, Wheatland points out that a low conversion factor has the effect of reducing reported costs. In fact, based on its own analysis, Wheatland contends that the weighted-average conversion factor for matching CONNUMs is indeed significantly lower than the weighted-average conversion factor for all CONNUMs. Although Husteel explains this phenomenon as due to U.S. customers being generally more willing to accept negative tolerances,[88] Wheatland argues that Husteel's assertion is unsupported and actually contradicted by the record. As proof, Wheatland proffers a specific matching CONNUM which it claims was sold almost entirely in Korea but in contrast to Husteel's assertions was reported with a conversion factor below one. Hence, Wheatland surmises that the only reason why certain CONNUMs have lower conversion factors is because they are matching CONNUMs. As such, Wheatland concludes that Husteel's proposed conversion factors represent an attempt to manipulate its dumping margin.

Based on the foregoing, Wheatland argues that Husteel's proposed conversion factors should be rejected in the final results. Wheatland points out that these conversion factors are not used in Husteel's normal books and records, therefore, dropping them from the cost calculations would align the costs with section 773(f)(1)(A) of the Act which directs the Department to base costs on a company's normal records. Nevertheless, if the Department is unwilling to reject Husteel's conversion factors, Wheatland proposes that the Department should calculate and apply to all products a single weighted-average conversion factor. Wheatland argues that this approach is consistent with recent Departmental practice such as *Pipe from Thailand* where the Department

[88] This would result in actual weights lower than the theoretical weights which would in turn result in a ratio less than one. The application of a conversion factor less than one would have the effect of reducing costs.

found that the company's product-specific factors were unreliable.[89]

Husteel counters that Wheatland's characterization of the adjustment to the conversion factors is incorrect and misleading. According to Husteel, the revision of its conversion factors was a direct result of a meeting called by Department officials for the purpose of discussing anomalies between the conversion factor calculations reported in the cost responses and the theoretical weights in the sales responses. As a result of the meeting, Husteel claims that it then reviewed its records finding that changes in the specificity of its cost accounting in recent years now allowed for a more accurate calculation of the conversion factors. Whereas in the past Husteel relied on a ratio of the calculated weights using the actual coil and theoretical pipe wall thicknesses, Husteel states that it was now able to use the actual measured weight of the pipes as opposed to a calculated actual weight. Thus, Husteel posits that not only do these changes result in a more precise conversion of costs, but they were in fact initiated by the Department's inquiries.

Husteel also dismisses Wheatland's reliance on the respondent's freight carrier information as evidence that the actual weights from its production records are unreliable. Rather, Husteel submits that Wheatland's argument is prefaced on a misinterpretation of a single statement on the record. According to Husteel, Wheatland interpreted a comment that there are only "rare instances when the actual weight and invoiced (theoretical) weight do not match" to infer that the weights are identical. Furthermore, Wheatland then reasons that because the shipping weights have been verified by a third party, they are more reliable than the actual weights from Husteel's production records. However, Husteel argues that the statement was intended to express that there are only rare instances where the actual and theoretical weights are not within the shipping carriers' approved tolerance limits, not that they are exactly the same. Pointing to its submissions, Husteel states that it is clear that they would not be the same since the shipping weights are theoretical weights while the cost accounting system records actual weights.[90] While the freight companies do weigh the merchandise themselves to ensure it is within an acceptable tolerance, Husteel contends that this measured weight is not recorded in any documentation maintained by Husteel. Hence, Husteel reiterates that the only weights recorded in its sales records are the theoretical weights which are used as the basis for its freight charges, weights which have been found to be within an approved tolerance of, but not identical to, the actual weights found in its production and cost accounting records.

While Wheatland also argues that Husteel failed to explain why the actual weights are not used for shipping purposes, Husteel proffers that it simply provides the shippers with the weight recorded on the sales invoices - a practice which Husteel argues is standard for all products and industries. In the case of standard pipe, Husteel points out that the invoiced weights are theoretical weights. Thus, according to Husteel once the stated weights are found to be within acceptable tolerances of the measured weights, the shippers continue to rely on the theoretical weights for invoicing purposes.

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[89] Wheatland cites *Circular Welded Carbon Steel Pipes and Tubes from Thailand*: *Final Results of Antidumping Duty Administrative Review*, 77 FR 61738 (October 11, 2012), (*Pipe from Thailand*), and accompanying I&D Memo at Comment 5.

[90] Husteel cites its 1/9/13 Response 9 and Husteel's 4/4/12 Response at Exhibit C-10.

Finally, Husteel rebuts that Wheatland's charges of margin manipulation are without merit. Husteel first questions the comparisons offered by Wheatland stating that an overall average conversion factor for all U.S. products or for all products is no more meaningful than an overall average cost across all CONNUMs. Furthermore, Husteel alleges that Wheatland uses inconsistent methods to calculate the weighted-average conversion factors it seeks to compare. Specifically, Husteel argues that Wheatland uses U.S. sales quantities to calculate the average conversion factor for matching CONNUMs while using production quantities to calculate the overall average conversion factor for all products. However, Husteel contends that when production quantities are used to weight both populations, there is little variation between the two averages.

Moreover, Husteel submits that its conversion factors are not subject to manipulation as they reflect straightforward calculations derived from information obtained directly from the company's normal books and records. According to Husteel, it has provided numerous examples supporting that the theoretical weights relied on are from its sales invoices, while similarly demonstrating that the actual weights are recorded and retained in its cost accounting records.

Husteel also refutes Wheatland's proffered contradiction to Husteel's argument for why the products sold to the United States have, on average, a somewhat lower conversion factor then the overall average for all CONNUMs. Contrary to Wheatland's claims that the CONNUM was sold almost entirely in Korea, Husteel instead reports that the majority of the CONNUM was actually sold in the United States. Hence, Husteel offers that Wheatland has failed to support its assertion that Husteel has manipulated its conversion factors. Instead, Husteel submits that the conversion factors should be applied in the final results as they are necessary to ensure that the per-unit costs and prices of merchandise are stated on a consistent basis, a concept that has been recognized by the Department for years in this and other pipe cases.

Department's Position: We disagree with Wheatland and have continued to rely on Husteel's reported conversion factors in the final results. The record evidence clearly illustrates that the quantities and per-unit figures reported in the sales files are on a different basis of measurement than the quantities and per-unit figures reported in the cost file. As such, a comparison of the sales and cost figures unadjusted for these differences would not provide for a meaningful or accurate analysis. Accordingly, the Department has determined that the sales and cost data must be stated on a consistent basis of measurement. Furthermore, as detailed below, the Department believes that the record evidence supports the continued use of the reported conversion factors to accommodate the comparison of Husteel's sales and cost data on a comparable basis.

In reporting its sales data to the Department, Husteel stated that its sales files reflect theoretical metric tons.[91] According to Husteel, the theoretical metric tons reported in the sales files were calculated using the following standard industry formula: (actual outside diameter – theoretical wall thickness) * theoretical wall thickness * density * length/1000.[92] Using this formula, the Department was able to recalculate the reported theoretical metric tons for the sales observations

[91] *See* Husteel's 4/4/12 Section B Response at 16 and Husteel's 4/4/12 Section C Response at 13.
[92] *Id.*

in the most recent sales database. Thus, assuming all elements of the equation were correctly reported in the sales files, of which there is no evidence to prove otherwise, the Department has confirmed that the quantities reported in the sales files and used to calculate the per-unit sales data reflect theoretical metric tons. Further, the Department notes that these facts, *i.e.*, that Husteel's sales files reflect theoretical metric tons and the appropriateness of using this formula to calculate the reported theoretical metric tons, are not under dispute.

In reporting its cost data to the Department, Husteel stated that its cost files reflect the "actual" metric tons produced from its production and cost accounting records.[93] According to Husteel, these actual quantities are tracked in its production records and are then transferred to its cost accounting system for calculating the product-specific costs. Husteel describes a system whereby the actual quantities reflect the actual measured weight of the input hot-rolled coil less the scrap generated during production.[94] To test these quantities, Husteel weighs samples of each type of pipe from each production run. The extension of the sample weights and number of pipes produced is compared to the input hot-rolled coil less scrap weight and any significant differences result in an adjustment in the recorded "actual" weight.[95] The weights tracked in Husteel's production system are relied on in the company's cost accounting system for the allocation of costs to products.

Regardless, the Department finds that the pertinent question is not what methodology is employed to determine pipe weight, but rather whether the weights have been consistently determined for all products and whether those weights have been consistently applied in allocating costs to products. Evidence to the contrary could suggest that a respondent has shifted costs between products through the manipulation of its production quantities. In the instant case, the Department finds no evidence to support that the actual weights reported to the Department were manipulated in order to shift costs between products. Rather, the Department was able to trace the costs and quantities reported for selected products to the production and cost accounting reports on the record.[96] In reviewing these records, the Department found no inconsistencies in the manner in which the product weights were determined or in how costs were allocated between products. Thus, based on the record evidence, the pipe weights reported to the Department were taken directly from Husteel's normal production and cost accounting records. Further, there is no evidence to suggest that the company's normal books and records were manipulated to shift costs between products for the purpose of reporting to the Department.

Hence, based on the record evidence, the sales files reflect theoretical metric tons while the cost file reflects the "actual" metric tons from Husteel's production and cost accounting records. Therefore, the remaining question is the manner of converting these figures to a consistent basis. In the company's original submission, Husteel reported CONNUM-specific conversion factors that were based on the actual and theoretical wall thicknesses of the pipe produced.[97] However,

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[93] *See, e.g.*, Husteel's 4/4/12 Section D Response at 30-34.
[94] *See* Husteel's 1/9/13 Response at 6.
[95] *Id.*
[96] *See, e.g.*, Husteel's 9/26/12 Response at Exhibits D-23 and D-30.
[97] *See* Husteel's 4/4/12 Section D Response at Exhibits D-13 and D-14. The originally reported conversion formula reflected a CONNUM-specific ratio of the extension of all production run weights by actual wall thickness to the extension of all production run weights by theoretical wall thickness.

neither the sales nor the cost weights were calculated using the actual wall thickness of the pipe. The sales files were based on a calculated weight which used theoretical wall thickness in its formula, while the cost file was derived from a net measured weight which might approximate but would not match exactly a weight calculated using actual wall thickness. Consequently, the numerator to Husteel's original conversion factor formula approximated but did not match the per-actual weight costs it was intended to convert.

In the company's November 16, 2012 submission, Husteel revised its methodology to reflect a ratio of the actual to theoretical POR production run weights for each CONNUM.[98] Specifically, the revised conversion factors comprise, on a CONNUM-specific basis, a numerator that reflects the actual production run quantities used to calculate the per-unit costs and a denominator that reflects the theoretical quantities for those production runs.[99] These theoretical quantities were calculated using the same formula that was used to calculate theoretical quantities in the sales files. Consequently, the Department finds that the revised conversion factors reflect a more appropriate and accurate methodology for converting the per-actual weight costs to per-theoretical weight costs. Additionally, we agree with Husteel that this change was prompted by a November 8, 2012, discussion between the company's counsel and the Department.[100]

While Wheatland proffers that Husteel's shipping details discredit the accuracy of the reported "actual" quantities and conversion factors, the Department finds this argument unpersuasive. Wheatland's contentions are centered on Husteel's statements that shipments are weighed by its freight providers and that these actual weights are "almost always" found to be within an acceptable range of the theoretical weights. According to Wheatland, if an independent third party, *i.e.*, the shippers, found the theoretical weights equivalent to the measured actual weights, then a conversion factor should not be necessary. Furthermore, Wheatland reasons that since there are indeed demonstrable variances between the theoretical and actual weights reported by Husteel then the actual weights from the company's production records along with the conversion factors calculated based on these weights are unreliable.

The record evidence fails to support Wheatland's conclusions. Specifically, the Department reviewed Husteel's 2010 and 2011 shipping contracts and sample freight invoices noting that the shipping fee schedules in effect during the POR depict stair-stepped flat truckload rates that increase by tonnage range.[101] For example, truckloads between 8 and 10.99 tons with the same origin and destination points would be invoiced at the same flat fee. Therefore, contrary to Wheatland's claims, it is plausible that the differences between theoretical and actual product weights would not diverge enough to require an adjustment for shipment billing purposes, but still require conversion to allow for a consistent and accurate comparison of the reported cost and sales files.

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[98] *See* Husteel's 11/16/12 Response at 1-2 where Husteel explains that it has revised the conversion factors to reflect the actual weights from production records in lieu of the calculated weights based on actual wall thickness.
[99] *See e.g.*, Husteel's 11/16/12 Response at Exhibit D-48.
[100] *See* Memorandum to the File "Ex-Parte Meeting with Morris, Manning & Martin, LLP, Counsel to Husteel Co., Ltd (Husteel)" dated November 8, 2012.
[101] *See* Husteel's 4/4/12 Section B Response at Exhibits B-8 and B-9.

Wheatland also argues that the conversion factors have been manipulated to lower the costs of the matching CONNUMs. As detailed above, the Department has uncovered no evidence to support Wheatland's assertions that the actual weights from Husteel's normal books and records are inaccurate or that the conversion factors based on these weights should be disallowed in the instant review. Furthermore, Wheatland's suggestion to disregard the conversion factors since they are based on unreliable actual weights fails to address the fact that the per-unit costs reported to the Department which Wheatland requests that the Department rely on unadjusted were also based on these same actual weights. Nevertheless, the Department has found no reason to disregard the actual weights reported by Husteel in the instant review.

Finally, Wheatland's reference to *Pipe from Thailand* is unavailing. In *Pipe from Thailand*, the Department rejected the reported per-theoretical weight coil costs because they were calculated using conversion factors that reflected CONNUM-specific actual to theoretical quantities, while the per-actual weight coil cost to which they were applied was calculated using POR factory wide actual production quantities. Thus, the denominator used to calculate the per-unit costs on an actual weight basis was on a less specific basis, *i.e.*, factory-wide, than the numerator used in the conversion factor, which was on a CONNUM-specific basis.[102] Here, the revised conversion factors are based on the same CONNUM-specific actual production weights that were used to calculate the per-unit costs to which the factors have been applied.[103] Therefore, in the instant case, the Department finds no such disparity between the CONNUM-specific actual quantities used to calculate the per-actual weight costs and the CONNUM-specific actual quantities used to calculate the conversion factors.

Comment 8: In the *Preliminary Results*, the Department first converted Husteel's reported per-unit costs to reflect a theoretical metric ton basis and then reallocated the company's raw material and fabrication costs. Husteel argues that in applying the conversion factors prior to the reallocation of costs, the Department inappropriately weight-averaged the product-specific conversion factors. According to Husteel this results in a less accurate margin calculation because it substitutes CONNUM-specific conversion factors to something less specific. Husteel explains that the conversion factors merely reflect a ratio of the actual weights which form the basis of the cost accounting system to the theoretical weights which form the basis of the sales transactions. Thus, for each given CONNUM, the conversion factor is calculated using the total actual and total theoretical weights of the products produced. As such, Husteel maintains that regardless of what cost adjustments are made, the theoretical weights of the products sold remain unaffected. Therefore, Husteel contends that there is no legitimate rationale for weight-averaging the CONNUM-specific conversion factors over a broader spectrum of products. Rather, should the Department continue to reallocate its costs in the final results, Husteel urges the Department to apply the conversion factor after the reallocation of the costs.

Wheatland disagrees with Husteel's arguments with regard to the application of the conversion factors. As argued at Comment 7, Wheatland believes the conversion factors are unreliable and distortive; therefore, they should be rejected for the final results. However, should the Department continue to rely on the conversion factors Wheatland contends that they should be

[102] *See Pipe from Thailand* at Comment 5.
[103] *See, e.g.*, Husteel's 11/16/12 Response at Exhibit D-48.

applied prior to the reallocation of the costs. To do otherwise, according to Wheatland, would be doubly distortive as it would result in the application of a product-specific conversion factor to a weighted-average cost. Therefore, Wheatland urges the Department to reject Husteel's proposed revision.

Department's Position: The Department agrees that the conversion factors were incorrectly applied in the *Preliminary Results*. As noted by Husteel, the Department first converted the reported per-actual metric ton costs to per-theoretical metric ton costs and then weight-averaged the per-theoretical metric ton costs using the reported production quantities. However, these production quantities represented actual metric tons. Therefore, in weight-averaging the converted costs, the Department mistakenly relied on theoretical metric ton costs, but actual metric ton quantities.

For the final results, the Department has adjusted its methodology for converting the per-unit costs from the actual to theoretical metric ton basis. First, the Department extended the per-actual metric ton costs by the actual metric ton quantities for all CONNUMs. As noted previously, the Department has decided to weight-average direct material costs by pipe grade, nominal pipe size, surface finish, and coupled versus non-coupled pipe end finishes, while conversion costs have been weight-averaged by pipe wall thickness, surface finish, and end finish. Therefore, the Department next pooled the extended costs by these groupings. Using the reported CONNUM-specific conversion factors, the Department then converted the reported production quantities from actual metric tons to theoretical metric tons. Finally, the cost pools were divided by the respective extended theoretical metric tons to calculate the revised weighted-average theoretical metric ton costs.

G&A

Comment 9: U.S. Steel asserts that the Department's long-standing practice is to require a respondent to report not only its own G&A expenses, but also a proportional share of an affiliated party's G&A expense incurred on the reporting entity's behalf.[104] In the instant case, U.S. Steel alleges that HYSCO did not include that portion of HMC's G&A expenses incurred on behalf of HYSCO in the numerator of HYSCO's G&A expense ratio. U.S. Steel argues that the Department, consistent with its practice, should increase the numerator of HYSCO's G&A expenses to include a proportionate amount of HMC's G&A expenses.

HYSCO counters that HYSCO did not obtain administrative services from HMC during the POR.[105] In prior administrative reviews of this case, HYSCO reported that the only expenses relevant to the Department's instruction concerning parent G&A expenses were those amounts associated with preparing the consolidated financial statements.[106] HYSCO asserts that as of 2011, HYSCO is no longer included in HMC's consolidated statements.[107] As such, HYSCO

[104] U.S. Steel cites *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany: Final Results of Antidumping Duty Administrative Review*, 66 FR 11557 (February 26, 2001), and accompanying I&D Memo at Comment 8.
[105] HYSCO refers to its section D Submission at 24.
[106] *Id*.
[107] HYSCO refers to its section A submission at A-13.

did not include an amount for HMC's services in its reported G&A calculation. HYSCO asserts that because it is listed independently on Korea's stock exchange, HYSCO does not benefit from HMC's preparation of combined financial statements. If the Department determines it nonetheless necessary to include an amount for HMC's preparation of combined financial statements, the Department has the authority to request the necessary data from HYSCO or, alternatively, the amount could be estimated as shown in HYSCO's February 27, 2013 submission at Exhibit 1.

Department's Position: We agree with U.S. Steel and adjusted the numerator of HYSCO's G&A expense ratio to include a portion of HMC's FY 2011 G&A expenses.[108] The Department's practice is to include an amount for administrative services performed by the parent company or other affiliated party on the respondent company's behalf in the numerator of a respondent's G&A ratio.[109] HYSCO bases its assertion that HMC did not perform any administrative services on behalf of HYSCO[110] on the fact that, unlike previous administrative reviews of this case, HYSCO was not included in HMC's FY 2011 consolidated financial statements. Although we agree that the facts in this case show that HYSCO was not included in HMC's FY 2011 consolidated financial statements, we find that the record shows the HYSCO was included in HMC's combined financial statements (*i.e.* the basis for HYSCO's reported financial expense ratio). As noted by HYSCO, these combined financial statements are consolidated statements that include both the results of the consolidated financial company and additional affiliates in which HMC holds a lower interest that does not require consolidation under generally accepted accounting principles. Because HYSCO is included in HMC's combined financial statements, we find that HMC incurred administrative expenses on behalf of HYSCO for reporting HYSCO's financial information to the Korean Fair Trade Commission.[111] Therefore, consistent with the Department's practice, we adjusted the numerator of HYSCO's G&A expense ratio to include estimated G&A expenses incurred by HMC on HYSCO's behalf (*see* HYSCO Final Cost Calculation Memo).

Comment 10: U.S. Steel also asserts that HYSCO offset its COM for revenues received from scrap sales yet included the cost of the scrap sold in the denominators of its G&A and financial expense ratios. According to U.S. Steel, the Department's practice is to ensure that the G&A and financial expense ratios have a denominator that is calculated in the same manner as the COM to which the ratios are applied.[112] U.S. Steel contends that, because HYSCO reduced its reported COM for revenues from the sales of scrap, the Department should likewise reduce the denominators of HYSCO's G&A and financial expense ratios for the scrap sales revenue reported by HYSCO.

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[108] *See* Memorandum to Neal M. Halper, Cost of Production and Constructed Value Calculation Adjustments for the Final Results – Hyundai HYSCO, dated June 5, 2013 (HYSCO Final Cost Calculation Memo).

[109] *See, e.g., Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77FR 63291 (October 16, 2012), and accompanying I&D Memo at Comment 15.

[110] *See* HYSCO's section D submission at 24.

[111] *See* HYSCO's August 29, 2012, submission at 34.

[112] U.S. Steel cites, *e.g., Certain Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review* 73 FR 46584 (August 11, 2008), and accompanying I&D Memo at Comment 8 and *Notice of Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part*, 69 FR 6255 (February 10, 2004), and accompanying I&D Memo at Comment 43.

HYSCO asserts that the Department may disregard adjustments that have no impact on the calculation, as is the case here. However, HYSCO explains, if the Department determines it necessary, it has enough information in the record to calculate the approximate value of the correct adjustment.[113]

Department's Position: We agree with U.S. Steel and reduced the denominators of HYSCO's G&A and financial expense ratios for HYSCO's scrap sales revenues. Because we subtracted the scrap revenue from total COM in calculating product-specific costs, we must reduce the denominator of the ratios by the total scrap revenue in order to keep the denominator of the ratios on the same basis as the COM to which the ratios were applied.[114] *See* HYSCO Final Cost Calculation Memo.

DATE OF SALE

Comment 11: Wheatland argues that HYSCO sells subject merchandise pursuant to purchase orders and the material terms of sale do not change from the purchase order date to the shipment date. For this reason, Wheatland requests that the Department use HYSCO's purchase order date, not shipment date, as the date of sale for the final results.

Wheatland contends that, contrary to HYSCO's assertion, HYSCO's sales documents do not support its assertion that the tolerance for the quantity differences applies on a line-item basis. Moreover, according to Wheatland, there were no changes in sales quantities after the purchase order date that exceeded the quantity tolerance listed in the sales documents. Wheatland explains that this is due to the fact that HYSCO's sales are made to order rather than being drawn from existing inventory and any changes after the purchase order are discouraged.

Wheatland claims that, despite the Department's several requests, HYSCO did not provide (1) a single sales document that demonstrates that the quantity tolerance for its U.S. sales is on a line-item basis or (2) proof that HYSCO and its affiliates did not maintain e-mail communications or other written records related to this issue for sales to customers in the United States during the POR. Wheatland acknowledges that HYSCO provided one e-mail communication to support its position but contends that HYSCO's e-mails are not available when they do not support HYSCO's assertion. Wheatland requests that the Department discount HYSCO's assertion that its quantity tolerances are on a line-item basis because the company did not submit e-mails or other sales correspondence in response to the Department's request for such information.

Wheatland maintains that, even if quantity tolerances are on a line-item basis, these changes are immaterial and infrequent and, thus, should not cause the Department to use a sale date other than the purchase order date. In support, Wheatland cites to *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 65

[113] HYSCO cites its April 6, 2012, submission at exhibit 5B.

[114] *See, e.g., Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying I&D Memo at Comment 9.

FR 60910 (October 13, 2000) (*CWP from Thailand*), and the accompanying I&D Memo at Comment 1, citing *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 63 FR 32833, 32836 (June 16, 1998). There, according to Wheatland, the Department said that even though there "was a change in quantity, below the specified tolerance, for one transaction," "the terms of sale were set at the contract date and any subsequent changes were usually immaterial in nature or, if material, rarely occurred." Wheatland also claims that *Nucor Corp. v. United States*, 612 F. Supp. 2d 1264, 1309 (CIT 2009) (*Nucor*), held that "a change in a material contract term, while relevant, does not end Commerce's date of sale analysis. Commerce is still required to undertake a factual analysis of the expectations and conduct of the contracting parties, to ascertain when they reached a true meeting of the minds on the material terms of sale." Wheatland points to one sales transaction in the instant review in which the quantity shipped was less than the quantity ordered, and HYSCO did not issue a revised purchase order or memorialize this quantity change in writing. If the change was material, Wheatland claims, a revised agreement or other documentation would be necessary to memorialize the change. Moreover, Wheatland contends, a change in one U.S. sales transaction between purchase order date and shipment date cannot be characterized as frequent or material.

Wheatland requests that, since HYSCO has not submitted purchase order dates for its U.S. transactions, the Department determine HYSCO's date of sale for its U.S. sales as the reported date minus the average number of days between the order confirmation date and the latest reported date of sale.

Citing, *e.g.*, *Polyvinyl Alcohol From Taiwan: Final Determination of Sales at Less Than Fair Value*, 76 FR 5562 (February 1, 2011), and the accompanying I&D Memo at Comment 3, HYSCO claims that, in general, if the terms of sale can potentially change from the time they are initially established, the Department will treat the date on which the terms can no longer change as the date of sale. In deciding this, according to HYSCO, the Department takes into consideration whether any of the material terms are still subject to change prior to shipment or invoicing, not just the absolute number of times that quantity or value changes. HYSCO further explains that the Department has a long-established practice that it will not consider the date of sale to occur after shipment from the factory because the material terms of sale are presumed to have been established after the shipment of merchandise.

HYSCO contends that Wheatland concedes that the quantity and value of HYSCO's sales can change after the issuance of the purchase order confirmation, but that Wheatland dismisses the changes as immaterial, inconsequential, and infrequent with *CWP from Thailand* as an example. According to HYSCO, *CWP from Thailand* involved a respondent which reported the date of contract as the date of sale and the Department found that the only change in quantity after the date of contract was a sale below the specified tolerance under unusual circumstances. HYSCO claims that Wheatland ignores substantial record evidence demonstrating HYSCO's longstanding business practices in which quantities can and do change after the order. Citing *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Antidumping Duty Administrative Review*, 74 FR 17591 (April 20, 2009), and the accompanying I&D Memo at Comment 1, HYSCO explains that, even if the price is fixed as of the date of the letter of credit, changes in quantity outside the tolerance level after that date will cause the Department to rely

on a later date of sale.

HYSCO explains that its sales are subject to the usual +/- 10 percent line item tolerance established in the standard pipe industry. HYSCO states that setting tolerances on a total order basis makes no commercial sense because standard pipe products are not interchangeable. In response to Wheatland's claim that HYSCO's quantity changes are immaterial because HYSCO did not memorialize those changes, HYSCO argues that it sought and received customers' authorizations for such changes over the telephone. HYSCO claims that changes outside the +/- 10 percent threshold are not immaterial. HYSCO explains that it must contact its U.S. customers to receive permission to ship the subject merchandise outside of the agreed-upon quantity tolerance because these changes affect the material terms of sale. HYSCO states that it has provided two significant examples of orders changing between the entry of a purchase order and the shipment date, and these two examples demonstrate that it is HYSCO's practice to permit negotiation and alterations related to quantity up to the time of shipment, after which the quantity and price of the order are fixed.

Citing, *e.g.*, *Solid Urea from the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 75 FR 51440 (August 20, 2010), and the accompanying I&D Memo at Comment 3, HYSCO argues that the Department has relied on earlier contract dates as the date of sale only in limited cases in which the Department found that the terms of sale were fixed and no longer subject to change. HYSCO describes them as unique cases which involve large orders of custom-made or specialty merchandise.

Department's Position: According to our regulations, we normally use the invoice date as the date of sale, unless "the Secretary is satisfied that a different date better reflects the date on which the exporter or producer established the material terms of sale."[115] Moreover, we have a longstanding practice of finding that, where shipment date precedes invoice date, shipment date should be used as date of sale.[116]

Consistent with our regulations, practice, and record evidence, we have continued to use HYSCO's shipment date as the date of sale for its U.S. transactions in these final results. The record evidence shows the material terms of sale can and do change up until shipment date.[117] HYSCO has provided two examples of changes to quantity between the purchase order date and the shipment date that were outside of the tolerance stated on the purchase order on a line-item

[115] *See* 19 CFR 351.401(i).

[116] *See Stainless Steel Bar From Japan: Final Results of Antidumping Administrative Review*, 65 FR 13717 (March 14, 2000) (*Stainless Steel Bar from Japan*), and accompanying I&D Memo at Comment 1; *see Amended Notice of Preliminary Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy*, 73 FR 54557 (September 22, 2008) (*Resin from Italy*); *see also 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) (*CORES 14*), and accompanying I&D Memo at Comment 18; *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fifteenth Administrative Review*, 75 FR 13490 (March 22, 2010) (*CORES 15*), and accompanying I&D Memo at Comment 5.

[117] *See* HYSCO's April 6, 2012, original response at Exhibit C-6, August 29, 2012, supplemental response at Exhibits 41 and 43, November 5, 2012, supplemental response at Exhibit 15, January 11, 2013, supplemental response at Exhibit 5, January 24, 2013, supplemental response at Exhibits 3 and 4.

basis.[118] In addition, HYSCO provided several U.S. sales traces indicating that each sales transaction in the purchase order is subject to line-item quantity tolerance of +/- 10 percent.[119] Because record evidence for HYSCO indicates that the quantity ordered was subject to change and, in some instances, did change beyond the specified line-item quantity tolerance between the purchase order date and the shipment date, and the shipment date precedes the sales invoice date, we find it appropriate to use the shipment date as the date of sale.

The burden of establishing a date of sale other than the invoice date is on the party that seeks to establish a different date of sale, *e.g.*, purchase order date.[120] In determining the date of sale, we consider which date best reflects the date on which the exporter/producer establishes the material terms of sale, *e.g.*, price and quantity.[121] Wheatland has never explained why, even though the record evidence clearly indicates that purchase order quantities are subject to change, we should use the purchase order date as the date of sale. Specifically, Wheatland has never explained why we should use the purchase order date as the date of sale despite the fact that all of HYSCO's U.S. sales traces contain the purchase order sheets with quantity tolerances specified for each line-item sales transaction.

Wheatland misconstrues our analysis of the date of sale and argues that we must compare the number of sales that changed with the overall number of sales. In other words, Wheatland suggests that, if the number of sales with quantity changes outside the tolerance is small relative to all other sales, we may not change the date of sale. Wheatland attempts to isolate the date of sale determination from the facts and circumstances surrounding the sale and make it a numerical analysis of how many sales changed.

In recent years, the CIT has rejected such an approach. The CIT held "{u}nder both settled law and agency practice, that {material terms of sale} analysis does not, and should not, hinge on a single change in price or quantity, or the volume of sales affected by that change, with no regard for any other relevant facts . . . . Even when there is evidence of change in a material term, Commerce still must consider whether – as evidenced by their understanding of the sales process, as well as their course of conduct – the parties had the expectation that the material terms of sale were fixed on the date of contract."[122] In addition, in *Sahaviriya*, which involved the same type of quantity tolerance discussion as the instant case, the CIT found unconvincing "{p}laintiff's argument that the changes in quantity tolerance levels are not meaningful in

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[118] *See* HYSCO's April 6, 2012, original response at Exhibit C-6, August 29, 2012, supplemental response at Exhibit 43, November 5, 2012, supplemental response at Exhibit 15, January 11, 2013, supplemental response at Exhibit 5, January 24, 2013, supplemental response at Exhibits 3 and 4.

[119] *See* HYSCO's April 6, 2012, original response at Exhibit C-6, August 29, 2012, supplemental response at Exhibits 41 and 43, November 5, 2012, supplemental response at Exhibit 15, January 11, 2013, supplemental response at Exhibit 5, January 24, 2013 supplemental response at Exhibits 3 and 4.

[120] *See Allied Tube & Conduit Corp. v. United States*, 127 F. Supp. 2d 207, 220 (CIT Dec. 12, 2000) (*Allied Tube and Conduit Corp. 2000*) ("Plaintiff, therefore, must demonstrate that it presented Commerce with evidence of sufficient weight and authority as to justify its factual conclusions as the only reasonable outcome. If, however, the record indicates that Commerce's decision to use the invoice date as the date of sale was reasonable and was supported by substantial evidence, Plaintiff's arguments must fail."); *see also SSI*, 714 F. Supp. 2d at 1279-80 ("unless the party seeking to establish a date of sale other than the invoice date produces sufficient evidence to overcome this presumption, Commerce will use invoice date as the date of sale.").

[121] *See* SSI, 714 F. Supp. 2d at 1279-80.

[122] *See Nucor*, 612 F. Supp. 2d at 1312.

relation to the total quantity of U.S. sales because they represent only [[ ]] of all quantities ordered in the final contracts."[123] The CIT reasoned that this is not the relevant measure of whether a quantity change is meaningful, and the real analysis must focus on the date ". . . when the material terms of sale were established by the parties."[124]

HYSCO has shown that when it codes each sale into its accounting system, it codes the quantity tolerance next to each line item. HYSCO has shown how it can and does change the quantity outside the tolerance for specific line items within the order. HYSCO has provided us with communications between it and its affiliate seeking approval to ship more than the tolerance amount for a specific line item on a specific invoice.[125] We do not find that HYSCO's line-item quantity changes on the record are immaterial because, even if quantity changes were rare, the existence of "one sale beyond contractual tolerance levels suggests sufficient possibility of changes in material terms of sale so as to render Commerce's date of sale determination supported by substantial evidence."[126]

Finally, we note that our decision in *CWP from Thailand* is not our practice and not consistent with *Allied Tube and Conduit Corp. 2000*, which was decided shortly after *CWP from Thailand*.[127]

Comment 12: U.S. Steel claims that the Department should treat the invoice date, not the shipment date, as the date of sale for HYSCO's U.S. sales. Citing *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 45611 (September 3, 2009) and the accompanying I&D Memo at Comment 2, U.S. Steel explains that invoice date is the presumptive date of sale in 19 CFR 351.401(i) and that a party must show that its proposed date, *e.g.*, shipment date, better reflects the date on which the material terms of sale are established. According to U.S. Steel, HYSCO has not met this burden because the e-mail communication HYSCO submitted in response to the Department's request for information shows that the quantity was not fixed as of the shipment date. U.S. Steel argues that quantity was subject to change and did change outside of the specified tolerance level after the shipment date and up until the invoice date. According to U.S. Steel, the e-mail communication at issue between HYSCO's U.S. affiliate and a U.S. customer indicates that the U.S. customer only agreed to the overage on the date of the e-mail, which was transmitted after the products, including the quantity outside the permitted line-item quantity tolerance, had been loaded and shipped to the United States.

Citing *Allied Tube and Conduit Corp. 2001*, 132 F. Supp. 2d at 1092, U.S. Steel explains that the CIT held that a change in quantity in excess of a specified tolerance level for even one sale is sufficient to show that the material terms are subject to change. U.S. Steel explains that

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[123] *See Sahaviriya Steel Industries Public Company Limited v. United States*, 714 F. Supp. 2d 1263, 1281 (CIT 2010) (*SSI*).
[124] *Id. at 1282.*
[125] *See* HYSCO's January 11, 2013, supplemental response at Exhibit 5.
[126] *See Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1091 (CIT 2001) (*Allied Tube and Conduit Corp. 2001*).
[127] *See Stainless Steel Sheet and Strip in Coils From Taiwan: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 7519 (February 13, 2006), and accompanying I&D Memo at Comment 4, citing *Allied Tube and Conduit Corp.*, 132 F. Supp. 2d at 1091.

HYSCO also argued in the last review that the Department has a consistent pattern of choosing a later date over an earlier date as the date of sale when there is even a single sales transaction evidencing that the material terms of sale are still subject to change. U.S. Steel contends that the Department cannot accept HYSCO's assertions concerning its telephone conversations over documentary evidence. Citing *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27348-49 (May 19, 1997) (*Final Rules*), U.S. Steel explains that the invoice date is the presumptive date of sale because the Department must determine the appropriate date of sale based on clear documentary evidence showing when the material terms of sale were established.

U.S. Steel argues that the Department should not use the date of shipment as the date of sale merely because the shipment occurred before the invoice date. According to U.S. Steel, selecting shipment date as the date of sale because it precedes invoice date would contradict 19 CFR 351.401(i), which provides for a presumption in favor of invoice date as the date of sale, not shipment date. U.S. Steel maintains that using the shipment date wherever it precedes the invoice date regardless of whether the material terms of sale were set on the shipment date (1) is inconsistent with the Department's practice and (2) creates a presumption in favor of the date of shipment. Regarding the former, U.S. Steel points to *Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007) (*Steel Wire Rod*), and the accompanying I&D Memo at 5-6, in which the Department used the respondent's U.S. affiliate's invoice date as the date of sale because the material terms of sale, including quantity, were not established until the U.S. affiliate invoiced the U.S. customer. U.S. Steel argues that the Department should not create a presumption in favor of shipment date without regard to whether the evidence shows that the material terms were set at that time because, as the Department stated in *Final Rules*, 62 FR at 27348, changes to the material sales terms frequently take place after shipment.

HYSCO requests that the Department continue to use HYSCO's shipment date as the date of sale for the final results of review, as it has in previous reviews. Citing, *e.g.*, *Certain Stilbenic Optical Brightening Agents From Taiwan: Final Determination of Sales at Less Than Fair Value*, 77 FR 17027 (March 23, 2012), and the accompanying I&D Memo at Comment 1, HYSCO argues that it is the Department's longstanding practice to use the shipment date as the date of sale when the shipment date precedes the invoice date. Citing, *e.g.*, *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Preliminary Results of the Antidumping Duty Administrative Review*, 75 FR 77838 (December 14, 2010), unchanged in *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of the Antidumping Duty Administrative Review*, 76 FR 36089 (June 21, 2011), HYSCO argues further that, even with changes to terms of sale after the shipment date but before the invoice date, the Department has found that the date of shipment is the appropriate date of sale. HYSCO explains that, as the CIT has held in *NSK Ltd. v. United States*, 350 F. Supp. 2d. 1128, 1131 (CIT 2004), the Department may not alter a methodology a respondent relied upon without (1) explaining the basis for the change, (2) providing substantial evidence to support such change, and (3) demonstrating that such change is in accordance with law. HYSCO states that, as the CIT has held in *Ranchers-Cattlemen Action Legal Foundation v. United States*, 74 F. Supp. 2d. 1353, 1374 (CIT 1999), an action by the Department becomes a practice when an existing uniform and established procedure leads a party to reasonably expect adherence to the established practice or procedure in the absence of a notification of change.

HYSCO distinguishes its sales transactions from those addressed by the Department in *Steel Wire Rod* by pointing out that the respondent in *Steel Wire Rod* redirected the merchandise from one customer to another after the shipment but before the invoicing by the U.S. affiliate. HYSCO also points to the fact that the respondent's U.S. affiliate in *Steel Wire Rod* physically possessed the merchandise before the delivery to its unaffiliated U.S. customer whereas HYSCO shipped the subject merchandise directly to its U.S. customer without having its U.S. affiliate physically possess the subject merchandise during the delivery process. HYSCO argues that the e-mail communication U.S. Steel relies upon does not justify the use of the invoice date as the date of sale because U.S. Steel misconstrued the e-mail by illogically stretching the plain language and structure of the e-mail communication. HYSCO explains that the e-mail communication at issue memorialized an agreement reached over the telephone before the shipment in accordance with HYSCO's regular business practice because it would be illogical for HYSCO to ship the subject merchandise beyond an agreed quantity tolerance level without first reaching an agreement that the shipment would be accepted and paid for by the U.S. customer.

Department's Position: For the final results, we have continued to use HYSCO's shipment date as the date of sale. Our regulations state that we "normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business,"[128] but "the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale."[129] One such situation involves our long-standing practice of using the shipment date as the date of sale where the shipment date precedes the invoice date.[130] We do not consider a date after the shipment date as the date of sale because "when a party ships its product to a customer, it is reasonable to assume that the material terms of the sale have been established."[131] Our use of the shipment date when that date is before invoice date as the date of sale has been "implicitly approved by the courts."[132]

In this review, we find no reason to depart from our normal practice *not* to consider dates after the date of shipment as appropriate for date of sale because once merchandise is shipped to the customer, the material terms of sale are presumed to be established.[133] HYSCO reported that

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[128] *See* 19 CFR 351.401(i).
[129] *Id.*; *see also Allied Tube and Conduit Corp. v. United States*, 24 C.I.T. 1357, 1370-71 (2000).
[130] *See, e.g.*, *Certain Stilbenic Optical Brightening Agents from Taiwan: Final Determination of Sales at Less Than Fair Value*, 77 FR 17027 (March 23, 2012) and the accompanying I&D Memo at Comment 1; *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 69626 (November 15, 2010) and the accompanying I&D Memo at Comment 1; *Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008) and the accompanying I&D Memo at Comment 2; *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 Thailand*, 69 FR 76918 (December 23, 2004) and the accompanying I&D Memo at Comment 10.
[131] *See Mittal Steel Point Lisas Ltd. v. United States*, 31 C.I.T. 638, 647 (2007) (*Mittal Steel*) (citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 38756, 38768 (July 19, 1999) (*Steel Products from Brazil*)).
[132] *See Mittal Steel*, 31 C.I.T. at 647 (citing *AIMCOR v. United States*, 141 F.3d 1098, 1104-05 (Fed. Cir. 1998)).
[133] *See Steel Products From Brazil*, 64 FR at 38768, and the accompanying I&D Memo at Comment 5.

negotiations for sales to U.S. customers could continue until actual shipment[134] and HYSCO's e-mail at issue evidences no quantity changes after the shipment date and we have no basis in the content of the e-mail at issue to find that the quantity change took place after the shipment.[135] We have no record evidence indicating that the material terms of sale were established after the shipment date. We find that, consistent with our practice, it is appropriate for us to use shipment date to the customer as the date of sale for HYSCO's U.S. sales for the final results of this review.

PIPE GRADE

Comment 13: U.S. Steel explains that, in the antidumping questionnaire, the Department instructed HYSCO to classify all pipe that is "used for load-bearing applications or fence tubing" under the grade of "structural pipe." According to U.S. Steel, in its questionnaire response, HYSCO divided the "structural pipe" grade into "general structural," "machine structural," and "pile" without providing any explanation for dividing them. According to U.S. Steel, it is the Department's practice, as upheld in *Fagersta Stainless AB v. United States*, 577 F. Supp. 2d 1270, 1276-77 (CIT 2008), not to revise established model match criteria in an administrative review unless there are "compelling reasons" to do so. U.S. Steel notes, that in prior cases, including *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review*, 75 FR 34980 (June 21, 2010), and the accompanying I&D Memo at Comment 5, the Department has only revised the existing model match criteria after conducting a detailed analysis of the administrative record and the arguments raised by the parties. U.S. Steel states that, in the *Preliminary Results*, the Department used the three grades of structural pipe that HYSCO reported without any comment on HYSCO's proposed revision to the model match criteria. U.S. Steel requests that the Department correct this inadvertent error by reclassifying these categories into a single grade of structural pipe. U.S. Steel explains that there are no industry standards showing that such differences between the structural pipe are commercially significant. U.S. Steel argues that three structural pipe models (BS 1775, BS 6323, and KSD 3566) are used as both machine structural and general structural pipes. U.S. Steel also argues that some pipe models that are in different grade categories, *i.e.*, machine structural, general structural, and pile, have identical chemical and physical properties.

HYSCO explains that the Department's antidumping questionnaire did not require that all structural pipes be categorized under one code. According to HYSCO, the Department's antidumping questionnaire required that the respondents specify the grade by use of a numeric code and provided examples including "ordinary" such as ASTM A-53, structural, or conduit. HYSCO insists that the Department's examples do not limit the respondents to use only these codes for grades. HYSCO claims that the Department observed that the products within these categories generally share physical characteristics.

HYSCO states that, in its April 6, 2012, section B response at 9, it identified the six grades as follows:

1 = Ordinary

[134] *See* HYSCO's March 19, 2012, section A response at A-20 and A-21.
[135] *See* HYSCO's January 11, 2013, supplemental response at Exhibit 5.

2 = Pressure Service
3 = General Structural
4 = Machine Structural
5 = Unfinished Conduit
6 = Pile

HYSCO argues that its reporting methodology using these six separate grade categories is consistent with the manner in which it markets and sells the subject merchandise as well as sales practices throughout the steel industry in Korea, Japan, United States, United Kingdom, *etc.* HYSCO claims that its product brochures placed on the record of this review provide these separate specifications and show that products with these different specifications are intended for different applications (*e.g.*, "machines structural" is generally used for mechanical parts such as machinery, automobiles, bicycles, furniture, and fixtures and "general structural" is generally used for structures such as civil works, architecture, and steel towers). Citing, *e.g.*, *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Preliminary Results of the Antidumping Duty Administrative Review*, 76 FR 76369, 76370 (December 7, 2011), unchanged in *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of the Antidumping Duty Administrative Review*, 77 FR 34344 (June 11, 2012), HYSCO also claims that its grade reporting methodology is consistent with how it reported grades in the past reviews of this order and no parties submitted comments concerning its grade reporting methodology in this proceeding until U.S. Steel raised this issue in its case brief. HYSCO contends that, because the Department obtained and reviewed technical information pertaining to HYSCO's grades, the Department's acceptance and use of HYSCO's grade reporting methodology was not inadvertent.

HYSCO states that the significant price differences among pipes with grades categorized as "general structural," "machine structural," and "unfinished conduits" are comparable to differences between the pipes with grades categorized as "ordinary" and "pressure service." HYSCO claims that such differences are present throughout the home market sales database. HYSCO disputes U.S. Steel's claim that some of HYSCO's pipes are used as both machine structural and general structural pipes. HYSCO claims that BS 1775 and KSD 3566 are actually used as either machine structural or general structural pipe, not both, and BS 6232 does not even exist. HYSCO also disputes U.S. Steel's claims that certain steel pipes in different grade categories have identical chemical and physical properties. HYSCO explains that the chemical and physical properties vary by the class of the product. In other words, according to HYSCO, each model specification has additional codes attached to it to further delineate the chemical and physical properties within the specification. Therefore, HYSCO claims, not all models with the same specifications have the same properties.

According to HYSCO, Husteel also reported its home market grade as "general structural (fence tubing)," thus specifying that the grade for all of its foreign like product is limited to "general structural" and, specifically, fence tubing. HYSCO also argues that the Department followed a similar approach in simply requiring the respondents to provide a code for each relevant surface and end finish characteristic. Following the Department's requirements, HYSCO contends, Husteel and HYSCO have established different parameters for the reported end finish characteristic.

Department's Position: In our antidumping questionnaire dated February 6, 2012, we requested the respondents to report the grades of products as follows:

> Specify the grade of pipe, *e.g.*, "ordinary" standard pipe such as ASTI A-53, which is intended for low pressure conveyance of liquids and gases; structural pipe, for use in load-bearing applications or as fence tubing; or conduit, used primarily for housing electrical wiring. The products within these categories generally share physical characteristics.[136]

As evidenced by the question itself and, in particular the use of "*e.g.*," we allow respondents a certain amount of discretion in identifying the various grades of pipe they sell. In this instance, HYSCO did so by separately identifying three types of pipe that U.S. Steel argues should be treated as a single product, structural pipe.

As HYSCO notes, its reporting in this review is consistent with its reporting in past reviews. Thus, combining the three products now, as U.S. Steel suggests, would be tantamount to changing the product matching characteristics without the analysis necessary to make such a change. Moreover, since U.S. Steel only raised this issue in its case brief, parties have not had sufficient opportunity to comment.

For these reasons, we have not changed HYSCO's coding of these three products (or combined the products) for these final results. Instead, we intend to address this issue in future reviews and invite parties to raise it early enough in the review process for the Department to gather the needed information and for parties to have an opportunity to comment meaningfully.

WARRANTY EXPENSE

Comment 14: According to U.S. Steel, HYSCO stated in its April 4, 2012, section B response at page B-29 that it incurs warranty expenses in the home market for "product defects such as cracks, scratches or other surface imperfections, or separation of the coating from the substrate" and that it reported these expenses on a transaction-specific basis. U.S. Steel asks the Department to follow its normal practice and allocate warranty expenses incurred to all home market sales.

U.S. Steel explains that the Department adopted this practice because it recognized that calculating warranty expenses on a transaction-specific basis is not reflective of a respondent's expectations. This is because a respondent does not expect to recoup its warranty expenses on a transaction-specific basis but instead expects to recoup the expenses from all of its sales, according to U.S. Steel. In support, U.S. Steel cites *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) (*Steel Flat Products*), and the accompanying I&D Memo at Comment 4, and *Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review*, 76 FR 15291 (March 21, 2011) (*COREs 16*), and the

[136] *See* the original questionnaire dated February 6, 2012, at page B-9.

accompanying I&D Memo at Comment 9. Moreover, U.S. Steel comments, in this review, there is no evidence that the warranty terms HYSCO offered at the time of sale varied by product, customer, or type of transaction. U.S. Steel requests that the Department reallocate HYSCO's warranty expenses using the warranty expense data from 2009 to 2011.

HYSCO claims that it reported home market warranty expenses on a transaction-specific basis, consistent with *Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan*, 75 FR 41804 (July 19, 2010), and the accompanying I&D Memo at Comment 14, and the Department's regulations, because it was able to link its warranty adjustments to specific sales. HYSCO argues that reporting these expenses on a transaction-specific basis was consistent with the Department's instructions and its practice of calculating selling expenses on as specific a basis as possible, pursuant to 19 CFR 351.401(g). According to HYSCO, although, in certain situations, warranty expenses cannot be reported on a transaction-specific basis due to the time lags between the warranty expenses incurred and sales associated with the warranty, when companies can report warranty on a transaction-specific basis, the Department will accept such reporting methodology as was the case in, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Taiwan*, 64 FR 30592, 30612 (June 8, 1999).

According to HYSCO, quality problems for the steel products are likely to develop during the transportation stage, not the production stage, and manifest themselves upon or shortly after the delivery with cracks, scratches, or other surface flaws. HYSCO states that, because it negotiates warranty adjustments on a case-by-case basis to compensate for such defects, it reported transaction-specific home market warranty expenses.

HYSCO claims that it does not maintain warranty agreements with its customers like those used for consumer electronics products. Citing, *e.g.*, *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*), and the accompanying I&D Memo at Comment 1, HYSCO explains that, in evaluating expenses which are inherently unpredictable at the time of sale, the Department may rely on foreseeable expenses that can be reasonably anticipated based on the historical experience of a company. HYSCO states that these circumstances generally apply in the consumer electronics industries in which (1) customers can return the product for servicing or replacement due to operating defects for a certain period of time after purchase and (2) producers may introduce new models in which actual experience may not be known until a future date. HYSCO notes that, in these circumstances, the Department reasonably relies on historical warranty expenses as a method to quantify those warranty expenses that could be reasonably anticipated. HYSCO explains that, in the alternative, the Department sometimes relies on a respondent's historical experience when it determines that warranty expenses incurred in the reporting period are unrepresentative. For example, in *Honey*, because the respondent had historically incurred significant levels of warranty expenses, the Department rejected the respondent's claim that it had zero warranty expense in the POR at issue.

HYSCO argues that none of the circumstances in *Honey* applies to it because warranty claims for steel products are generally related to the physical appearance of the product, rather than failure of the product's performance over an extended period of time. HYSCO claims that, due to the

number of quality controls and inspections during the production process, warranty claims have not been anticipated to be meaningful in general. HYSCO argues that the number of home market sales transactions with warranty claims and the fact that no U.S. sales transactions involved warranty claims underscore the fact that the warranty claims are rare in HYSCO's business operations given the exceptionally high quality of its products. Also, HYSCO explains that *Steel Flat Products* is inapposite because HYSCO's warranty expenses are the exception, not the rule. HYSCO claims that, because it had warranty expenses on only a small number of home market sales and no warranty expenses on U.S. sales, the possibility of warranty expenses did not affect HYSCO's pricing behavior.

HYSCO contends that *CORES 14* and *CORES 16* differ from this review because the Department concluded in *CORES 14* and *CORES 16* that, since the respondent's warranty program applied to all products and all sales, it was appropriate to allocate the warranty expenses over all U.S. sales. HYSCO also points out that, in *CORES 14*, it was U.S. Steel that argued in favor of applying warranty expenses on a transaction-specific basis, not on a customer-specific basis as a respondent requested, because warranty expenses could be tied to particular sales and were not a part of a general warranty program applicable to all sales or sales to a specific customer.

HYSCO contends that U.S. Steel's suggested adjustment is distortive because U.S. Steel has calculated a weighted-average percentage derived from the prior three years and because the warranty experience in 2009 was unusually high when compared with the two subsequent years. According to HYSCO, as a percentage of sales value, the 2009 warranty expense is nearly nine times greater than the 2011 warranty experience. HYSCO claims that the distortion is more pronounced when comparing U.S. Steel's proposed adjustment to HYSCO's experience during the POR because U.S. Steel's proposed warranty expense is more than 35 times greater than what HYSCO experienced in the POR.

HYSCO states that, when the Department has allocated warranty expenses across all sales, it has done so by allocating the reported warranty expenses over all reported home market sales transactions as it did in *CORES 14* and *CORES 16*. HYSCO requests that, if the Department determines that a modification to HYSCO's reported warranty expenses is necessary, the correct adjustment would be a deduction of a certain percentage of the gross unit price.

Department's Position: For the final results, we have allocated the warranty expenses HYSCO reported for the POR over all of its home market sales transactions during the POR.[137] The nature of a warranty expense is that it is unknown and unforeseeable at the time of sale. Unforeseeable expenses, including specific post-POR warranty claims, are irrelevant in the price

[137] *See CORES 14*, and accompanying I&D Memo at Comment 13; *see also, e.g., Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and the accompanying I&D Memo at Comments 59 and 69 (where we stated that "consistent with the Department's practice, we have utilized all expenses incurred during the period of investigation and allocated such across all period of investigation sales using a value-based allocation methodology"); *Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the First Antidumping Duty Administrative Review*, 75 FR 68758 (November 9, 2010), unchanged in *First Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 27994 (May 13, 2011).

setting of specific POR sales. Instead, sellers would normally build in a warranty and bad debt allowance across products, markets, or customers based on a company's historical experience.[138] Where a company has a warranty policy that it generally applies to all sales our practice is to allocate warranty expenses over all sales. In circumstances where the warranty policy is limited to a subset of sales, such as certain products, customers, or types of transactions, we may consider a narrower allocation.[139] In our antidumping questionnaire, we instructed HYSCO to report its warranty expenses based upon its experience by model, and to provide a copy of each type of warranty agreement.[140] HYSCO reported the warranty expenses on a transaction basis, and stated, "As is common in the steel industry, HYSCO does not maintain warranty agreements with its customers in the home or U.S. markets, ..."[141] Although HYSCO was able to report its warranty expenses on a transaction-specific basis with supporting documentation, that evidence does not indicate that HYSCO has a specific warranty policy limited to certain products, customers, or types of transactions. Also, there is no other information on the record to suggest that HYSCO's warranty program was limited to certain products, customers, or types of transactions.[142] Finally, HYSCO's warranty expenses between the fiscal years 2009 and 2011 indicates nothing unreasonable about its warranty expenses during the POR.[143] Thus, consistent with *COREs 14* and *COREs 16*, it is appropriate to allocate HYSCO's home market warranty expenses during the POR over all home market sales during the POR.[144]

INTEREST REVENUE

Comment 15: Citing, *e.g.*, *Light-Walled Rectangular Pipe and Tube From Mexico; Final Results of Antidumping Duty Administrative Review*, 76 FR 9547 (February 18, 2011), and the accompanying I&D Memo at Comment 6, HYSCO requests that the Department cap interest revenue by credit expense.

U.S. Steel and Wheatland oppose HYSCO's request for capping interest revenues. Citing, *e.g.*, *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, Determination Not To Revoke Antidumping Duty Order in Part, and Final No Shipment Determination*, 76 FR 50176 (August 12, 2011) (*Orange Juice*), and the accompanying I&D Memo at Comment 2, U.S. Steel and Wheatland argue that the Department treats interest revenues as a price adjustment under 19 CFR 351.401(c) and no longer uses interest revenues to offset credit expenses. According to U.S. Steel, the Department stated in *Orange Juice* that "interest revenue earned as late payment fees is a different type of revenue than the movement- or packing-related revenues which we have normally treated as an offset to expenses deducted under the circumstance-of-sale adjustment provision of the Act, albeit for a different reason than that espoused by the petitioners" and that its "practice is to treat interest revenue as a post-sale price adjustment."

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[138] *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), and accompanying I&D Memo at Comment 1.
[139] *See COREs 14*, and accompanying I&D Memo at Comment 13.
[140] *See* HYSCO's April 6, 2012 section B response at 27-28.
[141] *Id.*
[142] *Id*.
[143] *See* HYSCO's April 6, 2012 section B response at Exhibit 17.
[144] *See COREs 18* and the accompanying I&D Memo at Comment 8.

Department's Position: Consistent with our practice stated in *Orange Juice*, we continued to treat HYSCO's interest revenue as a price adjustment and did not cap it with HYSCO's imputed credit expenses.[145]

RECOMMENDATION

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

AGREE ✓ DISAGREE _____

Paul Piquado
Assistant Secretary
for Import Administration

5 JUNE 2013
Date

[145] *See Orange Juice* and the accompanying I&D Memo at Comment 2. *See* also *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012), and the accompanying I&D Memo at Comment 6.