

**DATE:** March 12, 2007

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

**FROM:** Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

**RE:** Certain Corrosion-Resistant Carbon Steel Flat Products from the  
Republic of Korea (Period of Review: August 1, 2004, through  
July 31, 2005)

**SUBJECT:** Issues and Decisions for the Final Results of the Twelfth  
Administrative Review of the Antidumping Duty Order on Certain  
Corrosion-Resistant Carbon Steel Flat Products from the Republic  
of Korea (2004-2005) (Final Results)

### **Summary**

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

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<sup>1</sup> Case briefs and rebuttal briefs were submitted by the following domestic interested parties and respondents: On October 20, 2006, United States Steel Corporation (US Steel) and Mittal Steel USA ISG Inc. (Mittal) (collectively, petitioners) filed case briefs (respectively, US Steel's Case Brief and Mittal's Case Brief). On October 31, 2006, US Steel and Mittal filed rebuttal briefs (respectively, US Steel's Rebuttal Brief and Mittal's Rebuttal Brief). The Nucor Corporation, another domestic interested party, did not submit a case brief or a rebuttal brief. On October 20, 2006, Dongbu Steel Co., Ltd. (Dongbu), Hyundai HYSCO (HYSCO), Pohang Iron & Steel Company, Ltd. (POSCO) and Pohang Coated Steel Co., Ltd. (POCOS) (collectively, the POSCO Group), and Union Steel Manufacturing Co., Ltd. (Union) (collectively, respondents, in the Discussion of Interested Party Comments, section A. General Issues, infra.) filed case briefs (respectively, Dongbu's Case Brief, HYSCO's Case Brief, the POSCO Group's Case Brief, Union's Case Brief). On October 31, 2006, the same respondents filed rebuttal briefs (respectively, Dongbu's Rebuttal Brief, HYSCO's Rebuttal Brief, the POSCO Group's Rebuttal Brief and Union's Rebuttal Brief).

## **I. Background**

The Department of Commerce (the Department) initiated this administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products (CORE) from the Republic of Korea (Korea) on September 28, 2005, for all companies. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 70 FR 56631 (September 28, 2005). On September 11, 2006, the Department published the preliminary results of this administrative review. See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of Antidumping Duty Administrative Review, 71 FR 53370 (September 11, 2006) (Preliminary Results). On January 3, 2007, the Department published a notice for extending the final results to March 12, 2007. See Corrosion-Resistant Carbon Steel Flat Products from Korea: Extension of Time Limits for the Final Results of Antidumping Administrative Review, 72 FR 102 (January 3, 2007). This review covers four manufacturers/exporters: the POSCO Group, Union, HYSCO, and Dongbu. The period of review (POR) is August 1, 2004, through July 31, 2005.

## **II. List of Comments**

### **A. General Issues**

Comment 1: Model-Match Methodology and Laminated Products

Comment 2: Treatment of Constructed Export Price (CEP) Offset

Comment 3: Adjustments to U.S. Prices for Duty Drawback Paid in Korea

Comment 4: Treatment of CEP Selling Expenses Incurred in Korea for U.S. Sales

Comment 5: Treatment of Production Yields

### **B. Company-Specific Issues**

#### **Dongbu Steel Co., Ltd.**

Comment 6: Treatment of All Sales Entered During the POR in Dongbu's Margin Calculation

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#### **Hyundai HYSCO**

Comment 7: Cash Deposit Rate for HYSCO

#### **Union Steel Manufacturing Co., Ltd.**

Comment 8: DINDIRSU Calculation

Comment 9: Treatment of Union's Indirect Selling Expense Ratio

Comment 10: Treatment of Union's Calculation of DKA's Short Term Interest Rate

Comment 11: Treatment of Union's Overrun Sales in the Home Market

Comment 12: Treatment of Union's Home Market Sales of Non-Prime Merchandise in the Calculation of Normal Value

Comment 13: Ministerial Error with Respect to QTYCVNU field

Comment 14: Ministerial Error Regarding Union's Home Market Credit Expenses

**Pohang Iron & Steel Company, Ltd. and Pohang Coated Steel Co., Ltd.**

Comment 15: Treatment of the POSCO Group's Home Market Credit Expenses on Freight Billed to its Customers

Comment 16: The Department's Calculation of the POSCO Group's Sales Database Affecting Certain Weight Conversion Factors

Comment 17: Treatment of the POSCO Group's Short-Term Interest Rate Used for U.S. Credit Expenses

Comment 18: Treatment of the POSCO Group's Overrun Sales in the Home Market

Comment 19: The Department's Calculation of the POSCO Group's Certain Merchandise Sales in the Home Market

Comment 20: Treatment of the POSCO Group's Cash Deposit Instructions

Comment 21: The Department's Calculation of Pohang Steel America Corp.'s (POSAM) Indirect Selling Expenses

**V. Discussion of Interested Party Comments**

**A. General Issues**

**Comment 1: Model-Match Methodology and Laminated Products**

**a. Mittal's Comments on Model-Match**

In its case brief, Mittal reiterates its model-match arguments from the two most recently completed administrative reviews<sup>2</sup> and raises additional arguments to support its position that the

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<sup>2</sup> See Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 70 FR 12443 (March 14, 2005) (Tenth Review Final Results), and accompanying Issues and Decision Memorandum at Comment 1; and Memorandum from Eric B. Greynolds, Program Manager, to Melissa G. Skinner, Office Director, Concerning Petitioners' Proposal for Changes to the Model-Match Methodology, dated August 27, 2004 (Tenth Review Model-Match Memo).

See also; Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 7513 (February 13, 2006) (Eleventh Review Final Results), and accompanying Issues and Decision Memorandum at Comment 1.

See also; August 31, 2006, Memorandum to Melissa G. Skinner, Office Director, from James Terpstra, Program Manager, regarding Mittal Steel USA ISG, Inc., United States Steel Corporation, and Respondents' Submissions Regarding Changes to the Model-Match Methodology (Twelfth Review Model-Match Memo) in the Preliminary

Department's model-match methodology is flawed. Mittal again states that the Department's definition of identical goods is overly broad and that its treatment will likely result in a comparison of non-comparable goods in sale-to-sale comparisons as well as the development of inappropriate costs of production. Mittal states that in both the prior and instant reviews, the Department has refused to request that respondents submit more specific data to allow the Department and Mittal the opportunity to test the reasonableness of the Department's current model-match methodology. Mittal argues that this refusal has precluded it from pursuing an important issue where it feels it has made a reasonable showing. Mittal argues that the issues that it raised in previous reviews were not adequately addressed by the Department in those prior reviews. Additionally, Mittal argues that the record in the instant review contains slightly different facts which were not developed in the previous proceedings and that the Department should revisit the issues because of the different set of facts in this review. Mittal states that the Department has an affirmative obligation to calculate margins as accurately as possible and that the Department has a duty to request all reasonably relevant information that would allow for a more accurate identification of subject merchandise. Additionally, Mittal states that none of the respondents has adequately shown, in the context of the instant review, that Mittal's previously submitted studies are no longer valid or why additional model-match criteria should not be collected in this review. Mittal argues that, prior to issuing the Final Results, the Department should request further data and make its model-match comparisons based on the more precise information.

Respondents argue that Mittal's request to revise the model-match methodology relies on the same unsupported arguments that the Department has consistently rejected in the past. Moreover, in the Preliminary Results, the Department provided a detailed explanation as to why it concluded that Mittal failed to meet the factual threshold required for the Department to consider a change in the model-match methodology.<sup>3</sup> Respondents state that in spite of the Department's repeated rejections of Mittal's position, Mittal again proposes that the Department request additional information from the respondents, which the Department has expressly found would unnecessarily place a significant reporting burden on the respondent companies.<sup>4</sup> Respondents also argue that Mittal's continued reliance upon its analysis of Korean respondents' internal pricing guidelines, its cost analysis, and its model-matching analysis as evidence that the current model-match criteria do not produce accurate comparisons of identical merchandise is unavailing and has been squarely addressed and rejected by the Department in the tenth and eleventh administrative reviews of this proceeding. Thus, respondents contend that because Mittal has presented no new information warranting a change, the Department should again reject Mittal's model-match arguments.

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Results.

<sup>3</sup> See Twelfth Review Model-Match Memo.

<sup>4</sup> Id.

## Respondents' Comments on Model-Match Criteria for Laminated CORE

Respondents argue that, in the Preliminary Results, the Department erred in assigning laminated CORE the same product matching code as certain other painted CORE products. Respondents argue that the Department's decision not to revise the model-match criteria to account for the commercially significant differences between laminated and painted CORE products was based on an arbitrary and inconsistently applied "industry-wide change" standard that should not be applied in the final results of this review. Respondents claim that in Structural Steel Beams from Korea,<sup>5</sup> the Department revised the model-match characteristics used in previous segments of the proceeding by collapsing two pairs of strength classifications that had previously been treated separately. Respondents go on to argue that in Structural Steel Beams from Korea, the Department specifically disavowed its standard that parties must either overcome a high factual threshold with evidence applicable to the industry as a whole, or present a compelling argument on other grounds for the Department to consider a change. According to respondents, the standard applied in the Department's Twelfth Review Model-Match Memo is inconsistent with Structural Steel Beams from Korea. Specifically, respondents claim that the Department based its decision not to revise the model-match criteria in the instant case on the fact that there have been no industry-wide, commercially accepted changes regarding laminated products, but in Structural Steel Beams from Korea, the Department defended its decision to change the model-match criteria on the grounds that the model-match criteria are not limited solely to changes in the industry norms or the fundamental definition of the product. Respondents argue that these decisions are arbitrary and not in accordance with the law.

Respondents claim that the Department should find that the significant cost and price differences between laminated and pre-painted CORE products warrant separate treatment because there are meaningful physical and commercial differences between them. Respondents argue that the record shows that laminated CORE products command higher prices, cost more to produce, and are used for different purposes than pre-painted CORE products. Respondents state that the Department's current model-match criteria with respect to the CTYPE variable (i.e., Field Number: 3.1; Field Name: CTYPEH/U; Description: Type) is distortive because it does not treat laminated CORE products separately from pre-painted CORE products. Respondents claim that pre-painted CORE products are most commonly painted with a polyester resin paint while laminated products are coated by attaching a plastic film or polyvinyl chloride film (PVC film) to the CORE substrate in lieu of painting or thermally sealing primer-coated CORE substrate with polyethylene terephthalate film (PET film). Additionally, respondents claim that painted and laminated CORE products have different uses. According to respondents, painted CORE products are used in applications that require less durability and chemical resistance than laminated products. Respondents argue that laminated products are used in environments that are susceptible to corrosion and in the production of electrical home appliances. Respondents

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<sup>5</sup> See Structural Steel Beams from Korea; Notice of Final Results of Antidumping Duty Administrative Review, 70 FR 6837 (February 9, 2005) (Structural Steel Beams from Korea), and accompanying Issues and Decision Memorandum at Comment 1.

state that painted CORE products cannot be used or adapted for use in the merchandise or environments in which laminated CORE products are used. Citing Shrimp from Ecuador,<sup>6</sup> Pasta from Italy,<sup>7</sup> and ESBR from Korea,<sup>8</sup> respondents argue that the Department has revised the model-match criteria in cases where cost, price, and physical differences exist. Thus, respondents argue that for the final results, the Department should assign a separate product matching code to laminated CORE products.

Respondents also argue that an additional or new CTYPEH/U code for laminated CORE products does not involve the complex and cross-cutting issues identified by the Department. Specifically, respondents state that the Department's argument that revising the model-match criteria based on price lists, costs of production, and changing markets raises the issue as to whether the Department would have to contemplate changes from one POR to the next and whether such revisions would also have to be applied to other companies or countries subject to the CORE orders, is misplaced. Respondents argue that in drawing such a conclusion, the Department is confusing model-match issues raised by Mittal, for which there is no support on the record, with very specific CTYPEH/U breakouts for which they have amply demonstrated the basis for a different treatment. First, respondents argue that the record shows that the cost, price and end-use differences between laminated and painted CORE products are not going to change from one POR to the next. Second, respondents state that the Department's concern that any changes to the model-match criteria with respect to the individual companies in this proceeding and the application of these changes to other companies or countries subject to CORE orders is legally irrelevant. Respondents argue that in New World Pasta,<sup>9</sup> the Court of International Trade (CIT) made clear that revisions to the model-match criteria could be made on a company-specific basis.

Respondents also state that the reasons offered by the Department in support of its preliminary decision not to add an additional matching category for laminated CORE products are not compelling. Specifically, respondents claim that the Department's reliance on its previous consideration of laminated CORE products during the first and second administrative reviews<sup>10</sup>

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<sup>6</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Ecuador, 69 FR 76913 (December 23, 2004) (Shrimp from Ecuador), and accompanying Issues and Decision Memorandum at Comment 7.

<sup>7</sup> See Notice of Final Determination of the Antidumping Duty Investigation on Certain Pasta from Italy, 61 FR 30326 (June 14, 1996) (Pasta from Italy) at Comment 3.

<sup>8</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from the Republic of Korea, 64 FR 14865, (March 29, 1999) (ESBR from Korea) at Comment 9.

<sup>9</sup> New World Pasta Co. v. United States, 316 F. Supp. 2d 1338, 1356-57 (C.I.T. 2004) (New World Pasta).

<sup>10</sup> See Certain Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Review, 61 FR 18547, 18566 (April 26, 1996) (First Review Final Results) at Comment 6 for Union. See also Certain Cold-Rolled and Corrosion-Resistant Steel Flat Products from Korea: Final Results of

of this proceeding does not support the Department's decision because the Department only addressed painted CORE products in simple terms in those prior reviews. Respondents claim that, during the first and second administrative reviews of this proceeding, they had argued for additional breakouts of the CTYPE field, but that the Department only added one additional paint category to the CTYPE field that distinguished polyvinylidene fluoride CORE products (PVDF CORE) from the other CORE products. Thus, according to respondents, the Department did not thoroughly examine whether laminated products should be a separate CTYPE category in the first and second administrative reviews of this proceeding. Respondents also dispute the Department's conclusion in the current review that the cost and price differences between laminated CORE and painted CORE are minor. According to respondents, if painted and laminated CORE products were coded separately, they would not be considered as suitable for matching purposes because of the 20-percent difference-in-merchandise (DIFMER) cap.

Additionally, respondents state that during the first and second administrative reviews, the Department did not specifically address the issue of laminated CORE products in terms of defining the model-match criteria for the CTYPE field. Respondents argue that during the first administrative review, the Department dismissed all comments regarding requests for a breakout of the various paint types. Additionally, respondents assert that the Department's lack of consideration became clearer when, in the second administrative review, the Department responded to Dongbu's inquiry about reporting requirements by stating that laminated products do not fall within the scope of the review.<sup>11</sup> Respondents argue that, although the Department sought to distance itself from the 1995 Memorandum to the File in the tenth administrative review and instructed respondents to report laminated products as subject merchandise (see Twelfth Review Model-Match Memo at Attachment 4), this does not change the fact that in determining its treatment of various paint types in the first and second administrative reviews, the Department was not addressing laminated products.

However, if the Department does not agree that a separate CTYPE product matching code is warranted, respondents request that the Department assign laminated CORE products the same CTYPE matching code as the one used for PVDF CORE. Respondents argue that the record establishes the fact that laminated and PVDF CORE products are more similar in terms of cost and price than CORE products contained in the "other painted" category. Thus, respondents state that use of PVDF CORE CTYPE product matching criteria for laminated CORE products would yield more accurate results.

In its rebuttal comments, Mittal argues that the Department should consider no changes to its model-match methodology as it applies to laminated products unless the Department is also

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Antidumping Duty Administrative Reviews, 62 FR 18404, 18446 (April 15, 1997) (Second Review Final Results) at Comment 53.

<sup>11</sup> In the second administrative review of this proceeding, the Department treated some laminated CORE products as non-subject merchandise. See November 21, 1995, Memorandum to the file from Charlie Rast (1995 Memorandum to the File), at Exhibit 18 of the POSCO Group's December 1, 2005, model-match submission.

prepared to request additional model-match information on all subject merchandise CORE products. Mittal claims that it would be unfair, arbitrary, and prejudicial for the Department to grant ad hoc requests, yet still refuse to request information that might support making numerous additional changes to the model-match methodology.

In its rebuttal comments, U.S. Steel argues that the Department should deny respondents' requests to revise the established model-match criteria with respect to painted/organic coated products (i.e., deny respondents' request that the CTYPEH/U variable<sup>12</sup> should have a separate code for laminated CORE products, rather than classify the laminated CORE products under CTYPEH/U: 60 = coated/plated with metal: painted or coated with organic silicate, All Other). U.S. Steel states that this issue has been raised in four prior segments of this proceeding beginning with the first administrative review, and that this instant request marks the fifth time that the Department has received requests to revise its longstanding classifications of painted/organic coated CORE products. U.S. Steel argues that respondents' request for change is not supported by the record evidence, that the Department applied the proper standard in evaluating the respondents' request, and that the industry does not differentiate laminated products from painted products. U.S. Steel states that respondents submitted product brochures and additional laminated/specialty painted CORE product information that undermine their contentions that these CORE products warrant separate treatment. U.S. Steel argues that respondents' claims regarding differences among CORE products rely on their unsupported assertions that specialty CORE products and/or laminated CORE products have material cost, sales price, and end-use differences compared to the painted CORE products. U.S. Steel states that in each review that these respondent issues/arguments have been raised, the Department has rejected respondents' proposals, finding that: 1) the evidence was insufficient and non-compelling; 2) the uses and applications of these CORE products are not dispositive, 3) the different uses of these CORE products with distinct paint coatings did not demonstrate that each paint coating imparts different properties to the CORE; and/or 4) the model-match criteria cannot account for every single possible difference between products.

U.S. Steel states that the Department has explained its high factual threshold standard for changing model-match methodologies.<sup>13</sup> U.S. Steel also states that in the tenth and eleventh administrative reviews of this proceeding, the Department rejected Mittal's<sup>14</sup> model-match

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<sup>12</sup> Field Number: 3.1; Field Name: CTYPEH/U; Description: Type.

<sup>13</sup> "In general, the Department refrains from revising the model-match criteria unless there is considerable and compelling evidence that the current model-match criteria is not reflective of the merchandise in question, there have been industry changes to the product that merit a modification, or there is some other compelling reason present requiring a change. Thus, while not leaving out the possibility of changing the model-match criteria in a given proceeding, the Department, as evidenced by its practice, has established a high factual threshold that parties must overcome with evidence relevant to the industry as a whole and/or some form of compelling argument in order to effect a change in the model-match criteria." See Twelfth Review Model-Match Memo at 9.

<sup>14</sup> Mittal is the successor-in-interest to International Steel Group (ISG), a party in the tenth administrative review.



arguments calling for a change to include more detailed reporting of several variables used in the model-match of this proceeding. U.S. Steel argues that, in the tenth and eleventh administrative reviews of this proceeding, the respondents themselves relied on the Department's high factual threshold for changing the model-match in their opposition to Mittal's requests for a modification to the model-match methodology. Citing to the language in the Tenth Review Model-Match Memo, U.S. Steel reiterated Dongbu's and Union's comments regarding their arguments against Mittal's request for changes to the model-match.<sup>15</sup> U.S. Steel argues that the Department standard that respondents argued should be used to leave the model-match unchanged in the tenth review is identical to the standard being used by the Department now to leave the model-match unchanged in this review. U.S. Steel states that in the eleventh administrative review, the Department rejected all requests from all parties that commented on the topic, to modify the model-match criteria. Finally, U.S. Steel states that for the preliminary results in the instant review, the Department has adopted the same model-match methodology it has adopted in all previous reviews of this proceeding. U.S. Steel argues that the Department has repeatedly rejected requests for a change in the model-match methodology and, that it should do so again in this review.

U.S. Steel claims that, contrary to respondents' assertions, the Department has consistently applied the same standard in analyzing proposed changes to the model-match criteria and that pursuant to this longstanding standard, the Department will not revise its established model-match criteria unless there is evidence that the model-match criteria are not reflective of the subject merchandise in question, there have been industry changes to the product that merit a modification, or there is some other compelling reason. U.S. Steel argues that respondents have not met this standard here.

U.S. Steel also asserts that the record does not support a revision to the established model-match criteria. First, U.S. Steel states that there have been no industry-wide changes to warrant a revision. The specialty CORE products and/or laminated CORE products at issue have been produced since the inception of the instant case, and there have been no new technologies or changes affecting the CORE products in question. Second, U.S. Steel states that the record does not support respondents' claim that there is industry-wide acceptance of the respondents' proposed laminated CORE product categories. U.S. Steel claims that, in fact, the evidence on the record shows that there is no such common industry recognition, and that the CORE industry does not differentiate laminated products from painted products. Third, U.S. Steel states that respondents' claims regarding differences in the production processes, production costs, and end-uses for laminated CORE products do not provide any support for a change to the model-match criteria. Fourth, U.S. Steel states that a change in the model-match criteria in this case would raise cross-cutting considerations relative to the other orders on CORE that preclude the Department from making such a change. Lastly, U.S. Steel states that the respondents are the only parties in this proceeding that can determine, at the start of an administrative review,

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<sup>15</sup> See Twelfth Review Model-Match Memo at Attachment 2, pages 3 - 4 (i.e., Tenth Review Model-Match Memo at 3 - 4)

whether the inclusion or exclusion of certain characteristics in the model-match would increase or decrease their dumping margins. U.S. Steel claims that if respondents were free to revise their positions on this issue, respondents could use the model-match criteria to obtain artificially low dumping margins. Thus, U.S. Steel states, for all these aforementioned reasons, respondents' request to revise the model-match for painted/organic coated CORE products should be denied.

### **Department Position**

In the Preliminary Results, the Department determined not to alter the model-match criteria in this segment of the proceeding, stating that, in general, the Department refrains from revising the model-match criteria unless there is considerable and compelling evidence that the current model-match criteria is not reflective of the merchandise in question, there have been industry changes to the product that merit a modification, or there is some other compelling reason present requiring a change.<sup>16</sup> For the Final Results, we are still not persuaded by either Mittal or respondents that the model-match methodology should be changed in this review for the reasons discussed below.

#### **b. Mittal's Proposed Model-Match Methodology**

In the Preliminary Results, the Department determined not to alter the model-match criteria in this segment of the proceeding. Mittal had made a number of arguments in support of changing the criteria. Before the Preliminary Results, Mittal stated that the current CORE product model-match methodology is flawed, does not fully reflect the respondent companies' current sales and pricing practices, and that the Department should request respondents to provide detailed CORE product data. Additionally, prior to the Preliminary Results, Mittal claimed that failure to implement its recommended changes will result in certain CORE products being classified as identical when, in fact, respondents market the aforementioned CORE products differently, particularly with regard to price. Mittal's submissions, prior to the Preliminary Results, also included the requests it made in the tenth and eleventh administrative reviews, without modification, that the Department change its model-match criteria methodology with respect to four sub-categories (thickness (gauge), type, width, and quality) and collect the additional specific CORE product matching characteristic data as well as the more specific associated cost data. According to Mittal, the Department's refusal to collect this data from respondents was an abuse of discretion and it precluded Mittal from pursuing an issue of critical importance.

However, in the Preliminary Results, the Department denied Mittal's request because Mittal failed to meet the factual threshold required by the Department to consider a change to its model-match methodology. Specifically, the Department found that Mittal's requests for additional information would place a significant reporting burden on respondent companies. We also found that the record evidence did not demonstrate that the model-match criteria are not reflective of the subject merchandise, there has been a change in industry practice, or there is some other

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<sup>16</sup> See Twelfth Review Model-Match Memo at pages 9 and 10.

compelling reason to warrant revision to the model-match methodology. The Department also reiterated its position from the final Issues and Decision Memorandum in the eleventh administrative review at Comment 1:

“It is important to note that petitioners’ arguments and analysis in this review are similar to those submitted in the tenth administrative review. In particular, our findings with respect to petitioners’ arguments on price-list information have already been addressed in our Tenth Review Model-Match Memo. In the Tenth Review Final Results, the Department did not alter the model-match criteria because we found that petitioners failed to adequately demonstrate the necessity for a revision to the model-match criteria currently in place. As we also found in the tenth administrative review, the price lists submitted by petitioners contained no evidence indicating that the price lists reflect actual transaction prices, and, thus, we found that they do not necessarily reflect the Korean respondents’ actual sales and pricing practices.....

We did, however, determine not to incorporate petitioners’ requests that the Department request actual measurement data on the specifications of the subject merchandise (e.g., thicknesses, width dimension, etc.). This is because the reporting of this data would have been extremely burdensome for the respondents. In addition, the thickness and width dimension information we do collect was created in the 1992 investigation in which the selling practices of nine countries involved in the antidumping duty investigations on CORE were considered. Also, petitioners have not presented sufficient evidence of changes in industry practice that would warrant seeking such additional information....” (Emphasis added. See CORE Eleventh Review Final Results, 71 FR 7513 (February 13, 2006) accompanying Issues and Decision Memorandum at Comment 1).

For the Preliminary Results, as we found in prior segments of this proceeding, we found that Mittal’s requests for additional information would place a significant reporting burden on respondent companies, especially with respect to the changes that would be necessary to accurately report the costs of production for a significantly increased number of product control numbers for each respondent. Because Mittal had provided no new information or argument concerning its request for the Department to seek additional information, we found that it had not adequately demonstrated that a new methodology should be considered. A detailed discussion of the Department’s findings for the preliminary results can be found in the Twelfth Review Model-Match Memo.<sup>17</sup>

With respect to the model-match arguments contained in Mittal’s case brief, we find that Mittal has not provided any new argument or information on this issue. Specifically, Mittal’s case brief simply restates the arguments and analysis it previously submitted, in the tenth and eleventh reviews of this order, to persuade the Department to collect more detailed model-match information on four CORE sub-categories (thickness (gauge), type, width, and quality) as well as

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<sup>17</sup> See Twelfth Review Model-Match Memo at pages 9 - 12.

the more specific associated cost data. Mittal cites to studies and submissions that it provided in previous reviews which it copied and submitted to the record of this review. Mittal then goes on to discuss how the Department abused its discretion by not requesting the new data from respondents in the tenth, eleventh, and for the preliminary results of this review. Reiterating the same arguments in both the prior and instant reviews, Mittal states that the Department refused to request that respondents submit more specific data to allow for reasonableness testing of the Department's model-match and that this refusal has precluded Mittal from pursuing this important issue. Finally, Mittal concludes its case brief arguments by stating the following new argument: "no respondents have adequately shown in the context of the instant review, that Mittal's studies are no longer valid.... that [the Department] should require that respondents submit further information prior to the Final Results.... The showings indicate a high probability that the Department's method for matching goods yields unacceptable results."

However, Mittal's case brief relies on the basic premise of the arguments it made in the tenth and eleventh administrative reviews. Mittal suggests that a new look at this issue is warranted because the respondents' antidumping duty questionnaire responses and supplemental in the instant review supports arguments made by Mittal in previous reviews. However, Mittal provides no factual evidence to suggest that anything has changed with respect to respondents' sales, production, accounting, and/or corporate structures and/or practices to support its argument that its discussions on model-match criteria are now relevant to this review. Therefore, as the Department found in the tenth and eleventh reviews, Mittal's arguments are not persuasive in this review because 1) Mittal, in its arguments and evidence submitted, failed to meet the factual threshold required by the Department to consider a change to its model-match methodology; 2) Mittal failed to adequately demonstrate the necessity for a revision to the model-match criteria currently in place; 3) the price lists submitted by Mittal contained no evidence indicating that the price lists reflect actual transaction prices, and, thus, we find that they do not necessarily reflect the Korean respondents' actual sales and pricing practices; 4) Mittal's requests that the Department request actual measurement data on the specifications of the subject merchandise (e.g., thicknesses, width dimension, etc.) were not incorporated because the reporting of this data would have been extremely burdensome for the respondents; and 5) Mittal has not presented sufficient evidence of changes in industry practice or any other compelling reason that would warrant seeking such additional information. Further, Mittal's arguments have not shown that somehow the underlying facts relative to the model-match criteria in this review have changed from the previous reviews. Thus, absent this showing, there is nothing to suggest that the Department's analysis and findings, with respect to Mittal's model-match submissions, in the in the tenth, eleventh, and for the preliminary results of this review do not continue to apply now.

Finally, the Department refrains from revising the model-match criteria unless there is evidence that the model-match is not reflective of the merchandise in question, there have been industry changes to the product that merit a modification, or there is some other compelling reason present requiring a change. See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from Malaysia, 66 FR 12759 (February 28, 2001) (Steel Rope from Malaysia), and accompanying Issues and Decision memorandum at Comment 3. Also, the model-match

criteria should be consistent across reviews so that parties may have a predictable means of determining possible product matches in current as well as future administrative reviews. See Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan: Final Results of Antidumping Duty Administrative Review, 56 FR 41508 (August 21, 1991), and accompanying Issues and Decision Memorandum at Comment 1. We also continue to find that the record evidence, including petitioners' submissions and information collected from respondents in this review, does not demonstrate that the model-match criteria are not reflective of the subject merchandise, there has been a change in industry practice, or there is some other compelling reason to warrant revision to the model-match methodology. Thus, Mittal's restated arguments and analysis continue not to meet the Department's high factual threshold necessary to consider this magnitude of change to the model-match criteria.

c. Respondents' Proposed Model-Match Methodology on Laminated CORE Products

Pursuant to our longstanding standard on this issue in this proceeding, the Department will not revise its established model-match criteria unless there is evidence that 1) the model-match criteria are not reflective of the subject merchandise in question, 2) there have been industry-wide changes to the product that merit a modification, or 3) there is some other compelling reason. In prior segments of the proceeding, we have referred to the Department's standard as an examination as to whether the above factors result in a "meaningful commercial difference."<sup>18</sup> An interested party wishing to change the model-match criteria established by the Department bears the burden of demonstrating that a revision is warranted.<sup>19</sup>

i. Discussion on Record Evidence Regarding Respondents' Proposed Change to Model-Match

Respondents' claim that the cost, price, physical, end-use, and meaningful commercial differences between laminated and painted CORE products warrant separate treatment.<sup>20</sup> There are two sources of factual information that respondents rely on for their arguments in this review. The first is a detailed factual submission made by POSCO on December 1, 2005 (see POSCO's December 1, 2005, model-match submission, hereafter - POSCO model-match submission), and the second are the applicable responses to CTYPEH/U in the questionnaire responses submitted by Union, Dongbu, and POSCO.

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<sup>18</sup> See Twelfth Review Model-Match Memo at page 15.

<sup>19</sup> See *Rautaruuki Oy v. United States*, 22 C.I.T. 786, 791-92 (1998), citing *Koyo Seiko Co., Ltd. v. United States*, 905 F. Supp. 1112, 1117 (C.I.T. 1995); *Timken Co. v. United States*, 673 F. Supp. 495, 513 (C.I.T. 1987); see also Twelfth Review Model-Match Memo at 9.

<sup>20</sup> Due to the proprietary nature of many of the facts on this topic, a separate analysis memorandum discusses the Department's findings on these issues. See Laminated CORE Products - Factual Information and Analysis for Final Results in the Final Results, March 12, 2007 (Twelfth Review Model-Match Memo - Final Results).

Respondents argue that there are significant cost differences between laminated and painted CORE products, and state that “some” of these other painted CORE products would not be comparable to laminated products because they would fail the 20-percent DIFMER test (see POSCO model-match submission at Exhibit 1). However, respondents have selectively interpreted and mis-characterized their own data, which in fact shows that the majority of “other painted products” are comparable to “laminated products” in this context. Although, on average, it costs more to produce laminated products, such differences do not render them non-comparable. Respondents’ analysis focuses only on the cost differences between laminated and other painted products in terms of paint/film, or other covering materials. Furthermore, respondents’ analysis fails to account for the total production cost; laminated and other products go through a large number of the same production processes. For example, POSCO’s questionnaire response identifies 12 different production stages that merchandise undergoes; however, for all products entering the coating process, there is only one stage that is unique to lamination. See POSCO’s Questionnaire Response dated September 28, 2006, at Exhibit 8 - E. Another aspect of respondents’ analysis that is unclear is the raw material cost. Specifically, although they show that, on average, raw material costs for laminated products are higher than for other painted products, the actual per-unit purchase cost for some of the other painted products is actually higher than the per-unit purchase cost of laminated products.

Respondents also argue that the POSCO model-match submission at Exhibit 15, comparing sales prices of laminated and other painted CORE products, demonstrates significant price differences between laminated and other painted CORE products. Respondents argue that this table shows that laminated CORE products sell at a premium price relative to other painted CORE products. However, as discussed below, respondents have selectively interpreted and mis-characterized their own data, which shows in fact that the prices for other painted products are comparable to those for laminated products.

Respondents assert that there are physical characteristics that differentiate laminated and other painted CORE products, citing to various portions of their questionnaire response.<sup>21</sup> Specifically, respondents claim that the physical differences render laminated products non-comparable with other painted products. Thus, in analyzing whether respondents have met the standard for changing the model-match, the Department has considered whether the differences cited by respondents rise to a level considered to be so significant as to create a “meaningful commercial difference.” Based on the Department’s analysis, we agree that there are certain physical differences between laminated and other painted products; however, we disagree that these differences result in a “meaningful commercial difference” that would render the products non-comparable. In fact, there are physical differences that exist within each of the “other painted products.” However, the Department does not find that the physical variations at issue preclude product comparisons. Thus, we find that the differences are not significant enough to warrant a major methodological revision to the established model-match criteria.

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<sup>21</sup> See, e.g., Dongbu and Union’s October 20, 2006, Case Brief at footnote 18.

Dongbu references details regarding the physical characteristics and costs of its laminated and regular polyester CORE products from its questionnaire response and cites these differences in its analysis.<sup>22</sup> However, Dongbu fails to mention the extent to which its CORE products are comparable based on the information contained in its section A questionnaire response at Exhibit A-17, which includes complete product brochures and detailed descriptions of the company's CORE products. Respondents cite to various portions of their questionnaire response in an attempt to show that laminated CORE products have different end uses from other painted CORE products, which they claim renders laminated CORE products non-comparable with other painted CORE products.<sup>23</sup> Although the Department agrees that there are different end uses for laminated and other painted products, we disagree that this necessarily means that the products are non-comparable. As is evident from the documentation provided in Exhibit A-17, each painted product is not uniquely end-use specific; instead, the end use of the painted products is frequently interchangeable. Therefore, end use of the painted products is not unique and does not prohibit meaningful comparisons across product types.

ii. The Record Evidence Supports the Department's Decision to Maintain the Established Model-Match Criteria

When evaluating the differences between laminated and other painted CORE products articulated by respondents, we also reviewed record evidence that showed the similarities between these products, as well as the differences between all of the products covered by the scope of these orders. We found that there were differences in physical characteristics, end uses, costs and selling prices across all of these products. For example, there are separate technical specifications and price lists for each product. However, there were also many common characteristics across all of these products. For example, most of them undergo many of the same production processes. Furthermore, the Department's analysis of the record evidence shows that both laminated and other painted products are frequently sold through the same distribution channels to the same customers. We also note that the reported gross unit price for a number of laminated sales is identical to the reported gross unit price of other painted products. Moreover, we find that the range of costs coincide with laminated and other painted CORE products. Thus, the record shows many differences and similarities between laminated and other CORE products, just as there are among and between all products. We find that these differences do not preclude the Department from making accurate comparisons among the various CORE products sold. The differences between laminated CORE products and other painted CORE products are not recognized in the marketplace, as evidenced by their identical reported gross unit prices and similar reported costs of manufacture. The issues regarding parties' requests to revise the CTYPE code for laminated CORE products have been considered and the Department ultimately rejected them in the investigation, as well as in the first and second administrative reviews of this proceeding. Any interested party that requests a change in the model-match

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<sup>22</sup> See Dongbu's Section B questionnaire response, dated December 2, 2005, at Exhibit B-26.

<sup>23</sup> Id.

criteria established by the Department bears the burden of demonstrating that a revision is warranted. However, no compelling evidence has been presented in the instant review that would warrant a change from the established model-match criteria. Respondents' own data shows that price, cost of production, channels of distribution and customers are consistent for laminated COPRE products and other painted CORE products.<sup>24</sup> Therefore, we find that the long-standing model-match criteria provide accurate product comparisons. For additional detail, see the Department's business proprietary memorandum entitled "Laminated CORE Products - Factual Information and Analysis the Final Results," March 12, 2007 (Twelfth Review Model-Match Memo - Final Results).

The Department disagrees that the record of this review contains evidence of an industry standard on laminated products. Specifically, the record does not support respondents' claims that there is any kind of industry-wide acceptance of respondents' proposed laminated CORE product categories. A review of the evidence on the record, including respondents' respective product brochures and other record evidence, shows that there is no common industry recognition on what constitutes laminated CORE products.<sup>25</sup> Although respondent companies use the term "laminated products," when describing their CORE product lines, the respondent companies' use of the term "laminated" also varies between respondent company based upon the discretion of the respective respondent company in the instant review. Because there is no recognizable industry-wide standard for laminated CORE products, we find that they have not met the Department's standard that there is an industry-wide change to the product that would merit a modification to the model-match.

Therefore, as an industry, the record evidence provided by respondents does not differentiate laminated products from painted products in any consistent manner. The Department also notes that, although respondents have provided voluminous comments on the differences between 1) CORE that is coated/plated with metal: painted or coated with organic silicate; and 2) specialty painted CORE products and/or laminated CORE products, respondents have not provided any compelling argument or record evidence that shows that the current model-match criteria do not adequately reflect the CORE industry's business practices with respect to these products. Thus, the record does not support altering the established model-match methodology based on respondents' assertion that there has been a significant change to laminated products in the industry or that an industry standard exists for laminated CORE products.

### iii. Discussion of Case Precedent Cited by Respondents

The Department disagrees with respondents' argument that the Department's decision in the Preliminary Results to maintain the established model-match criteria is inconsistent with

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<sup>24</sup> See Analysis Memo for Laminated CORE Products, March 12, 2007.

<sup>25</sup> See Section A of the respective Questionnaire Response submitted by Dongbu, Hysco, POSCO, and Union submitted on December 2, 2005.



Structural Steel Beams from Korea. Respondents claim that in Structural Steel Beams from Korea, the Department applied the model-match change to all of the companies in that particular administrative review based on the Department's analysis of one specific company subject to the review and on the claim that the reconsideration of the model-match criteria is not limited solely to changes in the industry norms or the fundamental definition of the product. However, further examination of the Department's position in Structural Steel Beams from Korea shows that the Department's decision to modify the model-match criteria was not based on a single determining factor such as changes in the industry norms. Specifically, the Department's decision to make the modification to the model-match criteria in Structural Steel Beams from Korea was based on: 1) a careful analysis of the commercial realities of the market, 2) the conclusion that a more proper price comparison would be afforded to the Department, 3) the conclusion that the change, based on careful comparison and analysis of strength specifications in the United States and other countries (e.g., Japan and Korea), was relevant to all of the orders involving structural steel beams, and not to any particular country, and 4) the finding that this change resulted in a more appropriate definition of distinct products.<sup>26</sup> In summary, the Department consolidated the strength categories in Structural Steel Beams from Korea because it resulted in more appropriate industry-wide definitions of distinct products for purposes of the Department's analysis. However, in the instant case, as discussed above, there is no record evidence to support the conclusion that the commercial realities of the market have changed. In addition, we find that a more appropriate price comparison or definition of distinct products would not be achieved if the Department were to modify its established model-match criteria. Importantly, we find that it is not possible to compare the detailed factual record of each case referenced by respondent. Thus, the findings of Structural Steel Beams from Korea (factors 1 - 4 referenced above) are based on that particular case record. Therefore, we do not find that there is compelling evidence that warrants a change in the established model-match.

In New World Pasta, the CIT considered whether the Department's decision to add one additional pasta production die-type criterion (i.e., bronze die) for one particular respondent was in accordance with the law. In the underlying administrative review, the Department originally chose four model-match criteria to use in identifying the foreign like product. However, one respondent, Ferrara, requested that a fifth criterion be added, representing the type of die used to extrude the pasta. The Department added the product matching criterion for die-type to the definition of "foreign like product" for Ferrara but not for the other companies in the same review. The Plaintiff in New World Pasta challenged the Department's decision not to apply the die-type criterion to the other companies subject to the same review. The CIT found that, in New World Pasta, the "other firms" in the review (respondent firms other than Ferrara) did not use the different pasta production die types and, thus, the Court concluded that the Department's decision to add the die-type criterion only to Ferrara was in accordance with law and supported by substantial evidence. However, the CIT did not specifically address the question of whether the Department's determination to alter the model-match criteria for the bronze die-type pasta was itself appropriate. Contrary to respondents' contention, the New World Pasta case is

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<sup>26</sup> See Structural Steel Beams from Korea and accompanying Issues and Decision Memorandum at Comment 1.

distinguished from the instant review. Multiple respondents in this review have requested a change in the model-match criteria that does not arise from a particular producer's use of a distinct production component, relative to the other respondents in that particular segment of the proceeding, as was the case in New World Pasta. Therefore, we find that respondents' reference to New World Pasta is not germane to the model-match issue of the instant review and that the Department's decision in the Preliminary Results is not inconsistent with the cited determination made by the CIT. Thus, we find that there is no compelling reason to alter the model-match based on this particular case precedent.

With respect to respondents' arguments that the Department has revised the model-match criteria in cases where cost, price, and physical differences exist, we agree with respondents in part (see Shrimp from Ecuador, Pasta from Italy, and ESBR from Korea). The Department did adjust the model-match criteria in each of these cases based on the differences in cost, price, and physical characteristics. However, as for the reasons discussed above, our analysis of the record evidence regarding differences in cost, price and physical characteristics in the instant review shows that there is not a compelling reason that warrants a change in the established model-match.

In summary, the Department finds that the record evidence does not support the assertion that meaningful physical and commercial differences exist between laminated and other painted CORE products. Therefore, we find that the laminated and other products are comparable and, as such, do not warrant special treatment within the model-match criteria. In addition to the lack of an industry-wide standard for CORE laminated products, there is no indication that there have been any industry-wide changes to the product that merit a modification, nor is there some other compelling reason to modify the model-match criteria. Thus, the Department will not revise its established model-match criteria because there is no conclusive evidence which shows that the established model-match criteria are not reflective of the subject merchandise in question.

iv. Alternative Model-Match Proposal

As an alternative to breaking out laminated products under its own CTYPE code, respondents propose that the Department combine both laminated CORE products with the PVDF CORE CTYPE code that is currently coded in the established model-match criteria because respondents argue that the record establishes the fact that laminated and PVDF CORE products are more similar in terms of cost and price than CORE products contained in the "other painted" category.<sup>27</sup>

However, the Department does not agree that laminated CORE products should be grouped together with PVDF and assigned the same CTYPEH/U matching code as the one used for PVDF CORE. Respondents' analysis relies exclusively on cost and price similarities between laminated CORE products and PVDF CORE products. Although these similarities are instructive, similarities based on cost and price alone are not sufficient evidence to warrant changing the model-match criteria and respondents have provided no additional record evidence to suggest that

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<sup>27</sup> See Dongbu and Union case brief at Exhibit 1.

laminated and PVDF CORE products are more appropriately grouped together rather than as they are currently defined by the Department's model-match methodology in this review. Therefore, the Department finds that there is no compelling evidence that warrants a modification to combine laminated and PVDF CORE products. Thus, we determine that the current model-match criteria are reflective of the merchandise in question and should not be revised for this administrative review.<sup>28</sup>

Respondents also argue that the Department did not examine whether laminated products should be a separate CTYPE category in the first and second administrative reviews because the Department only addressed painted CORE products in those reviews. Apart from when the Department has addressed laminated products' inclusion in the scope of the review, respondents' argue that the Department had not addressed laminated products in its earlier reviews of this order (see Twelfth Review Model-Match Memo at Attachment 4).<sup>29</sup> With respect to these arguments, we disagree. The Department notes that early in the history of this proceeding, interested parties had ample opportunity to comment on the model-match criteria. Prior to the first administrative review of this proceeding, the Department solicited and received numerous comments on the model-match criteria (see, e.g., U.S. Steel's January 18, 2006, submission at Attachments B and C, citing Letters from Dongbu and Union to the Department, dated August 26, 1994; see also Twelfth Review Model-Match Memo at page 12). Specifically, parties provided comments suggesting that the Department's model-match criteria should distinguish among many additional kinds of painted and laminated CORE products that include (but were not limited to) high-polymer polyester paint, siliconized polyester paint, PVC lamination, PVF lamination, PVDF, acrylic-sol-coated, and teflon-coated CORE products. Interested parties argued that the differentiation of these products was necessary to ensure accurate and fair comparisons of the CORE products.

In the final results of the first and second administrative reviews of this proceeding, as discussed in the comments dealing with the treatment of specialty paints,<sup>30</sup> both Dongbu and Union provided specific comments arguing that laminated CORE products should have a separate CTYPEH/U reporting code.<sup>31</sup> However, as evidenced by the final results of the administrative reviews of these segments of the proceeding, the Department has consistently and specifically rejected the numerous arguments that changes should be made to the model-match criteria. See,

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<sup>28</sup> See Twelfth Review Model-Match Memo at pages 9 - 10.

<sup>29</sup> In the second administrative review of this proceeding, the Department treated some laminated CORE products as non-subject merchandise. See November 21, 1995, Memorandum to the file from Charlie Rast (1995 Memorandum to the File), at Exhibit 18 of the POSCO Group's December 1, 2005 model-match submission.

<sup>30</sup> See First Review Final Results at Comment 6 for Union; and Second Review Final Results at Comment 53.

<sup>31</sup> See U.S. Steel's January 18, 2006, submission at attachments B - H that document a number of Dongbu's and Union's submissions of factual and argumentative information with respect to each respondent's position on the model-match criteria in the respective segments of this proceeding. See Twelfth Review Model-Match Memo at pages 9 - 10.

e.g., U.S. Steel's January 18, 2006, submission at Attachments B through H; First Review Final Results 61 FR 18547, 18566 (April 26, 1996), at Comment 6 for Union; Second Review Final Results 62 FR 18404, 18446 (April 15, 1997), at Comment 53. In addition, respondents have argued that the Department should treat specialty paints/coatings and/or laminated paints/coatings for CORE products differently than other CORE products in its model-match for a number of reviews.<sup>32</sup> However, as a result of the Department's analysis and extensive consideration of these issues in each review, PVDF is the only specialty paint/coating product category that the Department has broken out in the model-match criteria since the investigation concluded. Therefore, we find that the Department has, in fact, addressed laminated products in its earlier reviews of this order.<sup>33</sup> Furthermore, the Department has determined that respondents have not provided any new evidence to suggest that the products for which they request special model-match treatment are sufficiently new or different from the CORE products that were considered by the Department during the first two administrative reviews of this proceeding to warrant a change the model-match criteria.

## **Comment 2: Treatment of CEP Offsets**

Petitioners assert that no company has established entitlement to a constructed export price (CEP) offset because the respondent companies have not described all relevant selling activities at the CEP level of trade (LOT). Petitioners claim that the respondent parent companies routinely engage in interaction with U.S. subsidiaries that resell merchandise in the United States and that the parent companies engage in these activities to promote their own sales to the U.S. Thus, petitioners assert that the record evidence does not allow the Department to make a determination that the respondent companies' home-market (HM) sales are at a more advanced LOT than their U.S. CEP sales.

### **a. Dongbu**

With regard to Dongbu, Mittal argues that Dongbu failed to describe all selling activities at the CEP LOT, such as employees in Korea designated to assist Dongbu USA by performing various selling functions in connection with its U.S. sales. Mittal argues further that various activities, such as sales promotion, were not properly identified in Dongbu's selling functions chart. Mittal cites frequent communications, sales meetings, and company-wide education programs to benefit Dongbu USA, as examples of sales promotion activities that were excluded from the selling functions chart. In addition, petitioners state that because all of Dongbu's U.S. sales are made to order and are not from inventory, all of the activities involved are relevant to Dongbu's efforts to sell its goods for export to the United States. Petitioners also identify certain activities, such as

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<sup>32</sup> See Twelfth Review Model-Match Memo at pages 4 - 15.

<sup>33</sup> U.S. Steel's January 18, 2006 submission at Attachments B through H; First Review Final Results 61 FR 18547, 18566 (April 26, 1996), at Comment 6 for Union; Second Review Final Results 62 FR 18404, 18446 (April 15, 1997), at Comment 53.

loan guarantees, that Dongbu did not mention in its selling activities chart that petitioners claim the parent company provides for the benefit of Dongbu USA. Therefore, petitioners argue that there is no reason for the Department to conclude that Dongbu engages in more selling activities in the HM than at the CEP LOT and that Dongbu has not met its burden of proof for establishing a CEP offset. Thus, petitioners assert that the record evidence does not support a determination that Dongbu's HM sales are at a more advanced LOT than its U.S. CEP sales.

Dongbu argues that the Department relied on the same selling functions and level of activity in this case as it did in the Preliminary Results, the eleventh and tenth reviews of this proceeding, and the investigation of cold-rolled flat rolled products, to grant the CEP offset to Dongbu.<sup>34</sup> It argues that in Cold-Rolled Steel from Korea, Tenth Review Final Results, and Eleventh Review Final Results, the Department concluded that Dongbu did not have an LOT in its HM that was comparable to its CEP sales and that the HM was at a more advanced LOT than CEP sales. Dongbu asserts that in Cold-Rolled Steel from Korea and in the Tenth Review Final Results, the Department verified the functions performed by Dongbu and Dongbu USA and issued a decision that allowed the offset based on the same set of facts that exist on the record in this review. Dongbu also rebuts petitioners' claim that certain functions, such as loan guarantees, constitute selling functions. Rather, Dongbu argues that loan guarantees are an inter-company transaction and do not relate to the sale to the U.S. customer. Dongbu argues that, in all of these proceedings, it has provided evidence that demonstrates that expenses incurred in the United States by Dongbu USA are at a less advanced LOT than the HM. Therefore, as the facts remain the same for Dongbu, a CEP offset is warranted in these final results as well.

#### **b. HYSCO**

Petitioners argue that HYSCO's questionnaire responses indicate that HYSCO performs several general activities to assist its U.S. subsidiary in selling to the United States, but HYSCO did not identify these activities. Petitioners contend that because HYSCO has the burden of proof in establishing entitlement to offset adjustments and it has failed to meet this burden, the Department should deny a CEP offset for purposes of the final results.

HYSCO argues that the Department correctly concluded in the Preliminary Results that HYSCO is entitled to a CEP offset because HYSCO's HM sales were made at a different, and more advanced, stage of marketing than the CEP LOT and the data available do not provide an appropriate basis to determine an LOT adjustment. HYSCO urges the Department to continue to allow a CEP offset for the final results.

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<sup>34</sup> See Notice of Final Determination of Sales at Less than Fair Value: Certain Cold-Rolled Carbon Steel Products from Korea, 67 FR 62124 (October 3, 2002) (Cold-Rolled Steel from Korea), and accompanying Issues and Decision Memorandum at Comment 10; see also Tenth Review Final Results and accompanying Issues and Decision Memorandum at Comment 3; see also Eleventh Review Final Results and accompanying Issues and Decision Memorandum at Comment 6.

**c. Union**

Petitioners claim that Union routinely engages in interaction with its U.S. subsidiary, DKA, which resells merchandise in the United States and that Union engages in these activities to promote its own sales to the United States. Petitioners state that the record shows that Union has employees in Korea designated to assist DKA by performing various selling functions in connection with its U.S. sales. Petitioners argue that examples of employees of the parent company performing selling functions on behalf of Union's U.S. subsidiary include processing orders, arranging for shipments, conducting administrative meetings, and frequent communications and education programs to benefit the U.S. subsidiary.

Petitioners argue further that in order for the Department to assess differences in selling activities that result in a different LOT, the Department must have complete information to evaluate the selling functions performed in both markets. For example, petitioners argue that Union did not provide the Department with the detailed information it requested regarding the activity of Union's employees involved in its U.S. subsidiary. Thus, petitioners assert that Union failed to satisfy its burden of providing information to support its claim of LOT differences.

Petitioners also challenge the accuracy of the selling activities that Union did report and state that other record evidence contradicts Union's reported selling functions. Petitioners contend that Union provided vague and contradictory questionnaire responses on differences in selling activities between the HM and the CEP LOT. Thus, petitioners argue that the information on the record is not sufficient for the Department to conclude that there is a difference in selling activities and that the HM LOT is more advanced than the CEP LOT. Therefore, petitioners assert that the record evidence does not allow the Department to make a determination that Union's HM sales are at a more advanced LOT than its U.S. CEP sales.

Union disagrees with petitioners that its HM and CEP sales are at a similar LOT and that a CEP offset is not warranted for these final results. Union argues that it has met the statutory conditions for being granted the CEP offset and that the record evidence demonstrates that Union's sales in the HM are made at a more advanced LOT than its CEP sales. Therefore, Union asserts that there is no basis for petitioners' claim that information reported by Union in its selling function chart is contradicted by other record evidence. Accordingly, the Department should continue to grant a CEP offset for these final results.

**d. The POSCO Group**

Petitioners argue that the POSCO Group has not met the burden of proof for establishing entitlement to a CEP offset. Petitioners state that as the selling functions that the POSCO Group performs in the HM are generally the same as and performed at the same level as those it performs for its U.S. CEP sales, the selling functions in both markets are similar in nature. They assert that the POSCO Group has the burden of proof for establishing its entitlement to a CEP offset and that it has failed to meet its burden.

The POSCO Group states that the Department offsets normal value (NV) by the amount of indirect selling expenses (ISE) for the foreign like product when the NV LOT is more advanced than the CEP LOT. See section 772(a)(7)(B) of the Act. The POSCO Group states further that many antidumping proceedings involve U.S. affiliates that resell the foreign company's merchandise in the United States, whether in back-to-back transactions or from U.S. inventory. Under petitioners' scenario, the POSCO Group argues that the only instance in which a CEP offset would be warranted is where the U.S. affiliate further manufactures the merchandise in the United States. In response to petitioners' argument that there is an insufficient basis for a CEP offset because the POSCO Group's selling activities at the CEP LOT differed from only one channel of the POSCO Group's HM sales, the POSCO Group claims that, for purposes of a CEP offset, the Department's focus is the differences between the selling activities at the CEP LOT versus the single HM LOT, not the separate distribution channels.

The POSCO Group further argues that the Department found that a CEP offset was warranted in the Tenth Review Final Results, as well as in Cold-Rolled Steel from Korea,<sup>35</sup> based on the same facts that exist for this review, as identified in the Preliminary Results. The POSCO Group argues that for its CEP sales, there are several selling functions that the POSCO Group's U.S. affiliate, POSAM, is heavily involved in and performs exclusively. Thus, respondent claims that the POSCO Group's CEP sales should be considered different from the HM LOT and, thus, are at a less advanced LOT than that of the HM.

#### **Department Position:**

We agree with all four respondent companies that the evidence on the record is sufficient to demonstrate that their HM sales were at a more advanced LOT than their CEP sales, and as the data available does not provide an appropriate basis to determine an LOT adjustment, a CEP offset is warranted. As noted in the Preliminary Results, Tenth Review Final Results and Eleventh Review Final Results, section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same LOT as the CEP transaction. When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the CEP sale in the United States, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. Sales are at a different LOT if they are made at different marketing stages. See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. Id. See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61732 (November 19, 1997) (Plate from South Africa). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"), including selling functions, class of customer ("customer category"), and the level of selling expenses for each type of sale. For CEP sales, we consider the selling activities reflected in the

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<sup>35</sup> See Cold-Rolled Steel from Korea, and accompanying Issues and Decision Memorandum at Comment 6.

price after the deduction of expenses and profit under section 772(d) of the Act. See Micron Technology, Inc. v. United States, 243 F.3d 1301, 1315 (Fed. Cir. 2001).

In comparing CEP sales to sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act if the difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability. For CEP sales, if a NV LOT is more remote from the factory than the CEP LOT, and there is no basis for determining whether there are consistent price differences in different LOTs in the home market, the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See, e.g., Plate from South Africa.

In the Preliminary Results, we found that the evidence on the record was sufficient to demonstrate that the respondent companies' HM sales were at a more advanced LOT than their CEP sales; and because there was no basis for determining whether price differences occurred between different LOTs in the HM, we determined that a CEP offset was warranted for all the respondent companies' U.S. CEP sales.<sup>36</sup> Specifically, we reviewed the respondent companies' selling functions which identify the selling functions performed by the parent company for its HM sales and the selling functions performed by the parent company for its sales to the first unaffiliated party. Because of this record evidence, we do not find persuasive Mittal's arguments that respondent companies have not met their burden of proof. Petitioners have not provided any new information or arguments that would lead us to change our Preliminary Results in these final results. See Calculation Memoranda for Dongbu, Union, POSCO and HYSCO, Final Results in the 04/05 Administrative Review on Corrosion-Resistant Carbon Steel Flat Products from Korea, dated March 12, 2007.

### **Comment 3: Adjustments to U.S. Prices for Duty Drawback Paid in Korea**

Mittal asserts that adjustments for duty drawback paid in Korea increase U.S. prices and are advantageous to claimants. As a result, Mittal states that the two claimants for duty drawback in this review, Union and the POSCO Group, have the burden of proof in establishing entitlement for this claim. Petitioners argue that the Department's traditional standards are problematic in the context of Korean drawback law regarding duty drawback, in that the "substitution" aspect of the law allows the exporter to claim disproportionate amounts on exports to a given destination, such as the United States, even if the exporter did not use the imported materials on exports to that destination. Petitioners claim that the effect of this law distorts antidumping calculations by artificially reducing dumping margins and can result in a disproportionate upward adjustment to the U.S. price.

Petitioners contend that if the Department should continue to allow the two respondents to calculate a duty drawback adjustment in this manner, then the Department should require

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<sup>36</sup> See Calculation Memoranda for Dongbu, Union, POSCO and HYSCO, Preliminary Results in the 04/05 Administrative Review on Corrosion-Resistant Carbon Steel Flat Products from Korea, dated August 31, 2006.



respondents to perform a reasonable allocation to all export shipments to all destinations of the aggregate drawback it receives. To achieve this, petitioners assert that the Department must collect information that would allow the Department to “fairly limit” the amounts of duty drawback adjustment that a respondent could claim on U.S. imports for antidumping purposes. Petitioners state that they requested that the Department require respondents to provide worksheets with aggregate data to arrive at a “fairly limited” level of duty drawback adjustment, but the Department refused to request such information. Petitioners claim that this refusal by the Department is unreasonable, in view of the Department’s legal duty to investigate relevant facts and calculate margins as accurately as possible. Petitioners state that the Department has in effect presumed that all claims are fair without requiring appropriate proof.

Petitioners argue that the Department should follow the approach set forth in its Federal Register Notice entitled Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, where the Department “agrees that it should allocate the total amount of duty drawback received across all exports that may have incorporated the duty-paid input in question . . . unless the foreign producer claiming such adjustment demonstrates that it can directly trace the particular imported duty-paid inputs through the subsequent production process and into particular finished goods. . .” See 71 FR 61716, 61723-24 (October 19, 2006) (Federal Register Notice). Therefore, Petitioners argue that the Department should either request further information to allow appropriate allocations or disallow all duty drawback claims. Petitioners contend that the respondents’ claimed drawback adjustments are without merit and that the Department should deny the claims for the reasons stated above or should request further information.

Respondents argue that the Department’s proposed new methodology published in the Federal Register Notice does not constitute a final change in the agency practice on this issue. Therefore, respondents argue, until the Department formally changes its practice, it should continue to grant Union and the POSCO Group a duty drawback adjustment in accordance with its current well-established practice. Alternatively, respondents argue that, should the Department decide to apply this new policy to the current administrative review, it should allow Union and the POSCO Group to put further information on the record to substantiate its duty drawback claims under the new standard.

Respondents argue further that Union and the POSCO Group have satisfied the Department’s current two-prong test for entitlement to a duty drawback adjustment. They state that the Department has confirmed that the Korean duty drawback system meets the requirements for an adjustment to the U.S. price pursuant to section 773 of the Act and the Department’s two-part test. See Avesta Sheffield v. United States, 838 F. Supp. 608 (CIT 1993). They state further that the documentation on the record, submitted by Union and the POSCO Group, satisfies both prongs of the Department’s two-part test. Therefore, respondents argue that Union and the POSCO Group have met the current requirements established for duty drawback and consistent with the Department’s determinations in prior administrative reviews, the Department should continue to grant the duty drawback adjustment for the respondents.

### **Department Position:**

The Department's proposed new approach regarding duty drawback adjustments that was recently published in the Federal Register Notice indicates that the Department is considering a change and "welcomes comment on this proposed methodology" from the public. See Federal Register Notice at 61723-24. It does not constitute a formal change in the Department's current judicially approved duty drawback adjustment methodology. In addition, any changes to the Department's methodology, if implemented, would be applied prospectively.

We agree with the respondents that the duty drawback adjustment is justified in the present proceeding and should not be limited to only duties paid on inputs specifically used for exports to the United States. In accordance with section 772(c)(1)(B) of the Act, the duty drawback adjustment is an adjustment to the U.S. price to account for import duties "which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." See Allied Tube & Conduit Corp. v. United States, 374 F. Supp.2d 1257, 1261 (CIT 2005); see also Wheatland Tube Co. v. United States, 414 F. Supp.2d 1271 (CIT 2006).

In prior investigations and administrative reviews, the Department has examined the Korean individual-rate system and found that the government controls in place enable the Department to examine the criteria for receiving a duty drawback adjustment. Specifically, the Department's criteria are based on the following court-approved two-prong test: (1) the rebates received were directly linked to import duties paid on inputs used in the manufacture of the subject merchandise, and (2) there were sufficient imports to account for the rebates received.<sup>37</sup> The statute instructs the Department to adjust U.S. price by the amount of any import duties that have been rebated or not collected by reason of exportation. See section 772(c)(1)(B) of the Act. The only limitation currently placed on the duty drawback adjustment is that the adjustment to the U.S. price may not exceed the amount of import duty actually paid.

Union and the POSCO Group reported the duty drawback amount received from the Korean government and submitted documentation confirming the link between duties paid on inputs used and the export of the finished product that uses the imported material. Accordingly, for the final results, we have continued to grant the respondents' claimed duty drawback adjustments in full. See Union and the POSCO Group's December 2, 2005, section C questionnaire responses at 36 and Exhibit C-15; and at 37 and Exhibit C-14, respectively.

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<sup>37</sup> See Allied Tube & Conduit Corp. v. United States, 374 F. Supp.2d 1257, 1261 (CIT 2005); see also Notice of Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review: Certain Polyester Staple Fiber from Korea, 68 FR 34378, 34380 (June 9, 2003) (Polyester Staple Fiber from Korea).

#### **Comment 4: Treatment of ISE Incurred in Korea for U.S. Sales**

Mittal argues that the expenses incurred by respondents for activities performed in Korea should be treated as CEP selling expenses to the extent they relate to the resale transactions by its affiliate in the United States. Petitioners assert that section 772(d) of the Act and two Federal Circuit decisions, Micron Technology, Inc. v. United States, 243 F.3d 1301, 1308-09 (Fed. Cir. 2001) (Micron), and AK Steel v. United States, 226 F. 3d 1361 (Fed. Cir. 2000), require the Department to deduct at least some selling expenses associated with resale transactions of subject merchandise in the United States. Mittal further argues that under 19 CFR 351.402(b), expenses incurred by the affiliate but financed by the foreign parent are considered CEP selling expenses, even when the amounts are reflected on the foreign parent's books. As such, Mittal urges the Department to deduct those CEP selling expenses incurred in activities involved in the U.S. resale transaction.

##### **a. HYSCO**

US Steel argues that the Department should deduct HYSCO's selling expenses incurred in Korea (DINDIRSU) from U.S. price. US Steel contends that the Department's practice is to deduct ISE reported in the DINDIRSU field from the U.S. price where such expenses relate to and support the sale to the first unaffiliated U.S. customer, as opposed to the sales to the U.S. affiliate. US Steel argues that HYSCO has failed to demonstrate that the selling functions captured in DINDIRSU were performed solely for sales to its U.S. affiliate, Hyundai Pipe America (HPA). US Steel asserts that the record establishes some level of HYSCO's involvement in HPA's U.S. resales. Specifically, US Steel argues that HYSCO in its LOT chart identified ten selling activities for its sales to the U.S. that had HYSCO's involvement, seven of which were associated with HPA's sales to U.S. customers, and three for the HYSCO's sales to HPA. Because HYSCO has failed to establish that the three selling activities - *i.e.*, "Order Input/Processing", "Direct Sales Personnel", and "Warranty Service"- were related solely to its sales to HPA, US Steel argues, the Department should deduct the expenses associated with all the ten activities for the sales to U.S. customers.

HYSCO argues that petitioners' arguments are unsupported by the law, the Department's practice, and the current record. Citing the Department's regulations under 19 CFR 351.402(b), HYSCO states that in order for the Department to deduct expenses from CEP, the expense must be (1) associated with commercial activities occurring in the United States, and (2) related to the sale to an unaffiliated purchaser. HYSCO asserts that the Department has declined to deduct ISE incurred in the foreign market from CEP because there is no record evidence to show that the expenses relate directly to U.S. economic activity, citing Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Germany, 67 FR 55802 (Aug. 30, 2002), Certain Internal-Combustion Industrial Forklift Trucks From Japan: Final Results of Antidumping Duty Administrative Review, 62 FR 5592, 5610-11 (Feb. 6, 1997), and Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Results of Antidumping Duty Administrative Review, 69 FR 2566 (Jan. 16, 2004).

HYSCO argues that its selling activities reported in DINDIRSU were general in nature and not associated with economic activities in the United States. HYSCO asserts that it has allocated a portion of the same pool of ISE's to HM sales, and that these ISE's were not associated with specific activity in the United States, but rather, were a portion of the general selling expenses allocated to all markets. For the three specific activities that HYSCO identified for sales to HPA - order input/processing, direct sales personnel, and warranty services, HYSCO argues that its LOT and supplemental questionnaire response have clearly established that HYSCO only performs these activities for its sales to HPA. For the other seven activities in HYSCO's LOT chart, and the expenses of which reported in DINDIRSU, HYSCO argues that because they are all general in nature, supporting sales in all markets, the Department should not deduct these expenses from the CEP calculation.

**Department Position:**

We agree with US Steel that pursuant to section 772(d) of the Act, the Department will make adjustment for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser no matter where or when paid. We disagree with HYSCO's contention that the expenses covered by DINDIRSU are not associated with economic activities in the United States. To the contrary, the record evidence indicates that HYSCO was involved in the resales to unaffiliated U.S. customers during the POR. Specifically, in the LOT charts provided in HYSCO's Section A questionnaire response and in the May 15, 2006, supplemental questionnaire response, HYSCO reported that seven of the 13 resales activities were performed solely by HYSCO or in conjunction with HPA. These should be deducted from CEP. We disagree with US Steel that for the three selling activities - order input/processing, direct sales personnel, and warranty services - HYSCO failed to demonstrate that these selling functions related solely to its sales to HPA. We conclude that the record has established that HYSCO only performed these activities for its sales to HPA.

In the Eleventh Review Final Results, we included a portion of HYSCO's HYSCO's DINDIRSU indirect selling expenses in our calculations from CEP because HYSCO performed most of the selling functions involved in HPA's U.S. resales.<sup>38</sup> In the instant review, although HYSCO reported a lesser degree of its involvement in HPA's U.S. resales, the record evidence shows that HYSCO was involved in the sales to U.S. unaffiliated purchasers. For the final results, pursuant to 19 CFR 351.402(b) and consistent with the Eleventh Review Final Results, we will include a portion of HYSCO's DINDIRSU in our CEP deductions.

**\_\_\_\_\_ b. Dongbu**

Mittal argues that the Department should increase U.S. CEP selling expenses to account for all CORE selling activities performed by Dongbu in Korea in connection with Dongbu USA's resales (i.e., sales from the U.S. affiliate to the unaffiliated U.S. customer) in the United States. Mittal

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<sup>38</sup> See Eleventh Review Final Results) and accompanying Issues and Decision Memorandum at Comment 11.

argues that although Dongbu did not report any selling expenses incurred in Korea in connection with its U.S. affiliate's resales, such expenses do occur. Mittal points to Dongbu's website and brochures as examples of activities performed by Dongbu to assist Dongbu USA in reaching customers in the United States. Mittal also asserts that because Dongbu's sales in the United States are made to order, Dongbu is involved in selling activities involved in making this merchandise to order. Therefore, Mittal states that the reported CEP expenses are understated because the parent in Korea engaged in activities that furthered the U.S. resale operation. To remedy this, Mittal suggests that the Department should deduct 30 percent from the reported DINDIRSU to account for these activities.

Dongbu argues that ISE incurred by the parent company outside the U.S. and that do not relate to the sales to the unaffiliated U.S. customer are not deductible from CEP. Dongbu states that the Federal Circuit in Micron held that general expenses incurred by the foreign producer are not deductible expenses. See Micron, 243 F.3d at 1309. Dongbu argues further that it is the Department's practice not to deduct ISE from the CEP calculation if those expenses support sales to the affiliated purchasers, rather than their sales to the unaffiliated customer. See Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part, 70 FR 7237 (February 11, 2005), and accompanying Issues and Decision Memorandum at Comment 4. In addition, Dongbu asserts that in order to be deductible, such ISE should relate to commercial activities performed in the United States and that they must be incurred on behalf of the unaffiliated buyer, not just expenses the exporter incurs on its own behalf to complete the sale to the affiliated importer. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825, 11834 (March 13, 1997). Dongbu maintains that the U.S. subsidiary is set up to handle all aspects of a sales operations and all activities related to the U.S. customer. Dongbu states that it was verified during the tenth administrative review, thus providing the Department the opportunity to observe the activities performed by Dongbu and Dongbu USA. Therefore, Dongbu asserts that the Department should follow its past practice and continue to disregard the ISE incurred by Dongbu in selling to Dongbu USA, as these expenses are not related to the sale to the unaffiliated U.S. customer.

**c. Union**

Mittal and US Steel assert that Union's statement that its U.S. affiliate DKA acted as a selling intermediary between U.S. customers and Union implies that Union participated in non-intermediary activities in regard to the resale transactions. Therefore, petitioners argue that the Department should identify and deduct from CEP the expenses associated with all of Union's selling activities incurred in Korea and involved in the sales to the unaffiliated U.S. customer.

Union argues that the Department has determined in the tenth and eleventh administrative reviews that the ISE incurred by Union in Korea do not relate to the commercial activity performed in the

United States. Therefore, the Department should not deduct Union's indirect selling expenses, consistent with its position in the Preliminary Results.

**d. The POSCO Group**

Mittal and US Steel argue that the Department should increase the POSCO Group's U.S. CEP ISE to account for all CORE selling activities performed by its parent companies in Korea in connection with the POSCO Group's U.S. subsidiaries' resales. Petitioners argue that the Department should deduct all selling expenses associated with the POSCO Group's CORE selling functions in resale transactions in the United States, even when those activities occur outside the United States and the expenses are reflected on the foreign parent's books and records.

Petitioners state that the POSCO Group performs important resale activities in the United States on behalf of its U.S. affiliate, POSAM. Specifically, petitioners claim that expenses incurred by the parent company include negotiating POSAM's resales to unaffiliated U.S. buyers. Petitioners contend that the relevant expenses are selling expenses the POSCO Group pays on behalf of POSAM's resales in the United States, and therefore, these expenses should be deducted from the POSCO Group's U.S. prices.

The POSCO Group argues that, consistent with the Department's well-established practice and its treatment of these expenses in the Preliminary Results, the Department should not deduct any ISE incurred in Korea for U.S. sales. The POSCO Group argues that the Department made this preliminary determination based on the specific facts that the POSCO Group submitted in the present review, which are the same facts as those verified by the Department in previous reviews.<sup>39</sup> The POSCO Group argues further that the antidumping statute prevents the deduction of the POSCO Group's selling expenses incurred in Korea from CEP.

Department Position:

In accordance with section 772 of the Act and 19 CFR 351.402(b), the Department does not deduct from the CEP calculation ISE incurred outside the United States if the ISE support sales to the affiliated purchasers and not to the unaffiliated customer. See Final Results of Antidumping Duty Administrative Review: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania, 70 FR 7237 (February 11, 2005), and Accompanying Issues and Decision Memorandum at Comment 4; see also Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Mexico, 70 FR 3677 (January 26, 2005), and accompanying Issues and Decision Memorandum at Comment 7.

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<sup>39</sup> See Tenth Review Final Results and Accompanying Issues and Decision Memorandum at Comment 2 (“{W}e verified that the HM ISE reported by the respondents are general in nature and are unrelated to the commercial activities in the United States and to sales between the parent companies and their unaffiliated U.S. customers.”)

We do not find that ISEs incurred in Korea as reported by Dongbu, the POSCO Group and Union should be deducted from CEP. The evidence indicates that respondents' ISEs are general in nature and not specifically associated with commercial activities in the United States that relate to sales to unaffiliated purchasers. In this review, we have analyzed the selling functions reported by Dongbu, the POSCO Group, and Union in Korea and found that the U.S. subsidiaries performed most of the selling activities involved in their sales to unaffiliated U.S. customers. See Calculation Memoranda for Dongbu, Union, and The POSCO Group, final results in the 05/06 Administrative Review on Corrosion-Resistant Carbon Steel Flat Products from Korea, dated March 12, 2007, for the final results regarding a discussion of the business-proprietary record evidence which forms the basis for the above discussion.

#### **Comment 5. Treatment of Production Yields**

Petitioners argue that the record is not clear how some respondents utilized production yields in their Section D cost calculations. They claim the record appears to indicate that some respondents' production yield calculations include material that is added at certain stages in the production process. Petitioners assert that if yields are used in the cost calculations, overstated yields could reduce per-unit costs in the final cost calculations. For the final results, petitioners urge the Department to either collect additional information from respondents regarding their yield calculations or use the highest yield loss rate reported for any production stage as "facts available."

Respondents assert the petitioners' argument that the Department should collect additional information from respondents regarding its yield calculation or apply facts available to respondents' yield rates is without merit. Respondents argue that they have provided sample calculations illustrating exactly how they accounted for yield losses in the cost calculations, and that the Department has asked numerous supplemental questions regarding respondents' reported yields. Respondents claim that petitioners have had ample opportunity to raise any concerns about their reported yields while the Department was still in the information-gathering stage of this proceeding, but chose not to do so. HYSCO notes that the Department has verified its yield calculations in the 2002-2003 New Shipper Review and found that HYSCO's yield calculation methodology was reasonable.<sup>40</sup> Respondents argue that absent concrete evidence that their calculation methodology yields inaccurate results, the Department cannot apply "facts available," as argued by petitioners.

##### **a. Union**

Petitioners argue that no additional materials used in the production should be added in the calculation of Union's production yield for antidumping cost-of-production calculations. In addition, petitioners assert that yields should be measured without reference to the added material.

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<sup>40</sup> See Tenth Review Final Results and accompanying Issues and Decision Memorandum at Comment 29.

Thus, petitioners argue that an output weight which combines the weight of the substrate plus the weight of the added coating is meaningless for purposes of calculating rational yields. For the final results, petitioners urge the Department to ascertain exactly where and how Union has used its productions yields to calculate its reported Section D cost. Moreover, they argue, should Union fail to follow instructions, the Department should use appropriate “facts available” and use the highest yield loss rate reported for any stage of production and apply it to all the stages which involve adding material to the input product.

Union disagrees with petitioners’ claim that the Department should either collect additional information from respondents regarding its yield calculation or apply facts available to Union’s yield rates. Union maintains that it has fully demonstrated in its responses the process of calculation of yields in determining its actual cost of production, and therefore, no additional information is necessary.

**b. The POSCO Group**

Petitioners argue that accurate yield calculations are essential if yields are used to calculate the unit costs of material inputs. Petitioners assert that new material should have nothing to do with the calculation of process yields for COP calculations. With regard to the POSCO Group, petitioners claim that they were unable to determine whether the POSCO Group used process-by-process yields to calculate costs. The POSCO Group states that it fully accounted for yield losses in its production. The POSCO Group claims that it does not utilize yield losses on a process-by-process basis in calculating unit costs, but it divides total costs by total output weight in order to derive the cumulated unit costs per metric ton of the finished product. Moreover, the POSCO Group argues that the Department has verified in prior reviews and confirmed during this review that it divides total costs by total output weight in order to derive the cumulated unit costs per metric ton of the finished product.

**Department Position:**

We agree with the respondents. The Department has reviewed each respondents’ reported production yields and found that the reported yield methodology is reasonable because it is consistent with prior reviews that have been verified by the Department. Moreover, the respondents’ methodology of reporting production yields have been used in all prior administrative reviews of this proceeding and there is no record evidence in this review to indicate that the reported yields are overstated or inaccurate. Therefore, the Department agrees that no additional information regarding the yield calculation is necessary; and that no adjustments to the reported costs are necessary for the final results.



## **B. Company-Specific Issues**

### **Dongbu Steel Co., Ltd.**

#### **Comment 6: Treatment of All Sales Entered During the POR In Dongbu's Margin Calculation**

Petitioners claim that in the Preliminary Results, the Department inadvertently excluded Dongbu's reported U.S. sales from the margin program that were sold prior to, but entered during, the POR. Petitioners argue that these U.S. sales were not reviewed in the prior administrative review. Therefore, petitioners suggest that the Department should reassign the beginning of the POR in the margin calculation to include those U.S. sales that were sold prior to, but entered during, the POR.

Dongbu did not comment on this issue.

#### **Department Position:**

We agree with the petitioners that the margin program should be changed to include the earliest U.S. sales in the U.S. sales database that were entered during the POR. To account for these sales, we adjusted the margin program to ensure that HM sales made within the window period ninety days prior to the date of the first U.S. sale, but entered during the POR, were considered in our margin calculation. See The Calculation Memorandum for Dongbu dated March 12, 2007. Thus, the Department has appropriately accounted for these sales in the margin calculation for Dongbu.

### **Hyundai HYSCO**

#### **Comment 7: Cash Deposit Rate for HYSCO**

HYSCO argues that the Department should revise the draft cash deposit rate for HYSCO from 0.03 percent to zero to be consistent with its standard cash deposit instructions for manufacturers/exporters that have received a de minimis margin.

#### **Department Position:**

We agree that the cash deposit rate should be set to zero for HYSCO and we will revise the cash deposit rate in our instructions to U.S. Customs and Border Protection (CBP).

## **Union Steel Manufacturing Co., Ltd.**

### **Comment 8: DINDIRSU Calculation**

US Steel argues that Union's calculation of ISE incurred in Korea on its U.S. sales (i.e., DINDIRSU) is based on an inaccurate methodology and that the Department should deny the DINDIRSU adjustment to the Department's calculation of Union's CEP profit. Specifically, petitioners state that Union allocated all of its ISE between its domestic and export sales. Petitioners state that Union then allocated the total ISE for export sales over its total value of its export sales. Petitioners argue that Union should have calculated this adjustment at a more detailed level and; 1) determined which ISE were attributable to all export sales; 2) determined which ISE were attributable to all U.S. sales; and 3) based DINDIRSU on Union's total U.S. ISE over its total U.S. sales value as well as included the appropriate U.S. proportion of the "all export sales" ISE. Therefore, petitioners assert, because Union failed to provide this calculation using its data at its most specific level, the Department should not deduct DINDIRSU in the calculation of CEP profit.

Union argues that it correctly reported the amounts of its ISE. Union states that the methodology it used for calculating its HM ISE (INDIRSH), as well as the calculation for DINDIRSU, is consistent with the methodology that Union has used in all prior administrative reviews of this proceeding. Union argues that the Department has accepted this methodology in all prior reviews and verified the methodology in the tenth administrative review. Accordingly, the Department should continue to use its ISE calculated for these final results.

### **Department Position**

We agree with Union. Petitioners argue that Union could have calculated this DINDIRSU adjustment on a more specific and accurate basis, but have not cited nor have they proposed a more accurate methodology. The methodology used by Union is commonly used by respondents in cases and is normally accepted by the Department unless there is evidence that it is distorted. See Notice of Final Results of Antidumping Duty Administrative Review: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure from Romania, 70 FR 7237 (February 11, 2005), and accompanying Issues and Decision Memorandum at Comment 4; see also Notice of Final results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Mexico, 70 FR 3677 (January 26, 2005), and accompanying Issues and Decision Memorandum at Comment 7. We re-examined Union's record submission and found no basis to question the allocation method used by Union.

### **Comment 9: Treatment of Union's ISE Ratio**

Petitioners assert that the U.S. ISE ratio should express a respondent's total indirect expenses for the period as a percent of its total revenue for that period. Petitioners argue that Union's calculation of its ISE ratio for its U.S. sales is significantly understated because the denominator

incorrectly includes certain DKA revenue amounts which should not have been included because the value of these sales did not constitute revenue to DKA. Specifically, petitioners point to DKA's POR gross sales value of slab and scrap to its parent company. According to petitioners, the sales value of the slab and scrap should not have been treated as DKA's income because DKA only acts as an agent for such transactions, so the revenue in relation to these transactions was the commission DKA received on the sales, not the sales value of the merchandise. Petitioners argue that where DKA served only as an agent, it is improper to include the sales value of the merchandise sold as part of DKA's revenue for the purpose of calculating the ISE denominator.

Petitioners argue further that DKA's accountants came to the same conclusion on DKA's 2005 financial statements where they stated that in accordance with U.S. GAAP, the sales value of slab and scrap is not income to DKA and that according to U.S. accounting principal EITF 99-19, DKA's sales of slab and scrap are agent sales to the parent company, Dongkuk Steel Mill Co., Ltd. (DSM). Petitioners acknowledge that the Department rejected their argument regarding Union's ISE denominator in the previous administrative reviews; however, petitioners urge the Department to reconsider its position on this issue because the inclusion of the sales revenue of the agency sales in the ISE denominator distorts the ISE ratio.

Union argues that it correctly reported DKA's gross sales value as the sales denominator for calculating its U.S. ISE ratio. Union states that in all prior reviews, the Department has accepted Union's ISE ratio methodology, which is based on DKA's gross sales value. See Tenth Review Final Results and accompanying Issues and Decision Memorandum at Comment 20; see also Eleventh Review Final Results and accompanying Issues and Decision Memorandum at Comment 16. Union points to the Department's finding that a substantial portion of DKA's expenses related to the scrap and slab sales are included in DKA's total ISE, and thus, it is necessary to use DKA's total sales revenue rather than the total sales as reported in its financial statements. Id. In addition, Union argues that the Department did not confuse the issue of DKA's payment of commissions on certain sales in the denominator, and that it is petitioners who are mistaken. Union argues that petitioners are addressing the Department's reasoning on the numerator of the ISE ratio calculation and not the denominator. Therefore, Union argues that petitioners' critique of the Department's determination in previous reviews is without merit.

#### **Department Position:**

We find that Union did not err in its calculation of its U.S. ISE ratio in the manner alleged by petitioners. The Department has consistently held that the expense amount and the total sales value in a ratio should reflect the same pool of sales such that the total expense amount is divided by the total value of the sales for which the total expense was actually incurred. See, e.g., Final Results of Antidumping Duty Administrative Reviews and Termination In Part: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, 62 FR 11825, 11836 (March 13, 1997). In the instant administrative review, if the Department removed the sales revenue of scrap and slab to DSM, the ISE used in the same ratio would not reflect the same pool of sales as

the revenue amount contained in the denominator. Therefore, the Department will continue to use DKA's gross sales value as the sales denominator for calculating its ISE ratio.

The audited financial statements of DKA substantiate that DKA's books and records are maintained in accordance with U.S. GAAP. We recognize that U.S. GAAP principle EITF 99-19 dictates that DKA report its sales of slab and scrap to DSM as agent sales for purposes of preparing its financial statements. However, as we also determined in the Tenth Review Final Results and accompanying Issues and Decision Memorandum at Comment 20, a substantial portion of DKA's expenses related to the sales of scrap and slab is also embedded in DKA's total ISE. Consequently, to calculate the ISE ratio to be applied to the gross unit selling prices of DKA's U.S. sales, it is appropriate to include DKA's total sales revenue in the denominator. It is, therefore, necessary to utilize DKA's total sales revenue rather than the total sales revenue as reported in its audited financial statements. In doing so, we are relying on the underlying data in the audited financial report, *i.e.*, the audited books and records of DKA, which establish the invoiced value of DKA's sales to DSM and to its unaffiliated customers. Accordingly, the Department continues to accept Union's calculation of its ISE ratio for the final results.

**Comment 10: Treatment of Union's Calculation of DKA's Short-Term Interest Rate**

Petitioners argue that the Department should revise DKA's credit and inventory carrying costs by using the U.S. prime rate, instead of the short-term interest rate reported by Union. They claim that Union, in its calculation of DKA's short term U.S. interest rate, failed to include certain fees that DKA paid to Union and DSM. In addition, petitioners contend that DKS' reported rate is lower than the U.S. prime rate during the POR. Thus, the Department should correct Union's credit expense and inventory carrying costs calculation for these final results.

Union argues that it is not necessary to re-calculate its credit expense. Union claims that petitioners do not provide a sufficient argument for why DKA's short-term interest rate for its U.S. sales is unreliable. Union argues further that the method used to calculate DKA's short-term interest rate is accurate because "it is the Department's normal practice to disregard transactions between affiliated parties" and that the fees are "only internal transfers of funds and not actual expenses to unaffiliated parties." See Union's Rebuttal Briefs at 25 and 26, respectively (October 31, 2006).

Union argues further that the fact that DKA's average short-term interest rate is lower than the U.S. prime rate does not undermine the accuracy and validity of that interest rate. It states that petitioners did not provide sufficient evidence or explanation for why its reported rate is not accurate. As result, Union asserts that the Department should continue to use DKA's reported average short-term interest rate.

**Department Position:**

Regarding petitioners' argument that the short-term interest calculation should be revised to include certain fees that DKA paid to Union and DSM, we disagree. We note that petitioners have not identified any valid precedent establishing that the Department's practice is to include such fees in the calculation of credit expenses. The certain expenses that petitioners make reference to are of a different nature from the fees under consideration in this case. See Certain Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review and Final Determination to revoke the Order in Part, 69 FR 61341, October 18, 2004. Because this issue involves proprietary information, it cannot be addressed fully in a public forum. See Union's Final Calculation Memorandum regarding business proprietary information dated March 12, 2007.

The Department agrees with Union that its calculation methodology for U.S. credit expense utilizes an accurate approach in determining the short-term interest rate for the POR. The methodology is consistent with the methodology used by the Department to calculate a short-term interest rate for Union in the tenth and eleventh reviews. It is the Department's normal policy to base calculation of credit expenses upon the actual POR average interest rate charged for short-term credit reported in the respondents' financial records. Therefore, we have continued to exclude these certain fees from the calculation of Union's credit expenses.

**Comment 11: Ministerial Error with Respect to Union's Overrun Sales in the Home Market**

Petitioners argue that the Department should correct its programming language to exclude overrun sales from the margin program because record evidence indicates that they are outside the ordinary course of trade. Further, petitioners claim that the Department's practice in the previous reviews has been to treat overrun sales as outside the ordinary course of trade.

Union agrees with petitioners' comments that the Department should exclude overrun sales from preliminary margin program.

**Department Position:**

We agree with both parties. In the Preliminary Results, the facts on the record led us to find that Union's overrun sales were outside the ordinary course of trade and, thus, should have been excluded from the margin program. However, we made an inadvertent error in our preliminary margin program when we failed to exclude overrun sales. Therefore, we have corrected this error for these final results. See Union's Final Calculation Memorandum at 2.

**Comment 12: Treatment of Union’s Home Market Sales of Non-Prime Merchandise**

Petitioners claim that in the Preliminary Results, the Department made a ministerial error by failing to exclude non-prime merchandise from its analysis of HM sales as Union did not have any sales of non-prime merchandise in the United States.

Union argues that there is no basis for the Department to exclude non-prime sales in the calculation of NV for the final results. Union claims that the absence of non-prime U.S. sales is no justification for excluding HM sales of non-prime merchandise from the calculation of NV.

**Department Position**

We are not excluding non-prime merchandise from our calculation of NV. We do not consider sales of prime and non-prime merchandise to be identical for purposes of our analysis, because prime and secondary products are typically fundamentally different from each other, as the latter normally possess physical defects. Therefore, the Department’s model-match methodology prevents sales of prime merchandise from being matched to non-prime sales, and vice versa. However, the Department’s practice is not to exclude non prime merchandise sales from the calculation of NV even if they are not used for comparison purposes. We include non-prime sales in the calculation of NV because these sales were made in the ordinary course of trade and Union made revenue on these sales. See section 773(a)(1)(B) of the Act. Therefore, in accordance with our policy, we have continued to include Union’s HM sales of non-prime merchandise in our analysis for these final results.

**Comment 13: Ministerial Error with Respect to QTYCVNU Field**

Petitioners and Union argue that the Department should use the actual weight-based quantity reported in field QTYCVNH of Union’s HM sales database and field QTYCVNU of Union’s U.S. Sales database, in its Comparison Market and Margin program calculations instead of theoretical weight-based quantity reported in fields QTYH and QTYU, respectively.

**Department Position:**

We agree with both parties. Given that all expenses and adjustments reported by Union in its database are expressed in terms of the actual weight of the merchandise, we have made an adjustment and used the actual weight-based quantity in the comparison market and margin calculation programs for these final results. See Union’s Final Calculation Memorandum at 2.

**Comment 14: Ministerial Error with Respect to Union’s Home Market Credit**

Union argues that in the Preliminary Results the Department made a ministerial error by adding, instead of subtracting, HM credit to the comparison market prices.

Petitioners did not comment on this issue.

**Department Position:**

We agree with respondents and we have adjusted the comparison market program to subtract Union's HM credit from the comparison market price for these final results. See Union's Final Calculation Memorandum at 2.

**The POSCO Group**

**Comment 15: The Department's Adjustment for the POSCO Group's Home Market Credit Expenses on Freight Billed to Customers**

Petitioners argue that the Department should deny the POSCO Group's HM credit expense adjustment in which it imputed credit expenses associated with freight revenue in the CREDIT2H field. Petitioners claim that this adjustment lowers NV and the POSCO Group has failed to establish if, in fact, the POSCO Group paid for freight and was reimbursed later by its customers. Furthermore, petitioners state that the Department should deny the POSCO Group this adjustment because petitioners assert that there is no information on the record of this review that identifies the terms of payment to each freight carrier.

The POSCO Group states that it has correctly reported the amount for freight it billed to its HM customers in the field FRTREVVH and that it separately reported the imputed credit expenses associated with that freight revenue in the CREDIT2H field. The POSCO Group argues that in its normal sales accounting records, it treats freight revenue as part of the sales price agreed upon with the customer. The POSCO Group states that it incurs opportunity cost during the time between the date of shipment and the date on which it receives payment from the customer for the merchandise including any freight charges it appropriately reported in the field CREDIT2H. Moreover, the POSCO Group claims that the Department has accepted its reporting methodology in prior administrative reviews.<sup>41</sup>

**Department Position:**

The Department agrees with the POSCO Group. The POSCO Group appropriately reported imputed credit expenses in its CREDIT2H field and the Department calculated the POSCO Group's HM imputed credit expense to reflect imputed credit expenses associated with freight

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<sup>41</sup> See Eleventh Review Final Results; Light-Walled Rectangular Pipe and Tube From Mexico: Notice of Final Determination of Sales at Less Than Fair Value, 69 FR 53677 (September 2, 2004), and accompanying Issues and Decision Memorandum at Comment 12; and see also Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 69 FR 19153 (April 12, 2004), and accompanying Issues and Decision Memorandum at Comment 9.

revenue.<sup>42</sup> Because the POSCO Group invoiced the customer for the sales price, as well as the freight expense, the delivery terms are part of the terms of sale. The Department calculates imputed credit expense to reflect the loss attributable to the time value of money, when the seller allows the customer to delay payment of the total invoice amount, including transportation.<sup>43</sup>

#### **Comment 16: POSCO Group's Weight Conversion Factors**

Petitioners and the POSCO Group state that the POSCO Group reported HM sales on both a theoretical and an actual weight basis. See the POSCO Group's Sec B response at pages 33-34. Petitioners argue when calculating any dumping margin, the Department should convert fields to an actual basis by dividing each per-unit revenue or expense recorded in each field by the appropriate weight conversion factor provided by the POSCO Group in the field (WTCVNFH).

The POSCO Group claims that it made a clerical error, not methodological errors, in its reporting of weight conversion factors (WTCVNFH) and its conversion (QTYCVNH) for certain sales in the HM. The POSCO Group states that the necessary corrections rely on existing record information and that the information in the QTYPH field confirms that the affected sales were already reported on an actual weight basis and do not need to be converted. The POSCO Group claims that a simple correction to the field QTYCVNH is warranted. Furthermore, the POSCO Group claims that it did not realize that these database errors existed until the allegations made by petitioners. Therefore, the POSCO Group asserts the rebuttal brief was the earliest reasonable opportunity for it had to raise these database errors.

However, the POSCO Group argues that the Department should reject Mittal's proposed computer instructions and that the Department should only use proposed computer language submitted by the POSCO Group and US Steel for the final results. The POSCO Group states that it reported zero values for certain weight conversion factors and Mittal's proposed computer instructions would generate errors when the Department attempts to divide certain values expressed on a theoretical basis by weight of zero metric tons.

#### **Department Position:**

We find that the POSCO Group made certain clerical errors in reporting its weight conversion factors. The Department will change the programming language in the comparison market program for the final results based on conversion factors placed on the record.<sup>44</sup> Based on our

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<sup>42</sup> See POSCO Group's Section B response at page 49 to the Department's September 28, 2005 questionnaire (the POSCO Group's Sec. B response).

<sup>43</sup> See Pipe and Tube from Mexico at Comment 12.

<sup>44</sup> See Calculation Memorandum for the POSCO Group, Final Results in the 04/05 Administrative Review on Corrosion-Resistant Carbon Steel Products from Korea, dated March 12, 2007 (the POSCO Group's Final



analysis of the comments received, the Department will use the suggested computer language submitted by the POSCO Group and US Steel to correct the clerical errors because it is the most accurate information on the record for the final margin calculations.

**Comment 17: The Department's Calculations of the POSCO Group's Short-Term Interest Rate Used for U.S. Credit Expense**

Petitioners claim that the POSCO Group did not report its credit expense calculation based upon its actual POR average interest rate charged for short-term credit as reported in the POSCO Group's books and records. Moreover, petitioners assert that the POSCO Group's reported short-term interest rate does not comport with the rates reported in POSAM's audited financial statements and urge the Department to recalculate POSCO Group's U.S. credit expense based on the average of the short-term interest rates reported in POSAM's audited unconsolidated financial statements. Petitioners claim the worksheet provided by the POSCO Group to demonstrate its calculation of the POSCO Group reported monthly interest rate shows the per-month amount of the POSCO Group's dollar-denominated borrowings<sup>45</sup> and that the POSCO Group's lowest possible short-term interest rates reported in POSAM's audited financial statements is applicable to the POR.

The POSCO Group claims that they calculated U.S. imputed credit expenses using a short-term interest rate which was based on POSAM's dollar-denominated short-term debt as reported in POSAM's 2004 unconsolidated financial statement.<sup>46</sup> Furthermore, the POSCO Group claims that it calculated its short-term interest rate using POSAM's normal accounting books and records, as required by the Department's reporting methodology.

In addition, the POSCO Group states that petitioners' proposed calculation for the final results is flawed. The POSCO Group argues that US Steel has incorrectly calculated the simple average monthly balance for short-term borrowing by adding up all of the monthly borrowing reported in Exhibit C-15 and dividing that amount by 12 months. The POSCO Group argues that petitioners' simple average methodology understates the average monthly balance for those months in which POSAM actually had borrowings, which, in turn, overstates the short-term interest that it calculated. Moreover, the POSCO Group asserts that petitioners' calculation methodology is erroneous because it applied flat monthly interest rates for 2004 and 2005 based on a simple average calculation methodology and then applied those interest rates to the reported monthly balances in order to derive a monthly interest expense.<sup>47</sup> The POSCO Group argues that the

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Calculation Memo) at 1.

<sup>45</sup> See POSCO's Group's Section C response at page 10 and Exhibit C-15 to the Department's September 28, 2005, questionnaire (the POSCO Group's Sec. C response).

<sup>46</sup> Id.

<sup>47</sup> See the POSCO Group's May 23<sup>rd</sup> Supplemental Questionnaire Response at Exhibit S-28, page 9.

company's short-term working capital requirements are satisfied through revolving lines of credit, and that the actual rates and outstanding amounts may fluctuate throughout a given month.

Finally, the POSCO Group points to previous reviews noting that the Department has consistently accepted its calculation methodology. The POSCO Group states that the record clearly shows that POSAM's short-term interest rate is reasonable and reconciles to the company's accounting records. Therefore, the POSCO Group argues that the Department should reject US Steel's arguments in the final results.

**Department Position:**

We agree with the POSCO Group and no change is needed for the final results. The record evidence shows that the POSCO Group adequately reported its short-term interest rate used for its U.S. credit expense according to the POSCO Group's normal accounting books and records. Also, the POSCO Group has used this short-term interest rate methodology in prior reviews, and it has been consistently accepted by the Department.

**Comment: 18: The Department's Calculation of the POSCO Group's Overrun Sales in the Home Market**

Petitioners state that the POSCO Group reported sales of overrun merchandise in the HM during the POR. Petitioners argue that the Department has treated such sales as outside the ordinary course of trade since the final results in the second administrative review of CORE,<sup>48</sup> and that the POSCO Group itself has accepted the Department's decision without comment. Petitioners claim that the POSCO Group's sales of overrun merchandise are not representative of its HM and should not be included in the POSCO Group's margin calculation.

Petitioners assert that the Department has broad authority to consider other types of sales and transactions to be outside the ordinary course of trade when sales or transactions have characteristics that are not ordinary as compared to sales or transaction generally made in the same market. When considering HM sales outside the ordinary course of trade, petitioners claim that six factors are considered: 1) whether there are different standards and product uses for the merchandise in question, 2) the comparative volume of the sales of such merchandise, 3) the number of customers for the sales in question in relation to other HM sales, 4) the average price of the sales in question compared to other HM sales, 5) the relative profitability of the sales in question, and 6) whether the sales in question were of production overruns or seconds.<sup>49</sup> The

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<sup>48</sup> See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18404 (April 15, 1997) (2nd A.R. of CORE from Korea).

<sup>49</sup> See Structural Steel Beams From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 69 FR 7200 (February 13, 2004), and accompanying Issues and Decision Memorandum at Comments 1 and 2; see also Notice of Preliminary Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 68 FR 68331, 68333 (December 8, 2003); Notice of Final Determination of

POSCO Group argues that the company's short-term working capital requirements are satisfied through revolving lines of credit, and that actual rates and outstanding amounts may fluctuate throughout a given month.

Petitioners argue that there are different standards and product uses for the overrun merchandise sold by the POSCO Group in the HM, which are sold out of inventory. In contrast, the POSCO Group's non-overrun sales are made-to-order. Moreover, petitioners state the POSCO Group's overrun sales are also discounted on the internet. Finally, petitioners claim that the overrun sales should be excluded from the margin calculation program because the POSCO Group's overrun sales are manufactured without specified uses in mind and are sold in a different manner than non-overrun merchandise.

The POSCO Group did not comment on this issue.

**Department Position:**

The Department agrees with petitioners. The Department inadvertently failed to exclude the POSCO Group's overrun sales from the margin calculation program for the Preliminary Results. We will amend the computer program for the final results to reflect the exclusion of overrun sales from the margin calculation program.<sup>50</sup>

**Comment 19: The Department's Inclusion of the POSCO Group's Certain Merchandise Sales in the Home Market**

US Steel argues that the Department erroneously included the POSCO Group's HM sales of certain merchandise sales in the NV calculation and urges the Department to exclude them because the POSCO Group did not make any U.S. sales of this merchandise during the POR.<sup>51</sup>

The POSCO Group asserts that the Department correctly matched certain merchandise sales in question in the comparison market program from the NV calculation and no change is warranted for the final results. The POSCO Group states that if the Department exclude these sales from the NV calculations, that it should include them in the Department's calculation of CEP profit even though such sales will not be used for product comparisons with U.S. sales.

**Department Position:**

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Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan, 64 FR 24329, 24341 (May 6, 1999); and Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 63 FR 12770-12772 (March 16, 1998).

<sup>50</sup> See the POSCO Group's Final Calculation Memo at 2.

<sup>51</sup> See US Steel's October 20, 2006, case brief at page 10.

We agree with petitioners. The Department inadvertently failed to exclude the POSCO Group's sales of certain merchandise in the HM during the Preliminary Results. Therefore, the Department will amend the computer program for the final results to properly reflect the exclusion. In addition, the Department is not including these sales in the CEP profit calculation because these sales are not being used in the product comparisons with U.S. sales.<sup>52</sup>

**Comment 20: The POSCO Group's Cash Deposit Instructions**

The POSCO Group argues that the Department should revise the draft cash deposit rate for POSCO and POCOS from 0.48 percent to zero to be consistent with its standard cash deposit instructions for manufacturers/exporters that have received a de minimis margin.

**Department Position:**

We agree that the cash deposit rate should be zero for the POSCO Group. Therefore, we will revise the cash deposit rate in our instructions to CBP.<sup>53</sup>

**Comment 21: The Department's Calculation of POSAM's ISE**

The POSCO Group argues that the Department improperly increased its U.S. ISE (INDIRSU) for POSAM by dividing POSAM's company-wide payroll and other common expenses by its total POR sales. The POSCO Group states that the Department incorrectly calculated its INDIRSU by including expenses related to POSAM's sales of non-subject merchandise and its non-selling activities.<sup>54</sup> It argues that POSAM does not solely function as a sales organization, but it also employs an individual that is fully dedicated to managing POSAM's investments. The POSCO Group claims that this activity is not a selling activity and thus this employee's salary was properly excluded by the POSCO Group from the pool of selling expenses used to calculate its INDIRSU ratio.<sup>55</sup> Thus, the POSCO Group states that for the purposes of calculating INDIRSU, the Department should only include those expenses and sales revenues associated with used payroll information that segregates POSAM's payroll expense and other common expenses related to the sale of subject merchandise during the POR.

US Steel states that the Department correctly allocated the U.S. ISE incurred by POSAM on the basis of sales values. US Steel argues that the POSCO Group is confusing the allocation of

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<sup>52</sup> See the POSCO Group's Final Calculation Memo at 2.

<sup>53</sup> Id. at 5.

<sup>54</sup> See the POSCO Group's Sec. C response at 44 and Exhibit C-18 and see the POSCO Group's May 23, 2006, March 9, 2007 Supplemental Questionnaire Response (May 23 Supp. Response) at Exhibit 27.

<sup>55</sup> See the POSCO Group's July 26, 2006, Supplemental Questionnaire Response (July 26 Supp. Response) at 4 and Exhibit 9.

INDIRSU with ISE incurred in the HM on sales to the U.S. and HMs (i.e., DINDIRSU and INDIRSH). It claims that the POSCO Group's allocation of HM ISE is irrelevant to the calculations of the POSCO Group's INDIRSU and that the POSCO Group's proposed methodology for allocating POSAM's U.S. ISE is distortive. US Steel argues that the POSCO Group has failed to demonstrate how certain identified categories of U.S. ISE are not "attributable" to POSAM's sales of subject merchandise. Moreover, US Steel argues that the POSCO Group failed to demonstrate how its proposed allocation of U.S. ISE between such excluded activities and sale of the subject merchandise are based on "payroll information."

**Department Position:**

The Department agrees with the POSCO Group. In the Preliminary Results, we recalculated the POSCO Group's INDIRSU because the POSCO Group had not adequately explained the basis for its exclusion of certain expenses in its reported INDIRSU calculation. Specifically, we recalculated the POSCO Group's INDIRSU by including all ISEs incurred in the United States, including expenses related to POSAM's sales of non-subject merchandise and its non-selling activities during the POR. However, the POSCO Group provided evidence showing that the POSCO Group correctly calculated its INDIRSU by excluding expenses related to POSAM's sales of non-subject merchandise and its non-selling activities.<sup>56</sup> Thus, the Department will change the margin program in the final results to reflect the POSCO Group's original INDIRSU ratio.<sup>57</sup>

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<sup>56</sup> See the POSCO Group's Sec. C response at 44 and Exhibit C-18; May 23 Supp. Response at 17 and Exhibit-27; and July 26 Supp. Response at 4.

<sup>57</sup> See the POSCO Group's Final Calculation Memo at 4.

**V.     Recommendation**

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

Agree       \_\_\_\_\_                      Disagree   \_\_\_\_\_

\_\_\_\_\_  
David M. Spooner  
Assistant Secretary  
for Import Administration

\_\_\_\_\_  
Date