

**DATE:** March 10, 2008

**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, 2005, through  
July 31, 2006)

**SUBJECT:** Issues and Decisions for the Final Results of the Thirteenth  
Administrative Review of the Antidumping Duty Order on Certain  
Corrosion-Resistant Carbon Steel Flat Products from the Republic  
of Korea (2005-2006) (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 from the preliminary results in the margin calculations. We recommend that you approve the positions described in the Discussion of Interested Party Comments, sections A and B, infra. Outlined below is the complete list of the issues in this review for which we have received comments from the interested parties.

---

<sup>1</sup> Case briefs and rebuttal briefs were submitted by the following domestic interested parties and respondents: On January 18, 2007, United States Steel Corporation (US Steel), ArcelorMittal USA Inc. (ArcelorMittal), and Nucor Corporation (Nucor) (collectively, petitioners) filed case briefs (respectively, "US Steel's Case Brief," "ArcelorMittal's Case Brief," and "Nucor's Case Brief"). On January 28, 2007, US Steel, ArcelorMittal, and Nucor filed rebuttal briefs (respectively, "US Steel's Rebuttal Brief," "ArcelorMittal's Rebuttal Brief," and "Nucor's Rebuttal Brief"). On January 18, 2007, Dongbu Steel Co., Ltd. (Dongbu), Hyundai HYSCO (HYSCO), and Union Steel Manufacturing Co., Ltd. (Union) (collectively respondents) filed case briefs (respectively, "Dongbu's Case Brief," "HYSCO's Case Brief," and "Union's Case Brief"). On January 28, 2007, respondents filed rebuttal briefs (respectively, "Dongbu's Rebuttal Brief," "HYSCO'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 29, 2006, for each of the aforementioned respondents. See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 71 FR 57465 (September 29, 2006). On September 10, 2007, 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 and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 51584 (September 10, 2007) (Preliminary Results). On October 26, 2007, the Department published a notice extending the deadline of the final results to March 10, 2008. See Corrosion-Resistant Carbon Steel Flat Products from Korea: Extension of Time Limits for the Final Results of Antidumping Duty Administrative Review, 72 FR 60799 (October 26, 2007). This review covers three<sup>2</sup> manufacturers/exporters of the subject merchandise: Dongbu, HYSCO, and Union.

## **II. List of Comments**

### **A. General Issues**

Comment 1: Treatment of Sales with Negative Dumping Margins (Zeroing)

Comment 2: Model-Match Methodology and Laminated Products

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

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

Comment 3: CEP Offset

Comment 4: Home Market Rebates

Comment 5: Scrap Offset

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

Comment 6: CEP Offset

Comment 7: Indirect Selling Expense

Comment 8: U.S. Warranty Expenses

Comment 9: Treatment of Certain Home Market Sales as Non-Prime Merchandise

Comment 10: Treatment of E-Business Sales in the Home Market as Overruns

---

<sup>2</sup> Pohang Iron & Steel Company, Ltd. (POSCO) and Pohang Coated Steel Co., Ltd. (POCOS) (collectively, the POSCO Group) were originally included as a respondent in the instant review, however; the Department rescinded this review with respect to the POSCO Group. See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Partial Rescission of Antidumping Duty Administrative, 72 FR 58286 (October 15, 2007).

## **Hyundai HYSCO**

Comment 11: Non-Prime Merchandise in the Calculation of Normal Value

Comment 12: CEP Selling Expenses Incurred in Korea

Comment 13: POR Window Period

Comment 14: Short-Term Interest Rate

Comment 15: HHU CEP Selling Expenses

Comment 16: Sales to Affiliates in the CEP Profit Calculation

Comment 17: Inclusion of Scrap Revenue in the Cost of Goods Sold

### **III. Discussion of Interested Party Comments**

#### **A. General Issues**

##### **Comment 1: Treatment of Sales with Negative Dumping Margins (Zeroing)**

Respondents<sup>3</sup> argue that the Department should not disregard negative dumping margins found on Union's sales during the POR. Respondents state that the Department should discontinue its use of this methodology in calculating the overall weighted-average dumping margin for purposes of these final results. According to respondents, the calculation methodology in question is not in conformity with the Department's Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin During an Antidumping Duty Investigation; Final Modification (Final Modification). See 71 FR 77722, (December 27, 2006). Further, citing the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) decision in Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347 (Fed. Cir. 2005), cert. denied, 546 U.S. 1089 (2006) (Corus Staal), respondents contend that the Department's new statutory interpretation of section 771(35) of the Tariff Act of 1930, as amended (the Act), with respect to offsets of non-dumped sales in the context of both original investigations and administrative reviews is improper because the Department has interpreted section 771(35) of the Act in opposite ways. Respondents state that "it is a well established principle of statutory construction that an agency should interpret identical statutory language consistently unless the statute indicates a different meaning is intended." See RHP Bearing Ltd. V. United States, 288 F.3d 1334, 1346 (Federal Cir. 2002). Therefore, respondents urge the Department to eliminate its "zeroing methodology" for these final results.

Petitioners argue that the Department should abide by its longstanding methodology of denying the offset for negative dumping margins. They claim that respondents failed to provide sufficient evidence that the Department's zeroing methodology with respect to administrative reviews is inconsistent with the methodology articulated in the Final Modification. Petitioners assert that respondents' arguments regarding the Department's zeroing methodology are "premature" and state that under section 123 and 129 of the Uruguay Round Agreements Act (URAA), the Department is "statutorily prohibited" from adopting a new policy on its zeroing methodology until the new proceedings have been concluded. Specifically, Section 129 establishes a procedure by which the Administration may obtain advice it requires to determine

---

<sup>3</sup> When more than one respondent commented on an issue, we refer to them collectively as respondents; where only one party briefed an issue, that party is identified.

its response to an adverse WTO panel. Accordingly, petitioners conclude that the Department should not adjust its calculations for these final results.

### **Department Position**

We disagree with respondents and will continue to deny offsets for non-dumped transactions in these final results.

Section 771(35)(A) of the Act defines “dumping margin” as the “amount by which the normal value exceeds the export price or constructed export price of the subject merchandise.” (Emphasis added). Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when normal value (NV) is greater than export or constructed export price (CEP). As no dumping margins exist with respect to sales where NV is equal to or less than export or CEP, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The Federal Circuit has held that this is a reasonable interpretation of the statute. See Timken Co. v. United States, 354 F.3d 1334, 1342 (Fed. Cir.), cert. denied sub. nom. (Timken) See also Koyko Seiko Co. v. United States, 543 U.S. 976 (2004). See also Corus Staal.

The Department recently modified its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations in its Final Modification. In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews. Id. at 77724. Thus, contrary to respondents’ claim, because the Final Modification only affected antidumping investigations involving average-to-average comparisons, the Department’s determination to deny any offsets of non-dumped transactions in this administrative review does not contradict the Final Modification.

We disagree that the Department’s interpretation of section 771(35) of the Act with respect to zeroing is improper. In Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984), the U.S. Supreme Court explained that, when the language and congressional intent behind a statutory provision is ambiguous, an administrative agency has discretion to reasonably interpret that provision, and that different interpretations of the same provision in different contexts is permissible. Id. at 864.

The Federal Circuit (Federal Circuit) has found the language and congressional intent behind section 771(35) of the Act to be ambiguous. See Timken at 1342. Furthermore, antidumping investigations and administrative reviews are different proceedings with different purposes. Specifically, in antidumping investigations, the Act specifies particular types of comparisons that may be used to calculate dumping margins and the conditions under which those types of comparisons may be used. See section 777A(d)(1) of the Act. The Act discusses the types of comparisons used in administrative reviews. See section 777A(d)(2) of the Act. The Department’s regulations further clarify the types of comparisons that will be used in each type of proceeding. See 19 C.F.R. § 351.414. In antidumping investigations, the Department generally uses average-to-average comparisons, whereas in administrative reviews the

Department generally uses average-to-transaction comparisons. Id. at (c). The purpose of the dumping margin calculation also varies significantly between antidumping investigations and reviews. In antidumping investigations, the primary function of the dumping margin is to determine whether an antidumping duty order will be imposed on the subject imports. See sections 735(a), (c), and 736(a) of the Act. In administrative reviews, in contrast, the dumping margin is the basis for the assessment of antidumping duties on entries of merchandise subject to the antidumping duty order. See section 751(a) of the Act. Because of these distinctions, the Department's limiting of the Final Modification to antidumping investigations involving average-to-average comparisons does not render its interpretation of section 771(35) of the Act in administrative reviews improper. Therefore, because section 771(35) of the Act is ambiguous, the Department may interpret that provision differently in the context of antidumping investigations involving average-to-average comparisons than in the context of administrative reviews.

Also, respondents' reliance on Corus Staal is misplaced. The Court in Corus Staal did not hold, as respondents allege, that section 771(35) of the Act could not be interpreted differently in antidumping investigations and administrative reviews. Rather, after acknowledging that antidumping investigations and administrative reviews were different proceedings, the Court held that the Department's zeroing methodology was equally permissible in either context. See Corus Staal at 1347. Moreover, we note that the Federal Circuit recently affirmed the Department's denial of offsets in the context of administrative reviews. See Corus Staal BV v. United States, 502 F.3d 1370 (Fed. Cir. 2007). Specifically, the Federal Circuit found that the Final Modification had no effect on the Department's ability to deny offsets in administrative reviews, and that, thus, the judicial precedent upholding the Department's zeroing methodology in administrative reviews remains binding. See id. at 1375; see also SNR Roulements v. United States, 521 F. Supp. 2d 1395, 1398 (Ct. Int'l Trade 2007) (finding that, regardless of the Final Modification, no changed circumstances have occurred with respect to zeroing in administrative reviews).

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

## **Comment 2: Model-Match Methodology and Laminated Products**

In this review, as in the previous three reviews, interested parties have proposed two different changes to the Department's long-standing model-match methodology. Our discussion is separated into the two different proposals. As discussed in the Department's position, we continue to find these proposed changes to be without merit and we have continued to use the same model-match methodology used in all segments of this proceeding. All of the arguments made by the parties were addressed in detail during the previous review. Thus, to simplify the discussion, we have added the Issues and Decision Memorandum from the previous review to the record of this review and hereby adopt our analysis in that memorandum to the extent that it applies to the current arguments. We focus this discussion on whatever new information has been placed on the record of this review.

## **Petitioner's Proposal to use Actual Dimensions Instead of Ranges**

### **ArcelorMittal's Comments**

In its case brief, ArcelorMittal urges the Department to revise its model-match methodology or at least to request from respondents further information to allow it to identify goods more specifically for sale-to-sale comparisons. ArcelorMittal indicates that the Department addressed this issue in the tenth review of CORE from Korea,<sup>4</sup> and the U.S. Court of International Trade (CIT) sustained the Department's decision, but the issue remains on judicial review in the appeal of the eleventh review (2003-2004 review period) of CORE from Korea.<sup>5</sup> Citing various cases,<sup>6</sup> ArcelorMittal claims that the Department must calculate dumping margins as accurately as possible and that the Department has an affirmative duty to ascertain relevant facts. ArcelorMittal argues that this applies to methodologies for selecting merchandise and sales to compare. ArcelorMittal asserts that early in this review, it submitted evidence that the Department's method for matching goods likely produces inaccurate results. In addition, ArcelorMittal states that it also submitted additional evidence (including a set of four cost analyses) developed in the earlier CORE 11<sup>th</sup> Review, and a computer analysis (based on data submitted by certain respondents) which further calls the Department's method into question. ArcelorMittal asserts that thus far, none of the respondents have successfully shown that its studies were invalid or are no longer valid. Therefore, ArcelorMittal requested that the Department require respondents to submit further information prior to the final results because the evidence indicates a high probability that the Department's method for matching goods yields unacceptable results.

In this review, ArcelorMittal used Dongbu's and HYSCO's actual width and thickness data to run the Department's model-matching program; then it analyzed the models (a unique Prime/Month/ CONNUM/Width/Thickness combination) included in the monthly average prices that the Department used to compute "normal values" for each respective CONNUM. ArcelorMittal claims that based on its study, the grouping of models with different physical characteristics under a single CONNUM can lead to the inappropriate retention of below-cost sales in the database used to calculate normal values. In addition, ArcelorMittal asserts that its position is further supported by evidence obtained by examining the CEP profit calculations. ArcelorMittal concludes that to the extent that prices and variable costs for models that have different thicknesses and/or widths are averaged for a single CONNUM, the comparison of those

---

<sup>4</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) (CORE 10<sup>th</sup> Review).

<sup>5</sup> See Notice of Final Results of the 11<sup>th</sup> 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) (CORE 11<sup>th</sup> Review), and the accompanying Issues and Decisions Memorandum at Comment 1.

<sup>6</sup> E.g., Lasko Metal Products, Inc. v. United States, 43 F.3d 1442, 1446 (Fed. Cir. 1994); Freeport Minerals Company v. United States, 776 F.2d 1029, 1033 (Fed. Cir. 1985); Rhone-Poulenc, Inc. V. United States, 927 F. Supp. 451, 456 (CIT 1996) (Rhone-Poulenc).

averages to a single U.S. sale is likely to be less accurate than a comparison of the prices and variable costs of a specific home market model to those of the U.S. sale.

Citing Ball Bearings,<sup>7</sup> ArcelorMittal argues that when the Department treats a group of models as identical and has the respondents calculate a single price and variable cost, any inaccuracies arising due to the grouping of products that differ from each other are worse than they would be if the models were being grouped to determine similar merchandise. ArcelorMittal states that in the case of models averaged as identical, a single variable cost is reported for all models included, for which the Department does not and cannot apply any difference-in-merchandise (DIFMER) test or adjust for differences in variable costs because it does not have variable cost data broken out for different models. Citing Rhone-Poulenc, ArcelorMittal argues that when a particular action or approach that the Department has taken produces arbitrary results, the Department has an obligation to correct that action or approach so as to remove as much as inaccuracy as possible. Accordingly, ArcelorMittal urges the Department to: (1) request respondents to report cost information that accounts for differences in thickness and width, (2) analyze that information to determine whether it has properly treated any sales of steel categorized in the same CONNUM but with different thickness and/or widths as identical, and (3) alter its model-match approach as needed to treat only merchandise that is identical as identical for model-match purposes.

### **Dongbu's Comments**

Dongbu contends that the Department has considered and rejected ArcelorMittal's model-match argument in the last three administrative reviews,<sup>8</sup> but ArcelorMittal still asks the Department to revisit the issue in the current review and revise its model-match methodology or at least request further information to allow it to identify goods more specifically for sale-to-sale comparisons. Dongbu claims that the Department's decision not to impose the significant reporting burden on Korean respondents in this review was a reasonable exercise of its discretion and should be followed in the final results. Citing the Department's three-prong model-match criteria, Dongbu argues that the model match should remain consistent from one review to the next so that the parties have a predictable means of determining possible product matches in current and future reviews. Dongbu argues that ArcelorMittal did not provide an analysis addressing the Department's well-established standard, but focuses exclusively on its claim that the current

---

<sup>7</sup> See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Review, 70 FR 54711 (September 16, 2005), and the accompanying Issues and Decision Memorandum at 13-31. In discussing a change from a "family" of bearing models whose prices and variable costs were averaged to compute similar merchandise, the Department noted that "the proposition that it is more accurate to select a single most-similar model than to average together several disparate models for purposes of comparison stands to reason, wherever we might group the prices of several different models, all of the models that are not the single most similar model are necessarily less similar than the single most-similar model."

<sup>8</sup> See also, CORE 10<sup>th</sup> Review and the accompanying Issues and Decision Memorandum at Comment 1. See also; CORE 11<sup>th</sup> Review at Comment 1. See also; Notice of Final Results of the Twelfth Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 72 FR 13086 (March 20, 2007) (CORE 12<sup>th</sup> Review), and accompanying Issues and Decision Memorandum at Comment 1.

model-match “likely produces inaccurate results,” which has been rejected by the Department in the tenth, eleventh, and twelfth reviews.<sup>9</sup>

## **Respondent’s Proposed Change in the Treatment of Laminated Products<sup>10</sup>**

### **Union’s Comments**

In its case brief, Union claims that the Department erred in assigning laminated products the same product matching code as certain other products and, thus, failed to account for the commercially significant differences between laminated products and painted products. Union alleges that the record shows that the prices and costs of laminated products are significantly higher than that of the painted products. Union urges the Department to assign a separate product matching code to laminated products in the final results. Union claims that an addition to the model-match criteria in the field CTYPE is warranted pursuant to the Department’s three-prong model-match criteria which was established in CORE 12<sup>th</sup> Review,<sup>11</sup> and the Department’s decision in model-match codes for the Field CTYPE in CORE 2<sup>nd</sup> Review.<sup>12</sup>

Union argues that the current model-match codes for CTYPE are not reflective of the subject merchandise because laminated products are substantially different in their physical characteristics from painted products. Union contends that the current model-match codes were established by the Department for the Field CTYPE at a time when the Department considered laminated products not to be within the scope of the order. Specifically, Union points to a memorandum issued by the Department in the second review where the Department responded to Dongbu’s inquiry about reporting requirements stating that all painted and unpainted products should be reported “with the exception of laminated products, which do not fall within the scope of the review.”<sup>13</sup> Union alleges that because the Department was not addressing laminated

---

<sup>9</sup> The Department rejected this pricing analysis in the three previous reviews on the grounds that Dongbu’s and Union’s internal pricing guidelines: (1) fail to indicate a change in the Korean respondents’ production/pricing practices and (2) do not necessarily reflect the norms of the Korean respondents.

<sup>10</sup> In this review, Union made the primary argument about this issue; however, in this and previous segments, POSCO, Dongbu and Hysco have made numerous arguments and submissions regarding this issue, which are subsumed within the Department’s current and previous analyses and findings.

<sup>11</sup> In the CORE 12<sup>th</sup> Review, the Department stated that it will not revise model-match criteria unless there is evidence demonstrating that (1) the current 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 to change the current model-match criteria (Department’s model-match criteria). See CORE 12th Review, at Comment 1. See also Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rope from Malaysia, 66 FR 12759 (February 28, 2001), and the accompanying Issues and Decisions Memorandum at Comment 3.

<sup>12</sup> See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18404, 18446 (April 15, 1997), and the accompanying Issues and Decision Memorandum at Comment 53 (CORE 2<sup>nd</sup> Review), where the Department looked to physical differences and adjusted for them if satisfied that any price differential is wholly or partly the result of such physical differences.

<sup>13</sup> See Memorandum from Charlie Rast to the File Re: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel



products, the different codes that are contained in the Field CTYPE were not developed to address the characteristics specific to laminated products and are not reflective of the subject merchandise in question. Union asserts that laminated products are coated with a plastic film in lieu of paint, and therefore, are not painted products and the Department's current model-match criteria in the Field CTYPE make no provision for laminated products. In addition, Union indicates that laminated products have physical properties such as unrestricted expression of various patterns, superior durability, environmentally friendly material, etc. However, Union states that laminated products can be produced in the same production lines and have the same production processes as other CORE products up to the coating process where laminated products are attached with PET or PVC film instead of the color painting process. As such, Union claims that laminated products are easily distinguishable from other painted products from their coating, and that such distinction can be drawn by adding a new code for laminated products (i.e., 30 = Coated/Plated with metal: Laminated with film).

In addition, Union argues that the Department's "Industry-Wide Change" standard is not applicable since the current CTYPE classifications were created without reference to laminated products. Nonetheless, Union claims that despite the different brand names and different product brochures and promotion materials used by other Korean producers,<sup>14</sup> it is commonly understood in the industry that laminated and painted products are fundamentally different because of the difference in their coatings - film versus paint - and they are marketed as different products from painted products.

Furthermore, Union argues that it has demonstrated that there are compelling reasons to treat laminated products as a separate CTYPE field. According to Union, the production costs and sales prices of laminated products are substantially higher than other painted products because PET film and PVC film are more expensive than the various paints used for other color-coated products, including PVDF, and require more complicated processing knowhow. Union points out that the cost differences between laminated products and other painted products meet the 20-percent DIFMER cap as provided in the Department's Policy Bulletin No. 92.2, Differences in Merchandise, 20 % Rule. See Import Administration Policy Bulletin, Number 92.2, Differences in Merchandise; 20% Rule, July 29, 1992. Union disputes that in declining to treat laminated products separately, the Department violates this principle by treating very different products as identical. With respect to the sales prices, Union argues that the prices for laminated products are consistently higher than the sales prices for other painted products, including PVDF-painted products which have significantly higher prices than other painted-products.

Moreover, Union argues that there are meaningful commercial differences between laminated products and painted products that the Department should recognize by establishing a separate product type. Citing Ecuador Shrimp 2004,<sup>15</sup> Union contends that the Department stated that

---

Flat Products from Korea, Case No. A-580-816 (November 21, 1995) (November 21, 1995 Memo), which was included in Union's February 2, 2007, supplemental response.

<sup>14</sup> See e.g., Dongbu, Hysco and POSCO.

<sup>15</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) (Ecuador Shrimp 2004), and the accompanying Issues and Decision Memorandum at Comment 8 (noting that the Department's practice is to consider only "meaningful" or

model-match criteria should reflect “meaningful” physical and commercial differences between products by examining whether the physical differences have an impact on the cost and price of the subject merchandise. Furthermore, Union argues that the Department has the discretion to modify the model-match criteria in the context of an administrative review if the weight of the evidence demonstrates that such a change is necessary for fair comparison.<sup>16</sup> Referencing the Department’s decision in the CORE 2<sup>nd</sup> Review,<sup>17</sup> Union claims that the substantial cost and price differences between laminated and painted products resulted from a film coating instead of paint coating being applied to the CORE substrate. In addition, Union disputes that despite the fact that the various gradations for metal coating represent relative small cost and price differences, the Department considered these differences in physical characteristics as worth distinguishing in its model-match criteria.<sup>18</sup> Finally, Union argues that laminated products should be separately classified from painted products in the Field CTYPE because laminated and non-laminated products are distinguished in the companies’ product codes.

Union argues that the Department’s analysis of the laminated issue in CORE 12<sup>th</sup> Review was flawed and should be rejected in the current review because the Department began with a faulty assertion that this issue had already been considered and rejected in the original investigation and the first and second review. Furthermore, Union contends that the Department conducted a flawed price and cost analysis that purported to show insignificant differences between laminated and other painted products. Union argues that during the original investigation the Department only addressed painted CORE in simple terms, painted vs. unpainted CORE. It was not until the first administrative review that the issue of distinguishing various types of painted products in the Field CTYPE arose.<sup>19</sup> In response to Dongbu and Union’s proposal for further breakouts for the painted/unpainted product characteristic, the Department added one additional paint category to the model match, distinguishing PVDF-painted products from other painted products, based

---

“significant” physical characteristics, which it defined as “both price differences in the marketplace and cost differences which may reflect different production processes”).

<sup>16</sup> See Ecuador Shrimp 2004. See also Notice of Final Results of Antidumping Duty Administrative Review, Partial Rescission of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Order in Part: Certain Pasta From Italy, 67 FR 300, (January 3, 2002) (Italy Pasta), and the accompanying Issues and Decision Memorandum at Comment 2 (using revised CONNUMs for model matching to distinguish between bronze-die pasta and Teflon-die pasta based on physical and cost differences).

<sup>17</sup> Where the Department looked to the differences and adjusted for them “if satisfied that any price differential is wholly or partly the result of such physical differences.”

<sup>18</sup> Union contends that the Department established two fields, Field CMETAL and Field CWEIGHT, and allows each field to have various classifications to capture the differences in metal coating even though the average per-unit cost for metal coating is not very different from the average per-unit cost for the paint used for other painted products.

<sup>19</sup> See letter from Morrison & Foerster to the U.S. Department of Commerce, Case No. A-100-003 (August 26, 1994) at 2-4 and 6-7, submitted in letter from Skadden, Arps, Slate, Meagher & Flom to the U.S. Department of Commerce, Case No. A-580-816 (January 18, 2007) (Skadden’s January 18 submission) at Exhibit A. See also letter from Sidley & Austin to the U.S. Department of Commerce, Case No. A-100-003 (August 26, 1994) at Attachment 1-2 and 4, submitted in Skadden’s January 18 submission at Exhibit B.

on substantial price and cost differences between PVDF and other paint coatings.<sup>20</sup> According to Union, in the first review both Dongbu and Union requested further breakouts for the CTYPE field and one of the breakouts requested by Dongbu included its laminated products.<sup>21</sup> Although the breakout requests continued in the second review by both Dongbu and Union, the Department rejected the breakout requests in CORE 1<sup>st</sup> Review<sup>22</sup> and CORE 2<sup>nd</sup> Review.<sup>23</sup> Union contends that although the Department addressed Union's claims for additional paint categories, the Department simply dismissed all comments for a breakout of various paint types and did not specifically address the issue of laminated products in either the first or second reviews. This was done despite the fact that the Department in its November 21, 1995 Memo indicated that laminated products were not within the scope of the review. Accordingly, the Department's reliance on its findings in the original investigation and the first and second reviews as the basis for rejecting separate treatment for laminated products in the twelfth review was erroneous.

Furthermore, Union claimed that the Department's analysis in the twelfth review with respect to laminated products was deeply flawed because the Department ignored the fact that the average per-unit costs and prices for laminated products were substantially higher than for other painted products.<sup>24</sup> According to Union, the "basic and fatal" flaw in the Department's analysis is that it was conducted without isolating the one field, CTYPE, where the laminated classification is relevant, from all of the remaining 11 product characteristic fields which also affect costs and prices of both laminated products and painted products. Union argues that the Department's "skewed" analysis simply resulted in aggregate comparisons that include a number of other physical characteristics rather than the appropriate comparison of the cost/price of laminating compared to the cost/price of painting the CORE substrate. In addition, Union claims that in terms of comparing the gross unit prices and the total cost of manufacture of laminated products and painted products, the Department confused the issue by including numerous other factors unrelated to the laminated/painted products distinction that also affect costs and prices when making its aggregate comparisons between laminated and painted products. According to Union, comparing average raw material costs for laminated and other painted products is the only meaningful difference when determining whether there is a significant difference in costs and prices between laminated and painted products.

---

<sup>20</sup> See, e.g., id., Attachment 2.

<sup>21</sup> See letter from Morrison & Foerster to the U.S. Department of Commerce, Case No. A-580-816 (November 22, 1994) Exhibit B-6 at 7, submitted in Skadden's January 18 submission at Exhibit D.

<sup>22</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) (CORE 1<sup>st</sup> Review) at Union Comment 6.

<sup>23</sup> See CORE 2<sup>nd</sup> Review at Comment 53.

<sup>24</sup> In CORE 12<sup>th</sup> Review, the Department recognized that there is only one stage in the production that is unique to laminated products and noted that respondents' analysis focused only on the cost differences between laminated and other painted products in terms of paint/film. See CORE 12<sup>th</sup> Review at comment 14. The Department further stated that "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 cost of laminated products." Id. Similarly, the Department stated that the data "show in fact that the prices for other painted products are comparable to those for laminated products." Id.

Moreover, Union asserts that the Department's analysis with respect to whether the physical characteristics which differentiate laminated products from other painted products are so significant to create a "meaningful commercial difference," is also flawed. Union claims that the Department does not state which physical differences exist within each of the other painted products. Nonetheless, based on the Department's analysis, Union claims that the Department refers to variations in any of the other 11 product characteristics, differences which, however, are irrelevant when analyzing whether there should be a separate classification for laminated products in the CTYPE field. Union maintains that the issue is whether there is meaningful commercial difference in the one characteristic that differentiates laminated products from other painted products, *i.e.*, a film coating versus a paint coating. According to Union, the Department acknowledged and the record evidence showed that the differences exist on average raw material costs and prices for laminated products and other painted products. Union also disputes the Department's statement regarding customers of both laminated and painted products as being based on meager data and questions how few of the hundreds of customers of each respondent actually purchased both laminated and painted products.<sup>25</sup>

Based on the foregoing, Union requests that the Department follow its practice in Ecuador Shrimp 2004 and Italy Pasta and allow Union to add a separate CTYPE category for laminated products, because it has demonstrated that the cost, price and physical differences that exist between laminated and painted products are significant enough to warrant the addition of a separate CTYPE Field.

### **Nucor's comments**

Nucor asserts that the Department properly rejected Union's proposed revision of the model-match criteria to reflect purported differences between laminated and painted CORE products because Union has failed to meet the requisite burden of proof to change the Department's model-match program set forth in the twelfth administrative review.<sup>26</sup>

First, Nucor contends that Union has not presented any significant evidence demonstrating that the current model-match criteria are not reflective of the subject merchandise. Nucor argues that even though Union claims that its laminated CORE products and other painted CORE products have substantial different physical characteristics and that laminated products offer various patterns in an environmentally friendly material, Union failed to identify how the minor physical differences in laminated and other painted CORE products render them non-comparable, and how such differences could alter the Department's previous determinations in response to similar model-match arguments. Nucor also alleges that Union did not distinguish how the physical differences between laminated and other painted CORE merchandise are any more significant than the physical differences among each of the other painted CORE products. Furthermore,

---

<sup>25</sup> See CORE 12<sup>th</sup> Review laminated analysis memo at 3, where the Department stated that "there are customers that bought both categories of products. Thus, we find there are common distribution channels for these products. This further suggests that laminated CORE products and other painted CORE products can be used in common end use applications."

<sup>26</sup> See CORE 12<sup>th</sup> Review at Comment 1.

Nucor counters that Union's arguments that laminated products differ from other painted products because they offer various patterns for the product suggests that the purpose of applying a laminate is for aesthetic reasons and driven by customer preferences, and it does not justify a change in the Department's long-standing model-match criteria.<sup>27</sup>

Second, Nucor argues that Union's proposed model-match criteria have not been widely accepted by the CORE industry. Nucor counters that Union is incorrect in arguing that laminated products were not within the scope of the antidumping duty order at the time the Department established the model-match criteria for the field CTYPE. Nucor noted that numerous comments addressed the differences between painted and laminated CORE products.<sup>28</sup> Nucor alleges that Union's assertion that the "industry-wide change" standard should not apply in this case contradicts the Department's decisions in CORE 12<sup>th</sup> Review and its statement in the second administrative review of this proceeding in which the Department "treated some laminated CORE products as non-subject merchandise."<sup>29</sup> Nucor argues that in CORE 12<sup>th</sup> Review, the Department determined that "there is no common industry recognition on what constitutes laminated CORE products" because in part the respondent companies' use of the term "laminated" varies amongst themselves based upon the discretion of the respective respondent company. In this proceeding, Nucor alleges that Union has not provided any new information to contradict this finding; rather, Union only implicitly acknowledges that different companies treat the term "laminated" in different manners and it only provides its own brochures for comparison purposes.

### **Department Position**

Pursuant to our practice with respect to this issue in this proceeding, we will continue to reject petitioner's and respondent's proposed changes in model-match methodology because they have not provided substantial 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. See CORE 12<sup>th</sup> Review at Comment 1.

Regarding petitioner's proposal to use actual dimensions instead of the ranges we normally use, we disagree that we should change our methodology. We do not believe that the price analysis submitted shows that our calculations are inaccurate. First of all, the fact that prices for individual transactions are different from the average is normal. More importantly, there are many aspects of each transaction that can affect the price. ArcelorMittal has not shown that the fact that these products differ in terms of actual dimensions is the basis for the observed price differentials. Another aspect of ArcelorMittal's analysis that is problematic is the fact that many of the transactions that are identical using defined ranges in the Department's model-match

---

<sup>27</sup> See CORE 11th Review at Comment 1.

<sup>28</sup> Dongbu and Union specifically argued that laminated CORE products should have a separate CTYPE reporting code.

<sup>29</sup> See CORE 12th Review, Department position for Comment 1 and footnote 11. See also November 21, 1995, Memorandum .

methodology would not be identical using the actual dimensions. What they fail to point out is that these products would have to be matched to other non-identical products. However, ArcelorMittal has not explained what new method would be used to select the other comparable products, or how such comparisons would improve the accuracy of the calculation.

Regarding the difference in costs, we acknowledge that it is possible that companies might incur different costs from products of different dimensions; however, this does not mean that the Department's analysis is distorted. In almost every case, the products we analyze have a variety of different physical characteristics, many of which affect costs or revenues. However, the Department rarely takes all of the unique physical characteristics of every product into account in its analysis; rather, the Department tries to identify how these differences are reflected in the marketplace, *i.e.*, what products are reasonably commercially comparable. Thus, the Department develops and applies its model-match methodology to account for these differences. In this case, in the original investigation and first review, we found that products within a relevant range of widths and thicknesses were commercially comparable. Thus, we use these particular ranges as the basis to define products and perform our COP and other analyses.

ArcelorMittal asserts that the Department should have asked respondents to provide detailed specific product and sales data in a sales database format that would allow petitioners to pursue their matching issues in more detail via computer analysis. Specifically, ArcelorMittal requested that the Department require respondents to submit further information prior to these final results because its preliminary analysis demonstrates a high likelihood that the Department's method for matching goods yields unacceptable results. However, the Department disagrees that it did not solicit detailed information that would enable parties to conduct an analysis based on respondents' actual data. The Department solicited and respondents provided the requested detailed actual data within their respective questionnaire responses. Therefore, the Department finds that it has received sufficient data from respondents that enables parties to analyze the model-match criteria. Moreover, the CIT upheld the Department's decision not to seek additional product and sales data in CORE 10<sup>th</sup> Review. See Mittal Steel, Inc. v. United States, Slip Op. 2007-117 (Crt. Int'l Trade 2007).

Finally, regarding the CEP profit analysis, we fail to see how this is relevant to the model-match methodology. Specifically, the Department does not consider the profits or losses within the context of the model-match criteria. Rather, it is defined by product characteristics and differences in merchandise when the comparisons among sales are made. There is no indication how this would affect the profitability of U.S. sales. Thus, ArcelorMittal's speculation regarding how profitable a particular company's U.S. operations should be is not germane to the Department's analysis of the model-match criteria.

Regarding respondent's proposed change in the treatment of laminated products, we disagree that we should change our methodology. First, Union incorrectly asserts that laminated products were not considered when the model-match methodology was developed. In fact, in comments submitted in the first administrative review, parties argued that laminated products should be broken out separately from other painted products. When the Department finalized its model match in the first administrative review, it did not break such products out, as was requested then and is being requested now. Union cites to a memo from the second administrative review

where, it claims, a Department official indicated that certain laminated products were outside the scope.<sup>30</sup> The Department disagrees that the memo in question clarifies the scope of the CORE order. In fact, no party has formally requested a scope ruling with respect to laminated products; therefore, the Department cannot make a formal scope finding with respect to laminated products until a formal scope request has been made. To the contrary, the Department issued a letter to parties specifically requesting respondents to report such sales in the CORE 10<sup>th</sup> Review. See “Letter to Dongbu Steel Co., Ltd.” on the record of the instant review in the “Memorandum to the File,” dated March 10, 2008. In addition, there is no new factual information that is relevant to this analysis. Although Union cites to certain cost information based on respondents’ questionnaire responses submitted in this review, it is the same factual information that the Department considered in the previous review and found to be without merit. Respondents’ cost information showed a comparatively large cost difference when Union isolated the raw material used solely for lamination, compared with raw material used for some other painted products. This analysis overstates the differences between laminated and other painted products because it does not account for the numerous aspects of total production cost which are the same for painted and laminated products.

Thus, the Department finds that neither the arguments for changes in model match regarding dimensions nor arguments regarding laminated products are reflective of subject merchandise in the instant review. Further, neither changes in industry standards nor other compelling reasons have been presented.

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

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

#### **Comment 3: CEP Offset**

Nucor claims that the Department erroneously granted Dongbu a CEP offset in its Preliminary Results and urges the Department to reverse its decision in the final results because the record shows that Dongbu engaged in significant resale activities in the U.S. market and, therefore, Dongbu does not qualify for a CEP offset.

Referencing section 773(a)(7)(B) of the Act and 19 C.F.R. § 351.412(d) and (f), Nucor argues that the Department will grant a CEP offset if NV is established at a level of trade (LOT) which constitutes a more advanced stage of distribution than the LOT of the CEP, and it cannot be discerned from the available data if there are “consistent price differences” between sales at different LOTs in the country in which NV is determined. Nucor argues that Dongbu must demonstrate that it engaged in more selling activities in the home market in each distribution channel compared to its selling activities at the CEP LOT. However, in this case, Nucor contends that the available data shows that Dongbu participated extensively in resale activities in the U.S. market. Specifically, Nucor points out that in Dongbu’s questionnaire response it indicated that it acted as an intermediary between U.S. customers and Dongbu Group

---

<sup>30</sup> See November 21, 1995 Memorandum.

companies,<sup>31</sup> which Nucor claims, suggests that the sale is of a more direct nature rather than a “resale” by Dongbu USA to the U.S. customer.

Nucor also points out that Dongbu reported that “all U.S. sales are produced to order” for unaffiliated U.S. customers while its home market sales are normally made from inventory,<sup>32</sup> which, Nucor claims, requires that Dongbu engage in additional selling activities, including considerable planning to accommodate its production schedule for the home market, to monitor the orders to meet the customer’s specifications, and to review the delivery process. Further, Nucor argues that Dongbu’s involvement in setting the production schedule and providing a “price guideline” to Dongbu USA demonstrated additional evidence of involvement in contract negotiations.<sup>33</sup> In addition, Nucor argues that Dongbu’s participation in selling activities at the CEP LOT is also evident in the shipment process where Dongbu “customizes” the packaging of its products to unaffiliated U.S. customers.

Citing to the verification report on Dongbu’s sales responses where the Department stated that it reviewed and confirmed the listed selling activities for the home market and the U.S. market, Nucor contends that the Department appears to have taken the information Dongbu reported in its selling functions chart and questionnaire responses at face value, because there was no indication that Dongbu provided documentation to resolve the discrepancies or support its claims. In addition, Nucor asserts that Dongbu repeatedly failed to provide sufficient information and supporting documentation throughout the proceeding. Thus, the Department cannot properly conclude that Dongbu’s selling activities in the home market were “different, and more advanced” than its involvement in sales in the U.S. market. Accordingly, Nucor urges the Department not to grant Dongbu a CEP offset in these final results.

Dongbu counters that it has met the statutory criteria and is entitled to a CEP offset because it has demonstrated that the LOT for the home market sales is at a more advanced LOT than the sales to the United States and that these differences in LOT cannot be quantified. Dongbu argues that section 773(a)(1)(B)(I) of the Act provides that, to the extent practicable, the Department will calculate NV based on the sales at the same LOT as the EP and CEP transactions.<sup>34</sup> In addition, Dongbu asserts that if the Department determines that the CEP and the NV represent different LOTs, it will examine whether an LOT adjustment is appropriate. If the data available does not provide an appropriate basis for making an LOT adjustment, but the NV LOT is at a more advanced stage than the LOT of the CEP sales, the Department will grant a CEP offset. According to Dongbu and Union, in the Preliminary Results the Department followed all these steps and the approach used in the tenth through the twelfth reviews and, based on the factual evidence that exists in this review (e.g., the selling functions chart), granted a CEP offset to Dongbu.

---

<sup>31</sup> See Dongbu’s November 13, 2006, Section A questionnaire response (Section A response).

<sup>32</sup> See Dongbu’s Section A response at 14-15.

<sup>33</sup> See Dongbu’s Section A response at Exhibit A-7.

<sup>34</sup> NV LOT is that of the starting price in the comparison market while CEP LOT is the price after all deductions are made pursuant to section 777(d) of the Act. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).



Dongbu contends that the specific selling functions identified are almost identical to the ones discussed in the previous reviews and accepted by the Department.<sup>35</sup>

With respect to Nucor's argument that Dongbu USA's role in U.S. sales is limited because it acts as an "intermediary" between U.S. customers and Dongbu Group companies, Dongbu contends that such argument is misplaced and pales in comparison to the actual verified record evidence that shows that Dongbu USA handles all U.S. sales related activities. Regarding Nucor's claim that Dongbu is active in the sales negotiation process with unaffiliated U.S. customers because it produces U.S. sales to order as opposed to shipping from inventory in the home market, Dongbu clarifies that Dongbu's response stating that Dongbu USA's primary function was to sell Dongbu's subject merchandise in the U.S. market and to act as an intermediary between U.S. customers and Dongbu Group companies. Dongbu refers to the Department's sales verification report at page 9 and asserts that the Department verified in this review that Dongbu USA handles all U.S. sales-related activities. Dongbu rejects Nucor's claims that Dongbu's sales practice, of producing U.S. sales to order is an indication that Dongbu is active in the sales negotiation process with unaffiliated U.S. customers; rather, producing goods to order is not a selling function but is instead part of a company's normal production planning. In addition, Dongbu alleges that its provision of price lists to Dongbu USA does not inject Dongbu into the resale process, as suggested by Nucor. Dongbu also disagrees with Nucor's argument that Dongbu packs the subject merchandise with various skid materials for shipment to the United States constitutes a selling activity related to the resale in the United States.

Dongbu argues that the activities performed by Dongbu USA in the U.S. sales process were virtually identical to the sales activities that have been found in the prior three administrative reviews to support the granting of a CEP offset. Moreover, the Department noted no discrepancies during the recent sales verification of Dongbu and Dongbu USA's roles in the U.S. sales process, and therefore, the Department should continue to grant Dongbu a CEP offset in the final results.

### **Department Position**

We disagree with petitioners. Pursuant to section 19 C.F.R. 351.412(f), we have granted a CEP offset for Dongbu because we found its home market sales to be at a more advanced LOT than its U.S. CEP sales. For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these final results, see Memorandum from Preeti Tolani, Case Analyst, to James Terpstra, Program Manager, concerning Analysis Memorandum for Dongbu, Ltd. in the Preliminary Results, dated August 31, 2007 (Preliminary Calculation Memorandum for Dongbu).

In the Preliminary Results, the Department based its decision to grant Dongbu a CEP offset on information in its questionnaire response. See Dongbu's supplemental questionnaire response at

---

<sup>35</sup> For example, Dongbu provides loan guarantees on certain lines of credit for Dongbu USA, which Dongbu claims has nothing to do with sales to the ultimate customer because the terms of payment to the unaffiliated customer are "net cash after first free day."

Exhibit A-7. Contrary to petitioners' assertions, the activities undertaken in Korea by Dongbu related to U.S. sales activity do not, in themselves, detract from the selling activities performed by Dongbu USA. These selling activities are clearly identified in the selling function chart, and other parts of the questionnaire response. In addition, the associated expenses are clearly identified in Dongbu USA's financial statements. Moreover, the Department reviewed the reported information with respect to selling activities at verification and found no discrepancies. Therefore, we have continued to grant Dongbu a CEP offset pursuant to section 773(a)(7)(B) of the Act.

#### **Comment 4: Home Market Rebates**

In its case brief, ArcelorMittal requests that the Department re-examine whether the Department verified, as requested in its pre-verification comments, that the home market rebates granted by Dongbu during the POR were pursuant to agreements that were reached in advance of the sale. ArcelorMittal argues that unless the Department positively establishes that this threshold was met, the adjustment should be disallowed in the final results.

In its rebuttal brief, Dongbu claims that the record evidence is clear that Dongbu and its customers enter into rebate agreements in advance of the sales and that these rebate agreements set the approximate amount of the rebate to be granted if the conditions set out in the agreement are satisfied. Specifically, citing to its November 20, 2006, section B response at 31-33, Dongbu claims that it granted three types of rebates during the POR and that each of these rebates have been in existence for a number of years, are limited in scope (e.g., applicable only to certain type of products), and set forth certain conditions to qualify. Dongbu also indicates that copies of the agreements for each of the three rebates that were effective during the POR were provided in its section B response. Furthermore, Dongbu claims that these agreements show that both Dongbu and its customers are aware in advance of the various conditions that must be met in order to qualify for the rebates and the approximate amount of the rebate. In addition, Dongbu points out that while the conditions for receiving the rebate do not change, the amounts of the rebate are occasionally adjusted as competitive conditions in the marketplace dictate. Dongbu claims that these adjustments are made based on verbal agreements since Dongbu's sales personnel are in constant contact with their long-standing customers. Dongbu also indicates that during verification, the Department discussed Dongbu's rebate policy with the home market sales team, verified each of the rebate programs, and examined the documentation that Dongbu maintains to track the rebates.<sup>36</sup>

#### **Department Position**

We agree with Dongbu. The information in Dongbu's questionnaire response clearly shows that these rebate agreements were in existence before the sales in question were made. These are the type of price adjustments the Department routinely grants. See the 19 C.F.R. 351.401(c); see also the Department's questionnaire general filing instructions at G. II, which solicits data

---

<sup>36</sup> See Exhibit B-11 to its November 20, 2006, section B response where Dongbu provided a sample rebate agreement with one customer.

regarding a variety of price adjustments including billing adjustments, warranties, discounts, etc. Moreover, these rebates were reviewed at verification and no discrepancies were found. Accordingly, we have continued to allow these adjustments for the final results.

#### **Comment 5: Scrap Offset**

In the normal course of business, Dongbu assigns a value to scrap generated in the production of steel products and uses it as an offset to the manufacturing costs of steel products. In the Preliminary Results, the Department compared the company-wide total cost of the scrap sold during the POR with the corresponding company-wide total scrap sales revenue and determined that Dongbu's recorded scrap offset was overstated because the company-wide total cost of the scrap sold exceeded the company-wide total scrap sales revenue. In other words, a loss was realized on scrap sales. Thus, the Department increased Dongbu's cost of manufacturing (COM) for all products by the difference between the company-wide total cost of the scrap sold and the company-wide total scrap sales revenue as reflected in its income statements.

Dongbu argues that its cost accounting system accurately accounts for the scrap offset. According to Dongbu, its cost accounting system calculates a scrap offset specifically tied to the production of the subject merchandise based on the scrap sales value. Dongbu contends that it adhered to its normal cost accounting system and reported a control number (CONNUM) specific cost, calculated by weight-averaging the inventory values for products within each CONNUM. Thus, Dongbu asserts there is no basis for the Department to increase Dongbu's COM to account for any differences between the scrap cost and the scrap revenue.

Dongbu also argues that the record evidence demonstrates that its recorded scrap offset is reasonable and not overstated. Dongbu states that in the Preliminary Results, the Department relied on a comparison of the company-wide total cost of the scrap sold and the company-wide total scrap sales revenue for all products which include both subject and non-subject merchandise. Dongbu contends that the more appropriate comparison would be between the average per-unit scrap cost for subject merchandise and the average per-unit scrap sales value because this case involves an administrative review of sales of the subject merchandise. Dongbu further asserts that the information on the record demonstrates that the average per-unit scrap cost for the subject merchandise is in fact lower than the average per-unit scrap sales value during the POR.<sup>37</sup> Dongbu cites section 773(f)(1)(A) of the Act, and argues that its COM was calculated in accordance with its normal cost accounting system. Consequently, Dongbu maintains that the Department should not adjust Dongbu's reported scrap offset for the final results.

Petitioners argue that the Department was correct to adjust Dongbu's scrap offset in the Preliminary Results because it does not reasonably reflect the costs associated with the sale of subject merchandise.<sup>38</sup> Petitioners contend that Dongbu's analysis is flawed because Dongbu

---

<sup>37</sup> In support of this assertion, Dongbu provided the average per-unit scrap cost for subject merchandise and the average per-unit scrap sales value. See Dongbu's case brief dated January 18, 2008, at pages 6 and 7.

<sup>38</sup> In support of this argument, petitioners cite section 773(f)(1)(A) of the Act and Hynix Semiconductor, Inc. v. United States, 424 F. 3d 1363, 1369 (Fed. Cir. 2005), and assert that the Department may reject a company's records

compares the average per-unit scrap cost for subject merchandise with the average per-unit scrap sales value for all merchandise. Petitioners assert that this apples-to-oranges comparison is not an appropriate comparison. Petitioners further argue that Dongbu's assigned scrap value for the subject merchandise should be rejected because it results in an unreasonable and distorted scrap offset allocation to non-subject merchandise. Specifically, petitioners contend that Dongbu's submitted average per-unit scrap cost and the average per-unit scrap sales value lead to an allocation of unreasonably low scrap sales revenue to the non-subject merchandise compared to the subject merchandise. Thus, petitioners maintain that the Department should continue to make an adjustment for Dongbu's reported scrap offset for the final results.

### **Department Position**

We agree with petitioners. Normally, the sales value of scrap generated during a given period is used as an offset to the manufacturing costs of the finished products for the period. See Notice of Final Determination of Sales at Less Than Fair Value: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China, 68 FR 7765 (Feb. 18, 2003), and accompanying Issues and Decision Memorandum at Comment 3 (where the Department stated that its normal practice is to grant an offset for the revenue received from the sale of the by-products). In this case, Dongbu allocated costs to scrap production rather than simply using the revenue from scrap sales as an offset to production costs for merchandise under consideration. In the Preliminary Results, the Department increased Dongbu's COM for all products by the difference between the company-wide total cost of the scrap sold and the company-wide total scrap sales revenue as reflected in its income statements because Dongbu unreasonably allocated more costs to scrap produced than what such scrap was ultimately sold for.

We disagree with Dongbu that the record evidence demonstrates that its average per-unit scrap cost of merchandise under consideration is lower than the average per-unit scrap sales value. Specifically, Dongbu compared the average per-unit scrap cost for merchandise under consideration with the average per-unit scrap sales value for all products (*i.e.*, the merchandise under consideration and the merchandise not under consideration). Because of the mismatched comparison, Dongbu's analysis does not demonstrate that its reported scrap offset for the merchandise under consideration is not overstated. Using information on the record, the Department analyzed Dongbu's reported scrap offset using its company-wide total cost of the scrap sold and the company-wide total scrap sales revenue, as reported in its income statements (*i.e.*, all products). The Department recognizes that this analysis includes all products; however, the Department's methodology is reasonable based on the given circumstances because, unlike Dongbu's proposed methodology, our analysis uses a consistent basis (*i.e.*, the comparison of company-wide total cost of the scrap sold and the company-wide total scrap sales revenue).

While Dongbu reported its cost based upon its normal books and records, including its scrap offset, the net loss on sales of scrap is evidence that excess costs are assigned to scrap produced. Further, contrary to Dongbu's claim, the Department's analysis is based on Dongbu's normal books and records, as the audited income statement used by the Department was prepared from those books and records. Thus, the Department continues its methodology to increase Dongbu's

---

if accepting them would distort the company's reported costs.

reported COM by the difference between the company-wide total cost of the scrap sold and the company-wide total scrap sales revenue as reflected in its income statement for the final results.

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

### **Comment 6: CEP Offset**

Petitioners argue that the Department should deny Union's request for the CEP offset because, according to petitioners, Union understated its U.S. selling expenses and overstated its home market selling expenses.

In particular, petitioners claim that Union routinely engages in interaction with its U.S. subsidiary, Dongkuk International, Inc. (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 claim 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 note that the record evidence demonstrates that a parent company's employees participate in resale activities in the United States including traveling to the United States to visit U.S. customers, extending DKA credit, listing DKA as the beneficiary of some lines of credit, and processing defective merchandise claims for U.S. sales.

Petitioners contend that Union provided inadequate questionnaire responses on differences in selling activities between the home market 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 home market 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 home market sales are at a more advanced LOT than its U.S. CEP sales.

Union disagrees with petitioners 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 home market are made at a more advanced LOT than its CEP sales. In response to petitioners' comment regarding U.S. selling expenses, Union argues that "there is no basis for including any expenses incurred by Union in Korea as expenses related to commercial activities in the United States." See Union's case brief dated January 28, 2008, at page 20. 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.

### **Department Position**

We disagree with petitioners. Pursuant to 19 C.F.R. 351.412(f), we have granted a CEP offset for Union because we found its home market sales to be at a more advanced LOT than its U.S. CEP sales. For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these final results, see Analysis Memorandum for Union in the

Preliminary Results, dated August 31, 2007 (Preliminary Calculation Memorandum for Union).

In the Preliminary Results, the Department based its decision to grant Union a CEP offset on information provided by Union in its questionnaire response. See Union's supplemental questionnaire response at Exhibit A-11. Contrary to petitioners' assertions, we find that record evidence demonstrates that Union's selling activities in the home market via sales intermediaries were significantly different from its CEP sales made to its affiliate, DKA.

Petitioners assert that, as part of Union's resale activities in the United States, Union extends credit to DKA. However, as noted in our results of verification, Union charges DKA whenever Union extends credit to DKA.<sup>37</sup> Therefore, we do not find that the extension of credit is a resale activity in the United States that warrants consideration in the accounting of the CEP offset made in Union's calculation. Union provided sufficient information for the Department to compare selling functions and the difference in the degree of selling functions in the two markets. Specifically, during verification "{w}e found the information presented in regard to selling activities, customer categories, sales terms, or distribution channels to be consistent with that reported in Union's questionnaire response." See Union Verification Report at page 8. See also; Preliminary Calculation Memorandum for Union, at page 3. Therefore, we maintain our position that Union's HOME MARKET sales are at a more advanced LOT than its U.S. sales.

Given that the HOME MARKET sales are at a more advanced LOT, and it is not possible to make an LOT adjustment, we have granted Union a CEP offset pursuant to section 773(a)(7)(B) of the Act.

#### **Comment 7: Indirect Selling Expenses**

ArcelorMittal argues that the Department should increase CEP selling expenses to account for all Union's selling activities performed by Union in connection with DKA's resale activities in the United States. ArcelorMittal claims that Union's calculation of indirect selling expenses (ISE) incurred in Korea on its U.S. sales is based on an inaccurate methodology. Specifically, ArcelorMittal alleges that Union's indirect expenses incurred in Korea include both Union's sales to DKA and DKA's sales to unaffiliated U.S. buyers. ArcelorMittal urges the Department to make an adjustment by "allocating equal amounts to both types of sales." See ArcelorMittal's case brief dated January 18, 2008, at page 23.

Union disagrees with ArcelorMittal and claims that there is no evidence on the record to suggest that Union's ISE are directly attributable to U.S. sales. Union argues that the Department has determined in the tenth, eleventh and twelfth reviews that the ISE incurred by Union in Korea do not relate to the commercial activity performed in the United States. Moreover, Union states that the Department verified in the tenth and in the current review Union's sales relationship with

---

<sup>37</sup> During our review of a U.S. pre-selected sale, we inquired about a particular item on Union's commercial invoice issued to DKA. "Company officials explained that this particular amount confirms that Union charges DKA whenever Union extends credit to DKA, therefore, company officials explained that the credit amount is offset by the total amount invoiced to DKA because the invoiced amount is inclusive of the charge for credit." See "Verification of the Sales Response of Union Steel Manufacturing Co., Ltd. in the Antidumping Review of Certain Corrosion- Resistant Carbon Steel Flat Products (CORE) from the Republic of Korea" (Union Verification Report) dated August 31, 2007 at page 23. See also; Union Verification Exhibit (VE) S31 at page 25.

DKA. Therefore, Union claims that the Department should not deduct Union's ISE, consistent with its position in the Preliminary Results.

### **Department Position**

We disagree with ArcelorMittal. Specifically, the Department finds no evidence on the record to suggest that Union's reported ISE incurred in Korea are directly attributable to U.S. sales to unaffiliated parties. We verified that the home-market ISE reported by Union are general in nature and are not directly attributable to commercial activities in the United States and to sales between the parent company and its unaffiliated U.S. customers. See Union Verification Report at page 23. In addition, the CIT considered this same issue for the CORE 10<sup>th</sup> Review and affirmed the Department's finding, which is consistent with the instant review.

It is the Department's practice not to 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 Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Final Results of Antidumping 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.

Accordingly, we have not altered our treatment of reported ISE for U.S. sales from the Preliminary Results.

### **Comment 8: Treatment of Union's U.S. Warranty Expenses**

Petitioners argue that the Department should reallocate Union's U.S. warranty expense on a customer-specific basis for sales made during the POR. Specifically, petitioners argue that the Department should revise the WARRU field to allow more appropriate allocation.

Union states that it reported the warranty expenses on its U.S. sales in a manner consistent with all of its prior administrative reviews and the Department accepted this methodology. In all prior reviews of this antidumping order, Union asserts that it has reported an average warranty expense based on warranty claims paid during the POR, regardless of whether the merchandise for which the warranty claims were paid was sold during or before the POR. Therefore, Union concludes, the Department should use its reported warranty expenses in these final results.

### **Department Position**

We disagree with petitioners regarding the treatment of Union's U.S. warranty expense calculations. Warranties typically extend over a period of time that is longer than the POR as complete information for the reviewed sales during the POR is usually not available at the time the questionnaire response is received. Where appropriate, we collect information on model-specific warranty expenses extending over a three-year period. See the Department's questionnaire, Section C, field 44.0, which states "{i}nclude a schedule of direct and indirect warranty expenses incurred for the subject merchandise for the three most recently completed fiscal years." This information allows us to evaluate whether the expenses incurred during the

POR are reasonable. We note that Union's calculation of its warranty expenses during the three most recently completed fiscal years demonstrates that the per-unit warranty expense reported in the current review is consistent with Union's expenses during prior fiscal years. Therefore, we are continuing to use Union's methodology for reporting warranty expenses for these final results.

**Comment 9: Treatment of Certain Home Market Sales as Non-Prime Merchandise**

Union reported certain sales as prime merchandise in its home market sales listing. However, Nucor argues that these sales should be reclassified as non-prime merchandise to properly perform the margin calculation for the final results. Nucor performed an analysis of the prices and costs reported for these sales. According to Nucor, due to differences in the factors, these sales should appropriately be treated as non-prime sales. Due to the proprietary nature of the comments made with respect to this issue, we have summarized the business proprietary information within the Analysis Memorandum for Union, dated March 10, 2008.

Union did not comment on this issue.

**Department Position**

We disagree with Nucor. We have examined the record and found that Union properly reported certain sales in the home market as non-prime merchandise. With respect to Nucor's argument, we find that the differences or similarities in price alone are not a sufficient basis to re-classify merchandise from non-prime to prime. Based on the specific differences in the characteristics between prime and non-prime merchandise, as reflected in Union's records, we continue to find that it was appropriate for the Department to accept Union's sales as reported. See Union's Section B-D Questionnaire Response dated November 20, 2006, at page 4 and Exhibit B-4. During verification of Union, the Department conducted sample traces and found no evidence that calls into question the proper classification and reporting of Union's non-prime sales. Therefore, we find that a re-classification of the sales in question, based solely on petitioner's analysis of price and variable costs, is not warranted and is unsupported by record evidence. Accordingly, we have not altered our treatment of the reported sales from the Preliminary Results.

**Comment 10: Treatment of E-Business Sales in the Home Market as Overruns**

US Steel and Nucor claim that Union incorrectly reported e-business prime home market sales as overrun sales. They argue that, in the Preliminary Results, the Department made a ministerial error by failing to include such sales that were sold through Union's e-business sales channel in the home market during the POR from its analysis. In particular, US Steel and Nucor claim that Union's sales in question are not representative of its home market overrun sales and, therefore, should be included in Union's margin calculation for these final results. US Steel and Nucor argue that the Department should reject Union's classification of these sales as "overruns" because, according to US Steel and Nucor, there was not sufficient evidence presented to support Union's claim that these sales can be identified as overruns. In particular, they claim that Union failed to provide proper documentation to support its claim that such sales were overruns.



According to US Steel, “the Department found no evidence at verification that Union’s overrun sales consisted of merchandise originally produced pursuant to export orders.” See US Steel’s case brief at 1.

Finally, US Steel argues that Union presented no record evidence for distinguishing between the e-business sales classified as overruns and other e-business sales in the home market. In addition, US Steel claims that the sales in question were priced higher than other e-business prime home market sales. Accordingly, US Steel and Nucor argue that the Department should correct its programming language to include home market e-business sales classified as overruns in the comparison market program for these final results.

Union disagrees with petitioners’ comments that the Department should include Union’s sales made through the e-business sales channel during the POR in the Department’s margin calculations. In response to US Steel’s statement that “the record evidence does not demonstrate that such sales consisted of merchandise originally produced pursuant to export orders,” Union explains that its overrun sales are not marketed differently from non-overrun sales and that the methodology used to identify overruns is the same for all overrun sales regardless of channel of distribution. See US Steel’s case brief at 1. Therefore, Union questions the validity of US Steel and Nucor’s claims arguing that US Steel and Nucor accepted Union’s methodology for identifying overruns for other channels of distribution, end users and distributors which is the same for all overruns sales, regardless of the sale channel. See Union’s rebuttal briefs, at 2. Thus, Union concludes, there is no justification for the Department to deviate from its methodology applied in the Preliminary Results.

### **Department Position**

We disagree with US Steel’s and Nucor’s characterization of Union’s e-business sales as non-overruns. We have re-examined the record and found that circumstances surrounding Union’s e-business prime home market overrun sales are sufficiently similar to those of other overrun sales that we have consistently excluded as being outside the ordinary course of trade. See, e.g., Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea, Final Results of Antidumping Duty Administrative Review, 62 FR18404 (April 15, 1997). Specifically, we found that there is not sufficient evidence presented by US Steel and Nucor to cause the Department to reconsider treatment of such sales. We found that Union had adequately explained the basis for its exclusive classification as overrun e-business sales in its questionnaire responses, and confirmed by the Department during its verification of Union.

In particular, we reviewed Union’s identification process for overruns, including Union’s source documentation demonstrating the overrun identification methodology. See Exhibit B-20 of Union’s questionnaire response dated February 2, 2007, at 16. After an examination of the record, the Department has determined that Union properly classified sales in question as overruns. Moreover, based on the results of verification, where the Department examined overrun e-business sales, we determined that such sales are overruns. In particular, at verification we reviewed documentation for a preselected e-business sale and found, contrary to the petitioners’ assertion, the information was consistent with Union’s questionnaire response. See Union Verification Report.

As stated above, based on our examination of information on the record, we have determined that there is an insufficient basis for the Department to treat Union's e-business overrun sales as non-overruns. Therefore, for the final results, we have determined to continue to exclude these sales in our determination of NV.

## **Hyundai HYSCO**

### **Comment 11: Non-Prime Merchandise in the Calculation of Normal Value**

HYSCO states that the Department excluded HYSCO's sales of non-prime merchandise for the calculation of NV in the preliminary results. HYSCO contends that the Department did not exclude non-prime merchandise sold by Union, in the calculation of NV in the 12th administrative review. HYSCO argues that in order for the Department to be consistent with the 12th administrative review, non-prime merchandise should be included in the calculation of NV.

ArcelorMittal argues that non-prime sales should not be included in the calculation because they are more likely to be sold at prices below the cost of production, and would therefore be excluded. Moreover, inclusion of such sales would also distort the CEP profit calculation.

### **Department Position**

We disagree with HYSCO. In the CORE 11th Review, HYSCO argued that the Department should exclude non-prime sales from the calculation of the final results. The Department agreed, and excluded HYSCO's HM sales of non-prime merchandise for purposes of calculating the final results. See CORE 11<sup>th</sup> Review, at Comment 13.

In the CORE 12th Review, the Department continued to exclude non-prime sales from the calculation of the anti-dumping margins. See Final Results in the 04/05 Administrative Review on Corrosion-Resistant Carbon Steel Flat Products from Korea: Calculation Memorandum for Hyundai HYSCO at Appendix 1 "HYSCO's Antidumping Market Economy Program Market Analysis of Home Market or Third Country Sales at Part 4: Comparison Market Net Price Calculations." With respect to Union, the Department's margin program used in the CORE 12th Review to calculate NV did not compare prime sales with non-prime sales (in accordance with the Department's practice), despite the "inclusion" of the non-prime sales within the sales database.

HYSCO has not demonstrated that the facts of the instant review are different from those in the previous reviews such that a change from previous practice with regard to the treatment of non-prime merchandise is warranted. Thus, the Department will continue to exclude non-prime sales from the calculation of the final results.

Moreover, the fact that we agreed to include non-prime sales by Union in the CORE 12<sup>th</sup> Review does not present a contradiction. This is because even if we "include" non-prime sales in the home market calculations they do not affect the margin calculations because we run the cost test,

and any other analysis, separately for prime and non-prime sales. Thus, whether they are excluded or included has no effect on our margin calculation because U.S. sales of prime merchandise are never compared with home market sales of non-prime merchandise. As the Department previously stated with regard to this issue, separating prime merchandise from non-prime merchandise “secures a more accurate representation of a company’s selling practices.” See Stainless Steel Sheet and Strip in Coils From Mexico; Final Results of Antidumping Duty Administrative Review, 70 FR 3,677 (January 26, 2005), and accompanying Issues and Decision Memorandum at Comment 12; see also; Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 64 FR 30664 (June 8, 1999) and accompanying Issues and Decision Memorandum at Comment 6 (stating that “[The Department’s] model matching methodology in fact prevents any matches of prime to non-prime merchandise”); see also; Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Canada, 67 FR 55782 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comment 14 (where the Department’s agrees that such matching is “contrary to the spirit of the dumping law”).

#### **Comment 12: CEP Selling Expenses Incurred in Korea**

US Steel argues that a portion of the ISE incurred in Korea by HYSCO should be deducted from the U.S. price. US Steel states that according to the statute, and Department practice, the Department deducts ISE incurred in the home market from U.S. CEP when the expenses are attributable to “commercial activities in the United States that relate to the sale to an unaffiliated purchaser.” US Steel argues that in order to preclude the deduction of the ISE reported in DINDIRSU in this case, HYSCO must show that such expenses related only to sales to its U.S. affiliate Hyundai HySCO USA.

US Steel asserts that the facts in the instant review are identical to the facts in the CORE 12th Review. US Steel states that in the CORE 12th Review, the Department deducted from CEP the ISE reported in DINDIRSU that related to HYSCO’s sales to unaffiliated U.S. customers. US Steel argues that the Department should apply the same methodology regarding DINDIRSU in the instant review and deduct 37.5 percent of reported DINDIRSU from the U.S. price to calculate CEP.

HYSCO maintains that the Department's practice is to not deduct ISE incurred in the home country of manufacture in the calculation of CEP if such expenses cannot be linked to specific economic activities occurring in the United States. HYSCO asserts that the Department verified the expenses in question and confirmed that they were not specifically linked to sales activities in the United States, but instead, were general in nature, and thus should not be deducted from U.S. price.

#### **Department Position**

We agree with US Steel that pursuant to section 772(d) of the Act, the Department will make an 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. However, we disagree that the facts in the instant review are identical to those in the previous reviews. In CORE 11<sup>th</sup>

Review and CORE 12<sup>th</sup> Review, we included a portion of HYSCO's DINDIRSU ISE in our calculations from CEP because HYSCO performed most of the selling functions involved in Hyundai Pipe America's U.S. resales to unaffiliated parties. See CORE 11<sup>th</sup> Review at Comment 11. See also Final Results in the 04/05 Administrative Review on Corrosion-Resistant Carbon Steel Flat Products from Korea: Calculation Memorandum for Hyundai Hysco at Appendix 1 "HYSCO's Antidumping Market Economy Program Market Analysis of Home Market or Third Country Sales at Parts 2-A and 4-B. In this review, HYSCO's questionnaire response shows that there were no selling expenses incurred in Korea on behalf of U.S. sales to unaffiliated parties, as reported in their LOT chart. See HYSCO's response to the Department's September 13, 2006, Section A Questionnaire, dated November 14, 2006, at Exhibit 6. The Department verified the response and noted no discrepancies. See Verification of the Sales Response of Hyundai HYSCO in the Antidumping Review of Corrosion Resistant Carbon Steel Flat Products from Korea, dated August 31, 2007 (HYSCO's Verification Report). Thus, we find it inappropriate to make an adjustment to HYSCO's ISE ratio.

### **Comment 13: POR Window Period**

US Steel and Nucor state that an incorrect window period was used by the Department for calculating the antidumping duty rate in this review. US Steel and Nucor state that the Department set the beginning day and the ending day of the window period to exactly three months before the first U.S. sale and two months after the last U.S. sale. US Steel and Nucor argue that the Department should calculate the window period starting from the three months prior to the first day of the month of HYSCO's first U.S. sale until two month after the last day of the month of HYSCO's last U.S. sale.

HYSCO did not comment.

### **Department Position**

We agree that a clerical error was made in this calculation. The Department calculates the window period based on full months. See the Department's questionnaire, Section B, at page A-16, which states "{r}eport all sales of the foreign like product during the three months preceding the earliest month of U.S. sales, all months from the earliest to the latest month of U.S. sales, and the two months after the latest month of U.S. sales." As a result, we will calculate the window period from May 1, 2005, through August 30, 2006.

### **Comment 14: Short-Term Interest Rate**

ArcelorMittal states that HYSCO reported the average short-term interest rate paid by Hyundai Pipe of America, Inc (HHU) on its short-term borrowing in the United States. ArcelorMittal further states that HYSCO's public 2004/2005 Financial Statements show "Contingent liabilities for outstanding guarantees provided by the Company for the repayment of loans of related companies," including the U.S. subsidiaries HHU, and Hysco America Company, Inc. ArcelorMittal argues that the guarantees enable HHU to obtain a lower interest rate from U.S. banks than HHU would be able to obtain absent HYSCO's support, and does not reflect the normal cost of money. Thus, ArcelorMittal maintains that the Department should revise HHU's

imputed credit costs using the average U.S. prime rate published by the Federal Reserve for the POR as HHU's short-term interest rate.

HYSCO states that the reported interest rate is the correct rate to use in this review as the Department has found that the normal policy is to base the calculation of credit expenses upon the actual POR average interest rate charged for short-term credit reported in the respondents' financial records. Further, HYSCO asserts that HHU's reported interest rates are established in fairly negotiated loan agreements with HHU's bank. HYSCO also asserts that using the U.S. prime rate as HHU's short-term interest rate is incorrect. Instead, HYSCO argues that the Department's policy is to use the Federal Reserve's weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made.

### **Department Position**

We agree with HYSCO and no change is needed for these final results. It is the Department's practice to base the calculation of credit expenses upon the actual POR average interest rate charged for short-term credit reported in the respondents' financial records. See CORE 12<sup>th</sup> Review at Comment 10. The record evidence shows that the HYSCO adequately reported its short-term interest rate used for its U.S. credit expense according to HYSCO's normal business practices.

ArcelorMittal's assertion that the Department should use the average U.S. prime rate published by the Federal Reserve for the POR is incorrect. In cases where a respondent has no short-term borrowings in U.S. dollars, "we will use the Federal Reserve's weighted-average data for commercial and industrial loans maturing between one month and one year from the time the loan is made." See the Department's Policy Bulletin 98.2, Imputed Credit Expenses and Interest Rates (Imputed Credit Expenses and Interest Rates), February 23, 1998. As stated therein, the practice of using the U.S. prime rate is "troubling for two reasons: 1) the prime rate usually represents the minimum borrowing rate available in the U.S. market, rather than an average rate, and 2) it does not necessarily represent a short-term borrowing rate that a given respondent would realize in the usual course of business." Conversely, the Imputed Credit expenses and Interest Rates Policy Bulletin also states "{t}o calculate the credit expense on U.S. sales, the Department generally uses the weighted-average borrowing rate realized by a respondent on its U.S. dollar-denominated short-term borrowings." Therefore, based on the results of verification, the Department confirmed that HYSCO has legitimate short-term loans in U.S. dollars for the instant review. See HYSCO's Verification Report, at page 17.

### **Comment 15: HHU CEP Selling Expenses**

Nucor states that for the Preliminary Results the Department used sales through HHU as the basis for calculating the margin for all of HYSCO's sales in the United States. Nucor argues that sales through HAC and HHU are different, as sales through HAC are further manufactured in the United States. Nucor argues that to provide a reasonable basis for comparison, the Department should apply HAC's U.S. selling expenses in the calculation of the antidumping duty margin.

HYSCO states that the Department did not use HAC's sales data for purposes of calculating HYSCO's weighted-average dumping margin and assessment rate. Instead, it used HHU's sales and expenses for calculating the rates that will apply to all of HYSCO's U.S. sales. HYSCO argues that it is inappropriate to substitute HAC's selling expenses since the Department did not rely on HAC's further manufactured sales data. Thus, HYSCO asserts that it is not appropriate to substitute HAC's selling expenses because HAC's selling expenses do not correspond to HHU's selling prices.

### **Department Position**

We disagree with Nucor that the Department should apply HAC's U.S. selling expenses to sales made through HHU. For the purposes of this review, we have applied the special rule for merchandise with value added after importation. See 19 C.F.R. 351.402(c). For shipments through HAC that were further manufactured, we applied the rate calculated for shipments through HHU. Thus, we have used U.S. prices and adjustments for U.S. sales through HHU for the calculation of HYSCO's margin for all shipments in this review.

The Department's regulations, at 19 C.F.R. 351.401(c) states that "In calculating export price, constructed export price, and normal value (where normal value is based on price), the Secretary will use a price that is net of any price adjustment, as defined in §351.102(b), that is reasonably attributable to the subject merchandise or the foreign like product." In the instant case, we find that it is not reasonable to attribute the selling expenses of one U.S. subsidiary, i.e., HAC, to the net price adjustment for the sales of a second U.S. subsidiary, i.e., HHU.

### **Comment 16: Sales to Affiliates in the CEP Profit Calculation**

Nucor states that for HYSCO's sales to affiliates that fail the arm's-length test, the Department excluded those sales from the CEP profit calculation. Nucor argues that the Act does not provide for any sales in either market to be excluded from the calculation of total expenses or total actual profit. Nucor argues that the Act directs the department to include the revenue and expenses for all sales of the subject merchandise and the foreign like product, and that the Department has specifically stated that the statute does not authorize a cap on the amount of profit deducted from CEP. Thus, Nucor argues that the Department should include HYSCO's sales to affiliates that fail the upper limit of the arm's-length test in the calculation of CEP profit.

HYSCO states that the Department's practice is to exclude non-arm's-length sales for purposes of computing sales revenues and expenses for CEP profit. HYSCO asserts that the methodology proposed by Nucor is attempting to manipulate the margin calculation by inflating the CEP profit margin.

### **Department Position**

We agree with HYSCO. The Department's long-standing practice is to exclude affiliated party price comparisons from our analysis where we find that the prices are not made at arm's length because these transactions are not indicative of market value. See Import Administration

Policy Bulletin, Number 97.1, Calculation of Profit for Constructed Export Price Transactions (CEP Profit Policy Bulletin), September 4, 1997, at footnote 4. According to section 772(f) of the Act, the Department uses the “total actual profit” in calculating the CEP profit deduction. Since the calculation of both total actual profit and total expenses includes sales (whether above or below -cost) that are made at a profit or at a loss, the calculation must include below-cost sales in order to reflect actual profit. See 19 C.F.R. § 351.402 (d)(1); see also; 62 FR 27296, 27354 (May 19, 1997) (“there is no provision in the statute for disregarding sales below cost in this context, and doing so would conflict with the statutory requirement to use “actual profit”). However, sales to affiliates made at non-arm’s-length prices, as determined on a case-by-case basis, are excluded from the CEP profit calculation because they do not reflect actual market prices and, thus, do not represent actual profit (or loss).

Non-arm’s-length sales are not a reliable indicator of “actual profit,” just as they are not treated as a reliable indicator of NV or input costs. See section 773(a)(5) of the Act, 19 U.S.C. § 1677b(a)(5); section 773(f) of the Act, 19 U.S.C. § 1677b(f). Inclusion of non-arm’s-length sales would inappropriately distort the calculation of total actual profit. Therefore, we include below-cost sales but exclude non-arm’s-length sales for purposes of computing sales revenues and expenses for CEP profit.

#### **Comment 17: Inclusion of Scrap Revenue in the Cost of Goods Sold**

US Steel claims that while HYSCO offset reported COM for the value of scrap generated, HYSCO did not reduce the cost of goods sold (COGS) for the value of scrap generated. The COGS is used as the denominator in the G&A and Financial Expense ratios.

HYSCO claims that the record demonstrates that the reported COGS includes an offset for scrap generated because it is not identified as a reconciling item between COM and COGS.

#### **Department Position**

We disagree with US Steel that the denominator used in the G&A and financial expense ratios are not reflective of COGS, net of the value of scrap generated. We agree with HYSCO that the COM included a credit for the scrap generated and that this net COM is reflected in the COGS appearing on the financial statements. If the scrap credit were excluded from COGS as alleged by petitioner then this amount would have appeared as a reconciling item between the COM and the COGS. However, the only difference between the COM and the COGS appearing in the reconciliation was the change in finished goods inventory. See the cost reconciliation in cost Verification Exhibit 12 for the reconciliation of the COGS to the COM. Since the scrap offset appears in both the COM and as a component of the reported COGS, no adjustment is necessary for these final results.

**V. Recommendation**

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is 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)