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MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

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

SUBJECT: Antidumping Duty Administrative Review of Certain Welded
Stainless Steel Pipes from the Republic of Korea: Issues and
Decision Memorandum for the Final Results

SUMMARY

We have analyzed the comments of the interested parties in the 2006-2007 antidumping duty administrative review of certain welded stainless steel pipes (WSSP) from the Republic of Korea. As a result, we have made changes to the margin calculation for SeAH Steel Corporation (SeAH or Respondent). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

BACKGROUND

On December 24, 2008, the Department of Commerce (the Department) published the preliminary results of the antidumping duty review of certain welded stainless steel pipes from the Republic of Korea. See Certain Welded Stainless Steel Pipes from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review, 73 FR 79050 (December 24, 2008) (Preliminary Results). The product covered by this review is WSSP. The period of review (POR) is December 1, 2006, through November 30, 2007.

In February and March 2009, the Department conducted sales and cost verifications of SeAH in Seoul, Korea. In April 2009, the Department conducted a sales verification of SeAH's U.S. affiliate, Pusan Pipe America (PPA).

On April 29, 2009, the Department issued a preliminary decision to use an alternative cost calculation methodology. See Memorandum from Gina Lee, Senior Accountant to Neal M. Halper, Director Office of Accounting, Proposed Adjustments to the Cost of Production and Constructed Value Information – SeAH Steel Corporation dated April 29, 2009 (Post-preliminary Cost Decision).

We invited parties to comment on the Preliminary Results, post-preliminary verification reports and cost decision. We received timely filed case briefs from Bristol Metals LLC (one of the petitioners in the original investigation, and hereinafter referred to as “petitioner”) and SeAH. We also received timely filed rebuttal briefs from both parties. Based on our analysis of the comments received, the weighted average margin for SeAH has changed from that presented in the Preliminary Results and the Post-preliminary Cost Decision.

LIST OF THE ISSUES

Below is the complete list of issues in this investigation for which we received comments from interested parties:

- Comment 1: Whether to Apply An Alternative Cost-Averaging Methodology
 - a. Legal Framework and Case Precedent
 - b. Significance of Cost Changes
 - c. Linkage Between Costs and Sales Prices
 - d. The Elimination of the Window Period for Price-to-Price Comparisons
 - e. The Cost Recovery Test
- Comment 2: Application of the Major Input Rule
- Comment 3: The Treatment of Gains Associated with Foreign Currency Swaps
- Comment 4: The Treatment of Interest Income Earned on Retirement and Severance Deposits
- Comment 5: Whether the Department Should Refrain From Zeroing Negative Margins
- Comment 6: Calculation Issues

DISCUSSION OF THE ISSUES

Arguments of Parties:

Comment 1: Whether to Apply An Alternative Cost-Averaging Methodology

a. Legal Framework and Case Precedent

SeAH argues that the Department’s decision to use quarterly costs is unsupported by record evidence and not in accordance with law. Citing Antidumping Methodologies for Proceedings that Involve Significant Cost Changes Throughout the Period of Investigation (POI)/Period of Review (POR) that May Require Using Shorter Cost Averaging Periods; Request for Comment, 73 FR 26,364 (May 9, 2008) (“Quarterly Request for Comment”), the respondent claims that the Department’s well-established practice has been to use an annual weighted average cost of production (COP), deviating from this practice only under limited circumstances. SeAH asserts that, in those cases where the Department has departed from its established practice, it has always required both a significant increase in costs throughout the POR and evidence that these increased costs are passed on to the customer in the form of higher prices. The respondent claims that there are no grounds for inferring that quarterly average costs are more accurate than are annual average costs for purposes of the sales-below-cost test if there is no direct linkage between changes in costs and changes in selling prices during the same quarter. SeAH argues

that this is the first case in which record evidence did not show a direct linkage between increased raw material costs and increased sales prices. SeAH maintains that the fact that prices and costs generally trend in the same direction does not meet the Department's "direct linkage" test, nor does it show an accurate link between cost and selling prices within the same quarter. In fact, asserts respondent, it provided evidence in the course of this review demonstrating that it was not able to accurately link quarterly sales prices with raw material coil costs.

SeAH contends that, at the beginning of the instant administrative review, the Department's established practice was to use quarterly costs upon the request of an interested party, provided the interested party could demonstrate significant cost changes that could be linked to sales prices. However, claims SeAH, the Department abused its discretion by changing its established policy without explanation, ignored previous case precedent, and used a quarterly cost methodology without evidence of a direct or accurate linkage between raw material costs and sales prices. To support its assertion that the Department abused its discretion in this case and failed to offer an explanation for the change in course, the respondent cites INS v. Yang, 519 U.S. 26,32 (1996) (where the court found that "an irrational departure" from a general policy that has been announced and followed "could constitute action that must be overturned as . . . , 'an abuse of discretion',") and Ranchers-Cattlemen Action Legal Found. v. United States, 74 F. Supp. 2d 1353, 1374 (CIT 1999). SeAH also refers to a more recent decision, Nippon Steel Corp. v. U.S. Int'l Trade Comm., 494 F.3d 1371, 1378 n. 5 (Fed. Cir 2007), where the Federal Circuit held that an agency changing its course "must adequately explain the reason for a reversal of policy."

Furthermore, SeAH accuses the Department of ignoring public comments it received in response to the Quarterly Request for Comment seeking input on the issue of quarterly costs and argues that the Department has instead engaged in an ad hoc analysis that represents a departure from its existing policy. Citing NSK Ltd. v. United States, 510 F.3d 1375, 1384-85 (Fed. Cir. 2007) (where the Court rejected respondents' challenge to the Department's proposed change to its model-matching methodology on the grounds that the Department had not yet implemented the change and would only do so after full notice and comment on the proposed change), the respondent asserts that this departure constitutes an abuse of discretion and that it should apply its existing practice rather than apply this ad hoc policy to SeAH.

Petitioner argues that the Department's use of an alternative cost averaging methodology based on quarterly costs is appropriate due to significant changes in the cost of manufacture, and the strong correlation of changes in costs to changes in prices. As to SeAH's contention that that the Department has abruptly changed course and has abused its discretion in using quarterly costs, petitioner points out that this is the third case in the previous four months involving stainless steel products where a quarterly cost methodology has been applied. Petitioner notes that in the two other recent cases involving quarterly costs, Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review, 74 FR 6365 (Feb. 9, 2009) and accompanying Issues and Decision Memorandum at Comment 5 ("SSSS from Mexico"), and Stainless Steel Plate in Coils From Belgium: Final Result of Antidumping Duty Administrative Review, 73 FR 75,398 (Dec. 11, 2008) and accompanying Issues and Decision Memorandum at Comment 4 ("SSPC from Belgium"), the Department determined that a massive volatility in stainless steel input costs, especially for alloys such as nickel, caused a significant

change in the cost of manufacture (COM) during the POR. Petitioner asserts that it would have been an abrupt change had the Department not addressed the volatility in stainless steel coil input costs in this case. Furthermore, petitioner argues that the 25 percent threshold applied by the Department for using shorter cost averaging periods is in line with its long-standing and established practice when prices are fluctuating due to inflation, exchange rates, or various other factors.

Department's Position:

For the reasons articulated below, we disagree with SeAH that the use of quarterly average costs in this case is neither supported by record evidence nor in accordance with law. As such, consistent with the position outlined in our Post-preliminary Cost Decision, we have continued to use an alternative cost-averaging method in calculating COP and CV.

The Department has a consistent and predictable methodology of calculating COP on an annual-average basis over the entire POR. As such, the Department's standard questionnaire requests that respondents report their costs on an annual-average basis over the entire POR. See, e.g., Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review, 65 FR 77852 (Dec. 13, 2000), and accompanying Issues and Decision Memorandum (Pasta from Italy) at Comment 18; Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada, 71 FR 3822 (Jan. 24, 2006), and accompanying Issues and Decision Memorandum (Wire Rod from Canada) at Comment 5 (where the Department explains its practice of computing a single weighted average cost for the entire period).

The calculation of COP is relevant in determining which sales of merchandise in the foreign market will be used to compare to sales in, or to, the U.S. market to determine dumping margins. Specifically, section 771(34) of the Act defines dumping as the sale or likely sale of goods at less than NV. Dumping occurs when imported merchandise is sold in, or for export to, the United States at less than the NV of the merchandise. Section 771(35)(A) of the Act defines the dumping margin as the amount by which the NV exceeds the export price (EP) or constructed export price (CEP) of the subject merchandise. In calculating NV, the Department will consider only those sales in the comparison market that are in the "ordinary course of trade." Generally, sales are in the "ordinary course of trade" if made under conditions and practices that, for a reasonable period of time prior to the date of sale of the subject merchandise, have been normal for sales of the foreign like product. See section 771(15) of the Act. Specifically, sales disregarded under section 773(b)(1) of the Act are defined by section 771(15)(A) of the Act as outside the ordinary course of trade. Section 773(b)(1) of the Act describes how sales may be disregarded if they have been made at prices which represent less than the COP of that product. Section 773(b)(3) of the Act defines the COP as:

an amount equal to the sum of –

(A) the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product, during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business;

(B) an amount for selling, general, and administrative expenses based on actual data pertaining to production and sales of the foreign like product by the exporter in question; and

(C) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the foreign like product in condition packed ready for shipment.

Section 773(b)(1) of the Act states that if no sales made in the “ordinary course of trade” remain, “the normal value shall be based on the constructed value of the merchandise.” CV is defined at section 773(e) of the Act as the cost of materials, plus fabrication expenses, selling, general and administrative expenses, profit and packing expenses.

As can be seen above, the Act does not dictate the method of calculating COP during the POR, nor does it provide a definition for the term “period” in calculating COP and CV. Thus, the Department adopted a consistent and predictable approach in using annual-average costs over the entire POR - the result being a normalized, average production cost to be compared to sales prices covering the same extended period of time. See Color Television Receivers From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 55 FR 26225, 26228 (June 27, 1990) (where the Department stated that the use of quarterly data would cause aberrations due to short-term cost fluctuations); see also Gray Portland Cement and Clinker From Mexico; Final Results of Antidumping Duty Administrative Review, 58 FR 47253, 47257 (September 8, 1993) (where the Department explained that the annual period used for calculating costs accounts for any seasonal fluctuation which may occur as it accounts for a full operation cycle). As the Department explained in those cases, the result of this approach smooths out normal cost fluctuations that occur during an accounting period. Moreover, we prefer to calculate costs on an annual weighted average basis in an antidumping context because, as costs are calculated over shorter periods, it directly limits the periods of time over which sale prices can reasonably be matched, thus limiting price-to-price comparisons contrary to Department preference. Before moving away from the normal method of calculating an annual average cost, we find that a change in production costs during the POR would need to be significant. The Department has articulated in several past proceedings that the use of an alternative cost averaging period may be appropriate in situations where a reliance on our normal annual weighted average cost method would be distortive due to significant cost changes. These situations include high inflation and raw material cost volatility. See e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results of Antidumping Duty Administrative Review, 66 FR 56274 (November 7, 2001); Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip From Netherlands; 65 FR 742 (January 6, 2000) (Brass Sheet & Strip Netherlands).

Since the date of the initiation of this case, there have been several cases in which we considered whether to deviate from our normal annual average cost methodology due to significant changes in the COM throughout the cost reporting period. See Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and Determination To

Revoke in Part, 73 FR 66218 (November 7, 2008) (“Rebar from Turkey - 2”) and accompanying Issues and Decisions Memorandum at Comment 2; SSPC from Belgium; SSSS from Mexico. As this issue has continued to arise in more and more cases, we recognize the importance of having a consistent and predictable approach to analyzing the issue and determining when to deviate from our normal annual average cost methodology. Accordingly, the Department has made a concerted effort to develop a more predictable methodology for determining when the use of shorter cost averaging periods is more appropriate than the established practice of using annual cost averages, due to the occurrence of significant cost changes throughout the period of investigation (POI)/POR. As part of this effort, on May 9, 2008, the Department published a Federal Register notice to solicit comment on this issue. The Department stated in the Federal Register notice that we continue to regard our practice of using annual cost averages in proceedings as generally the most appropriate methodology, and that we intend to deviate from this practice only under limited circumstances. See Quarterly Request for Comment, 73 FR 26366. We acknowledged that in certain cases, possible distortions may result when our normal annual average cost method is used during a period of significant cost changes. Conversely, relying on shorter cost reporting periods can result in an average cost that does not relate to the sales that occurred during the same shorter period. In light of these competing considerations, we asked outside parties for comments and suggestions on the factors to consider, tests to apply, and thresholds to apply when deciding whether to rely on cost averaging periods of less than one year. We received comments from nine parties on June 23, 2008.

The Department conducted a careful review of the comments received in response to the Quarterly Request for Comment. We also considered interested party comments on the same issue in Rebar from Turkey – 2, SSSS from Mexico and SSPC from Belgium, and reaffirmed in the final results of these cases that the two most important factors in considering whether to deviate from our normal average cost methodology are 1) whether the cost changes throughout the POI or POR were significant, and 2) whether sales during the shorter cost averaging period could be accurately linked with the COP during the same averaging period. We continue to believe these two factors are the most important in determining whether to deviate from our normal annual average cost methodology.

We disagree with SeAH’s arguments that the Department’s decision to use a shorter cost averaging period in this case is not in accordance with law or past case precedents and that the Department has abruptly changed its established policy without explanation. As explained further below we have applied the same standards to this case as in Rebar from Turkey - 2, SSSS from Mexico, and SSPC from Belgium. The only difference between our past practice and the approach taken in these recent decisions is that in these decisions we more clearly defined the significance and linkage thresholds. With regard to SeAH’s argument that we should only consider using a shorter cost averaging period if requested by an interested party, we disagree. Moving away from the normal annual average costs may increase or decrease the dumping margin, which raises concerns that a respondent party will only request it when the methodology results in a dumping margin that benefits that party. We believe that a predictable and consistent approach to when to resort to the alternative cost calculation methodology will prevent the self-selective use of it by interested parties. We disagree with SeAH’s claim that the Department has ignored public comment and abruptly changed policy with regard to this issue. It is clear that the Department has notified the public of the issue through publication of a Federal Register notice,

and discussed the issue, at length, in three determinations (i.e., Rebar from Turkey – 2, SSPC from Belgium, and SSSS from Mexico) prior to the briefs being due in this case. SeAH was also notified that the Department would be considering this issue for the final results through the Memorandum from Gina K. Lee to Neal M. Halper, Cost of Production and Constructed Value Calculation for the Preliminary Results – SeAH Steel Corporation, December 17, 2008 (“Preliminary Cost Memo”). As a result, we affirm that our finding in this instance is supported by evidence on the record and is in accordance with law.

b. Significance of Cost Changes

SeAH argues that the analysis employed by the Department to determine the magnitude of cost changes (i.e., comparing the highest and lowest quarterly COMs of the five largest groups of products with the same characteristics (“CONNUMs” sold in the U.S. and home market) is flawed and does not support the conclusion that COM changed significantly over the POR as a whole. The respondent asserts that, unlike in SSSS from Mexico, there was not a steady and constant increase in costs during the period. SeAH points out that its reported COM did not increase 25 percent during the entire POR, but rather increased above 25 percent only when compared to the quarter with the lowest COM. SeAH asserts that the 25 percent significance threshold is met only in the third quarter, when the cost of raw material inputs increased. However, SeAH continues, this threshold is not met when comparing the first and second, or even the first and fourth quarters. The respondent contends that the changes in its COM increased between the first and third quarters and then declined in the fourth quarter. This pattern, concludes SeAH, does not constitute the type of significant and consistent increase that justifies a departure from the use of annual average costs. SeAH additionally argues that the Department has determined in prior cases that, to be considered “significant,” cost changes must not only satisfy the 25 percent threshold, but must also represent a consistent trend affecting the POR as a whole. However, SeAH claims that in this case the increases in its COM were neither significant nor consistent throughout the entire POR.

SeAH asserts that, in determining what constitutes “significant” change, the Department has consistently conducted an analysis between the annual average cost method and the shorter cost period requested by the respondent to see if the preferred annual average cost period is distortive. The respondent refers to the Quarterly Request for Comment, where the Department explained that, in recent proceedings, it analyzed the significance of cost changes by comparing the difference between the annual average COM and the shorter period average COM for each of the five most frequently sold CONNUMs in the comparison market. However, SeAH argues that the Department’s analysis in the instant review to determine significance contradicts prior practice because it measures cost changes by comparing the differences in individual quarterly costs between different quarters rather than the differences between quarterly costs and annual average costs. The respondent concludes that merely looking at whether a 25 percent increase in COM occurred between any two quarters of the POR, without considering the percentage of the total POR affected or whether the cost increases represented a short-term fluctuation or a persistent trend, is flawed. SeAH asserts that the application of a “bright-line” 25 percent test in this case is not appropriate because it leads to significant distortions in its dumping margin. To support this contention, SeAH notes that the dumping margin in the first quarter of the POR increased

nearly fourfold as a result of employing a quarterly cost methodology, despite the fact that more home market sales passed the cost test.

Petitioner emphasizes that, in SSSS from Mexico and SSPC from Belgium, the Department analyzed whether costs changed significantly during the POR by calculating the cost difference between the lowest quarterly COM and the highest quarterly COM for the five most frequently sold CONNUMs in both markets. Petitioner claims that, in the present case, the information provided by SeAH for each of the five highest-selling control numbers in the U.S. and the home market reveals massive and precipitous changes in costs within the POR that justify the use of quarterly costs.

Department's Position:

We find that the administration of antidumping duty cases is better served through a reasonable numeric threshold for determining what constitutes a significant cost change. A numeric threshold for significant change avoids confusion because it is transparent, can be applied consistently, and parties are better served when a predictable and transparent practice is in place. By establishing a standard practice, we ensure a more equitable and consistent application of the alternative cost calculation methodology. In SSSS from Mexico, SSPC from Belgium, and Rebar from Turkey – 2, we established a threshold of 25 percent change in cost for significance. In developing the 25 percent threshold for when the change in production costs is significant enough for us to consider deviating from our normal annual average cost methodology, we looked to our practice for high inflationary economies for guidance. In high inflation cases, the Department has established a threshold of 25 percent annual inflation, which is used to determine when the Department deviates from its normal methodology of calculating an annual weighted average cost. The Department's threshold in high inflation cases is based upon generally accepted accounting standards set forth by the International Financial Reporting Standards (IFRS). International Accounting Standard (IAS) 29 establishes when it is appropriate for an entity to depart from IFRS accounting standards and adopt an alternative method, because the existing method (i.e. historical costing) will result in distortions. Under IAS 29, an economy is considered inflationary if the cumulative inflation rate over three years approaches or exceeds 100 percent. We note that approaching or exceeding 100 percent inflation over a three year period equates to approximately a 25 percent annual inflation rate. If the annualized rate of inflation exceeds 25 percent, the Department will determine that the associated country experienced high inflation during the POI or POR and will resort to an alternative cost averaging methodology in order to avoid the distortive effect of inflation on our comparison of costs and prices.¹

¹ See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from Indonesia, 64 FR 73164, 73169-73171 (December 29, 1999); Silicomanganese From Brazil: Final Results of Antidumping Duty Administrative Review, 69 FR 13813 (March 24, 2004), and accompanying Issues and Decision Memorandum at Comment 4 ("Silicomanganese from Brazil"); Certain Pasta From Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review, 69 FR 47876, 47878 (August 6, 2004), unchanged in final results, Certain Pasta from Turkey: Final Results of Antidumping Duty Administrative Review, 70 FR 6834 (February 9, 2005); Certain Steel Concrete Reinforcing Bar from Turkey: Final Results of Antidumping Duty Administrative Review and Determination to Revoke in Part, 73 FR 66218, and accompanying Issues and Decision Memorandum at Comment 2; and Light-Walled Rectangular Pipe and Tube from

The distortive impact of high inflation on our normal annual weighted average cost calculation methodology is similar to that resulting from a significant change in costs. The primary difference is that in high inflationary economies, many COM cost components typically rise from month to month whereas in non-high inflationary economies, significant cost changes are usually driven by one or two main inputs. For high inflation situations, we expect production costs and prices for all products generally to increase significantly. Thus, we are able to look to a published index like the producer price index (PPI) or wholesale price index (WPI), specific to a country, in quantifying the degree of currency devaluation over a given period, and can make a threshold decision for the company as a whole. When the significant cost change is driven by one or two main inputs, the extent to which production costs change may vary widely from product to product because each product typically requires different quantities of a given input. As such, the cost change must be analyzed on a product specific basis. Furthermore, in high inflationary situations, the PPI or the WPI typically trend upward. Thus, calculating the percent increase in the index from the beginning to the end of the POI/POR provides a good measure of the magnitude of change during the period. In the situation where significant cost change is driven by one or two main inputs, the cost of the inputs driving the change may be increasing, decreasing, or trending in both directions throughout the period. Even though the change in costs from the beginning to the end of the POI/POR may not be significant, the change within the period may be significant.

Recognizing the similarities of the impact of high inflation and significant cost changes due to one or two main inputs on the cost-based AD computations, and taking into account the above noted differences between the two situations, in SSPC from Belgium, Rebar from Turkey - 2, and SSSS from Mexico, we developed a method for measuring the cost change and a significance threshold. In determining whether the change in production costs is significant, we analyzed, on a product-specific basis, the extent to which the total COM changed during the POR. We did this by analyzing, on a CONNUM-specific basis, the percentage difference between the low quarterly average COM and the high quarterly average COM, as a percentage of the low quarterly average COM. If the percentage difference exceeds 25 percent, we will normally consider the significant cost change threshold to be met. In performing this analysis, the use of quarterly average COMs is preferred over monthly average COMs because we want to ensure the change in cost is sustained for a reasonable time rather than for only an isolated month or two. We believe that this significance threshold is high enough to ensure that we deviate from our annual average cost methodology only in circumstances where changing input costs are clearly affecting the appropriateness of our annual average cost calculation.

Subsequent to the preliminary results in this case, we solicited quarterly cost information from SeAH in order to determine the magnitude of cost changes during the POR and whether it would be appropriate to use shorter cost averaging periods for the final results.² Consistent with our approach in SSPC from Belgium, Rebar from Turkey - 2, and SSSS from Mexico, we analyzed the difference in COM for the five most frequently sold CONNUMs in the U.S. and home

Turkey; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 69 FR 19390 (April 13, 2004), unchanged in final results, 69 FR 53675 (September 2, 2004).

² The Department requested that SeAH provide quarterly average direct material costs, while continuing to report conversion costs (i.e., labor and overhead) on an annual average basis.

markets. Based on this analysis, we found that the difference between the low quarterly average COM and the high quarterly average COM exceeded the 25 percent threshold. See Post-preliminary Cost Decision at page 2. SeAH asserts that the Department engaged in a flawed analysis to determine the magnitude of cost changes throughout the POR. The respondent specifically disputes a finding of significance based solely on whether a 25 percent increase occurred between any two quarters of the POR. However, it is the Department's view that using a comparison of quarterly average costs as the basis for a significance finding ensures, as noted above, that fluctuations in costs are sustained for a reasonable period of time. A change in costs that exceeds 25 percent, even if only between two quarters of the POR, is significant enough to create distortion when using a single annual average cost methodology. A single annual average cost methodology still results in costs being too high in the low cost quarter and too low in the high cost quarter. The analysis the Department conducted in this case does reflect the change in costs over the period and reflects trends during the POR because it measures how much costs have changed between the high and low cost quarter. This approach does not, as respondent alleges, represent a departure from past practice. As noted previously, in SSPC from Belgium, SSSS from Mexico, and Rebar from Turkey - 2, the Department similarly based a finding of significance on the percentage change between the high quarterly and low quarterly COM. We acknowledge, as SeAH points out, that the Department, in Rebar from Turkey - 1, analyzed cost changes by comparing the quarterly averages to this annual average in order to establish whether such changes were significant. However, as explained above, we have since adopted a high-to-low quarter approach that more closely follows our high inflation methodology and the related 25 percent threshold.

Furthermore, while SeAH is correct that cost changes may have trended consistently throughout the POR in previous cases (as in Rebar from Turkey - 2), we do not consider this to be a critical factor in our analysis. We note that, while costs are changing significantly throughout the year based on our quarterly average analysis, the distortive impact of using a single annual average cost will be the same regardless of whether costs are trending upward, trending downward, or moving in both directions.

c. Linkage Between Costs and Sales Prices

SeAH asserts that the Department ignored its arguments that it could not satisfy the second part of the Department's standard (i.e., that the sales price during the shorter averaging periods can be linked with the COP during the same periods) and instead changed its practice of requiring an accurate link between COM and price in favor of an undefined "reasonable correlation" that costs and prices generally trend in the same direction. Absent this link, argues SeAH, there is no basis for using quarterly average costs. The respondent refers to Rebar from Turkey - 1, where the Department concluded that "Without a direct link between the input raw material costs and the directly related sales transactions . . . here is no certainty that . . . sales occurring in a given quarter are directly the result of the recorded raw material cost for the same quarter" and that "deviating from our normal practice in an attempt to make a more accurate comparison of sales prices and cost may well result in a comparison that is less accurate due to the many factors that influence a fair comparison of production and sales."

SeAH argues that the Department ignored evidence on the record showing a lack of linkage between raw material costs and sales prices by switching from the requirement for an accurate link to a “reasonable correlation.” SeAH alleges that the Department failed to explain in the Post-preliminary Cost Decision how its justification for finding a reasonable correlation between changes in costs and changes in sales prices (i.e., that prices and costs were generally trending in a consistent manner) satisfies the requirement articulated in Rebar from Turkey - 1 that sales in a given quarter are the result of the recorded raw material costs in that same quarter. SeAH asserts that, without a clear link between changes in quarterly costs to changes in the prices in that quarter, there are no grounds for assuming that quarterly cost averaging more accurately matches costs and prices than would, six-month periods or three month moving average cost periods, for example. SeAH contends that this “trending” standard is meaningless because costs and prices will generally trend in the same direction in every case, and that a test allowing the Department to find a reasonable correlation between costs and sales prices based on the fact that they are trending in the same direction accords the Department broad discretion to decide when to use quarterly average costs and gives respondents no guidance regarding when a quarterly analysis will be used. The respondent asserts that the Department’s reasonable correlation standard adopted for this review is at odds with the direct linkage requirement that was articulated in a recent remand determination involving Rebar from Turkey - 1. See Final Results of Redetermination pursuant to Court Remand (March 3, 2008), Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. v. United States, No. 05-00613, slip op. 07-167 (CIT November 2007), where the Department determined that a more accurate sales-below-cost test results only if the sales during the shorter averaging period can be directly linked with the COP during that period. SeAH further argues that the Department has failed to explain how this new “relaxed” standard for finding linkage considers factors such as erratic production levels, monthly cost accruals, and year-end adjustments and their potential impact on the timing relationship between sales transactions and costs.

SeAH disputes the Department’s finding in its Post-preliminary Cost Decision of a reasonable correlation between sales and prices during the POR based in part on SeAH’s relatively short inventory turnover period. Respondent asserts that, although the length of inventory turnover may indicate how quickly raw material cost increases are reflected in the cost of finished goods, it says nothing about how quickly changes in cost of production are passed through to the customer in the form of higher prices.

SeAH argues that, while the petitioner attempts to support its linkage argument (see the summary of petitioner’s comments below) by referring to the Department’s preliminary analysis of the change in POSCO’s COP of stainless steel substrate and the change in its sales prices of stainless coil to SeAH, the Department’s analysis of POSCO’s data was conducted solely for purposes of the major input rule to determine whether it was appropriate to use quarterly comparisons of COP and transfer price.³ The respondent further disputes the petitioner’s reliance on POSCO’s pricing practices as evidence that SeAH passes through increased raw material costs to its customers. SeAH maintains that any mechanisms POSCO may have in place for passing raw

³ As discussed in Comment 2 below, SeAH purchased hot-rolled stainless steel coils used to manufacture subject merchandise from its home market affiliate, POSCO.

material cost increases to its customers have nothing to do with whether or not SeAH is able to pass along cost increases to its customers in the form of higher sales prices.

Petitioner asserts that the significant change in raw material (i.e., hot-rolled stainless steel coil) costs during the POR is positively correlated with a change in sales prices. Petitioner contends that the change in raw material input costs and sales prices during the POR are similar in magnitude, and cite the Preliminary Cost Memo, where the Department concluded that the changes between the high quarterly and low quarterly COP of SeAH's affiliated supplier of stainless coils was significant, and that the average market prices showed a similar magnitude of change. Petitioner also refers to SSSS from Mexico, where the Department stated that the definition of linkage did not require direct traceability between specific sales and their specific cost of production, but rather a reasonable correlation between underlying costs and final sales prices.

Petitioner disputes SeAH's assertion that SeAH could not demonstrate a link between the increases to raw material costs and the prices it charges customers. Petitioner contends that SeAH selectively chose a few home market CONNUMs for which there was no positive correlation to support its claim that cost and price could not be linked. However, petitioner asserts, the cost and price data submitted by the respondent for the five most frequently sold home market and U.S. CONNUMs shows a strong and positive correlation between costs and the final sales prices of the subject merchandise. Petitioner claims that this trend is consistent with what has been reported in other cases, such as SSSS from Mexico and SSPC from Belgium, where the price volatility of expensive alloys such as nickel are quickly passed through to the customer in the form of surcharges or price adjustments.

With regard to the issue of inventory turnover periods, petitioner asserts that SeAH's relatively quick inventory turnover allows SeAH to revise subject merchandise prices in response to highly volatile material costs and allows current costs to be quickly reflected in its COM.

Department's Position:

Consistent with past precedent, if the Department finds changes in costs to be significant in a given investigation or administrative review, the Department subsequently evaluates whether there is evidence of linkage between the cost changes and the sales prices during the shorter cost periods within the POI or POR. We disagree with SeAH's assertion that the Department has changed its practice of requiring an accurate link between COM and price in favor of an undefined "reasonable correlation" that costs and price generally trend in the same direction. In two recent determinations, SSPC from Belgium and SSSS from Mexico, the Department explained that our definition of linkage does not require direct traceability between specific sales and their specific production costs, but rather relies on whether there are elements which would indicate a reasonably positive correlation between the underlying costs and the final sales prices charged by a company. The Department acknowledges that being able to reasonably link sales prices and costs during a shorter cost period is important in deciding whether to depart from our normal annual average cost methodology. We believe that requiring too strict a standard for linkage, however, would unreasonably preclude this remedy for commodity-type products where

there is no pricing mechanism in place and it may be very difficult to precisely link production costs to specific sales.

A review of past precedent reveals that the Department has approached its consideration of linkage between sales and costs in various ways and to varying levels of precision. In Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8911, 8925-8926 (February 23, 1998) (“SRAMS”), we did not require any linkage between price and costs but rather agreed with the parties that because both price and cost consistently trended downward due to expected technological advancements, we would use quarterly data. In another case⁴, we examined the correlation between sales prices and cost during the shorter cost averaging periods and found that the information on the record revealed that the sales prices for the subject merchandise correspondingly and consistently declined during the POR. We found that the sales prices and costs were linked because the respondent purchased the input raw materials on the customer’s behalf and then billed the customer for the cost of the metals, the terms of which were set forth on the finished products’ sales invoice along with the associated processing costs as a separate item describing this factual situation as a pass-through. Thus, the Department has accepted varying degrees of correlation. In Brass Sheet and Strip, we found a direct link in that the price setting and materials acquisition process formed a pass-through mechanism. In SRAMS, we did not perform any direct analysis, but we found a consistent decline in both price and cost. In recent cases, such as SSSS from Mexico and SSPC from Belgium, we found reasonable linkage due to the fact that the companies operated using an alloy surcharge mechanism. That is, they made sales with a provision that allowed them to pass on any increase in the cost of their main inputs to their customers.

In this case, we evaluated whether the sales prices during the shorter cost averaging period were reasonably correlated with the COP during the same period. As noted, our definition of linkage does not require direct traceability between specific sales and their specific production costs. These correlative elements may be measured in a number of ways depending on the associated industry, the overall production process, inventory tracking systems, company-specific sales data, inventory turnover ratios, price and cost trend analysis, and pricing mechanisms used in the normal course of business (e.g., surcharges, raw material pass through devices). SeAH, unlike respondents in SSPC from Belgium and SSSS from Mexico, does not have an alloy surcharge mechanism in place. Therefore, we looked to other correlative elements to determine whether sales and costs were reasonably linked.

To facilitate our analysis, we asked SeAH to provide a comparison, by quarter, of the weighted average sales prices for the five most frequently sold CONNUMs in the home and U.S. markets and the weighted average direct material (i.e., stainless steel coil) costs. We also asked SeAH to compute its average overall POR inventory turnover for raw material inputs and for finished goods. See SeAH’s January 26, 2009 questionnaire response at Exhibit 45. The information provided by SeAH reveals that sales and costs for each of the sample CONNUMs requested generally trended in the same direction, and that the inventory turnover period for raw materials and finished goods was relatively short.

⁴ Brass Sheet & Strip Netherlands.

As noted previously, SeAH asserts that, although the inventory turnover period may indicate how quickly raw material cost increases are reflected in the cost of finished goods, it says nothing about how quickly changes in cost of production are reflected in higher prices. We disagree with SeAH's assertion. The analysis at Attachment 2 of our Post-preliminary Cost Decision shows increasing prices for the selected CONNUMs at the same time of the observed cost increases. This demonstrates that prices were increasing at the same time that costs were increasing, and therefore a reasonable correlation can be found between rising COM and sales prices. The average raw material inventory turnover period further supports our conclusion that SeAH's COM and sales prices are reasonably correlated by the fact that SeAH purchases its input relatively frequently and uses it in the production of merchandise under consideration relatively quickly, leading to the reasonable assumption that, on average, SeAH buys its raw materials and uses them in production within a three-month period (*i.e.*, quarter). The finished goods inventory turnover ratio tells us that SeAH sells its production relatively quickly; therefore, costs in the quarter are reasonably representative of the sales that occurred within the same quarter. We agree with petitioner that SeAH's quick inventory turnover allows SeAH to revise its prices in response to the highly volatile material costs and allows current costs to be reflected quickly in its COM. We also disagree with SeAH's assertion that its data show no correlation between quarterly sales prices and costs. SeAH's selective choice of data limits its usefulness in this analysis, whereas the trend analysis relied on by the Department represents multiple data points, providing a clearer, more representative reflection of the trends between costs and prices. In summary, these correlative elements, taken together, are sufficient to establish a reasonable link between the changes in SeAH's COM and the changes in sales prices.

Lastly, we disagree with respondent that the Department has failed to consider factors such as erratic production levels, monthly cost accruals, and year-end adjustments and their potential impact on the timing relationship between sales transactions and costs. The Department determined that using quarterly average costs for our analysis ensures that fluctuations in costs are sustained for a reasonable period of time. As noted above, we have continued to use the normal annual average cost methodology for all other elements of cost except for the inputs experiencing a significant change. Therefore, this approach (*i.e.*, the use of annual average conversion costs), accounts for any erratic production levels, monthly cost accruals, and year-end adjustments.

d. The Elimination of the Window Period for Price-to-Price Comparisons

SeAH notes that the Department normally bases normal value in an administrative review on monthly weighted average prices and compares them to individual U.S. sales. SeAH further points out that, if no home market identical or similar sale is found in the same month of the U.S. sale, the Department will then look for an identical or similar sale in the three months prior to the U.S. sale, then in the two months following the U.S. sale. The respondent disputes the Department's elimination of this "90/60" day window period for purposes of price-to-price comparisons in the margin program and asserts that no analysis was undertaken to ensure this approach to matching would achieve accurate results. SeAH argues that eliminating the window period for price-to-price comparisons results in clear distortions. For example, SeAH notes that many U.S. sales were matched to less similar home market products even though there were

sufficient above-cost identical or more similar matches within the window period. SeAH believes that the inclusion of the window period complies with the statutory preference for identical comparisons. The respondent cites Cemex S.A. v. United States, 133 F.3d 897, 902-03 (Fed. Cir. 1998) (“Cemex”), where the Court explained that Act establishes an hierarchy for identifying “such or similar merchandise.”

While SeAH opposes the use of quarterly costs in the first place, it urges the Department to at the very least include the 90/60 day window period for the first quarter of the POR should it continue to employ the quarterly cost methodology. SeAH alternatively proposes splitting the POR into two periods, where the first period encompasses the first half of the year and price-to-price comparisons are performed within the normal window periods, and where the second half of the year is split into two quarters with the quarterly cost methodology applied. The respondent asserts that such an approach would be consistent with the methodology applied in Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit from Thailand, 63 FR 7392 (February 13, 1998) (“CPF from Thailand”), and Final Results of Redetermination Pursuant to United States Court of International Trade Remand Order, Thai Pineapple Canning Industry Corp., Ltd. v. United States, 24 CIT 284 (2002) (No. 98-03-00487), where the Department segregated the 18-month POR into two separate fiscal years.

Petitioner contends that the Department properly disregarded the 90/60 day window period in its margin analysis. Petitioner asserts that this approach is eminently reasonable in that it controls for massive and volatile changes during the POR by restricting the period over which costs and prices are compared. Furthermore, petitioner reasons that it results in more accurate margins because the margin may be a function, in a time of rising costs, of a seller’s ability to pass along cost increases to customers in the form of higher sales prices. Responding to SeAH’s claim that there is no reasonable basis for eliminating window period sales to match U.S. sales in the first quarter of the POR because they would not have been affected by an increase in COM during the third quarter, petitioner argues that the Department’s quarterly analysis does not compare U.S. prices in the first quarter with either costs or sales in the third quarter. Petitioner also takes issue with SeAH’s argument that pre-POR window sales should be matched to its first quarter sales because costs did not increase in the first quarter of the POR. Petitioner asserts that the fact that the change in COM between the first quarter and the second quarter did not exceed the 25 percent significance threshold is without consequence, because the Department found that the range of the increase in COM during the POR was significant. Petitioner additionally argues that limiting the comparison period for prices, as well as for costs, to quarters, controls for changes in price that occur because of changes in costs. Petitioner alleges that if the Department’s margin analysis retained the 90/60 day window period, the margins between U.S. and home market sales could be understated because of rising prices resulting from increasing costs that occurred in the pre-POR home market sales and matched to the POR U.S. sales. Finally, petitioner disputes SeAH’s argument that the elimination of the window period results in U.S. sales matching to less similar products in the home market, arguing that data on the record of this case indicates precisely the opposite.

Department's Position:

We disagree with SeAH that eliminating the window period sales for price-to-price comparisons is distortive and contrary to law. As noted previously, for administrative reviews, the Department generally bases NV for the POR on monthly weighted average prices and compares them to individual EPs or CEPs. Where no sales of the like product are made in the exporting country in the month of the U.S. sale, the Department will attempt to find a weighted average monthly price one month prior, then two months prior, and then three months prior to the month of the U.S. sale. If unsuccessful, we will then look one month after and finally two months after the month of the U.S. sale. This practice is commonly referred to as the "90/60" day contemporaneity guideline, and is codified in the Department's regulations at 19 CFR 351.414(e)(2). Where costs and prices are changing significantly due to high inflation, the Department has in the past eliminated the "90/60" day window period and limited comparisons of U.S. price to home market sales made during the same month in which the U.S. sale occurred (i.e., the sales "contemporaneity" period was modified to conform with the shortened cost averaging period). See e.g., Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey, 61 FR 69067 (December 31, 1996), where the Department reasoned that such a methodology minimized the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales. See also Certain Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 42946 42505-42506 (Aug. 7, 1997).

In this case, as noted above, we have determined that the changes in SeAH's COM throughout the POR due to fluctuating raw material input prices are significant enough to depart from our normal annual average costing methodology. As in inflationary economies, these significant changes in costs lead to distortions in the Department's sales-below-cost test, as well in the overall margin calculation. When significant cost changes have occurred during the POR, these same conditions are accompanied by changes in prices as the market reacts to changing economic conditions. In this situation, we find that price-to-price comparisons should be made over a shorter period of time to lessen the distortive effects of changes in sales price which result from significantly increasing costs. We agree with petitioner that using a 90/60 day window period understates margins simply by the timing of price comparisons. For example, record evidence in this case shows that the cost of input coils increased considerably from the pre-POR window period to the first quarter of the POR. In addition, price trends show a corresponding increase in prices for the same time periods. See Memorandum from Stephanie Arthur to Neal Halper, Adjustments to the Cost of Production and Constructed Value Information for the Final Results – SeAH Steel Corporation Final, dated concurrently with this notice (Final Results Cost Memo). As such, comparing lower priced home market sales from the pre-POR window period with U.S. sales during the first quarter of the POR, when the unadjusted home market price does not reflect the contemporaneous price increases that have occurred through the date of the U.S. sale, results in a distorted analysis. It is our view that U.S. sales be compared with contemporaneous NVs in the ordinary course of trade which have been established in the sales-below-cost test. We note that although 19 CFR 351.414(d)(3) is applicable to the average-to-average methodology, we find that the principle pertaining to the use of a shorter period for averages is relevant to the average-to-transaction

method for purposes of the averaging aspect of that methodology. Accordingly, we find that it is appropriate in this case to match sales only within the same period (i.e., quarter) as the shortened cost period. Further, we maintain here the average-to-transaction preference for matches within the “month during which the particular U.S. sale under consideration was made.” 19 CFR 351.414(e)(2)(i). Comparing U.S. sales to normal values (NV) outside the quarter would result in comparisons with NVs that are not reflective of market conditions at the time of the U.S. sale in that the NVs would not reflect the increasing or decreasing prices due to the significant changes in costs. Contrary to SeAH’s claims that significant cost increases did not begin until the third quarter of the POR, we find that nickel prices, a significant component of the merchandise under consideration, increased since the beginning of the POR. See Schagrin Associates’ May 7, 2008 submission at attachment 2. Further, the analysis in the Post-preliminary Cost Decision showed increases for the selected CONNUMs prior to the third quarter with resultant price increases as well. While minor price fluctuations are normal and do not typically have a significant effect on our price comparisons and subsequently calculated margins, substantial changes in costs and prices as evidenced in this case lead to distorted results because margins are calculated on distorted price comparisons. Since we have recognized significant cost changes have occurred during the POR which have led us to depart from our normal annual average cost methodology to limit the distortion, these same conditions have led to changes in prices as the market reacts to the changing economic conditions. In this situation, we have determined it appropriate to make price-to-price comparisons over a shorter period of time to lessen the distortive effect of the significantly changing costs. We have not made comparisons outside of a quarter for the final results because of our above noted concern with contemporaneity and the point that significant costs changes are typically accompanied by significant price changes. This is consistent with our practice in SSSS from Mexico and SSPC from Belgium, where we made comparisons between U.S. and home market sales only if they were in the same quarter. See Final Results Cost Memo.

With regard to the respondent’s assertion that the inclusion of the window period would further the statutory preference for the use of identical product comparisons (as articulated in Cemex), we emphasize that our quarterly cost margin program attempts first and foremost to match U.S. sales to home market sales of identical products, but does so within the period (i.e., quarter) for which we have limited price-to-price comparisons. Accordingly, although this increases the number of similar matches relative to the number of identical matches, this result does not violate our preference for identical matches within the relevant period.

Finally, as noted previously, SeAH advocates that the Department, should it continue to employ an alternative cost methodology, split the POR into two periods. The respondent refers to CPF from Thailand to support its contention that the Department has in the past used different approaches in matching sales and costs where the circumstances warranted. In that case, the Court recognized the distortive effects of comparisons between a single weighted average cost and sales prices during periods of rising raw material costs and instructed the Department to modify its methodology for matching costs to sales. CPF from Thailand, however, only supports the Department’s practice of departing from the use of annual average costs due to significant cost changes in raw material inputs during the POR. The other relevant aspects of that case were specific to the circumstances there.

e. The Cost Recovery Test

SeAH notes that, under the “cost recovery” provision of the statute, prices that are above the weighted average per-unit COP for the POR “shall be considered to provide for recovery of costs within a reasonable period of time.” As a result, SeAH argues that, sales that are above the POR weighted averaged COP cannot lawfully be excluded under the sales-below cost test. SeAH alleges that the Department failed to apply the statutorily mandated cost recovery test after completing the cost test on a quarterly basis. The respondent points out that the Department calculated indexed annual direct materials costs and added them to the weighted average annual conversion cost to obtain a COM that was subsequently used in the quarterly sales-below-cost test and CV calculations. SeAH contends that the Department has adopted a POR-specific average cost calculation approach in lieu of the cost recovery test that incorporates an indexing methodology to alleviate the distortive effects of increasing raw material costs. SeAH finally asserts that the deference accorded to the Department in cases where a statute is ambiguous (see Chevron, U.S.A., Inc. v. Natural Res. Def. Council, 467 U.S. 837, 843-84 (1984) (Chevron)) does not apply in this case. The respondent argues that had Congress intended for the cost recovery test to apply only in cases involving annual average costs, it would have specified as such.

Petitioner notes that Section 773(b)(3) of the Act defines COP as “the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product, during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business.” Petitioner asserts that, in other cases, the primary argument in favor of quarterly costs is that using a single average cost for the POR causes many home market sales to fail the cost test because increasing costs at the end of the period increase the yearly average cost such that it does not accurately reflect the lower costs in the early part of the year upon which the prices during that time were based. Petitioner suggests that this is the type of distortion that the use of quarterly average costs attempts to address, and assert that the relationship of prices during the POR to a single average cost is attenuated in an environment of price volatility. Petitioner further contends that the statute does not expressly specify the “period of investigation or review” for purposes of the cost recovery test. Petitioner suggests that the cost recovery provision should therefore be interpreted as the shorter-than-annual period for which costs and prices can be accurately compared. Petitioner believes that the Department’s use of a comparison period for the recovery of cost test that is equal to the period used to investigate whether prices are below the cost of production establishes a reasonable time period for the recovery of costs.

Department’s Position:

We disagree with SeAH’s arguments. Section 773(b) of the Act provides that sales may be disregarded in the determination of NV if those sales have been made within an extended period of time in substantial quantities and were not at prices which permit recovery of all costs within a reasonable period of time. Section 773(b)(2)(D) of the Act further defines the recovery-of-cost requirement by stating that if prices which are below the per-unit COP at the time of the sale (i.e., sales below cost) are above the weighted average per-unit COP for the POI or POR, such prices shall be considered to provide for the recovery of costs within a reasonable period of time

(i.e., the recovery of cost test). In performing the sales-below-cost and recovery-of-cost tests in situations where the COM is changing significantly throughout the cost reporting period, it is important to adopt an approach that addresses the distortive impact that a significantly changing COM has on the annual average cost calculation in order to achieve a fair and reasonable result. In this case, we have determined that the changes in SeAH's COM throughout the POR are significant and have therefore departed from the use of our normal annual average cost methodology in conducting the sales-below-cost test. As to the recovery-of-cost test, we have adopted an alternative methodology that we determine complies with the statute's weighted average costs requirements while taking into account the distortive effect of significant cost changes.

As discussed above, the Department has determined for purposes of the sales-below-cost test in this case that the use of an alternative cost averaging method is appropriate due to the significant changes in COM during the POR. We find that indexing the significantly changing raw material costs to a common end-of-period cost level, calculating a POR-specific weighted average material cost, and then indexing the weighted average annual per-unit cost for the input to the appropriate period (similar to the Department's high inflation methodology), addresses the statute's requirement of weighted average costs for the period (i.e., recovery of cost test) while preserving the indexed differences between quarters and the end of the period resulting from the significant price level changes.

The purpose of section 773(b)(2)(D) of the Act is to allow for the recovery of costs in a reasonable period of time for those sales which were made below cost at the time of sale. Normally, the calculation of an annual weighted average per-unit cost for the cost period smoothes out any non-significant variations in costs that may occur during the course of the cost period. As long as the producer's or exporter's sales price is above that annual weighted average per-unit cost, the costs are considered to be recovered. In other words, the sales prices account for non-significant fluctuations in costs throughout the cost reporting period.

In the instant case, however, the calculation of an unadjusted annual weighted average per-unit cost does not smooth out the fluctuations in costs to provide for cost recovery but rather results in significant distortions in the application of the cost recovery test. SeAH's raw material costs in this case changed significantly throughout the cost period. The Department has, therefore, based the sales-below-cost test on an alternative cost-averaging method which takes into consideration only those raw material cost fluctuations that occur within a particular quarter. If the Department were to then use an unadjusted weighted average per-unit cost for the POR for purposes of the cost recovery test, sales prices which were determined to be below cost may be erroneously considered to have recovered costs based simply on the timing of the sale. For example, a sale that occurred in the last quarter of the POR that failed the cost test based on the alternative cost-averaging method would pass the cost recovery test because lower costs from the beginning of the period offset the higher costs at the end of the period in the unadjusted annual cost calculation. In light of the possible distortions that may arise in using unadjusted annual average costs for cost recovery purposes, consistent with SSSS from Mexico and SSPC from Belgium, we have adopted a POR-specific average cost calculation approach for the cost recovery test that incorporates an indexing methodology in order to adjust for the distortive effects the significant change in SeAH's raw material costs has on the calculations. See Post-preliminary Cost Decision at page 4. Despite

SeAH's argument to the contrary, the Department finds that this approach satisfies the requirements set forth in section 773(b)(2)(D) of the Act.

Comment 2: Application of the Major Input Rule

SeAH argues that the Department should not adjust its reported COP under the major input or transactions disregarded provisions of the Act to account for the difference between market and transfer price for stainless hot-rolled coils purchased from POSCO that were used in the manufacture of subject merchandise. As an initial matter, SeAH disputes the characterization of POSCO as an affiliated party. The respondent maintains that, although POSCO became a 10.1 percent shareholder in SeAH and SeAH obtained shares in POSCO of equal value, the ownership does not render them affiliated under the antidumping law. SeAH refers to Ta Chen Stainless Steel Pipe Co. v. United States, No.05-00094, Slip Op.07-87 at 38-45 (CIT May 30, 2007), where the Court explained that affiliation within the meaning of the 19 U.S.C. 1677(33)(F) and (G) depends on whether one entity controls another. However, SeAH argues that there is no evidence on the record of this review that POSCO exercised control over SeAH in a way that resulted in SeAH purchasing stainless hot coils from POSCO at below cost or below market prices. The respondent further claims that POSCO's purchase of SeAH's shares was merely a defensive measure to protect itself from a hostile foreign takeover.

SeAH contends that, should the Department nevertheless continue to treat POSCO and SeAH as affiliates for purposes of applying the major input and transactions disregarded rules, it should not rely on SeAH's purchases of one particular type of stainless coil as the basis for adjustments to all grades of stainless input coil purchased from POSCO. SeAH asserts that it has placed evidence on the record of this review for each of the various grades and specifications of coil that should be used to test whether any adjustments are necessary for its purchases from POSCO. For example, SeAH argues that, even though it had no purchases from unaffiliated customers of one particular coil grade, the Department should have instead used data submitted by POSCO regarding sales of this grade to both SeAH and to unaffiliated customers to determine whether an adjustment was warranted. SeAH further maintains that the data provided by POSCO reveals that transfer and market price were the same for this coil grade and that an adjustment is thus not necessary. Recognizing that the Department's preference is to use the respondent's own data as the benchmark unaffiliated price, SeAH asserts that the second preference is to use an affiliated supplier's sales data. Regarding another grade of stainless coil, the respondent claims that the small quantities it purchased from unaffiliated suppliers are not representative, and that the Department should instead use the pricing data submitted by POSCO as the basis for determining whether an adjustment is warranted under the transactions disregarded rule.

SeAH disputes petitioner's argument (summarized below) that for one of the grades of stainless coil purchased from POSCO, the transfer price for one quarter of the POR was less than the market price paid by unaffiliated parties. SeAH contends that the petitioner's analysis is flawed in that it ignores several factors that POSCO considers when setting prices. SeAH further argues that the COP analysis submitted by petitioner for this type of coil is distortive because it does not distinguish between the differences in product types for this particular grade and specification, but rather aggregates them. While the respondent does not consider itself affiliated with POSCO, SeAH proposes that should the Department continue to treat POSCO as an affiliated party for

purposes of the major input and transactions disregarded rules, it should base its determination as to whether an adjustment is warranted on the sales value comparison information provided by POSCO. The respondent also suggests that the Department consider product differences in evaluating POSCO's COP data for stainless steel coil.

Petitioner asserts that the Department properly recognized the affiliation of POSCO and SeAH based on ownership interest, and note that subsection 19 U.S.C 1677(33)(E) establishes that a party is affiliated with any organization when the party owns 5 percent or more of the outstanding voting stock of any organization.

Petitioner also refutes SeAH's contention that the market price for one of the various coil grades purchased from POSCO was the same as transfer price. Petitioner argues that, based on an analysis of transfer prices, market value, and COP submitted by POSCO and SeAH, the transfer price for at least one quarter of the POR was less than the market price paid by unaffiliated parties and that POSCO's reported COP for the stainless coil sold to SeAH was greater than both the transfer and market price in another quarter. Regarding SeAH's assertions that the small quantities purchased from unaffiliated suppliers of another grade of coil are not representative, petitioner argues that the respondent's purchases still constitute bona fide transactions that should be used by the Department to establish market value for purposes of applying the major input and transactions disregarded provision. Petitioner otherwise advocates the methodology employed by the Department in the preliminary results (*i.e.*, the use of the adjustment ratio for one grade of coil as the basis for adjustments to all grades of stainless coil purchased from POSCO).

Department's Position:

With regard to affiliation, we disagree with respondent. SeAH's argument against a finding of affiliation focuses on whether POSCO was in a position to legally or operationally control SeAH. However, we note that the ability to exercise control over another party is but one of several factors that support a finding of affiliation. Pursuant to Section 771(33)(E) of the Act, if any person has the power to vote by directly or indirectly controlling, or holding, five percent or more of the outstanding voting stock or shares of another organization, then the two are considered to be affiliated. In its April 4, 2008 section A questionnaire response, SeAH explained that it became affiliated with POSCO in February 2007 via POSCO's purchase of 10.1 percent of SeAH shares and the SeAH Group's purchase of shares in POSCO for equal value. We find that this alone is sufficient to establish that POSCO and SeAH are affiliated under the Act.

As set forth in section 773(f)(2) of the Act, a transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. Section 773(f)(3) of the Act governs the major input rule, which involves transactions involving any of a product's major inputs between affiliated parties. In such instances where we have reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the Department may determine the value of a major input on the basis of

the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under the transaction disregarded rule. As reflected in the Department's regulations at 19 CFR 351.407(b), for any major inputs purchased from affiliated parties, the Department normally compares the transfer price and the market price to the affiliated supplier's COP and adjusts the reported costs to reflect the highest of these three amounts. See, e.g., Notice of Final Determination of Sales at Not Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin From Taiwan, 70 FR 13454 (March 21, 2005).

During the POR, SeAH purchased several types of stainless steel hot-rolled coils from POSCO for use in the manufacture of subject stainless pipe. SeAH's April 22, 2008 Section D Questionnaire Response. No party contests that hot-rolled stainless coil is considered a major input to the production of stainless pipe. For the preliminary results, the Department made an adjustment to SeAH's reported COM to account for the difference between transfer and market price for one particular grade of hot-rolled coil purchased from POSCO. We also used the adjustment ratio calculated for this type of coil as the basis for adjustments to other grades of coil. See Preliminary Cost Memo at page 2. See also Certain Welded Stainless Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review, 73 FR 79050 (December 24, 2008).

We have carefully re-evaluated the record evidence regarding both SeAH's and POSCO's price and cost data for purposes of determining whether an adjustment to COM is warranted under the major input and transactions disregarded rule. For the grade of coil used as the basis for our adjustment to all coil types in the preliminary results, we have employed a similar methodology to determine an adjustment ratio for this coil grade (i.e., based on a comparison of the transfer price from POSCO, the market price from unaffiliated SeAH suppliers, and POSCO's reported COP for the input). See Final Results Cost Memo. However, unlike in our preliminary results, we have not constructed market prices and applied the resultant adjustment factor to all grades of stainless coil. Rather, we have used grade-specific price and cost data as described below as the basis for determining if an adjustment to COM is appropriate for each of these grades. We note that, consistent with our decision to deviate from our normal annual average cost methodology, our major input analysis was based on quarterly data rather than annual POR information.

SeAH disagrees with the Department's approach of constructing market prices in the preliminary results and urges the Department to instead use pricing data submitted by POSCO as the basis for determining whether an adjustment is warranted for another of the coil grades purchased from POSCO.⁵ Petitioner advocates using the same POSCO data to determine whether to adjust SeAH's reported COM, arguing that their analysis of this data shows that an adjustment should in fact be made to SeAH's COM for certain quarters of the POR. Based on our own analysis of the data, we have determined that an adjustment to SeAH's COM for this particular grade of coil is warranted. We conducted our analysis by comparing POSCO's COP for this grade, the

⁵ POSCO submitted a table with its September 4, 2008 response showing all sales to SeAH during the POR of this particular grade of stainless coil, as well as sales of the same coil grade to certain large end-user unaffiliated customers for the same time period. We note that our preference, however, is to conduct our major input analysis using the total universe of unaffiliated and affiliated sales. For these final results of review, we will use the market price data that is on the record in our analysis. For future proceedings we will require respondents to provide the total universe of unaffiliated sales transactions in determining market price.

transfer price to SeAH, and market prices to POSCO's unaffiliated customers. Due to the proprietary nature of this analysis, please refer to our Final Results Cost Memo for further details.

For another grade of stainless coil, SeAH argues that purchases from unaffiliated parties during the POR were not representative and that the Department should instead use pricing data submitted by POSCO in its October 21, 2008 response as the basis for concluding that an adjustment is not in fact warranted. As noted previously, petitioner contends that the Department should use SeAH's own pricing data for purchases of this coil grade, as these sales still represent bona fide transactions. In deciding whether to make an adjustment to COM for this coil grade, the Department has determined that the transactions in question were made in commercial quantities and that it is appropriate to base our analysis on SeAH's purchases of this coil grade from unaffiliated parties. This is in line with our preference to use the respondent's own purchase price transactions as the benchmark unaffiliated price. See e.g., Silicomanganese from Brazil, where we stated that "[i]f the respondent did not make any purchases of the input from unaffiliated parties during the POR, the Department's next preference is to use the price at which the affiliated parties sold the input to unaffiliated purchasers in the market under consideration." We compared the transfer price from POSCO to SeAH, POSCO's reported COP for this input, and market prices from the unaffiliated supplier from whom SeAH purchased this coil grade during the POR. Based on the results of our analysis, we find that an adjustment to COM under the major input and transactions disregarded provisions is warranted for this particular coil grade. See Final Results Cost Memo for further details.

SeAH additionally argues that any major input analysis based on the September 21, 2008 POSCO data for the second type of coil grade discussed above should consider the different characteristics within the coil grade group itself. However, the transactions disregarded and major input analysis is to measure the preferential treatment, if any, given to SeAH by POSCO for purchases of hot-rolled stainless steel coil during the POR. Because the costs reported by POSCO were aggregated by grade group (see POSCO's September 4, 2008 response at Exhibit 4 (Standard COM Buildup Summary)); see also POSCO Cost Verification Exhibit 3), we determine that it is appropriate to conduct our major input analysis on the same basis (i.e., by grade group). This approach is consistent with the Department's analysis in SSSS from Mexico to determine whether an adjustment was necessary to the respondent's reported COM pursuant to the major input and transactions disregarded rules.

Comment 3: The Treatment of Gains Associated with Foreign Currency Swaps

SeAH argues that the Department should include the net gains associated with currency swaps in the calculation of its financial expense ratio. The respondent refers to the Memorandum from Stephanie Arthur to Neal Halper, Verification of the Cost Response of SeAH Steel Corporation in the Antidumping Duty Administrative Review of Welded ASTM A-312 Stainless Pipe from Korea (April 28, 2009) ("Cost Verification Report"), where the Department noted that SeAH recorded a net gain from currency options and swaps, and argues that the inclusion of these net gains would be consistent with our practice in other cases, including Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Preliminary Results of

Antidumping Duty Administrative Reviews, 71 FR 12170 (March 9, 2006) and Notice of Preliminary Results of Antidumping Duty Administrative Review, Notice of Intent to Revoke in Part: Individually Quick Frozen Red Raspberries from Chile, 71 FR 45004 (August 8, 2006).

Petitioner did not comment on this issue.

Department's Position:

We agree with the respondent. In calculating its financial expense ratio, SeAH did not include the gains or losses from foreign currency options and swaps that were reflected in the consolidated financial statements of the SeAH Group. The Department typically accounts for activities that relate to the financing of working capital as part of the financial expense ratio calculation. See e.g. Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fourteenth Administrative Review and Partial Rescission, 74 FR 11082 (March 16, 2009). As both currency swaps and options are a part of the consolidated entity's overall management of its foreign currency exposure in any one currency, we consider them to be linked and directly associated with the cash management of the company. As such, for these final results, we have included the net gains associated with currency options and swaps in SeAH's financial expenses. See SeAH's September 4, 2008 Section A response at Exhibit 21.

Comment 4: The Treatment of Interest Income Earned on Retirement and Severance Deposits

SeAH argues that the Department should continue to allow SeAH to offset its financial expenses with interest income generated on retirement and severance deposits. The respondent maintains that, as reported in its October 21, 2008 section D supplemental response, withdrawals from the retirement and severance account are not restricted and that the conditions of the policy are renewed annually. Therefore, claims SeAH, the money in the account can be transferred to another bank every year. SeAH concludes that, given the features of this account, the interest earned is properly classified as short-term income and should be used to offset its financial expenses.

Petitioner asserts that the interest income from restricted funds should not be used to offset SeAH's financial expenses. Petitioner points out that the Department's Cost Verification Report characterizes the interest income generated on SeAH's retirement and severance deposits as restricted. Petitioner further notes that the report indicates that the Department would consider for the final results whether it is appropriate to include the interest income in question as an offset. Petitioner argues that the Department has a longstanding practice of denying offsets to financial expenses for income that is restricted for current operations and for interest income earned on retirement funds that is restricted to paying retirement benefits. Petitioner cites Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 65 FR 68976 (November 15, 2000), where the Department denied an offset for interest income earned on restricted deposits for funding severance payments, concluding that interest income generated on severance insurance deposits was not related to current operations.

Department's Position:

We disagree with respondent. As noted above, SeAH included in the calculation of its financial expense ratio an offset attributable to interest earned on its retirement and severance deposits. While SeAH's section D questionnaire response describes the account as unrestricted, we note that company officials explained during the Department's cost verification that the account was restricted, as withdrawals were limited to payments made to retired employees. See Cost Verification Report at page 2. In addition, we noted during verification that the balance of the account itself was reflected on SeAH's balance sheet as a non-current liability with a negative balance and that any interest income generated from these funds was deposited back into the retirement and severance account. These facts indicate that the interest earned on SeAH's retirement and severance deposits is not available for current working capital and thus should not offset financial expenses. It is the Department's practice to offset financial expenses for short-term interest income available for working capital. See e.g., Stainless Steel Sheet and Strip in Coils from Germany: Final Results of Administrative Review, 69 FR 75930 (December 20, 2004) and accompanying Issues and Decision Memorandum at Comment 2. As the income generated from this account is not available for working capital, we have denied an offset to financial expenses for interest earned on SeAH's retirement and severance deposits.

Comment 5: Whether the Department Should Refrain From Zeroing Negative Margins

SeAH argues that the Department has unlawfully continued to zero-out negative dumping margins when calculating SEAH's weighted average antidumping duty margin. SeAH states the Department's zeroing policy is inconsistent with the Department's Final Section 123 Determination Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification, 71 FR 77722, (Dec. 27, 2006). Further, SeAH cites to U.S. Supreme Court in Chevron, stating that the Department's new interpretation of section 771(35) of the Act cannot be sustained as reasonable. SeAH states that the Department by its new statutory interpretation of section 771(35) of the Act, to provide for the use of zeroing in antidumping administrative reviews but not in investigations, is interpreting the identical statutory provision in diametrically opposite ways. SeAH contends 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. RHP Bearings Ltd. v. United States, 288 F.3d 1334, 1346 (Fed. Cir. 2002); SKF USA Inc. v. United States, 263 F.3d 1369, 1381-81 (Fed. Cir. 2001). In this case, SeAH argues that the Department now interprets this same provision as both providing for zeroing and not providing for zeroing, which is unreasonable and unlawful.

SeAH further states that the U.S. Court of Appeals for the Federal Circuit has expressly rejected the argument that section 771(35) should be read as providing for zeroing in reviews but not in investigations. Corus Staal BV v. Dep't. of Commerce, 395 F.3d 1343, 1347 (Fed. Cir. 2005), cert. denied, 546 U.S. 1089 (2006) (Corus). SeAH notes that in Corus the Federal Circuit both held that the only statutory provision relevant to the question of zeroing is section 771(35), and that there was no basis to interpret section 771(35) different in investigations than in administrative reviews. Moreover, SeAH adds that nothing in the statute or legislative history of

section 771(35) supports the Department's new reading of the statute, which gives the statutory term "weighted average dumping margin" in section 771(35)(B) two completely different meanings as between investigations and administrative reviews. SeAH argues the Department should calculate the dumping margin for the final results without zeroing out negative dumping margins.

The petitioner disagrees with SeAH's argument, stating that the Department has consistently in innumerable administrative reviews not permitted non-dumped sales to offset the amount of dumping found with respect to other sales. Petitioner cites as examples, Stainless Steel Bar from the United Kingdom: Final Results of Antidumping Duty Administrative Review, 72 FR 43598 (August 6, 2007); Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review, 73 FR 75398 (Dec. 11, 2008), and accompanying Issues and Decision Memorandum at Comment 1. Thus, petitioner states that the Department's interpretation which it applied to administrative reviews is consistent with the statutory definition of the dumping margin, but inconsistent with treating negative margins as dumping margins. Petitioner argues that the antidumping statute at section 771(35)(A) defines the "dumping margin" as "the amount by which the normal value exceeds the export price." Therefore, only a comparison for which "the normal value exceeds the export price" *i.e.*, a positive dumping margin, may be considered as a dumping margin. A comparison for which the normal value does not exceed the export price, *i.e.*, a negative margin, may not be considered as a dumping margin. Negative margins do not equal the amount by which the NV exceeds the EP. Therefore, petitioner contends that, if a negative margin were considered a dumping margin, the dumping margin would not equal "the amount by which the NV exceeds the EP" as required by statute. The petitioner argues that the Department should continue to exclude negative margins and deny offsets of positive margins by negative margins in calculating the weighted average dumping margin.

Department's Position:

We have not changed our calculation of the weighted average dumping margin as suggested by the respondent for these final results of review. Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the EP or CEP of the subject merchandise." Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when NV is greater than EP or CEP. As no dumping margins exist with respect to sales where NV is equal to or less than EP or CEP, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The U.S. Court of Appeals for the Federal Circuit has held that this is a reasonable interpretation of the statute. *See, e.g., Timken Co. v. United States*, 354 F.3d 1334, 1342 (Fed. Cir. 2004); *Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), *cert. denied*; 126 S. Ct. 1023, 163 L. Ed. 2d 853 (Jan. 9, 2006) ("*Corus I*"). Section 771(35)(B) of the Act defines weighted average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." The Department applies these sections by aggregating all individual dumping margins, each of which is determined by the amount by which NV exceeds EP or CEP, and dividing this amount by the value of all sales. The

use of the term aggregate dumping margins in section 771(35)(B) is consistent with the Department's interpretation of the singular "dumping margin" in section 771(35)(A) as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or CEP exceeds the normal value permitted to offset or cancel out the dumping margins found on other sales.

This does not mean that non-dumped sales are disregarded in calculating the weighted average dumping margin. It is important to note that the weighted average margin will reflect any non-dumped merchandise examined during the POR: the value of such sales is included in the denominator of the weighted average dumping margin, while no dumping amount for non-dumped merchandise is included in the numerator. Thus, a greater amount of non-dumped merchandise results in a lower weighted average margin.

The Federal Circuit explained in *Timken* that denial of offsets is a "reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to mask sales at less than fair value." *Timken*, 354 F.3d at 1343. As reflected in that opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner interpreted by the Department. No U.S. court has required the Department to demonstrate "masked dumping," before it is entitled to invoke this interpretation of the statute and deny offsets to dumped sales. *See, e.g., Timken*, 354 F.3d at 1343; *Corus I*, 395 F.3d 1343; *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007) ("*Corus II*"); and *NSK Ltd. v. United States*, 510 F.3d 1375 (Fed. Cir. 2007).

The respondent has cited WTO dispute-settlement reports ("WTO reports") finding the denial of offsets by the United States to be inconsistent with the Antidumping Agreement. As an initial matter, the U.S. Court of Appeals for the Federal Circuit has held that WTO reports are without effect under U.S. law, "unless and until such a [report] has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act ("URAA"). *Corus I*, 395 F.3d at 1347-49; accord *Corus II*, 502 F.3d at 1375; *NSK*, 510 F.3d 1375.

With respect to *United States-Final Determination on Softwood Lumber from Canada*, WT/DS264/AB/R (Aug. 11, 2004) (US-Softwood Lumber), the Appellate Body's finding only related to the denial of offsets in the Softwood Lumber from Canada antidumping investigation. That report, and the Department's implementation of that report, did not address the Department's denial of offsets in other antidumping investigations or in any administrative review. *Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Softwood Lumber Products From Canada*, 70 FR 22636 (May 2, 2005). Moreover, ultimate resolution of that WTO dispute was achieved through a mutually agreed solution, and not through an elimination of the denial of offsets. Notification of Mutually Agreed Solution, *United States-Final Dumping Determination on Softwood Lumber from Canada*, WT/DS264/29/Add.1 (March 9, 2007).

With respect to *United States-Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing)*, WT/DS294/AB/R (Apr. 18, 2006) ("US-Zeroing (EC)"), the Department has modified its calculation of weighted average dumping margins when using average-to-average comparisons in antidumping investigations. *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (Dec. 27, 2006) ("Zeroing Notice"). In doing so, the Department declined to adopt

any other modifications concerning any other methodology or type of proceeding, such as administrative reviews. See Id. 71 FR at 77724.

Accordingly, and consistent with the Department's interpretation of the Act described above, the Department has continued to deny offsets to dumping based on export transactions that exceed normal value in this review.

Comment 6: Calculation Issues

SeAH pointed out two errors in the Department's margin calculation program. The first error relates to the inaccurate implementation of the specification/grade matching criteria in the program. The second error relates to the incorrect identification of the window period in the program. Petitioner did not comment on this issue.

Department's Position

We have made the necessary change to the specification/grade matching criteria. See Memorandum from Myrna Lobo, Case Analyst to The File, Calculation Memorandum for the Final Results of Administrative Review of the Antidumping Duty Order on Stainless Steel Pipe from the Republic of Korea – SeAH Steel Corporation.

With regard to the window period, in the preliminary results the Department inadvertently had an incorrect window period date. However, even though this error was corrected for purposes of our post-preliminary calculations, we note that in limiting price-to-price comparisons to the same quarter for the final results, the window period is no longer relevant. See Department's Position in Comment 1.d. above, "Elimination of the Window Period for Price-to-Price Comparisons."

Recommendation

We recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results and SeAH's final weighted average dumping margin in the Federal Register.

Agree _____ Disagree _____

Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

Date