

DATE: March 9, 2009

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

RE: Certain Corrosion-Resistant Carbon Steel Flat Products from the
Republic of Korea (Period of Review: August 1, 2006, through
July 31, 2007)

SUBJECT: Issues and Decisions for the Final Results of the Fourteenth
Administrative Review of the Antidumping Duty Order on Certain
Corrosion-Resistant Carbon Steel Flat Products from the Republic
of Korea (2006-2007) (Final Results)

Summary

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

¹ Case briefs and rebuttal briefs were submitted by the following domestic interested parties and respondents: On October 9, 2008, United States Steel Corporation (US Steel), ArcelorMittal USA Inc. (ArcelorMittal), and Nucor Corporation (Nucor) (collectively, petitioners) filed case briefs (respectively, "US Steel's case brief," "ArcelorMittal's Case Brief," and "Nucor's case brief"). On October 17, 2008, US Steel, ArcelorMittal, and Nucor filed rebuttal briefs (respectively, "US Steel's Rebuttal Brief," "ArcelorMittal's Rebuttal Brief," and "Nucor's Rebuttal Brief"). On October 9, 2008, Dongbu Steel Co., Ltd. (Dongbu), Hyundai HYSCO (HYSCO), Pohang Iron & Steel Co., Ltd. (POSCO) and Pohang Coated Steel Co., Ltd. (POCOS) (collectively, the POSCO Group), Union Steel Manufacturing Co., Ltd. (Union) (collectively respondents), and Haewon MSC Co., Ltd. (Haewon) filed case briefs (respectively, "Dongbu's case brief," "HYSCO's case brief," "POSCO's case brief," "Union's case brief," and "Haewon's case brief"). On October 17, 2008, respondents filed rebuttal briefs (respectively, "Dongbu's Rebuttal Brief," "HYSCO's Rebuttal Brief," and "Union's Rebuttal Brief").

I. Background

The Department of Commerce (“the Department”) initiated this administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products (“CORE”) from the Republic of Korea (“Korea”) on September 25, 2007, for each of the aforementioned respondents. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 72 FR 54428 (September 25, 2007). On September 9, 2008, the Department published the preliminary results of the antidumping duty administrative review for CORE from Korea. See Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Preliminary Results of the Antidumping Duty Administrative Review, 73 FR 52267 (September 9, 2008) (“Preliminary Results”). In this review we individually investigated four manufacturers/exporters of the subject merchandise: Dongbu, HYSCO, the POSCO Group, and Union. On October 9, 2008, ArcelorMittal, US Steel, and Nucor filed case briefs concerning all four mandatory respondents. On the same day, each of the four mandatory respondents and Haewon filed a case brief. On October 17, 2008, ArcelorMittal, US Steel, Nucor and each of the four mandatory respondents filed rebuttal briefs.

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III. Discussion of Interested Party Comments

A. General Issues

Comment 1: Model-Match Methodology and Laminated Products

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

A: Petitioner's Proposal to use Actual Dimensions Instead of Ranges

ArcelorMittal's Comments

In its case brief, ArcelorMittal urges the Department to revise its model-match methodology or at least to request from respondents further information to allow it to identify goods more

specifically for sale-to-sale comparisons, by adding an additional criteria to the reported CONNUM.² ArcelorMittal argues that the Department incorrectly addressed this issue in the thirteenth review of CORE from Korea by not accepting ArcelorMittal's model match proposal.³ ArcelorMittal claims that the Department must calculate dumping margins as accurately as possible and that the Department has an affirmative duty to ascertain relevant facts. ArcelorMittal argues that this applies to methodologies for selecting merchandise and sales comparisons.

ArcelorMittal submitted a price list of products that they argue shows the model match is not accurate.⁴ ArcelorMittal asserts that early in this review, it submitted evidence that the Department's method for matching goods likely produces inaccurate results by comparing CONNUMs whose variable costs differ by 20 percent.⁵ In addition, ArcelorMittal states that it also submitted additional evidence which further calls the Department's method into question.⁶

HYSCO's Comments

HYSCO urges the Department to reject ArcelorMittal's proposed changes to the model match methodology in the instant case. HYSCO maintains that ArcelorMittal's arguments are the same as in prior reviews of CORE from Korea that the Department has previously rejected.⁷ HYSCO maintains that ArcelorMittal has not demonstrated that a change in industry standards has occurred since the original investigation that would warrant a change in the model match methodology in the instant case. HYSCO argues that the price list study that ArcelorMittal relied on is substantially identical to that submitted in prior reviews and that the Court of International Trade (CIT) affirmed the Department's findings relative to them.⁸

HYSCO further argues that the Department has consistently stated that, within the meaning of the statute, products may be considered identical even though they may contain minor

² See Comments of ArcelorMittal re Model Match Methodology – Fourteenth Administrative Review of Certain Corrosion-Resistant Carbon Steel Flat Products from Korea, dated June 30, 2008, (ArcelorMittal model match comments) at pages 20 – 21.

³ See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Thirteenth Administrative Review, 73 FR 14220 (March 17, 2008) (CORE 13 Final Results), and accompanying Issues and Decision Memorandum at comment 2.

⁴ See ArcelorMittal's case brief at 7 and exhibit 2.

⁵ See *id.* at 8.

⁶ See ArcelorMittal model match comments, at pages 20 – 21.

⁷ See CORE 13 Final Results at comment 2; see also Notice of Final Results of the Twelfth Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 72 FR 13086 (March 20, 2007) (CORE 12 Final Results), and accompanying Issues and Decision Memorandum at Comment 1; see also Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 7513 (February 13, 2006) (CORE 11 Final Results), and accompanying Issues and Decision Memorandum at Comment 1; see also Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea, 70 FR 12443 (March 14, 2005) (CORE 10 Final Results), and accompanying Issues and Decision Memorandum at Comment 1.

⁸ See Mittal Steel USA Inc. v. United States, 2007 CIT LEXIS 138 (August 1, 2007); see also ArcelorMittal USA Inc. v. United States, 2008 CIT LEXIS 62 (May 15, 2008).

differences.⁹ HYSCO also rejects ArcelorMittal's cost analyses to support a change in the model match methodology arguing that the cost analysis does not undermine the validity of the model match criteria.¹⁰

Finally, HYSCO argues that the Department does not need to consider ArcelorMittal's suggested change in model match as ArcelorMittal has not provided substantial evidence that the Department should change the methodology. Further, HYSCO asserts that the proposed change by ArcelorMittal would impose a significant burden on respondents and the Department, but would not lead to more accurate results.

Department Position

Pursuant to our practice with respect to this issue in this proceeding, we will continue to reject petitioner's and U.S. Steel's proposed changes in model-match methodology because they have not provided substantial evidence that 1) the model-match criteria are not reflective of the subject merchandise in question, 2) there have been industry-wide changes to the product that merit a modification, or 3) there is some other compelling reason.

Petitioner's original proposal was to use actual dimensions (*i.e.*, width and thickness) instead of the ranges we normally used. We continue not to believe that the price analysis submitted showed that our calculations are inaccurate. First of all, the fact that prices for individual transactions are different from the average is normal. More importantly, there are many aspects of each transaction that can affect the price. ArcelorMittal has not shown that the fact that these products differ in terms of actual dimensions is the basis for the observed price differentials. Another aspect of ArcelorMittal's analysis that is problematic is the fact that many of the transactions that are identical using defined ranges in the Department's model-match methodology would not be identical using the actual dimensions. Consequently, these products would have to be matched to other non-identical products.

Regarding the difference in costs, we acknowledge that it is possible that companies might incur different costs from products of different dimensions; however, this does not mean that the Department's analysis is distorted. In almost every case, the products we analyze have a variety of different physical characteristics, many of which affect costs or revenues to a certain extent. However, the Department rarely takes all of the unique physical characteristics of every product into account in its analysis; rather, the Department tries to identify how these differences are reflected in the marketplace, *i.e.*, what products are reasonably commercially comparable. Thus, the Department develops and applies its model-match methodology to account for these differences. In this case, in the original investigation and first review, we found that products within a relevant range of widths and thicknesses were commercially comparable. Thus, we use these particular ranges as the basis to define products and perform our COP and other analyses. The CIT has upheld this methodology.¹¹

⁹ See Certain Cold-Rolled and Corrosion-Resistant Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review, 62 FR 18404, 18446 (April 15, 1997).

¹⁰ See HYSCO's case brief at pages 16 and 17.

¹¹ See ArcelorMittal USA Inc. v. United States, 2008 CIT LEXIS 62 (May 15, 2008).

With regards to the current model match proposal, we find that ArcelorMittal has failed to show how the added variable to the CONNUM will increase the accuracy of the dumping margin. Further, we find that there is no compelling evidence showing that the established model-match methodology is not reflective of the merchandise in question, nor have there been industry wide changes to warrant its modification.

B: Respondent's Proposed Change in the Treatment of Laminated Products

Union's Comments

Union argues that the Department should consider laminated products separately from other painted products for purposes of model match. With the exception of the following two comments, Union submitted the exact same comments for the instant review as for the previous review.¹² In the instant review, Union additionally argued that an industry-wide standard is not applicable because the Department never considered what the industry-wide standard was for laminated products when it created the original model match criteria.¹³ Union also argued that the Department erred by re-classifying all of Union's sales of laminated products as 'other painted products' in the Preliminary Results.¹⁴

ArcelorMittal's Comments

ArcelorMittal and Nucor argue that the department should not classify laminated CORE products separately. ArcelorMittal and Nucor maintain that the Department has rejected the change to model matching with regard to laminated products in previous reviews of CORE Korea,¹⁵ and should do so again. ArcelorMittal and Nucor maintain that the Department has included laminated products with painted products for model match purposes consistently throughout the life of the order.¹⁶

Nucor argues that Union's assertion that the "industry-wide change" standard does not apply in the instant case is unavailing. Rather, Nucor maintains that the "industry-wide change" standard applies in the current review, as it has in past reviews.¹⁷ Nucor asserts that Union has not provided any new information to contradict this finding in the instant review.

ArcelorMittal and Nucor argue that the Department has repeatedly found that differences in production processes are not a basis to distinguish products in the model match.¹⁸ Further, ArcelorMittal asserts that Union's description of its production process is inconsistent with its claims, and that the production process of laminated and painted products are more similar than different. ArcelorMittal maintains that Union's description of its lamination and painting

¹² See CORE 13 Final Results, at Comment 2.

¹³ See Union's case brief at 7.

¹⁴ See id. at 12.

¹⁵ See CORE 12 Final Results, at Comment 1.

¹⁶ See ArcelorMittal's Rebuttal Brief, at pages 9 – 11.

¹⁷ See CORE 12 Final Results, at Comment 1.

¹⁸ See Stainless Steel Sheet and Strip in Coils from France, 64 FR 30820 (June 8, 1999), and accompanying Issues and Decision Memorandum at Comment 4.

process appears to utilize the same machinery and that lamination appears to be a finishing alternative for paint.¹⁹

ArcelorMittal and Nucor argue that there is no evidence of significant cost and price differences between painted products and laminated products. ArcelorMittal and Nucor argue that when prices for all CTYPE products, laminated and non-laminated, are compared, laminated products are priced squarely within price ranges of “other” painted products.²⁰ Thus, ArcelorMittal and Nucor urge the Department to continue to treat laminated products the same as painted products.

Department Position

Pursuant to our practice with respect to this issue in this proceeding, we continue to reject petitioner’s and respondent’s proposed changes in model-match methodology because they have not provided substantial evidence that 1) the model-match criteria are not reflective of the subject merchandise in question, 2) there have been industry-wide changes to the product that merit a modification, or 3) there is some other compelling reason.

Regarding respondent’s proposed change in the treatment of laminated products, we disagree that we should change our methodology. First, Union incorrectly asserts that laminated products were not considered when the model-match methodology was developed. In fact, in comments submitted in the first administrative review, parties argued that laminated products should be broken out separately from other painted products. When the Department finalized its model match in the first administrative review, it did not break such products out, as was requested then and is being requested now. Union cites to a memo from the second administrative review where, it claims, a Department official indicated that certain laminated products were outside the scope.²¹ The Department disagrees that the memo in question clarifies the scope of the CORE order. To the contrary, the Department issued a letter to parties specifically requesting respondents to report such sales in the CORE 10th Review. See Submission of Factual Information from U.S. Steel dated March 18, 2008, at exhibit 1. In addition, there is no new factual information that is relevant to this analysis. Although Union cites to certain cost information based on its questionnaire responses submitted in this review, it is the same methodology that the Department considered in the previous review and found to be without merit. Union’s cost information showed a comparatively large cost difference when Union isolated the raw material used solely for lamination, compared with raw material used for some other painted products. This analysis overstates the differences between laminated and other painted products because it does not account for the numerous aspects of total production cost which are the same for painted and laminated products.

Thus, consistent with the previous reviews of CORE from Korea, the Department finds that the current model match methodology regarding laminated products is reflective of subject merchandise in the instant review. Further, neither changes in industry standards nor other

¹⁹ See ArcelorMittal’s Rebuttal Brief at page 12.

²⁰ See *id.* at 14.

²¹ See Union’s case brief at 3; see also Union’s July 16, 2008, supplemental questionnaire response at exhibit B-22, containing the November 21, 1995, memorandum.

compelling reasons have been presented. Therefore, we have not changed our model-match methodology in this respect.

Comment 2: Treatment of Negative Dumping Margins (Zeroing)

Respondents urge the Department to recalculate their dumping margins without zeroing-out negative dumping margins in the final results. Dongbu and Union argue that it is unreasonable and unlawful for the Department to construe the same provision in diametrically opposite ways with respect to the terms “dumping margin” and “weighted average dumping margin” in the context of antidumping investigations and reviews. Citing the U.S. Court of Appeals for the Federal Circuit’s (Court of Appeals) decision in Corus,²² Dongbu and Union argue that the Department’s new statutory interpretation of section 771(35) of the Tariff Act of 1930, as amended (the Act), in Calculation Final Modification²³ is without basis and is directly contrary to the decision in Corus. Dongbu and Union claim that the Court of Appeals found no basis for giving section 771(35) of the Act a different meaning in investigations than in reviews, and that such an interpretation cannot be justified on any other statutory or policy grounds. Dongbu and Union further submit that the Court of Appeals held that: (i) the only statutory provision relevant to the question of zeroing is section 771(35) of the Act, and (ii) there is no basis to interpret section 771(35) of the Act differently in investigations than in administrative reviews. HYSCO and POSCO contend that the Department has already eliminated zeroing in investigations, in response to a World Trade Organization (WTO) finding.²⁴ HYSCO and POSCO argue that in Calculation Final Modification the Department maintained discretion to use zeroing in ongoing proceedings. Thus, HYSCO and POSCO argue that the Department has the discretion to eliminate zeroing in administrative reviews. Thus, Respondents request that the Department recalculate their dumping margin in the final results.

Petitioners and ArcelorMittal counter that Respondents’ arguments are devoid of merit and should be rejected. Petitioner first claims that the use of zeroing in all segments of an antidumping proceeding is required by the statute. Specifically, Petitioners argue that section 777A(d) of the Act provides for a specific methodology that must be used by the Department in calculating dumping margins under three different scenarios.²⁵ Citing the WTO Panels’ decision,²⁶ Petitioners argue that if zeroing is not used, a respondent’s dumping margin will always be the same regardless of whether the average-to-average or average-to-transaction

²² See Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347 (Fed. Cir. 2005)(Corus), cert. denied, U.S. (2006).

²³ See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation: Final Modification, 71 FR 77722 (Dec. 27, 2006) (Calculation Final Modification).

²⁴ See id.

²⁵ The three scenarios include: (1) for investigations without targeted dumping, the Department is to use the average-to-average comparison methodology; (2) for investigations with targeted dumping, the Department is to use the average-to-transaction methodology, and (3) for administrative reviews, the Department is to use the average-to-transaction methodology.

²⁶ See Opening Statement of the United States at the First Substantive Meeting of the Panel, United States – Laws, Regulations and Methodology for Calculating Dumping Margins (“Zeroing”), WT/DS294/R (March 16, 2005, available at http://www.ustr.gov/assets/Trade_Agreements/Monitoring_Enforcement/Dispute_Settlement/WTO/Dispute_Settlement_Listings/asset_upload_file6_7156.pdf at 5, paragraph 13.

methodology is used. Petitioners further argue such an outcome contradicts Congress's intent to change the statute in 1995 so as to mandate that a particular comparison methodology be used in each of the three scenarios. Further, Petitioners argue that the statute must be interpreted to give effect to the different comparison methodologies set forth in section 777A(d) of the Act, *i.e.*, using zeroing, pursuant to the rulings of the Supreme Court and the Court of Appeals in that the rules of statutory construction require that a statute be interpreted so as to avoid rendering superfluous any provision of that statute.²⁷ Moreover, Petitioners maintain that even if the zeroing methodology is not required by the statute, the courts have repeatedly upheld the Department's use of zeroing in administrative reviews as a reasonable interpretation of the statute.²⁸ Petitioners cite the Court of Appeals finding that the Calculation Final Modification has "no bearing" on the use of zeroing in administrative reviews.²⁹ Therefore, Petitioners urge the Department to reject Respondents' same arguments, and continue to use zeroing in calculating Dongbu, Union, POSCO and HYSCO's dumping margin for these final results.

Department Position

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

Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." (Emphasis added). Outside the context of antidumping investigations involving average-to-average comparisons, the Department interprets this statutory definition to mean that a dumping margin exists only when normal value (NV) is greater than export or constructed export price (CEP). As no dumping margins exist with respect to sales where NV is equal to or less than export price or CEP, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The Federal Circuit has held that this is a reasonable interpretation of the statute.³⁰

Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." The Department applies these sections by aggregating all individual dumping margins, each of which is determined by the amount by which normal value exceeds export price or constructed export price, and dividing this amount by the value of all sales. The use of the term aggregate dumping margins in section 771(35)(B) is consistent with the Department's interpretation of the singular "dumping margin" in section 771(35)(A) as applied on a comparison-specific level and not on an aggregate basis. At no stage of the process is the

²⁷ See, e.g., TRW Inc. v. Andrews, 534 U.S. 19, 31 (2001) ("It is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence or word shall be superfluous, void, or insignificant.'"); see also Ishida v. United States, 59 F.3d 1224, 1230 (Fed. Cir. 1995) ("the rules of statutory construction require a reading that avoids rendering superfluous any provision of a statute.")

²⁸ See, e.g., Timken Co. v. United States, 354 F.3d 1334, 1342-45 (Fed. Cir. 2004) (Timken); SKF USA Inc. v. United States, 491 F. Supp. 2d 1354, 1364 (Ct. Int'l Trade 2007).

²⁹ See Corus Staal BV v. United States, 502 F.3d at 1370, 1374 (Fed. Cir. 2007).

³⁰ See Timken; see also Koyko Seiko Co. v. United States, 543 U.S. 976 (2004); see also Corus.

amount by which export price or constructed export price exceeds the normal value permitted to offset or cancel out the dumping margins found on other sales.

This does not mean that non-dumped sales are disregarded in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped merchandise examined during the 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 Department recently modified its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations in its Calculation Final Modification. In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews.³¹ Thus, because the Calculation Final Modification only affected antidumping investigations involving average-to-average comparisons, the Department's has continued to deny any offsets of non-dumped transactions in this administrative review.

We disagree that the Department's interpretation of section 771(35) of the Act with respect to zeroing is improper. In Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984), the U.S. Supreme Court explained that, when the language and congressional intent behind a statutory provision is ambiguous, an administrative agency has discretion to reasonably interpret that provision, and that different interpretations of the same provision in different contexts is permissible.³²

The Federal Circuit has found the language and congressional intent behind section 771(35) of the Act to be ambiguous.³³ Furthermore, antidumping investigations and administrative reviews are different proceedings with different purposes. Specifically, in antidumping investigations, the Act specifies particular types of comparisons that may be used to calculate dumping margins and the conditions under which those types of comparisons may be used.³⁴ The Act discusses the types of comparisons used in administrative reviews.³⁵ Department's regulations further clarify the types of comparisons that will be used in each type of proceeding.³⁶ In antidumping investigations, the Department generally uses average-to-average comparisons, whereas in administrative reviews the Department generally uses average-to-transaction comparisons.³⁷ The purpose of the dumping margin calculation also varies significantly between antidumping investigations and reviews. In antidumping investigations, the primary function of the dumping margin is to determine whether an antidumping duty order will be imposed on the subject imports.³⁸ In administrative reviews, in contrast, the dumping margin is the basis for the assessment of antidumping duties on entries of merchandise subject to the antidumping duty

³¹ See id. at 77724.

³² See id. at 864.

³³ See Timken at 1342.

³⁴ See section 777A(d)(1) of the Act.

³⁵ See section 777A(d)(2) of the Act. The

³⁶ See 19 C.F.R. § 351.414.

³⁷ See id. at (c).

³⁸ See sections 735(a), (c), and 736(a) of the Act.

order.³⁹ Because of these distinctions, the Department's limiting of the Final Modification to antidumping investigations involving average-to-average comparisons does not render its interpretation of section 771(35) of the Act in administrative reviews improper. Therefore, because section 771(35) of the Act is ambiguous, the Department may interpret that provision differently in the context of antidumping investigations involving average-to-average comparisons than in the context of administrative reviews.

Also, respondents' reliance on Corus is misplaced. The Court in Corus did not hold, as respondents allege, that section 771(35) of the Act could not be interpreted differently in antidumping investigations and administrative reviews. Rather, after acknowledging that antidumping investigations and administrative reviews were different proceedings, the Court held that the Department's zeroing methodology was equally permissible in either context.⁴⁰ Moreover, we note that the Federal Circuit recently affirmed the Department's denial of offsets in the context of administrative reviews.⁴¹ Specifically, the Federal Circuit found that the Final Modification had no effect on the Department's ability to deny offsets in administrative reviews, and that, thus, the judicial precedent upholding the Department's zeroing methodology in administrative reviews remains binding.⁴²

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

Comment 3: Recalculation of General and Administrative (G&A) and Financial Expense Ratios

US Steel

US Steel argues that the Department erred in the Preliminary Results when it based its calculation of Union, Dongbu and HYSCO's G&A expense ratio and interest expense ratio on their 2006 unconsolidated financial statements and, in the case of Union, the cost of production (COP) on Dongkuk Steel Mill Company Ltd. (DSM)'s 2006 consolidated financial statements. According to US Steel, the Department's normal practice is to base the G&A expense ratio on the fiscal year audited financial statements that most closely correspond to the period of review (POR), thus, they argue that the Department, for these final results, should use the 2007 ratios for both the G&A and interest expense calculations for Union, Dongbu, and HYSCO. Citing Magnesium from Russia and Steel Butt-Weld Fittings from Taiwan, US Steel claims that the Department has ignored its longstanding policy of using audited fiscal year financial statements for the "fiscal year {or period} that most closely corresponds to the POR."⁴³

³⁹ See section 751(a) of the Act.

⁴⁰ See Corus at 1347.

⁴¹ See Corus Staal BV v. United States, 502 F.3d 1370 (Fed. Cir. 2007).

⁴² See id. at 1375; see also SNR Roulements v. United States, 521 F. Supp. 2d 1395, 1398 (Ct. Int'l Trade 2007) (finding that, regardless of the Final Modification, no changed circumstances have occurred with respect to zeroing in administrative reviews).

⁴³ See Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review, 72 FR 51791 (September 11, 2007), and accompanying Issues and Decision Memorandum at Comment 1 ("Magnesium from Russia"); see also Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review, 67 FR 78417, December 24, 2002 ("Steel

Furthermore, US Steel claims that the use of ratios based on Union, Dongbu, and HYSCO's 2007 financial statements is more appropriate because evidence in this case indicates that the portion of the POR in 2007 is longer than the portion of the POR in 2006. Referencing Union's July 16, 2008 supplemental questionnaire and Dongbu's July supplemental response,⁴⁴ US Steel rebuffs Union's argument that the 2006 financial statements are more appropriate to use because of the window period for which sales are reported in the home market. According to US Steel, there is no legal basis for the finding that the window period not the POR determines the use of appropriate financial statements.

In support of its claim US Steel refers to the Department's Section D questionnaire where the Department requests "the full-year G&A expense and COGS reported in your company's audited fiscal year financial statements for the fiscal year that most closely corresponds to the POR."⁴⁵

US Steel contends that although the Department has the discretion to deviate from its practice, the Department does not have a good cause in this review to deviate from its practice of using financial statements that most closely correspond to the POR. According to US Steel the existence of the window period does not constitute a good cause. Moreover, US Steel argues that Union, Dongbu and HYSCO have failed to provide a valid reason that would justify the Department deviating from its normal practice. Further, US Steel asserts that the Department used HYSCO's 2006 financial statements in the most recently completed administrative review of CORE from Korea,⁴⁶ and that the same financial statements should not correspond to two different periods of review for the same antidumping duty order. Therefore, US Steel argues that the 2007 financial statement is appropriate to use for Union, Dongbu, and HYSCO.

Union

Union claims that for the final results the Department should rely on the reported POR G&A expense ratio based on the 2006 financial statements. Union contends that in prior reviews, the Department used Union's G&A expense ratio for Union's fiscal year statements representing the first part of the POR. Union recognizes that the Department's normal practice is to base the G&A and interest expense ratios calculations on the fiscal year financial statements that most closely correspond to the POR. However, citing to Magnesium from Russia, Union claims that the Department has the discretion to decide on a case-by-case basis whether "in certain instances, an unusual fact pattern may present itself which makes it appropriate to deviate from the Department's normal practice."⁴⁷ According to Union, in this manner the cost test can be applied to all of Union's home market sales of subject merchandise during the window period. Further, Union contends that the majority of that period, ten months of 19, falls in 2006.⁴⁸

Butt-Weld Fittings from Taiwan"), and accompanying Issues and Decision Memorandum at Comment 8.

⁴⁴ See Dongbu's supplemental response dated July 14, 2008, at pages 37 and 40.

⁴⁵ See the Department's Section D questionnaire, at page D-12 (December 6, 2007).

⁴⁶ See HYSCO's Section D supplemental response, dated Feb. 20, 2007, at Exhibit SD-13 in CORE 13 Final Results.

⁴⁷ See Union's rebuttal brief at 9; Magnesium from Russia at Comment 1.

⁴⁸ See Union's rebuttal brief at 10.

In response to petitioners' claim that the use of 2007 financial statements is more appropriate because the portion of the POR in 2007 is longer than the portion of the POR in 2006, Union states that petitioners misinterpret the purpose of "window periods." Union argues that there are valid reasons to justify that the Department deviate from its normal practice in this review because "while the majority of the POR is in 2007, the majority of the home market reporting period to which the COP data is actually applied in the Department's sales-below-cost test is in 2006." ⁴⁹

In the alternative, if the Department decides to alter its methodology regarding the calculation of ratios, for this review, Union argues that the Department should use a blended ratio consisting of Union's and DSM's financial statements from 2006 and 2007. Union explains that because the POR corresponds to two fiscal years, a blended ratio would be appropriate as a base for calculating G&A and interest expense ratios. In support of its argument, Union cites to Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to Length Carbon Steel Plate from Canada; Final Results of Antidumping Duty Administrative Review, 61 FR 13815, 13829-30 (March 28, 1996) (CTL Plate from Canada), and Accompanying Issues and Decision Memorandum at Comment 30.

Thus, Union concludes that the Department's use of fiscal year 2006 for the calculation of Union's G&A and DSM's expense ratio is both entirely logical and consistent with prior practice. Therefore, Union claims that for the final results, the Department should continue to rely on Union's 2006 financial statements for the calculation of these ratios.

Dongbu

In its rebuttal brief, Dongbu urges the Department to reject Petitioner's argument because the same argument has been raised by Petitioner but was rejected by the Department in the previous four administrative reviews. Dongbu claims that for purposes of calculating the G&A and interest expense ratios, the Department has the discretion to decide on a case-by-case basis whether or not to deviate from the Department's normal practice of using the financial statement data from the fiscal year that most closely corresponds to the POR. In this case, Dongbu argues, the Department has consistently deviated from its general preference and used Dongbu's financial statements that are available at the time the section D responses are submitted. Dongbu asserts that there is no evidence that this practice has sacrificed the accuracy of the calculated dumping margin. Citing the decision of the Court of International Trade (CIT) in Huvis Corp., ⁵⁰, Dongbu argues that the fact that the Department has repeatedly used the financial statements from the first part of the POR has lead Dongbu to reasonably expect adherence to the Department's action. Therefore, Dongbu claims that deviation from this established agency practice would not be in accordance with law. Further, Dongbu argues that use of its 2006 financial statements is more appropriate because the cost test will be applied to all of Dongbu's home market sales of subject merchandise during the February 2006-August 2007 home market reporting period, i.e., the POR and the window period. As such, Dongbu argues that when considering its entire reporting period, there is an eleven-month period in 2006 compared to the

⁴⁹ See Union's rebuttal brief at 13.

⁵⁰ See Huvis Corp. v. United States, 525 F. Supp. 2d 1370, 1378-79 (Ct. Int'l Trade 2007).

eight-month period in 2007, which supports the use of its 2006 financial statements in calculating Dongbu's G&A and interest expense ratios.

With respect to petitioners' argument that window periods should not be treated as if they were part of the POR for purposes of selecting financial statements, Dongbu rebuts that petitioners miss the point. Dongbu asserts that it provided its COP for the POR in accordance with the Department's requirements in that its cost data derive entirely from costs incurred during the POR, except for the G&A and interest expenses ratios. It is the Department's methodology to use ratios not from the POR but rather ratios derived from full fiscal year data in audited financial statements that are most closely aligned with the POR to calculate COP. As stated above, because Dongbu considers the 2006 financial statements are most closely aligned with the POR, Dongbu urges the Department to follow its past practice and continue to use Dongbu's 2006 financial statements to calculate Dongbu's G&A and interest ratios for these final results.

Should the Department decide to deviate from its practice from the previous reviews and not rely on Dongbu's 2006 financial statements, Dongbu requests that the Department follow its practice in CTL Plate from Canada⁵¹ and use the G&A and interest ratios Dongbu reported for fiscal years 2006 and 2007 to calculate weighted-average ratios based on the relative portions of the home market reporting period in each fiscal year.

HYSCO

HYSCO maintains that the Department correctly used HYSCO's reported G&A expense ratio based on what was the most recently completed fiscal year for which financial statements were available at the time of its submission. HYSCO argues that when the POR spans two accounting years, the Department has the authority to rely on data from either year's financial statements. HYSCO contends that the Department has not requested that HYSCO recalculate its G&A expense ratio based on HYSCO's audited 2007 unconsolidated financial statements, and the deadline for new information has passed without such a request. Thus, HYSCO maintains that the Department should continue to rely on HYSCO submitted G&A expenses.

Department's Position

We agree with petitioners and have relied on Dongbu, Hysco, and Union's fiscal year 2007 unconsolidated financial statements for the basis of the G&A expense rate calculation and Dongbu Group's 2007 consolidated financial statements for the basis of the interest rate calculation. When instructing respondents to calculate G&A expense and interest expense ratios, the Department's antidumping duty section D questionnaire requires the respondent to use the audited fiscal year financial statements for the period which most closely corresponds to the POR. See question III D. 1. and 2. Basing the G&A expense and interest expense rates on the fiscal year which most closely corresponds to the POR is also our practice. See Magnesium from Russia and Steel Butt-Weld Fittings from Taiwan. In this case, Dongbu, and Union originally submitted calculations of the G&A expense and interest expense ratios based on their 2006 fiscal year financial statements,⁵² and then, in a supplemental response, submitted the

⁵¹ See CTL Plate from Canada at Comment 30.

⁵² See Dongbu's February 5, 2008, response to the Department's section D questionnaire at exhibits D-10 and D-11;

calculations based on the 2007 fiscal year financial statements.⁵³ The 2007 fiscal year financial statements overlap seven months of the POR whereas the 2006 financial statements overlap only five months of the POR. Therefore, the 2007 financial statements are the more appropriate basis for the G&A expense and interest expense ratios since the portion of the POR in 2007 is longer than the portion of the POR in 2006.

We acknowledge that, for at least the previous three reviews of this particular case, the Department has accepted Dongbu, and Union's reporting based on the earlier set of the financial statements for its calculations of G&A expense and interest expense ratios. However, whereas the Department prefers consistent methodology from segment to segment, it is not compelled to continue with a methodology at variance with its standard practice for the sake of consistency with prior segments.⁵⁴

We agree with the petitioner that the window period for home market sales, which includes three months prior to and two months after the first and last sale to the United States, is not relevant in determining which fiscal year is more appropriate in calculating the G&A and interest expense rates. The Department normally calculates its COP for the POR and does require costs to be separately reported for window periods. Since the costs are reported for the POR, the appropriate period for reporting the G&A and financial expense rates is the fiscal period which most closely matches the POR. We also note that sales occurring during the window periods are not necessarily used in the calculation of the dumping margin.

Lastly, while we agree with Dongbu that in CLT Plate we used data from two fiscal years to calculate the G&A rate, we recognize that this was a deviation from our normal practice of relying on financial statements for a single fiscal year. While CLT Plate reiterates our practice of using one fiscal year, the unique circumstances which warranted such a departure from our practice is not articulated in the notice. In any case, we find that such a departure is not warranted in this case.

B. Company Specific Issues

Dongbu

Comment 4: Exclusion of Gains and Losses on Currency Forward Contracts

The petitioners argue that the Department should revise the reported G&A expense ratio by excluding gains and losses on currency forward contracts. Petitioners point out that Dongbu included gains and losses on currency forward contracts from its unconsolidated financial

Union's February 4, 2008, response to the Department's section D questionnaire at exhibits D-16 and D-17; Union's July 15, 2008, supplemental response at page 61 and exhibits D – 39 and D - 40.

⁵³ See the July 14, 2008, response to the Department's supplemental section D questionnaire at exhibits D-19 and D-20.

⁵⁴ See Individually Quick Frozen Red Raspberries from Chile: Notice of Final Results of Antidumping Duty Administrative Review and Final Determination to Revoke the Order In Part, 72 FR 6524 (February 12, 2007), and accompanying Issues and Decision Memorandum at Comment 5: "We disagree that the Shikoko ruling requires the Department to continue to apply an incorrect methodology in the calculation of a respondent's costs for the sake of being consistent from segment to segment."

statement in its reported G&A expense ratio. Petitioners point out that, in the previous review, the Department revised the reported G&A expense ratio by excluding gains and losses on currency forward contracts on the basis that such gains and losses are components of the financial expense ratio and that the facts are no different in the current review.

The petitioners add that the Department's practice is to include currency gains and losses at the consolidated level rather than at the unconsolidated level. The petitioners argue that the gains and losses experienced at the unconsolidated level cannot serve as an alternative for those incurred at the consolidated level because there is no evidence that the experience of the other individual companies in the Dongbu Group is similar to that of Dongbu. Therefore, petitioners reason that considering such gains and losses at the unconsolidated level is flawed and would distort the margin calculation.

Dongbu explains that it uses currency forward contracts to hedge its foreign currency risk. Dongbu points out that the gains and losses on the currency forward contracts are shown on Dongbu's unconsolidated financial statements but such gains and losses are not segregated from the total miscellaneous non-operating income and expense accounts as shown on the Dongbu Group's consolidated financial statement. Therefore, Dongbu argues that reporting the gains and losses as shown on the unconsolidated financial statements in the G&A expense ratio was the only viable alternative for including the amount in the reported COP.

Dongbu states that there is no disputing that the gains and losses should be included in the COP. Dongbu states that such gains and losses are classified as a non-operating income/expense in accordance to Korean GAAP. Dongbu argues that the gains and losses are "general expense (s)" and that the amounts shown in the financial statements at the unconsolidated level are properly reported in the G&A expense ratio because they relate to risk hedging that apply to Dongbu alone and have no relationship with other companies in the Dongbu Group.

Department Position

We agree with the petitioners that the Department should exclude the gains and losses arising from currency forward contracts related to risk hedging from Dongbu's G&A rate calculation. As the petitioner points out, in the previous review, the Department revised the reported G&A expense ratio by excluding gains and losses on currency forward contracts on the basis that such gains and losses are components of the financial expense ratio. See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 51584 (September 10, 2007) (CORE 13 Preliminary Results) and the Memorandum to Neal Halper titled, "Cost of Production and Constructed Value Adjustments for the Preliminary Results--Dongbu Steel Co., Ltd.", dated August 30, 2007 (unchanged in the final results).

We typically account for activities that relate to the financing of working capital as part of the financial expense rate calculation which is calculated at the consolidated level. See Notice of Final Determination of Sales at Less than Fair Value: Live Cattle from Canada, 64 FR 56738, 56758 (October 21, 1999). It is also our practice to include foreign exchange gains and losses in the financial expense. See Certain Preserved Mushrooms from India: Preliminary Results of

Antidumping Duty Administrative Review, 68 FR 11045, 11048 (March 7, 2003) (unchanged in the final results). As both currency forward contracts and foreign exchange gains and losses 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, as we do with foreign exchange gains and losses, we include the gains and losses on currency forward contracts in the financial expense rate calculation.

We disagree with Dongbu's assertion that gains and losses from currency forward contracts are properly measured, in this case, at the unconsolidated level. It is the Department's practice to base the financial expense for COP and CV purposes on the consolidated level. See Notice of Final Results of First Administrative Review: Fresh Atlantic Salmon from Chile, 65 FR 78472 (December 15, 2000), and accompanying Issues and Decision Memorandum at Comment 7. This practice recognizes the fungible nature of money within a consolidated group. In cases where a respondent is a member of a consolidated group, the most accurate measure of a member's financial expense is the borrowing costs of the controlling entity. Companies finance operations through various forms of debt transactions, stock transactions, and even corporate operating transactions. These financing activities are conducted both with internal and external parties. The major point is that the controlling management of the group coordinates these activities of the group in order to maximize the benefit to the group as a whole.

We also disagree with Dongbu that it is reasonable to include such gains and losses at the unconsolidated level in the G&A expense rate because Dongbu is unable to identify them on Dongbu Group's consolidated financial statements. When a respondent cannot identify such gains and losses at the consolidated level, the Department's practice is to exclude the expense from the G&A calculation on the basis that such gains and losses are components of the financial expense ratio. See CORE 13 Preliminary Results (unchanged in the final results).⁵⁵

Comment 5: Exclusion of Losses on the Disposal of Accounts Receivable from Short Term Interest Rate Calculation

Petitioners claim that an interest rate, by definition, is a ratio of interest paid relative to the amount of principal borrowed. In this case, Petitioner argues that it is improper and inconsistent for Dongbu to include its monthly "AR-disposal loss" in the numerator of the short term interest rate ratio as an "interest expenses" but not to include a corresponding amount of principal in the denominator. Therefore, petitioners request that this amount be excluded from Dongbu's short term interest rate calculation.

Dongbu did not comment on this issue in its rebuttal.

Department Position

We agree with petitioners that "AR-disposal loss" should not be included in the short term interest rate calculation. When customers failed to pay their purchase of merchandise in full, the

⁵⁵ See 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), and accompanying Issues and Decision Memorandum at Comment 19.

selling companies recognize such loss as bad debt expense. It is the Department's practice to treat bad debt expense as indirect selling expense. See, e.g., CORE 10 Final Results at Comment 21. In CORE 10 Final Results, the Department affirmed Union's treatment of its bad debt expenses and determined that Union correctly reported the proper portions of its bad debt as indirect selling expenses in its revised indirect selling expense ratio calculation.⁵⁶ In this case, Dongbu incurred losses on disposal of account receivable. Because there is no evidence on the record demonstrating that the disposal of account receivable is attributable to specific actual sales, pursuant to CORE 10 Final Results, the Department considers such losses as indirect selling expenses for purposes of these final results.

Union

Comment 6: Inclusion of Union's U.S. Warehousing Expenses in the Calculation of International Movement Expense

Petitioners state that the Department failed to include warehousing expenses in the calculation of the international movement expense in the U.S. market sales program. Petitioners argue such expenses should be included in the calculation of international movement expense.

Union agrees with US Steel that the Department should not exclude Union's U. S. warehousing expense from the calculation of international movement expense in the final results. Union also states that the Department made an error by deducting Union's U.S. warehousing expense as further manufacturing.

Therefore, Union argues that the Department should exclude its deduction of U.S. warehousing expenses as further manufacturing expenses and include U.S. warehousing expenses in its calculation of Union's international movement expenses for the final results.

Department Position

We agree with both US Steel and Union that for the preliminary results the Department erred in excluding Union's U.S. Warehousing expenses in its calculation of Union's international movement expenses. Further, as properly noted by Union, the Department erred in deducting U.S. warehousing expenses as further manufacturing expenses. Accordingly, we have made an adjustment in the margin calculation program. For the final results, we have included U.S. warehousing expenses in the calculation of international movement expenses and we deleted these expenses from further manufacturing expenses. See Memorandum from Jolanta Lawska, Case Analyst, to James Terpstra, Program Manager, concerning Analysis Memorandum for Union Steel Manufacturing Ltd. in the Final Results, dated March 9, 2009 (Final Calculation Memorandum for Union).

⁵⁶ In CORE 10, in addition to reporting "bad debt allowance," which Union included in its calculation of the U.S. indirect selling expense ratio, Union also reported "bad debt write-offs" that were attributable to actual sales, which Union reported in the field OTHDISU.

Comment 7: The Department's Treatment of Union's Purchases of Steel Substrate from Affiliated and Unaffiliated Parties

Nucor notes that Union obtained a certain quantity of steel substrate from its affiliated suppliers during the POR and claims that pursuant to section 773(f)(3) of the Act the purchases of substrate should be subject to the “major input” rule. In particular, Nucor argues that the “major input” analysis should be applied toward purchases of substrate from certain affiliated parties. Nucor alleges that the record shows that the transfer prices of some of Union’s purchases from certain affiliated supplier were not in line with market prices, therefore, Nucor contends that adjustment is warranted.⁵⁷

US Steel argues that only certain purchases of steel substrate should be subject to the “major input” analysis. Both petitioners claim that the Department does not have sufficient information on the record to perform the “major input” test. Specifically, referencing questions D-4 at page 7, and D-6 at page 9, of the Department’s February 4, 2008, questionnaire US Steel argues that Union failed to provide requested information regarding prices and cost of raw materials that are necessary for conducting the “major input” test. Therefore, according to Nucor, the Department should request COP data from all of Union’s affiliated suppliers of steel substrate for these final results and then perform the test for these final results. Nucor emphasizes the importance of the cost analysis considering that certain steel substrate purchases come from Union’s affiliated suppliers, and that substrates account for a significant percent of Union’s total cost of raw materials.

In the absence of the information to apply the “major input” test, US Steel argues that the Department should apply the “transaction disregarded” rule to Union’s purchases of certain raw materials from all affiliated parties during the POR. In support of its argument US Steel cites to section 773(f)(2) of the Act and explains that the “transaction disregarded rule” applies to all inputs from affiliated parties regardless of whether or not the input is considered to be major. According to US Steel the Department has all the necessary information to conduct this test.⁵⁸ Thus, US Steel argues that the Department should conduct the “transaction disregarded” test and then apply the results of the test for recalculating Union’s total cost of manufacturing for the final results.

Union contends that its purchases of substrate from a certain affiliated supplier are subject to the “major input” rule but disagrees with Nucor’s and US Steel’s argument that the Department lacks sufficient data on the record to conduct the “major input” analysis with respect to Union’s purchases of steel substrate from a certain affiliated supplier.

Further, citing to Certain Hot-Rolled Carbon Steel Flat Products from Thailand and Stainless Steel Sheet and Strip in Coils from Germany, Union disputes Nucor’s allegation that the “major input” rule should be applied to Union’s affiliated suppliers that provided Union with very small quantities of steel substrate. Rather, Union argues that the “transaction disregarded” rule is warranted here. See Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty

⁵⁷ See Nucor’s case brief at 8.

⁵⁸ See US Steel’s case brief at 8.

Administrative Review (Hot-Rolled Carbon Steel Flat Products from Thailand) 72 FR 27802 (May 17, 2007), and accompanying Issues and Decision Memorandum at Comment 3; see also Final determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Germany (Stainless Steel Sheet and Strip in Coils from Germany), 64 FR 30710, 30747 (June 8, 1999).

Due to the proprietary nature of other comments made by Nucor and US Steel with respect to this issue, we have summarized the business proprietary information within the Analysis Memorandum for Union, dated March 10, 2009.

Department Position

We agree with Nucor and US Steel and Union that the Department should apply a “major input” analysis with respect to Union’s purchases of substrate from certain affiliated suppliers. In determining whether an input is considered “major,” among other factors, the Department looks at both the percentage of the input obtained from affiliated suppliers (as opposed to unaffiliated suppliers) and the percentage the individual element represents in the product's cost of manufacture (COM).⁵⁹ Based on the results of our analysis, the Department determines that Union’s substrate purchases from certain affiliated supplier are major inputs under section 773(f)(3) of the Act and in accordance with 19 CFR 351.407(b).

With respect to Union’s purchases of steel substrate from the POSCO Group, and other affiliated suppliers, we disagree with Nucor and US Steel that the “major input” rule applies. According to section 773(f)(3) of the Act, the application of the “major input” rule is not warranted because the record shows that the POSCO Group, and certain other affiliated suppliers, accounted for insignificant percentages of Union’s total purchases of substrate during the POR. Therefore, the Department applied the transactions disregarded rule as suggested by US Steel to determine the proper valuation for Union’s purchases of steel substrate from POSCO and certain other affiliated suppliers.

Pursuant to section 773(f)(3) of the Act, the Department may value major inputs purchased from affiliated parties at the higher of the market value, transfer price, or the affiliated supplier’s COP. See 19 CFR 351.407(b). According to 19 CFR 351.407(b), the Department will determine the value of the major input purchased from an affiliated person based on the higher of: 1) the price paid by the exporter or producer to the affiliated person for the major input; 2) the amount usually reflected in sales of the major input in the market under consideration; and 3) the cost to the affiliated person of producing the major input. We have relied on this methodology in other cases. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Taiwan, 64 FR 17336, 17337 (April 9, 1999), Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part, 66 FR 36551, (July 12, 2001) (AFBs 2001), and accompanying Issues and Decision Memorandum at Comment 1. Moreover, the CIT has upheld our application of this regulation. See Mannesmann v. United States, 77 F. Supp 2d 1302 (CIT 1999). The Department determines that Union’s purchases of steel substrate from a certain supplier constitute a major input and, therefore, we examined these purchases as

⁵⁹ See Antidumping Duty: Countervailing Duties, 62 FR 27296, 27361 (May 19, 1997).

directed by section 773(f)(3) of the Act and 19 CFR 351.407(b)(2). We note that Union purchased various forms of steel substrate manufactured by certain affiliated supplier and sold to Union through a certain affiliated supplier during the POR. Because this certain affiliated supplier is a trading company, and therefore does not manufacture, we requested and obtained its weighted average purchase costs for certain steel substrates during the POR.

Union provided a detailed list of all input purchases from affiliated and unaffiliated suppliers. Based on this we were able to perform detailed analysis of all purchases, including those from certain affiliated suppliers covered by the major input rule, and those from other affiliated suppliers. Our analysis shows that no adjustment is warranted for any of these purchases. Due to the proprietary nature of the issue, see Union's Analysis Memorandum, dated March 9, 2009, for a more detailed discussion

POSCO

Comment 8: Whether to Collapse the POSCO Group and Union for the Final Results

US Steel argues that the Department should collapse the POSCO Group and Union for the final results because there is a significant potential for the manipulation of price and production in the absence of collapsing. On April 27, 2007, POSCO bought equity interest in Union from Dongkuk Steel Mill Co., Ltd., (DSM) and on May 2, 2007, DSM bought equity interest in POCOS. Nucor and US Steel claim that during the POR Union purchased raw materials from the POSCO Group. Moreover, Nucor and US Steel suggest that the Department should obtain Union's COP from its other raw material suppliers in order to analyze properly the nature of Union's raw material purchases. In addition, Nucor and US Steel explain that Union understates its relationship with the POSCO Group by stating that its purchases are "unrelated to the cross-investment between Union/DSM and the POSCO Group." See Union's June 9, 2008, Supplemental Response at Section A page 6.

The POSCO Group claims that the level of common ownership between the POSCO Group and Union is minimal. The POSCO Group asserts that in order to collapse two producers, the Department must examine the totality of the circumstances in establishing if there is potential for the manipulation of price or production. The POSCO Group explains that its relationship with Union does not involve common ownership, nor do managerial employees or board members of one firm sit on the board of directors of the other firm, and operations are not intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the producers.

The POSCO Group further refutes Nucor by arguing that the POSCO Group did not receive any products or services from Union or DSM for the sale or production of subject merchandise during the POR, and that the POSCO Group did not purchase any finished steel products, raw materials, or other inputs from Union or DSM used to produce steel during the POR.

Union disagrees with US Steel that Union and the POSCO Group should be collapsed because according to Union, the nature of the relationship between Union and POSCO does not justify collapsing these companies for the purposes of calculating Union's COP. Referring to the

Preliminary Results, Union notes that the Department examined the POSCO Group's affiliation with Union and decided not to collapse Union with the POSCO Group. Union contends that the Department has no reason to change its preliminary decision not to collapse Union with the POSCO Group.

Union also argues that the evidence in the administrative record does not support US Steel's arguments that there is potential for the manipulation of price or production in the absence of collapsing. According to Union, the POSCO Group supplier relationship with Union has existed prior to the POSCO Group's affiliation with Union and that there is evidence that Union continued to purchase certain raw materials for the production of subject merchandise from the POSCO Group during the POR. Further, Union points out that the low level of common ownership of the POSCO Group in Union does not allow the POSCO Group to control Union. Rather, Union points out, DSM, Union's parent company that owns a majority of Union's shares is in a position to do so. Thus, Union maintains that the above-mentioned evidence demonstrates no potential for price manipulation. Therefore, for the foregoing reasons, Union argues that the Department should continue treating Union and the POSCO Group as separate entities for the final results of this review because the evidence does not support the need to collapse the two companies.

Department Position

The Department will not collapse the POSCO Group and Union for the final results of this proceeding. The POSCO Group and Union are both exporters and producers of subject merchandise, as defined by section 771(28) of the Act. During the preliminary results, the Department concluded that the POSCO Group and Union were separate entities. The Department recognized that the POSCO Group and Union were affiliated, but determined that the level of common ownership is minimal.⁶⁰ The Department further determined that the criteria of 19 CFR 351.401(f) were not satisfied and that there was no potential for manipulation as defined by section 351.401(f) between the POSCO Group and Union. The Department also found that the POSCO Group and Union did not fit the criteria of 19 CFR 351.401(f), where two or more producers have production facilities for similar or identical products that would not require substantial retooling of either facility to restructure manufacturing priorities.

As previously stated in the preliminary results, the POSCO Group and Union's operations are not intertwined, such as through common ownership, sharing of board members, sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between affiliated producers. In addition, there is no evidence that the POSCO Group and Union share sales information, production and pricing decisions, facilities, or employees. There is no evidence on the record of this proceeding which indicates that the POSCO Group and Union are engaged in any significant transactions during the POR.

⁶⁰ See, e.g., Stainless Steel Sheet and Strip in Coils From Taiwan: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 69 FR 5960 (February 9, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

Based on these factors, we find that there is no significant potential for the POSCO Group and Union to manipulate the price or cost of CORE exported to the U.S. Therefore, the Department will not collapse the POSCO Group and Union for the final results of this proceeding.

Comment 9: The POSCO Group's Inland Freight from Plant to Port Incurred by POSCO for Its U.S. Sales

US Steel and ArcelorMittal assert that the POSCO Group did not report its foreign inland freight expenses from the plant to the port of exportation (DINLFTPU), or its internal expenses in transporting subject merchandise from its plant to the port. US Steel argues that the POSCO Group did not act to the best of its ability to provide the Department with the required information. Moreover, ArcelorMittal argues that the POSCO Group must deduct its movement expenses associated with transporting subject merchandise from its mill to the port from U.S. price. Therefore for the final results, US Steel and ArcelorMittal request the Department to apply partial adverse facts available (AFA) to calculate inland freight for the POSCO Group's U.S. sales.

The POSCO Group explains that it did not report DINLFTPU because its production personnel transport the products to the port once the production is completed. The POSCO Groups claims that no other transportation expense is incurred, and that the salaries for these personnel are recorded in the indirect cost centers and are reflected as manufacturing costs. The POSCO Group asserts that the salaries of these personnel cannot segregate DINLFTPU expenses because this is a part of their ordinary job function. In addition, the POSCO group claims that the proposed adjustments made by US Steel and ArcelorMittal will not work because its mill is located directly at the port and the distance that the merchandise travels is negligible and comparing its movement expenses to the other respondents will potentially represent greater distances and higher costs. Moreover, the POSCO group argues that in applying adverse facts available, the Department would be "double counting" the expenses and would be erroneously changing its reported home market sales.

Department Position

The Department agrees with the POSCO Group and thus, no change is needed for the final results. The record evidence shows that the POSCO Group adequately reported its DINLFTPU according to the POSCO Group's normal accounting books and records. Moreover, the evidence indicates that the distance from the plant to the port is negligible. The petitioners' proposal to compare the POSCO Group's movement expenses to the other respondents is wrong because the POSCO Group's DINLFTPU will be calculated at a higher distance and cost. Moreover, the Department agrees that the POSCO Group cannot segregate the payroll of the personnel that is transporting the products to the port when it is part of the personnel's ordinary job function. The POSCO Group has accurately accounted for all of its expenses according to the Department's instructions. Because the Department is satisfied with the POSCO Group's response, the Department will not apply AFA to the POSCO Group's DINLFTPU calculation for the final results.

Comment 10: The Department's Calculation of POCOS' Loans in the Calculation of the Home Market Interest Rate

US Steel urges the Department to exclude the interest expense associated with loans obtained for export financing from calculating POCOS' home market interest rate. US Steel argues that export loans are based on the unique risks associated with exporting and POCOS' interest rate does not reflect the usual and reasonable commercial behavior with respect to borrowing for sales in the home market. In Porcelain-on-Steel Cooking Ware From Mexico; Final Results of Antidumping Duty Administrative Review, 58 FR 43327 (August 16, 1993) (Cooking Ware from Mexico), US Steel argues that the Department excluded the interest expense associated with loans obtained for export financing. For the final results, US Steel recommends that the Department recalculate the POSCO Group's home market short-term interest rate to exclude POCOS' interest expense for export loans.

The POSCO Group argues that in calculating its short-term interest rate associated with Korean won borrowings for POCOS, POSCO included all loans denominated in Korean won. The POSCO Group states that US Steel incorrectly cited Cooking Ware from Mexico. The POSCO Group argues that this case is directly distinguishable from the POSCO Group's situation because there is no evidence that POCOS' loans were used solely for export sales. The POSCO Group asserts that the Department excluded export loans in Cooking Ware from Mexico because it verified that the loans in questions were explicitly tied to export sales. In addition, the POSCO Group states that the Department has, in the past, included export loans in calculating short-term interest expense for the purpose of determining home market credit expense.⁶¹

Department Position

We agree with the POSCO Group and, thus, no change is needed for the final results. The record evidence shows that the POSCO Group adequately reported its short-term interest rate used for its U.S. credit expense according to the POSCO Group's normal accounting books and records. In calculating short-term interest rates, the Department only considers the loans that are entirely associated with activities in the respective market.⁶² Here, the loans in questions were not tied solely to export sales. Moreover, the POSCO Group reported all of its credit expenses based on short-term interest rates.

Comment 11: The Department's Calculation of the POSCO Group's U.S. Indirect Selling Expense (INDIRSU)

The POSCO Group asserts that the Department should continue to use its U.S. indirect selling expense (ISE) calculation methodology for POSCO America Corporation (POSAM) consistent with the twelfth administrative review. The POSCO Group claims that it calculated its INDIRSU ratio by segregating the sales of products purchased from POSCO, sales of non-

⁶¹ See Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Administrative Review, 62 FR 33588 (June 20, 1997), and accompany Issues and Decision Memorandum at Comment 5.

⁶² See Stainless Steel Sheet and Strip in Coils From Italy; Final Results of Antidumping Duty Administrative Review, 67 FR 1715 (January 14, 2002), and accompanying Issues and Decision Memorandum at Comment 4.

subject merchandise, and management of POSAM's U.S. investments. Then, the POSCO Group explains that it uses payroll expenses of the employees performing these activities and then allocated common expenses incurred in each of the three categories of employees' activities.

The POSCO Group argues that POSAM does not solely function as a selling company, but it also employs an individual that is fully dedicated to managing POSAM's investments. The POSCO Group claims that this activity is not a selling activity and thus this employee's salary was properly excluded by the POSCO Group from the pool of selling expenses used to calculate its INDIRSU ratio.⁶³ Thus, the POSCO Group states that for the purposes of calculating INDIRSU, the Department should only include those expenses and sales revenues associated with POSAM's payroll, which is related to the sale of subject merchandise during the POR.

US Steel states that the expenses associated with POSAM's investment management should not be excluded from the Department's calculation of INDIRSU. US Steel contends that it is the Department's practice to include G&A expenses that are incurred in support of the respondent's U.S. sales affiliate, such as expenses associated with investment management. Moreover, US Steel contends that the facts in this review are different from those from the twelfth review. Because there is no evidence as to how to allocate the new function of the one employee and its investment management functions, US Steel states that there is no way to allocate such expenses in a way that would not produce distortions. Thus, US Steel urges the Department to allocate the POSCO Group's INDIRSU using the relative sales value methodology for the final results.

Due to the proprietary nature of other comments made with respect to this issue, we have summarized the business proprietary information in the Calculation Memorandum for the POSCO Group, dated March 9, 2009.

Department Position

The Department agrees with the POSCO Group. When calculating INDIRSU, the Department excludes those expenses that are not related to selling subject merchandise.⁶⁴ The POSCO Group has demonstrated that the expenses associated with POSAM's investment manager were not related to selling subject merchandise, but only related to managing investments. The POSCO Group's payroll methodology is not distortive as US Steel claims because the POSCO Group correctly calculated INDIRSU by excluding those expenses that were not associated with the sale of subject merchandise or its selling activities. Thus, the POSCO Group correctly calculated its INDIRSU by excluding expenses related to POSAM's sales of non-subject merchandise and its non-selling activities. For the final results, a change to the POSCO Group's

⁶³ See Antifriction Bearings and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part, 69 FR 55574 (September 15, 2004), and accompanying Issues and Decision Memorandum at Comment 4.

⁶⁴ See Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Spain, 67 FR 35482 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 12; see also Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea, 71 FR 29310 (May 22, 2006), and accompanying Issues and Decision Memorandum at Comment 20.

calculation of INDIRSU is not warranted. See the POSCO's March 9, 2009, Calculation Memorandum for a further discussion on this issue.

Comment 12: The POSCO Group's Reporting of POCOS' Home Market Warranty

ArcelorMittal alleges that the POSCO Group inaccurately reported POCOS' home market warranty expenses and the Department should reject it for the final results. ArcelorMittal claims that the POSCO Group reported discrepancies which caused distortions in the normal value calculation.

The POSCO Group claims that ArcelorMittal's allegations are flawed because it does not take into consideration the reported home market sales database which includes the POSCO Group's sales from the 90/60 window period and the sales during the 12-month POR. Pursuant to 19 CFR 351.414 (e)(2), the Department will compare sales made within the window period, which extends from three months prior to the POR until two months after the POR. The POSCO Group argues that there are no differences between the warranty expenses reported in its Section B response and those warranty expenses report for the 12-month POR in the POSCO Group's home market sales database.

Due to the proprietary nature of other comments made with respect to this issue, we have summarized the business proprietary information in the Calculation Memorandum for the POSCO Group, dated March 9, 2009.

Department's Position

The Department agrees with the POSCO Group. ArcelorMittal did not consider the window period in its allegation. When calculating home market expense, the Department considers the window period because the Department will select the contemporaneous month when comparing NV to CEP. However, if there are no sales of the foreign like product during the contemporaneous month, the Department will compare the most recent of the three months prior to the month of the U.S. sale in which there was a sale of the foreign like product and two months following the month of the U.S. sale in which there was a sale of the foreign like product.⁶⁵ For the final results, a change to the POSCO Group's home warranty expense calculation is not warranted.

Comment 13: The POSCO Group's Transaction-Specific Reporting of Warranty Expenses

The POSCO Group asserts that it reported U.S. warranty expenses on certain U.S. sales associated with claims made by one U.S. customer. However for the final results, the POSCO Group urges the Department to allocate warranty expenses on a customer-specific basis in order to avoid distortions in the margin calculation.

The POSCO Group contends that the Department prefers transaction-specific base adjustments

⁶⁵ See 19 CFR 351.414 (e)(2).

only where such adjustments are not distortive.⁶⁶ In addition, the POSCO Group claims that it is the Department practice to calculate warranty expenses based on historical averages because warranty expenses are “unknown and unforeseeable at the time of sale” and such expense cannot reasonably reflect the gross unit prices agreed upon between the seller and buyer.⁶⁷

Nucor asserts that the POSCO Group only reports transaction-specific warranty expenses. Furthermore, US Steel argues that in Certain Cold-Rolled Carbon Steel Flat Products from Brazil⁶⁸, the Department agreed with the petitioners that when “warranty expenses can be tied to particular sales and are not part of a general program based on all sales or sales to a particular set of customers, they must be transaction-specific.” Consequently, the Department refused to reallocate the respondent's transaction-specific warranty expense to all of its U.S. sales in that case. Nucor states that the POSCO Group’s cite to Certain Activated Carbon from the PRC does not pertain to the POSCO Group. Nucor asserts that the Department properly treated in this event the “unforeseen, unusual in nature, and infrequent occurrence” of Hurricane Katrina and allowed the respondent to average warehousing costs due to damage. Nucor argues that this has nothing to do with warranty expenses as the POSCO Group claims. Moreover, Nucor asserts that the POSCO Group’s references to Brass Sheet and Strip from Canada⁶⁹ and Tapered Roller Bearing from Japan⁷⁰ are wrong as well. Unlike Brass Sheet and Strip from Canada, Nucor claims that the POSCO Group did not report all warranty expenses.

In addition, Nucor and US Steel allege that the POSCO Group’s reliance on Honey from Argentina⁷¹ is misplaced. In Honey from Argentina, the Department rejected transaction-specific warranty expenses in favor of a warranty adjustment based on historical data. In that case, Nucor asserts that the Department also allocated the historical warranty expenses across the entire market – i.e., on a market-wide basis. Nucor suggests that there was a general program for the entire market that governed the respondent's warranties in that case. Nucor argues that the POSCO Group does not have any such general warranty program that governs how it incurred its U.S. warranty expenses.

Department Position

The Department agrees with the POSCO Group in part. We agree with the POSCO Group that warranty expenses should not be allocated on a transaction-specific basis; but disagree with the POSCO Group that such expenses should be allocated on customer-specific basis. In accordance with our practice, we have allocated warranty expenses over all of POSCO’s U.S. sales. Where a

⁶⁶ See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part, 65 FR 11767 (March 6, 2000), and accompany Issues and Decision Memorandum at Comment 4.1 (Tapered Roller Bearings from Japan).

⁶⁷ See Honey from Argentina: Final Results, Partial Rescission of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 71 FR 26333 (May 4, 2006) (Honey from Argentina).

⁶⁸ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Brazil, 67 FR 62134 (October 3, 2002), and accompanying Issues and Decision Memorandum at Comment 16 (Certain-Cold Rolled Carbon Steel Flat Products from Brazil).

⁶⁹ See Brass Sheet and Strip from Canada.

⁷⁰ See Tapered Roller Bearings from Japan.

⁷¹ See Honey from Argentina.

company has a warranty policy that it applies to all products and all sales our practice is to allocate warranty expenses over all sales. In circumstances where the warranty policy is limited to certain products, customers, or types of transactions, we may consider a narrower allocation.⁷² However, there is no information on the record to suggest that the POSCO Group's warranty program was limited to certain products, customers or types of transactions. Moreover, none of the unique circumstances in the other cases cited by the parties are present here. Finally, the POSCO Group provided no evidence of any distortion associated with these transactions.

Comment 14: The POSCO Group's Transaction-Specific Reporting of Other Transportation Expenses

The POSCO Group asserts that it reported other transportation cost from the U.S. port to a customer designated place of delivery in the field INLFTPU. However for the final results, the POSCO Group urges the Department to allocate these expenses on a customer-specific basis in order to avoid distortions in the margin calculation.

The POSCO Group contends that the Department prefers transaction-specific base adjustments only where such adjustments are not distortive.⁷³ The POSCO Group argues that if the Department uses transaction-specific allocation for its INLFTPU, it would cause distortions in its margin calculation by calculating a higher antidumping margin. Moreover, the POSCO Group argues that the Department excludes expenses from the calculations where such expenses are "unusual and infrequent in occurrence."⁷⁴ In Brass Sheet and Strip from Canada,⁷⁵ the POSCO Group points out that the Department responded to allocated freight costs on a customer-specific basis, noting that "allocations of freight costs are common" and that the allocation did not cause distortions in the calculations.⁷⁶

Nucor states that the POSCO Group's cite to Certain Activated Carbon from the PRC does not pertain to the POSCO Group. Nucor asserts that the Department properly treated in this event the "unforeseen, unusual in nature, and infrequent occurrence" of Hurricane Katrina and allowed the respondent to average warehousing costs due to damage. Nucor argues that this has nothing to do with the other transportation expenses as the POSCO Group claims. Moreover, Nucor asserts that the POSCO Group's references to Brass Sheet and Strip from Canada and Tapered Roller Bearing from Japan are wrong as well.⁷⁷ Unlike Brass Sheet and Strip from Canada,

⁷² See id.

⁷³ See Certain Activated Carbon from the People's republic of China, 72 FR 9508 (March 2, 2007) and accompanying Issues and Decision Memorandum at Comment 25; see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part, 65 FR 11767 (March 6, 2000), and accompanying Issues and Decision Memorandum at Comment 4 (Tapered Roller Bearings from Japan).

⁷⁴ See Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China, 72 FR 9508 (March 2, 2007), and accompanying Issues and Decision Memorandum at Comment 25 (Certain Activated Carbon from the PRC).

⁷⁵ See Brass Sheet and Strip From Canada: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part, 64 FR 46344 (August 25, 1999), and accompanying Issues and Decision Memorandum at Comment 5 (Brass Sheet and Strip from Canada).

⁷⁶ See POSCO's case brief at 4.

⁷⁷ See Nucor's Rebuttal Brief at 26 and 27.

Nucor claims that the POSCO Group did not report all inland freight expenses.

Department Position

We disagree with the POSCO group that these expenses should be allocated over all sales to that customer. As noted in section 351.401(g) of the Department's regulations, the Department prefers most expenses to be calculated on a transaction-specific basis. The Department's practice is to tie a specific expense to a specific transaction unless the expense cannot be tied to a specific transaction, in which case the expense will be allocated as appropriate. The terms of these transactions are unique such that transaction-specific reporting is the most appropriate method. Moreover, the POSCO Group has provided no evidence of distortion associated with these expenses. Because of the proprietary nature of this issue, see POSCO calculation Memo for details.

HYSCO

Comment 15: Inclusion of Sales to Affiliates in the CEP Profit Calculation

Nucor states that in calculating CEP profit, the Department does not treat high priced sales to affiliates that fail the arms' length test and below cost sales equally.⁷⁸ Nucor asserts that both types of sales are made outside the ordinary course of trade, however, below cost sales are included in the CEP profit calculation, while high-priced sales to affiliates are not. Nucor argues that the Department should either include high-priced sales to affiliates that fail the arms' length test, or exclude sales made below cost, from the CEP profit calculation. Nucor argues that the Act does not provide for any sales in either the home or U.S. markets to be excluded from the calculation of total expenses or total profit. Nucor argues that HYSCO is making a substantial profit from the sales to its U.S. affiliates, and that it is illogical to exclude those sales from the CEP profit calculation.

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

Department Position

We agree with HYSCO. The Department's long-standing practice is to exclude affiliated party price comparisons from our analysis where we find that the prices are not made at arm's length because these transactions are not indicative of market value. See Import Administration Policy Bulletin, Number 97.1, Calculation of Profit for Constructed Export Price Transactions (CEP Profit Policy Bulletin), September 4, 1997, at footnote 4. According to section 772(f) of the Act, the Department uses the "total actual profit" in calculating the CEP profit deduction. Since the calculation of both total actual profit and total expenses includes sales (whether above or below-cost) that are made at a profit or at a loss, the calculation must include below-cost sales in order to reflect actual profit. See 19 C.F.R. § 351.402 (d)(1); see also Antidumping

⁷⁸ See Nucor's case brief at 13.

Duties; Countervailing Duties, 62 FR 27296, 27354 (May 19, 1997) (“there is no provision in the statute for disregarding sales below cost in this context, and doing so would conflict with the statutory requirement to use “actual profit”). However, sales to affiliates made at non-arm’s-length prices, as determined on a case-by-case basis, are excluded from the CEP profit calculation because they do not reflect actual market prices and, thus, do not represent actual profit (or loss).⁷⁹

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

Comment 16: Recalculation of Net Interest Expense

US Steel asserts that HYSCO’s net interest expense ratio is incorrect. US Steel states that HYSCO’s net interest expense ratio is calculated using the financial statements of Hysco Motor Company (HMC) instead of HYSCO’s financial statements. US Steel argues that when a company is part of a larger corporate group, the Department’s practice is to use the company’s own financial statement, i.e. HYSCO’s consolidated financial statement, not the financial statement of its parent company, HMC, if the parent does not have power to direct the respondent’s capital structure.⁸⁰ US Steel asserts that HMC does not have the power to direct HYSCO’s capital structure because “HMC directly owns only 26.31 percent of HYSCO and indirectly owns, through its subsidiary Kia Motor Company (“Kia”), only 5.28 percent.”⁸¹ Further, US Steel argues, that HYSCO itself has calculated its net interest expense based on its financial statements, instead of HMC’s financial statements for every previous administrative review of this order.⁸²

HYSCO argues that the Department’s practice is to base interest expense on financial statements consolidated at the highest level.⁸³ HYSCO maintains that this practice has been affirmed by the Count of Appeals for the Federal Circuit.⁸⁴ HYSCO argues that the record evidence shows that HYSCO is consolidated into HMC, and appropriately reported the interest expense ratio based on its consolidated parent company’s financial statements.

Department’s Position

⁷⁹ See Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada, 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 6.

⁸⁰ See US Steel’s case brief at 6.

⁸¹ See US Steel’s case brief at 6.

⁸² See id. at 7.

⁸³ See, e.g., Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52055, 52061 (September 12, 2007) (Shrimp from India); Industrial Nitrocellulose From the United Kingdom: Final Results of Antidumping Duty Administrative Review, 67 FR 77747 (December 19, 2002).

⁸⁴ See American Silicon Tech. v. United States, 334 F. 3d 1033, 1037-1038 (Fed. Cir. 2003).

The Department's practice is to calculate the respondent's net interest expense based on the financing expenses incurred on behalf of the highest consolidated group of companies to which the respondent belongs.⁸⁵ In general, this practice recognizes the fungible nature of invested capital resources (*i.e.*, debt and equity) within a consolidated group of companies. It also recognizes that the controlling entity within a consolidated group has the ultimate power to determine the capital structure and financial costs of each member within the group. There is a presumption that consolidated financial statements are more meaningful than separate financial statements and that they are usually necessary for a fair presentation when one entity directly or indirectly has controlling financial interest in another entity.

In its December 31, 2006, and 2007 financial statement, HMC consolidated HYSCO in the HMC consolidated financial statements. HMC lists the companies over which it has substantial control and that were included for purposes of consolidation. HYSCO is listed as being 40.04 percent directly owned and 13.91 percent indirectly owned by HMC.⁸⁶ Therefore, we have followed our standard practice and have calculated financial expense based on the highest level of consolidation, that is, based on the consolidated statements of HMC.

Comment 17: HYSCO's Window Period

US Steel states that it is the Department's practice to set the window for review of sales to "three months prior to the month of the first U.S. sale, until two months after the months after the sale."⁸⁷ US Steel argues that the Department erred by incorrectly establishing the window period, based off the POR, and should correct the matter by including all sales in the home market from three months before HYSCO's first U.S. sale, and two months after HYSCO's last U.S. sale.

HYSCO did not comment on this issue.

Department Position

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

Comment 18: HYSCO's Date of Sale

⁸⁵ See Notice of Final Determination of Sales at Less than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico, 67 FR 55800 (Aug. 30, 2002), and accompanying Issues and Decision Memorandum at Comment 8; and Notice of Final Results of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile, 65 FR 78472 (Dec. 15, 2000), and accompanying Issues and Decision Memorandum at Comment 7; see also Shrimp from India at 52061.

⁸⁶ See HYSCO's calc memo at exhibit 3.

⁸⁷ See CORE 13 Final Results at comment 13.

Nucor and US Steel state that in the Preliminary Results the Department used shipment date as the date of sale for HYSCO's sales. Nucor states that as a result, a number of sales were not used in the margin calculation because the shipment was outside the POR, even though they were invoiced during the POR. Nucor and US Steel argue that the facts in this review demonstrate that the material terms of sale are not established until after the merchandise is shipped. Nucor and US Steel assert that the Department's regulations prefer the use of invoice date for date of sale, unless the Department finds that another proposed date better reflects the date on which the material terms were established.⁸⁸ Nucor argues that HYSCO admits that price was subject to change until the tax and commercial invoice was issued to the unaffiliated customer or trading company.⁸⁹ Thus, Nucor and US Steel argue that the Department should use the date of the issuance of the tax invoice as the date of HYSCO's sales for the final results.

HYSCO argues that the Department correctly used HYSCO's reported home market and U.S. dates of sale for this review. HYSCO maintains that the Department's practice,⁹⁰ and the practice in prior reviews of the instant case, is that the date of sale cannot occur after the date of shipment. HYSCO maintains that the sales quantity is fixed for both home market and U.S. sales on the date of shipment from HYSCO's factory to the customer.

Department Position

The Department agrees with HYSCO that the date of shipment is the correct date of sale. The Department's regulations state that "In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale." See 19 CFR 351.401(i). It is the Department's normal practice to *not* consider dates subsequent to the date of shipment from the factory as appropriate for date of sale because once merchandise is shipped, the material terms of sale are established.⁹¹ In the instant case, we see that the quantity is fixed at the time of shipment. Further, HYSCO provided documentation showing the booking of the sale price and quantity, *i.e.* the material terms of sale, on the date of shipment, before issuing an invoice to the customer.⁹² The entries into HYSCO's accounting system are consistent with the amounts billed on the final invoice. Thus, in the instant case, we find that the material terms of sale are fixed on date of shipment.

⁸⁸ See 19 C.F.R 351.401(i)(2008), see also Hornos Electricos de Venezuela, S.A. v. United States, 285 F. Supp. 2d 1353, 1366-1367 (Ct. Int'l Trade 2003).

⁸⁹ See HYSCO's Response to Section A of the Department's Antidumping Duty Questionnaire as A-22 (Feb. 4, 2008).

⁹⁰ See, e.g., Granular Polytetrafluoroethylene Resin from Italy, 73 FR 54557 (September 22, 2008); Certain New Pneumatic Off-the-road Tires from the People's Republic of China, 73 FR 40485 (July 15, 2008); Purified Carboxymethylcellulose from Mexico, 73 FR 45937 (August 7, 2008).

⁹¹ See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Part III, 64 FR 38756, 38768 (July 19, 1999), and accompanying Issues and Decision Memorandum at Comment 5.

⁹² See HYSCO's response to the Department's April 10, 2008, Supplemental Questionnaire, at exhibit 14.

Haewon

Comment 19: Haewon's Cash Deposit Rate

Haewon states that it did not receive a questionnaire nor were its sales actually reviewed by the Department in this review, and thus would be assigned a dumping margin based on the results of the companies reviewed *i.e.* Dongbu, Union, POSCO and HYSCO. Haewon states that it had a single sale during the POR that was the subject of a new shipper review in which the Department found a zero margin, and no subsequent shipments.⁹³ Haewon states that the Department has already instructed U.S. Customs and Border Protection to assess antidumping duties on Haewon's single sale in accordance with that decision. Haewon argues that because the Department has already reviewed the single sale by Haewon to the U.S. for the POR, and determined it had a zero margin, the Department should not apply a cash deposit rate based on the results of the other companies reviewed in the instant case.

There were no rebuttal comments.

Department Position

The Department agrees that it has already reviewed Haewon's single sale to the U.S. during the POR in the instant case and found a zero margin.⁹⁴ In a typical antidumping duty review, the Department issues a preliminary intent to rescind, invites comments from interest parties and issues a final rescission. See, e.g., Welded Carbon Steel Pipe and Tube from Turkey: Notice of Intent to Rescind Antidumping Duty Administrative Review, In Part, 73 FR 60240 (October 10, 2008); Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Rescission, in Part, of Antidumping Duty Administrative Review, 74 FR 7394 (February 17, 2009). In the instant case, because Haewon requested rescission in its case brief, interested parties had opportunity to comment on the rescission. No interested party took the opportunity to do so. Thus, because there were no other sales by Haewon during the POR, the Department finds that it should not include Haewon in the instant review, and will rescind the instant review with respect to Haewon.

⁹³ See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of Antidumping Duty New Shipper Review, 73 FR 35366 (June 23, 2008).

⁹⁴ See id.

Recommendation

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

Ronald K Lorentzen
Acting Assistant Secretary
for Import Administration

Date