

FINAL RESULTS OF REDETERMINATION
PURSUANT TO REMAND

Union Steel v. United States
Court No. 08-00101
Slip Op. 11-3 (Ct. Int'l Trade Jan 11, 2011)

SUMMARY

This remand redetermination, issued in accordance with the January 11, 2011, opinion of the U.S. Court of International Trade (Court" or "CIT") in Union Steel v. United States, Court No. 08-00101, Slip Op. 11-3 (Ct. Int'l Trade January II, 2011) ("Remand Order"), concerns the determination of the U.S. Department of Commerce ("the Department") for Union Steel ("Union") in the 13th administrative review of the antidumping duty order on certain corrosion resistant steel flat products ("CORE") from Korea covering the period August 1, 2005, through July 31, 2006. 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) ("Final Results").

Pursuant to the Court's Remand Order, the Department has reviewed and reconsidered Union's request for a revision of the Department's classification of physical characteristics, and the subsequent model match results, to include a separate category for laminated CORE products. For the reasons set forth below, the Department finds that record evidence supports revising its physical characteristics classifications to create a separate category for laminated CORE products. Pursuant to the Court's Remand Order, the Department has examined the record evidence to determine whether additional record evidence is necessary to determine whether physical differences between laminated CORE products and non-laminated, painted CORE products are minor and commercially insignificant: The Department concludes the record evidence on this issue is complete, and is sufficient to support a determination, on remand, that

the physical differences between laminated CORE products and non-laminated, painted CORE products are not minor and commercially insignificant. Accordingly, pursuant to the Court's Remand Order, the Department has altered its classification of physical characteristics that was applied in the Final Results and initial remand redetermination so that laminated CORE products and non-laminated, painted CORE products are not compared pursuant to 19 U.S.C. § 1677(16)(A). Consequently, the Department has recalculated Union's margin consistent with the above findings.

BACKGROUND

The background of this case up to the Department's Results of Redetermination Pursuant to Court Remand, Union Steel v. United States, Court No. 08-00101 (December 28, 2009) ("First Remand Results"), is adequately summarized in the First Remand Results. In the First Remand Results, the Department determined that its reconsideration of record evidence since from the thirteenth administrative review did not support revising the classification of physical characteristics with respect to laminated CORE products. See First Remand Results at 4-6. In its Remand Order issued on January 11, 2011, the Court again remanded the product characteristic classification issue to the Department. Citing Pesguera Mares Australes Uda. v. United States, 266 F.3d 1372 (Fed. Cir. 2001), the Court stated that, under the definition of "foreign like product" found at 19 U.S.C. § 1677(16)(A), considering laminated CORE products and non-laminated, painted CORE products to be identical would be lawful only if the physical differences distinguishing those products could be considered "minor and not commercially significant." Remand Order at 8-10. The Court found that the Department's initial remand analysis demonstrating an overlap in prices and costs between laminated CORE products and non-laminated, painted CORE products lacked probative value to that inquiry. See id. at 10-16.

The Court then concluded that record evidence, including Union's marketing materials cited by the Department in the First Remand Results, did not constitute substantial record evidence establishing that the physical differences in question were minor and commercially insignificant. See id. at 16-25. The Court also found that the Department's practice not to alter its classification of physical characteristics absent compelling reasons to do so did not override the statutory requirement to comply with the definition of "foreign like product" in 19 U.S.C. § 1677(16)(A). See id. at 25-28.

The Court therefore directed the Department on second remand not to "compare laminated CORE and non-laminated, painted CORE products under § 1677(16)(A) unless it reopens the record, conducts a sufficient investigation on the question of whether the physical differences distinguishing laminated and non-laminated, painted CORE products are minor and not commercially significant, and reaches appropriate, probative findings that are supported by substantial evidence on the reopened record. If {the Department} decides not to proceed in this way, on the second remand it must modify the model-match methodology applied in the Final Results to avoid comparing laminated CORE and non-laminated, painted CORE as products 'identical in physical characteristics' under § 1677(16)(A)." Id. at 28-29.

ANALYSIS

In reconsidering its determination, the Department has carefully reevaluated the record evidence in light of the specific instructions of the Court. As an initial matter, the Department determines that it is not necessary to reopen the record in this remand proceeding because sufficient factual information already exists on the record for the Department to determine whether the physical differences distinguishing laminated CORE products and non-laminated, painted CORE products are minor and not commercially significant. As discussed in greater

detail below, the record contains evidence concerning the physical characteristics of laminated CORE products and non-laminated, painted CORE products, the process to manufacture laminated CORE products and non-laminated, painted CORE products, cost and price data for laminated CORE products and non-laminated, painted CORE products, and marketing materials for laminated CORE products and non-laminated, painted CORE products. Based upon this information, the Department is able to make a determination upon remand concerning the proper physical characteristic classifications for laminated CORE products that is supported by substantial evidence already on the record and that is otherwise in accordance with law.

Having determined not to reopen the record, the Department acts in accordance with this Court's Remand Order and will no longer consider laminated CORE products and non-laminated, painted CORE products to be identical in physical characteristics under 19 U.S.C. § 1677(16)(A) in the 13th administrative review. In this remand, the Department has reconsidered and changed its classification of physical characteristics, and the subsequent model-match results, for laminated CORE products based upon the following evaluation of the evidence, consistent with the Court's opinion. The Court upheld the Department's statutory construction, consistent with the Court of Appeals decision in Pesguera:

In upholding the Department's statutory construction, the opinion in Pesguera provides guidance on the meaning of the statutory term "identical in physical characteristics." Concluding that dictionary definitions of the word "identical" established two distinct common usages, the Court of Appeals saw the choice as between construing the term to mean having the exact same identity or, alternatively, construing the term to mean having such a near similarity or resemblance as to be essentially equal or interchangeable or having such close resemblance and such minor differences as to be essentially the same. Id. at 1382-83. Concluding that a construction of "identical" according to the latter category of definitions was reasonable, the Court of Appeals upheld Commerce's construction of the statutory term "identical in physical characteristics" to mean "that merchandise should be considered to be identical despite the existence of minor differences in physical characteristics, if those minor differences are not significant." Id. at 1384.

The Remand Redetermination appears to rely on the same statutory construction of the term "identical in physical characteristics" that the Court of Appeals affirmed in *Pesquera*. See [First Remand Results at] 4. To the extent that the [First Remand Results do] so, the court defers to the Department's construction. The court proceeds to consider the question of whether the [First Remand Results] lawfully compared laminated and non-laminated, painted CORE products as "identical in physical characteristics" within the meaning of that term as used in 19 U.S.C. § 1677(16)(A) and expounded in *Pesquera*. Such comparisons are lawful only if substantial evidence on the record in this case can support a factual determination that the physical characteristics distinguishing laminated CORE products from the "other painted," *i.e.*, non-laminated, CORE products to which Commerce compared laminated CORE products are minor and not commercially significant. For the reasons discussed below, the court concludes that substantial evidence does not exist on the record to support such a determination.

Remand Order at 9-10.

Accordingly, in reviewing and reconsidering Union's request for a revision of the Department's classification of physical characteristics to include a separate category for laminated CORE products, the Department considered the record evidence in relation to the following factors:

Whether the Record Evidence Supports a Finding that Physical Differences Between Laminated CORE Products and Non-Laminated, Painted CORE Products Are Not Minor and Are Commercially Significant

After additional reconsideration pursuant to remand, the Department finds that the physical differences between laminated CORE products are commercially significant when compared to non-laminated, painted CORE products. First, the Department recognizes that laminated CORE products by their very nature are not painted products. Laminated CORE products are coated by attaching a plastic film to a CORE substrate, and lamination is done in lieu of painting. Union produces and sells two types of laminated CORE products where either: (1) a coating of PET film is thermally-sealed onto a heated, primer-coated CORE substrate after it passes through a drying oven, or (2) colored PVC film is attached to the CORE substrate using

adhesive. See Union's Questionnaire Response (dated November 20,2006) at 5 and 6. This is in contrast to non-laminated, painted CORE products, where the CORE substrate is run through color painting lines instead of the lamination line. See Union's Supplemental Questionnaire Response (dated February 7, 2007) at 17 and 18.

Second, the cost of production for laminated CORE products is higher than other non-laminated, painted CORE products. PET film and PVC film are more expensive than the various paints used to produce non-laminated, painted CORE products. Id. at 20. Evidence that laminated CORE products cost more is probative to the question of whether the physical differences between laminated CORE products and non-laminated, painted CORE products are commercially significant because higher costs of production may be indicative of commercially significant physical differences between the two products. **In** addition, "{I}aminating the steel increases . . . the sales price by" a significant percentage over non-laminated, painted CORE products. See Union's Questionnaire Response (dated November 20,2006) at 6. Thus, the unit price for laminated CORE products is considerably higher than the unit price of non-laminated, painted CORE products. See Union's Supplemental Questionnaire Response (dated February 7, 2007) at 20. The Department concludes that the considerable differences in cost and price between laminated CORE products and non-laminated, painted CORE products provide additional evidentiary support that the physical differences between the two products are commercially significant.

As observed by the Court, see Remand Order at 17-19, laminated CORE products and non-laminated, painted CORE products are marketed differently in Union's brochure, which is further indication that there are commercially significant differences between the two products. The record evidence demonstrates that Union and Unico (Union's affiliate) both differentiate

between laminated CORE products and non-laminated, painted CORE products in their brochures. See Union's Questionnaire Response (dated November 13, 2006) at Exhibit A-28 and Union's Supplemental Questionnaire Response (dated February 7, 2007) at Exhibit B-22. For example, the record describes three lines of PET-film laminated CORE products marketed by Union, "Unipet," "Unilux," and "White Board," each of which is listed on the page of Union's brochure labeled "High-tech Steel" and not on the page labeled "Pre-painted Steel." See Union's Questionnaire Response (dated November 13, 2006) at Exhibit A-28. The record also contains a separate brochure for one of Union's brand name laminated CORE products, such as UNIPET. See Union's Supplemental Questionnaire Response at 18 and Exhibit B-22. The Department finds that it is meaningful that the product brochures contain information, as noted above, which differentiates the physical differences between laminated CORE products and non-laminated, painted CORE products. Therefore, the Department finds that, in fact, Union's marketing materials also support the conclusion that there are commercially significant physical differences between laminated CORE products and non-laminated, painted CORE products.

Upon reexamination, the record as a whole, consisting of the brochures, the questionnaire response, and Union's price and cost data, demonstrates that physical differences between laminated CORE products and non-laminated, painted CORE products are neither minor nor commercially insignificant. For these reasons, the Department determines that, in accordance with the Court's Remand Order, upon remand it will not consider laminated CORE products and non-laminated, painted CORE products to be identical in physical characteristics under 19 U.S.C. § 1677(16)(A) in the 13th administrative review.

Whether There Is Compelling Reason For the Department To Alter Its Classification of the Physical Characteristics of the Subject Merchandise

In light of the above considerations, the Department finds that, upon remand, there are compelling evidentiary reasons to alter its classification of the physical characteristics of the subject merchandise, and subsequently the results of its matching of U.S. sale prices with normal values based upon home market sale prices. See Fagersta, 577 F. Supp. 2d at 1277. As discussed above, the Department concludes that record evidence demonstrates significant differences in the physical characteristics between laminated CORE products and non-laminated, painted CORE products. As the Court observed, despite the Department's preference to maintain consistency in its method for classifying the physical characteristics of the subject merchandise across segments of a proceeding, the Department's primary obligation in that task is to comply with the statutory requirements of 19 U.S.C. § 1677(16)(A). See Remand Order at 26. Record evidence establishes significant differences in the physical characteristics between laminated CORE products and non-laminated, painted CORE products. Additionally, the Court found the Department's previous methodology with respect to laminated CORE products "contrary to law" based upon the facts of this case. See Remand Order at 28. Therefore, compelling reasons exist for the Department to alter its classification of the physical characteristics in this remand proceeding.

On March 9, 2011, we issued our Draft Results Of Redetermination Pursuant To Court Remand ("Draft Results"). On March 16, 2011, we received comments concerning the draft results from United States Steel Corporation ("U.S. Steel"), Nucor Corporation ("Nucor"), and Union.

Comments:

1. Whether the Record Fully Supports the Department's Draft Remand

Union argues that the Court made it clear that the only way the Department could lawfully continue to treat laminated CORE products as identical to painted CORE products was if the Department identified substantial record evidence demonstrating that the differences between the two types of CORE was minor and commercially insignificant. See Remand Order at 9-10. Union asserts that the Department is correct in its conclusion that the physical differences between laminated and other painted CORE products are commercially significant. See Draft Remand at 5. Moreover, according to Union, the cost of production and prices for laminated products are higher than other painted CORE products. See id. at 6. Laminated CORE products are also marketed differently than other painted CORE. See id. at 6-7. Finally, Union argues that the Department's conclusion in the Draft Remand is consistent with 19 U.S.C. § 1677(16)(A) as interpreted in Pesguera.

Nucor argues that the Department's conclusion that the physical differences between laminated CORE products and other painted CORE products are commercially significant is unfounded. Nucor argues that the Department has failed to support its decision to make a model-match change and does not have substantial evidence on the record. Nucor further argues that the Department should at least re-open the record to collect additional factual submissions. Nucor believes that record evidence, including the cost and price data, support a determination to group laminated and other painted CORE products as the same type. Furthermore, Nucor suggests that the Department's determination has the potential to encourage future manipulation of the model-match results by respondents. Finally, Nucor states that it adopts and incorporates its rebuttal brief to the Department (dated January 28, 2008) in addition to its response brief to

Union's motion for judgment upon the agency record (filed October 20, 2008), its comments on the Department's First Remand Results (filed February 17, 2010), and its post-oral argument comments (filed September 17, 2010).

Department's Position:

We agree with Union that the record supports the Department's decision on remand to treat laminated CORE products as a separate type in its margin analysis. In its Remand Order, the Court instructed the Department as follows:

Therefore, [the Department], on the second remand, may not compare laminated CORE and non-laminated, painted CORE products under § 1677(16)(A) unless it reopens the record, conducts a sufficient investigation on the question of whether the physical differences distinguishing laminated and non-laminated, painted CORE products are minor and not commercially significant, and reaches appropriate, probative findings that are supported by substantial evidence on the reopened record. If [the Department] decides not to proceed in this way, on the second remand it must modify the model-match methodology applied in the Final Results to avoid comparing laminated CORE and non-laminated, painted CORE as products 'identical in physical characteristics' under § 1677(16)(A).

Remand Order at 28-29. As described above, Union's questionnaire responses, price and cost data, and product brochures all indicate that the physical differences between laminated CORE products and non-laminated, painted CORE products are neither minor nor commercially insignificant.

The Department disagrees with Nucor that it was necessary to reopen the record as part of this remand proceeding. As explained above, the Department found sufficient evidence on the record in the form of questionnaire responses, price and cost data, and product brochures from which it could reach a determination on second remand to treat laminated CORE products separately from non-laminated, painted CORE products. See Draft Results at 5-7. Accordingly, the Department reviewed such evidence in reaching its conclusion, as did the Court. See id. and Remand Order at 20-25. Specifically, record evidence supports the Department's finding that

laminated CORE products by their very nature are not painted products. See Union's Questionnaire Response (dated November 20, 2006) at 5 and 6 and Union's Supplemental Questionnaire Response (dated February 7, 2007) at 17 and 18. The Department has also concluded that the considerable differences in cost and price between laminated CORE products and non-laminated, painted CORE products are indicative of commercially significant differences in physical characteristics between the two products. See Union's Supplemental Questionnaire Response (dated February 7, 2007) at 20 and Union's Questionnaire Response (dated November 20, 2006) at 6. Union's product brochures provide additional evidence to support the Department's decision to treat laminated CORE products separately. See Union's Questionnaire Response (dated November 13, 2006) at Exhibit A-28 and Union's Supplemental Questionnaire Response (dated February 7, 2007) at Exhibit B-22. Based upon the foregoing factual information, the Department considers that substantial evidence exists on the record for the Department to support a decision on remand to revise its physical characteristics classification to create a separate category for laminated CORE.

In regards to Nucor's comment that the Department's remand determination has the potential to encourage future manipulation of the model-match results by respondents, the Court addresses this concern in the Remand Order. The Court explains that the Department must "comply with the definition of "foreign like product" in § 1677(16)(A)," regardless of any practice to resist modifications to its classification of the physical characteristics of the subject merchandise and the subsequent model match results. Remand Order at 26. In this particular case, record evidence supports the Department's decision to treat laminated CORE products as a separate type in its margin analysis.

2. Whether the Department Relies Upon the Correct Legal Standard in its Analysis of the Facts

U.S. Steel argues that the Department's practice is to analyze commercial significance recognized by the relevant industry and not that solely of a single producer. See First Remand Results at 8. U.S. Steel asserts that the CIT and the Court of Appeals for the Federal Circuit have affirmed this aspect of the Department's model match practice. See Pesguera and Fagersta Stainless AB v. United States, 577 F. Supp. 2d 1270 (Ct. Int'l Trade 2008). In Pesguera, U.S. Steel contends that, even though the respondent pointed to certain physical differences between its super premium grade of salmon and premium grade of salmon, the Department found that the salmon industry as a whole did not recognize the difference. U.S. Steel asserts that to rely on industry standards is reasonable because of the risk of possible manipulation for antidumping purposes. See Pesguera at 1385.

U.S. Steel contends that, in contrast, the Department based its analysis in the Draft Results solely on Union's cost of production, prices, and product brochures. In fact, U.S. Steel notes that Union acknowledged that it was not aware of industry-wide information regarding specifications or standards for laminated CORE products. See Union's Supplemental Questionnaire Response (dated February 2, 2007) at 21. In addition, U.S. Steel argues that the Department has not provided a reasoned analysis to support a change in its practice of looking to industry-wide acceptance of standards as recognized by the CIT. See United States v. Pressman Gutman Co., Inc., 721 F. Supp. 2d 1333, 1346 (Ct. Int'l Trade 2010).

Finally, U.S. Steel asserts that the Department's reasoning in the Draft Results is circular and cannot serve as a proper basis for its decision. As an example, U.S. Steel cites to the Department's statement, "Evidence that laminated CORE products cost more is probative to the question whether the physical differences between laminated CORE products and non-laminated,

painted CORE products are commercially significant because higher costs of production may be indicative of commercially significant physical difference between two products." Draft Results at 6. However, U.S. Steel notes that the Department previously determined that Union's cost data were, at best, inconclusive and that record evidence showed that certain paints could and did cost more than laminates. Therefore, U.S. Steel argues that the Department's decision "must be 'reached by reasoned decision-making, including ... a reasoned explanation supported by a stated connection between the facts found and the choice made.'" See Amanda Foods (Vietnam) Ltd. v. United States, 714 F. Supp. 2d 1282, 1288 (Ct. Int'l Trade 2010) (internal citations omitted).

Department's Position:

The Department disagrees with U.S. Steel's contention that the Department must find relevant industry standards which support its finding that significant commercial differences exist. As noted by the Court, "the opinion in Pesguera provides guidance on the meaning of the term 'identical in physical characteristics.'" See Remand Order at 9 and 14. The Court makes it clear that the important consideration is whether, in a commercial sense, the two groups of products are essentially equal or interchangeable. The Court states:

First, language in the Pesguera opinion suggests that physical differences are minor and commercially insignificant if the two products under consideration can be described as "essentially equal or interchangeable." Pesguera, 266 F.3d at 1382 (quoting The American Heritage Dictionary 639 (2d ed. 1991)). Second, as a matter of logic, it is difficult to imagine how the physical differences separating the two groups of products at issue in this case could be considered to be minor and commercially insignificant unless the two groups of products are viewed by customers as generally equal or interchangeable in the marketplace. The court is unable to find on the record substantial evidence to support a finding that the two product groups are viewed in this way, and what evidence exists is inconsistent with such a finding. Cf. Pesguera, 266 F.3d at 1378.

Remand Order at 19.

Therefore, the emphasis as noted by the Court is on whether the evidence on the record supports a finding that physical differences between the products are minor and commercially insignificant. In this case, evidence supports the Department's findings that physical differences are commercially significant. Laminated CORE products, for instance, are identified separately in Union and UNICO's product brochures, which support a finding that laminated CORE products are not viewed by customers as generally equal or interchangeable in the marketplace. See Union's Questionnaire Response (dated November 13, 2006) at Exhibit A-28 and Union's Supplemental Questionnaire Response (dated February 7, 2007) at Exhibit B-22. Moreover, while the Department may consider industry standards as a factor in its classification of physical characteristics, the statute is silent as to whether it is necessary for the Department to review industry standards in determining if a product type is identical. See Pesguera at 1384 (observing that "Commerce has considerable discretion in defining 'identical in physical characteristics'"); SKF Inc. v. United States, 537 F. 3d 1373, 1379 (Fed. Cir. 2008) (quoting Koyo Seiko Co." Ltd. v. United States, 66 F.3d 1204, 1209 (Fed. Cir. 1995)) (noting that the statute is "silent with respect to the methodology Commerce must use to match a U.S. product with a suitable home market product").

With regard to the review of the cost data, the Department, consistent with the Court's remand instructions, has reconsidered its analysis. The Court has ruled on the Department's prior efforts to analyze Union's cost data. See Remand Order at 10-16. As noted by the Court, "evidence based on broad ranges has little or no probativity on the issue of whether the two groups of products are distinguished only by minor and commercially insignificant physical differences," Remand Order at 12. Therefore, we have reviewed the record and identified evidence that is more probative to the relevant inquiry of whether the cost of laminating is

equivalent to the cost of painting. See Union's Questionnaire Response (dated November 20, 2006) at 6; Supplemental Questionnaire Response (dated February 7, 2007) at 20.

3. Whether the Department's Decision is Arbitrary

U.S. Steel argues that the Department acted in an arbitrary manner in its decision in the Draft Results to revise its physical characteristics classifications. Moreover, U.S. Steel contends that the classification of the physical characteristics is intended to be consistent across reviews and to apply to all producers across reviews. U.S. Steel contends that the decision to change the physical characteristic classifications and the subsequent model match results is based on conclusive statements and these statements are inconsistent with its decision in the First Remand Results. Furthermore, U.S. Steel asserts that the Department failed to provide an analysis of why the facts are now sufficient to revise its previous decision.

As an example, U.S. Steel refers to the Final Remand Results, in which the Department determined that Union's claim of significant physical differences was not sufficient to support a change in the classification of physical characteristics. See First Remand Results at 9-10. U.S. Steel asserts that Union has described the differences between laminated CORE products and other painted CORE products, but that it has not provided information about whether those differences are minor. U.S. Steel points out that the Department stated in the First Remand Results that "virtually every product has some unique physical characteristics." First Remand Results at 9. However, U.S. Steel contends that the Department relied upon the same record evidence to conclude that the differences between laminated CORE products and other painted CORE products are not minor that it now relies upon to reach a different conclusion.

U.S. Steel also contends that the Department included an additional factor, Le., production process; that it had not previously considered in determining the significance between

laminated and painted products. U.S. Steel argues that the fact that different production processes are used is not a proper basis for distinguishing between products for physical characteristic classification purposes. See, e.g. Notice of Final Determination of Sales at Less Than Fair Value: Stainless Sheet and Strip in Coils from France, 64 FR 30820 (June 8, 1999), and accompanying Issues and Decision Memorandum at Comment 4; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany: Final Results of Antidumping Administrative Review, 64 FR 43146 (August 9, 1999), and accompanying Issues and Decision Memorandum at Comment I.

In addition, U.S. Steel argues that the Department previously recognized the difficulty in concluding whether laminated CORE products were more costly to produce than non-laminated, painted CORE products. U.S. Steel argues that the Department previously considered it "short-sighted" to conclude that the cost of producing laminated CORE products is greater than producing non-laminated, painted CORE products when record evidence establishes that, in certain instances, the cost of painting can exceed the cost of laminating. See United States' post-oral argument comments to Court (filed September 24, 2010) at 8. U.S. Steel also contends that the use of weighted-averages to compare costs and prices can present a distorted picture. Therefore, U.S. Steel maintains that the Department has not reconciled its prior determinations that the record does not support Union's contention that laminated CORE products are more expensive to manufacture than non-laminated, painted CORE products with its conclusions in the Draft Remand. See U.S. Steel's September 24, 2010, response to Union's Post-Oral Argument Comments at 6, 8, 9.

U.S. Steel contends that the Department provided no explanation to justify a decision which it previously rejected. U.S. Steel argues that the CIT has recognized that an agency that

"fails to take into account contradictory evidence...cannot withstand scrutiny." See Former Employees of Int'l Bus. Mach. Com v. United States, 483 F. Supp 2d 1284, 1325 (Ct. Int'l Trade 2007). Therefore, U.S. Steel argues that the Department should determine that the record does not contain substantial evidence to support its new physical characteristic classification, and it should re-open the record. At a minimum, U.S. Steel argues that the Department must now explain how evidence, which was previously considered insufficient, can now serve as a basis for its determination.

Department's Position:

We disagree with U.S. Steel's argument that the Department acted in an arbitrary manner in its decision in the Draft Results. The Department explained its rationale and reasoning in the First Remand Results, and the Court ruled that determination to be "contrary to law." Remand Order at 28. For the reasons discussed herein, the Department is complying with the specific instructions of the Court's Remand Order by revising its physical characteristics classifications to create a separate category for laminated CORE products. In our response to Comment I, we address the concerns of whether the record supports the Department's decision. The Department does in fact believe that it has reviewed probative evidence which supports its finding.

In regard to the importance of production process, the Court notes that Union and UNICO have invested in production equipment and other resources necessary to produce and market laminated CORE products while concurrently producing and marketing non-laminated, painted CORE products. Remand Order at 21. Specifically, the brochures and questionnaire responses provide probative evidence that laminated CORE products and non-laminated, painted CORE products result from different coating processes and are comprised of different material. See Union's Questionnaire Response (dated November 20, 2006) at 5-6. Based upon its review

of record evidence, including evidence regarding the production process, the Court states, "In sum, the record evidence refutes a finding that the physical differences between laminated and non-laminated, painted CORE products are minor and not commercially significant." Remand Order at 21-22.

As for the Department's analysis of cost data, we address this issue, in part, above in our position for Comment 2. The Court found the Department's previous analysis of Union's cost data not to be probative. See Remand Order at 10-16. For the reasons stated above, we contend that the cost data provided by Union in its response is appropriate to use in our analysis to help determine if the physical difference between laminated CORE products and non-laminated, painted CORE products are commercially significant.

4. Whether the Department Correctly Classified Union's Product in its Analysis

U.S. Steel contends that Union incorrectly stated that its "UNIVURE" brand products were laminated products. U.S. Steel argues that the CIT recognized that Union's UNIVURE product brochure does not identify "UNIVURE" as a laminated product. Therefore, U.S. Steel argues that, contrary to the Department's conclusion, the UNIVURE product brochure does not show that there are commercially significant physical differences between laminated and painted products. Instead, U.S. Steel asserts that the physical differences between laminated and painted products in the brochure are unclear and not commercially distinct. Moreover, U.S. Steel argues that the Department should ensure that UNIVURE is properly classified in Union's margin analysis.

Department's Position:

The Department agrees with U.S. Steel that the UNIVURE product brochure does not clearly identify UNIVURE as a laminated CORE product. In fact, as noted by the Court,

UNIVURE is not described as being coated by a plastic film and "therefore does not appear to be a laminated product." However, Union notes that it does market other laminated CORE products, such as "Unipet," "Unilux," and "White Board." These laminated CORE products are shown in Union's products brochure on the page labeled "High-tech Steel." See Union's Questionnaire Response (dated November 13, 2006) at Exhibit A-28. In addition, as reported in Union's Supplemental Response, UNICO produces two brand-name laminated CORE products, BRISTAR and NATURAMI, and lists the products on its website. See Union's Supplemental Response (dated February 2, 2007) at Exhibit B-22. Therefore, regardless of whether UNIVURE is a laminated CORE product, Union makes a commercially significant effort to separately identify laminated CORE products in its product brochures, which are made available to its customers. Finally, Union has clearly identified laminated CORE products in its sales database as CTYPE "30" which have enabled the Department to separate laminated CORE products from non-laminated, painted CORE product in Union's margin analysis.

CONCLUSION

Based on the forgoing analysis and discussion, the Department has decided, pursuant to the remand order of the U.S. Court of International Trade, to alter its classification of physical characteristics that was applied in the Final Results and First Remand so that laminated CORE products and non-laminated, painted CORE products are not considered to be identical in physical characteristics under 19 U.S. C. § 1677(16)(A) in the 13th administrative review of the antidumping order on CORE from Korea. Accordingly, the Department has recalculated Union's margin from 4.35 percent in the Final Results to 3.59 percent.



Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

April 11, 2011

Date