

SECOND REDETERMINATION ON REMAND  
OIL COUNTRY TUBULAR GOODS FROM MEXICO:  
FOURTH ADMINISTRATIVE REVIEW

In the Matter of: Oil Country Tubular Goods from Mexico; Final Results of Antidumping Duty  
Review and Determination Not to Revoke,  
Secretariat File No. USA-Mex-2001-1904-05 (Panel Decision, August 11, 2006)

Summary

\_\_\_\_\_ In accordance with the remand instructions of the North American Free Trade Agreement (“NAFTA”) Bi-National Panel (“Panel”) in the above-referenced case, the Department of Commerce (“the Department”) has reconsidered Hylsa’s request for revocation from the order under 19 CFR § 351.222(e)(1). Taking into account the Panel’s instructions, the Department has again determined that Hylsa did not meaningfully participate in the marketplace and thus, it has not sold the subject merchandise for three years in commercial quantities within the meaning of section 351.222(e) of the Department’s regulations. Therefore, Hylsa does not qualify for revocation.

Background

The Department detailed the background of the case in its April 27, 2006 redetermination. See Redetermination on Remand, Oil Country Tubular Goods from Mexico: Fourth Administrative Review (“First Redetermination”) at 2 - 5.

Subsequently, the Department issued a draft redetermination on September 22, 2006. See Letter To All Interested Parties, September 22, 2006. The Department received briefs from petitioner, United States Steel Corporation (“U.S. Steel”), and Hylsa on September 26, 2006. The Department received rebuttal comments from Hylsa, U.S. Steel and interested parties, Maverick Tube Corporation, IPSCO Tubulars, Inc., and Bellville Corporation (collectively, “Maverick”), on September 28, 2006. All party comments are summarized and discussed below.

### The Panel’s Second Decision

The Panel issued a second Decision of the Panel on August 11, 2006, remanding the review to the Department with respect to the Department’s revocation analysis regarding Hylsa. See In the Matter of: Oil Country Tubular Goods from Mexico; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke, Redetermination on Remand, USA-MEX-01-1904-05 (August 11, 2006) (“Second Decision”).

In its Second Decision, the Panel considered three separate items. The first item concerned information submitted by the Department and Hylsa regarding the calculation of the dumping margin in the fourth administrative review.<sup>1</sup> The second item concerned the Department’s revocation analysis with respect to Hylsa. The third item examined the findings in

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<sup>1</sup> In the introduction to its decision, the Panel expressed concern that Hylsa first sought revocation in 1999, but that its request was rejected only in 2006. See Second Decision at 2. Although a request for Panel review was filed in 2001, (see In the Matter of: Oil Country Tubular Goods from Mexico; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke, USA-MEX-01-1904-05 (January 27, 2006) (“First Decision”) at footnote 24), the Panel was not established until several years later. As the Panel noted, the Department only made its initial revocation ruling after the Panel issued its decision in January 2006. See Second Decision at n. 26.

the ninth administrative review of the order.<sup>2</sup> With respect to the first item, the Panel refused to consider the Department's submissions regarding the calculation of the dumping margin during the fourth administrative review. See Second Decision at 4.

Concerning the revocation analysis, the Panel notes that the Department engaged in four different analyses in reaching the conclusion that Hylsa had not shipped in commercial quantities. Id. at 6. While the Panel notes that it would normally defer to the Department's discretion in making the determination, the Panel also notes that Hylsa "was not found by the Department to have engaged in sales at less than fair value." Id. at 7. The Panel further states that

Hylsa, of course, had not engaged in an unfair trade practice, and had nothing to prove with its sales during the three years of administrative reviews. Thus, when the Department confines its analysis of commercial quantities to a brute comparison of Hylsa's sales during a 15 month period in 1994 and 1995, ignoring sales volumes before and after that period, solely because that period coincides with its investigation of TAMSA, a company guilty of an unfair trade practice, the Department has a heavy burden in demonstrating the validity of its choice. It is made heavier in this case because the Department declined to include Hylsa in its initial investigation because its sales were too low.

Id. While the Panel upheld the Department's determination with respect to TAMSA, where "a company has previously engaged in dumping, and its sales under the antidumping order continue at a tiny percentage of its sales made while engaging in dumping," it is not clear to the Panel "that this rationale is legitimate when the company seeking the revocation has not engaged in dumping and it can establish a legitimate pattern of commercial sales outside the time frame Commerce has chosen to use as its basis." Id. at 8. The Panel concluded that "under such

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<sup>2</sup> See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Oil Country Tubular Goods from Mexico, 70 Fed. Reg. 60492 (October 18, 2005) ("Ninth Administrative Review").

circumstances, the Department needs to establish a rationale for its standard that is unrelated to suspicions about a firm that has engaged in an unfair trade practice in rejecting legitimate alternatives.” Id.

With respect to the benchmark time periods used by the Department in its analysis, the Panel noted that “it is clear that {the} period of time selected by the Department as the basis for sales in commercial quantities by Hylsa is not compelled by statute or regulation” and that “the Department is not constrained by law in establishing the time period for evaluating a complaint, and cannot argue that it is frozen into the six month period it has embraced.” Id. at 9. The Panel thus states that the period of comparison advocated by Hylsa, which are the four quarters preceding the filing of the petition, may be equally valid for use in determining whether Hylsa made sales in commercial quantities. Id. at 9, footnote 26, and at 11. The Panel acknowledged that Hylsa’s pattern of sales over time “presents a challenge to the Department in determining what constitutes sales in commercial quantity by the company if the agency is basing its decision solely on comparisons.” The Panel further stated that it “cannot say that this choice is incorrect or cannot be justified, but observes that the offered explanation is neither logical nor consistent with the articulated reason.” Id. at 11 - 12.

Finally, the Panel stated that the Department’s reliance on the methodology employed in Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part, 68 Fed. Reg. 53127 (September 9, 2003) (“Rebar from Turkey”) is misplaced, as Hylsa “has a history of participation in the U.S. market, albeit an uneven history . . . .” Id. at 10.

Concerning the findings of the Ninth Administrative Review and their applicability to this analysis, the Panel stated that “if the Department is going to rely upon another proceeding, the relevant elements of that proceeding need to be before the reviewing tribunal. Since in this case the record of the ninth review is outside the scope of our consideration for the fourth review, the conclusion in that proceeding must also be outside the scope of our substantial evidence review.” Id. at 20.

The Panel concluded by remanding the decision back to the Department, finding that the Department acted in an arbitrary and capricious fashion when it failed to adequately justify its determination that Hylsa did not ship the subject matter goods in commercial quantities during the periods of review in question. We therefore are remanding the matter to the Department for further consideration, in light of the issues raised by the Panel. This is necessary because of our decision that the results of the ninth administrative review cannot be taken into account by the Department in its decision in the fourth review, leaving the commercial quantities determination the sole basis for its refusal to revoke the antidumping order against Hylsa. Id. at 21.

#### Analysis and Redetermination

In light of the issues raised by the Panel, the Department has further considered Hylsa’s request for revocation under 19 CFR § 351.222(e)(1). Based on our analysis of the information on the record, in accordance with 19 CFR § 351.222, we have again determined that Hylsa did not sell the subject merchandise in the United States in commercial quantities in each of the three years cited by Hylsa to support its request for revocation. Therefore, for the purposes of this redetermination, we have not revoked the antidumping duty order (“Order”) with respect to Hylsa.

## Antidumping Duty Orders and the ‘All Others’ Rate

The Panel questioned the Department’s rationale “when the company seeking revocation has not engaged in dumping and it can establish a legitimate pattern of commercial sales outside the time frame Commerce has chosen to use as its basis.” See Second Decision at 8. As analyzed below, the Department has not found that Hylsa established a legitimate pattern of commercial sales, i.e. did not sell in commercial quantities, during the three relevant administrative review periods. With respect to Hylsa’s pricing practices, although the Department did not find Hylsa to be dumping during the second and fourth administrative review periods, the order itself covers all subject merchandise from Mexico, including Hylsa’s exports. While the determinations of sales at less than fair value are made after examination of data from individual companies, the determination of injury and the imposition of an antidumping duty order is on specific merchandise and normally on a country-wide basis. The antidumping duty order on OCTG is applicable to all companies in Mexico which export subject merchandise to the United States, irrespective of whether they were investigated in the original investigation.

The antidumping duty law “is remedial, not punitive, in nature; it was designed to protect domestic industry from sales of imported merchandise at less than fair value which either caused or threatened to cause injury.” Badger-Powhatan, Div. of Figgie Intern., Inc. v. United States, 608 F. Supp. 653, 656 (CIT 1985).<sup>3</sup> The protection afforded to the U.S. domestic industry is based on a particular product from a particular country. “LTFV determinations and antidumping orders are rendered upon the subject merchandise from a certain country under the investigation.”

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<sup>3</sup> The protection afforded to a U.S. industry by an affirmative ITC determination is prospective and ongoing. See Suramerica de Aleaciones Laminadas, C.A. v. United States, 818 F.Supp 348 (CIT 1993); Kemira Fibres Oy v. United States, 861 F. Supp. 144 (CIT 1994).

See Jia Farn Mfg. Co. Ltd. v. Secretary of the U.S. Department of Commerce, 817 F.Supp. 969, 975 (CIT 1993) (“Jia Farn”). “Antidumping duty orders apply to all imports from a covered country, except those specifically excluded from the antidumping order.” See Antidumping Duties, 54 Fed Reg. 12742, 12755 (March 23, 1989) (“Final Rule”).

With respect to a determination of sales at less than fair value, the Department is not required to investigate every company in a specific country to make the determination. The companies investigated must be representative of the industry of a particular country under investigation. See, e.g. National Knitwear & Sportswear Association v. United States, 779 F. Supp. 1364, 1372-1374 (CIT 1991). Companies that manufacture and/or export merchandise and do not believe themselves to be making sales at less than fair value may become voluntary respondents under 19 CFR § 351.204(d). However, “Commerce assumes that companies which are not dumping will submit voluntary responses.” Serampore Industries Pvt. Ltd., et al., v. U.S. Department of Commerce, 696 F. Supp. 665, 668 (CIT 1988).

After the initiation of the antidumping duty investigation, the Department sent an antidumping survey to Hylsa and two other firms. See Preliminary Determination of Sales at Not Less Than Fair Value: Oil Country Tubular Goods From Mexico, 60 Fed. Reg. 6510 (February 2, 1995). After reviewing the responses, the Department determined that TAMSA would be the sole mandatory respondent, as it accounted for at least 60 percent<sup>4</sup> of exports of OCTG from

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<sup>4</sup> The Department did not include Hylsa in the investigation not because, as the Panel stated, “its sales were too low.” See Second Decision at 7. Rather, it is because TAMSA’s exports to the United States of the subject merchandise were at least 60 percent of total exports from Mexico. For the actual export figures for both companies, see Memorandum to the File, Exports of OCTG from Mexico to the United States by Hylsa S.A. de C.V. (“Hylsa”), Commercial Quantities Analysis, March 31, 2006.

Mexico during the POI. Id. There is no indication that any other company submitted a voluntary response to the Department as part of the investigation. The ITC considered TAMSA's and Hylsa's exports to the United States during the investigation with respect to the injury, or threat of injury, determination. See Oil Country Tubular Goods from Argentina, Austria, Italy, Japan, Korea, Mexico, and Spain, Investigation Nos. 701-TA-363 and 364 (Final) and 731-TA-711-717 (Final), USITC Pub. 2911 (August 1995). Thus, Hylsa's exports contributed to the ITC's injury determination, and were covered by the "all others" cash deposit rate. Hylsa was subject to the "all other" cash deposit rate after the Department found evidence of sales at less than fair value of exports of OCTG from Mexico, and the ITC found that such exports were injuring the U.S. industry. The Department's dumping finding in the investigation is representative, and not necessarily exclusive.

It is within this framework that the Department analyzes the revocation request of an individual company. The Panel stated that a fundamental difference between previous Department revocation analyses and the analysis with respect to Hylsa is that the Department did not investigate Hylsa and that Hylsa was never found to be dumping in subsequent administrative reviews. See Second Decision at 7, 8. There is no basis in U.S. law for placing a heavier burden on the Department to justify its commercial quantities analysis because the Department declined to include Hylsa in its initial investigation. Id. at 7. Thus, neither the Department's decision not to include Hylsa in the original investigation nor the lack of a finding of dumping by Hylsa affect the Department's revocation analysis. While a revocation analysis examines exports by a particular company, the focus of the analysis is merchandise-specific and intends to ensure that maintenance of a part of the order is not necessary to offset dumping of that merchandise.

Accordingly, the Department's analysis of commercial quantities is designed, on a case by case basis, to determine whether a company has participated meaningfully in the market.

### Commercial Quantities

In determining if a company made sales in commercial quantities, the Department conducts a multi-step analysis based on the unique facts of each case. The critical determination for the Department is to examine a company's behavior prior to and after the issuance of an antidumping duty order.<sup>5</sup> Generally, the Department's preference is to use the POI as the comparison period prior to the issuance of an antidumping duty order. See Rebar from Turkey. The POI is presumed to be a reasonable reflection of sales of merchandise in commercial quantities by the entire industry covered by an antidumping duty order. However, as the Panel has stated, "the Department is not constrained by law in establishing the time period for evaluating a complaint, and cannot argue that it is frozen into the six month period it has embraced." See Second Decision at 9. Indeed, the Department may chose any period prior to the issuance of an order, so long as it reasonably reflects export activity in commercial quantities.<sup>6</sup>

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<sup>5</sup> The Department followed this methodology in a number of revocation analyses pertaining to magnesium from Canada. See Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order in Part, 64 Fed. Reg. 12977, 12978 (March 16, 1999) ("Magnesium from Canada 5"); Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part, 64 Fed. Reg. 50489 (September 17, 1999) ("Magnesium from Canada 6"); and Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Antidumping Duty Order in Part, 65 Fed. Reg. 55502 (September 14, 2000) ("Magnesium from Canada 7").

<sup>6</sup> See, e.g., Magnesium from Canada 6 at Comment 3. The Department selected the "volume of merchandise sold in the last completed fiscal year prior to the order" as the basis for its pre-order comparison. See also Notice of Final Results of Antidumping Duty Administrative

In discussing exports of subject merchandise to the United States after the imposition of an order, the Department has consistently stated that an exporter must demonstrate “the ability to participate in the U.S. market in a commercially meaningful way.” See Pineapple from Thailand. “Sales during the {period of review} which, in the aggregate, are an abnormally small quantity, either in absolute terms or in comparison to an appropriate benchmark period, do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping.” See Rebar from Turkey, Issues and Decision Memorandum at Comment 5. Thus, it is clear that post-order exports to the United States of subject merchandise are not deemed to be made in “commercial quantities” simply based upon a comparison of pre-order sales and exports. Post-order exports must also be commercially meaningful,<sup>7</sup> reflecting in some way the normal commercial practices of the industry and not being of an abnormally small quantity in absolute terms.<sup>8</sup>

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Review and Final Determination Not To Revoke Order in Part: Canned Pineapple Fruit From Thailand, 65 Fed. Reg. 77851, 77853 (December 13, 2000), Issues and Decision Memorandum at Comment 1 (“Pineapple from Thailand”). “The Department analyzes the question of whether respondents have shipped in commercial quantities on a case-by-case basis, and considers comparisons between aggregate sales in the relevant review periods and sales in a benchmark period before the imposition of the order to be a valid basis for determining whether a respondent continues to participate meaningfully in the U.S. market.” Id.

<sup>7</sup> Similarly, if a company did not, for a particular period of time, participate in the U.S. market in a commercially meaningful way prior to the imposition of the order, the use of this period for the purpose of a revocation analysis would not yield a meaningful result.

<sup>8</sup> The Department is not suggesting that all companies covered under an antidumping duty order must have similar levels of exports in order to be considered commercially viable. The Department realizes that companies within a particular industry may have significantly different sales and export levels, cycles, or trends. Similarly, the number or volume of sales and exports that are commercially viable may vary from industry to industry. A determination of commercial viability thus must be made on a case-by-case basis.

The Department's First Revocation Determination with Respect to Hylsa

The Panel expressed concern regarding the Department's use of four different commercial quantity analyses. As stated above, the Department's preference is to use the POI as the comparison period in a revocation analysis. See Rebar from Turkey. See also Polyvinyl Alcohol From Taiwan: Final Results of Third Antidumping Duty Administrative Review and Determination Not To Revoke Order in Part, 65 Fed. Reg. 60615 (October 12, 2000). Generally, the Department uses the POI because the shipment data is available for such comparison.<sup>9</sup> So long as other data are available, another time period is of sufficient duration, and the sales participation prior to the order is commercially meaningful, such other period of comparison may be valid in order to perform a commercial quantities assessment. Using these criteria, the Department's use of the POI, an annualized POI, and full 1994 figures, as outlined in the First Redetermination, is consistent with the regulations and past practice.

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<sup>9</sup> The Department is puzzled as to the basis for the Panel's assertion in footnote 26 of the Second Decision. See Second Decision at page 9. The regulations establishing a POI of four quarters prior to the filing of an investigation went into effect in 1997. See Antidumping Duties; Countervailing Duties, Final Rule, 62 Fed. Reg. 27296 (May 19, 1997). The regulations under which the Department performed its analysis in the fourth administrative review (Oil Country Tubular Goods from Mexico: Final Results of Antidumping Review and Determination Not To Revoke in Part, 66 Fed. Reg. 15832 (March 21, 2001) ("96-97 Administrative Review")) are no different than those in effect currently. Furthermore, there have been a number of analyses by the Department after the implementation of the new regulations establishing a full year POI that, nevertheless, examined only the six months of the POI in effect under the old regulations. See, e.g., Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil, 65 Fed. Reg. 7497 (February 15, 2000) ("Silicon Metal from Brazil"); Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-To-Length Carbon Steel Plate from Canada, 64 Fed. Reg. 2173, 2175 (January 13, 1999).

### Hylsa's Proposed Comparison Period

The Panel expressed concern that the Department's comparison period benchmarks are arbitrary, because if Hylsa's proposed comparison period is examined the sales within that period are similar to the sales during the administrative review period. See Second Decision at 11. In fact, however, the sales within Hylsa's proposed comparison period also do not represent meaningful commercial participation in the U.S. market. Hylsa has proposed that the Department use the four quarters prior to the filing of the antidumping duty petition as the comparison benchmark period. See Letter from Preston, Gates, Ellis & Rouvelas, Meeds LLP to the NAFTA Secretariat, May 22, 2006, at 23 ("Hylsa's Panel brief"). The proposed period corresponds to the final three quarters of 1993 and the first quarter of 1994. Hylsa proposed this comparison period based on that fact that if the regulations in effect today were in effect at the time of the investigation, the actual investigation period would be the proposed comparison period. Hylsa argues that since it had sales only in March of 1994, at levels comparable to its sales in the second administrative review, and its history of sales shows sporadic and small sales, the proposed comparison period is an accurate reflection of Hylsa's normal commercial practices. Thus, according to Hylsa, a comparison of the shipment levels during the review periods to this comparison period allegedly would show that Hylsa was shipping in commercial quantities. Id. Hylsa argues that the use of the original POI is arbitrary and would yield a distorted analysis as Hylsa's shipments in the second quarter of 1994 were much higher. Id. at 24.

The Department believes that Hylsa's proposed comparison period is not an appropriate period on which to base its revocation analysis. As the Department has previously stated, its

preference is to use the POI as a comparison period, pursuant to the regulations in effect at the time of the investigation. As all of the Department's commercial quantity analyses in the First Determination demonstrate, each contains the original POI, even if additional months were added. Hylsa's suggested benchmark period does not include all of the months of the POI.

However, in the instant case, Hylsa's proposed comparison period is not a valid reflection of normal commercial practices. Hylsa has already stated that it had no shipments of merchandise in 1993, which is the majority of the proposed comparison period. See August 16, 2000, letter. In fact, Hylsa had no shipments of subject merchandise in either 1992 or 1993. Id. Rather than being part of the normal commercial practice, the Department believes that other factors more reasonably explain the lack of shipments of OCTG during these years. First, as the Department previously stated in the First Redetermination, OCTG from Mexico was subject to Voluntary Restraint Agreements ("VRAs") from 1984 until 1990 and from 1990 until 1992. See First Redetermination at 46. Hylsa's shipments of OCTG under the first VRA were very small, and nonexistent during the second VRA. See August 16, 2000, letter. With the expiration of the VRAs, Hylsa needed to re-enter the U.S. OCTG market and re-establish a U.S. customer base for its products. Furthermore, as Hylsa stated, the production line for OCTG is the same as for other pipe products. See Hylsa's Panel brief at 22. Therefore, if Hylsa produced substantial amounts of different tubular products, it was limited in the amount of its production capacity that could be devoted to making OCTG.

Furthermore, the sales in March of 1994 are too small to be in commercial quantities. As the Department stated in the First Redetermination, the United States is one of the largest markets for OCTG in the world. See First Redetermination at 52 - 53. Given the overall size of

the U.S. market, and the overall export volumes from Mexico to the United States of OCTG prior to the imposition of the order, Hylsa's sale and export volume in March of 1994 is so small that it cannot be considered to be commercially meaningful participation (i.e., sales in commercial quantities) in the market.

Finally, if Hylsa's proposed period of comparison were reflective of Hylsa's general commercial practices, it would be reasonable to expect that Hylsa's sales and export volume of subject merchandise into the United States would be relatively consistent over time. However, that is not the case. As the Department stated in the First Redetermination, the sales and export volume for Hylsa in 1994 and the first half of 1995 increased dramatically from previous levels. See First Redetermination at 51.<sup>10</sup> After the imposition of the order, sales and export volumes declined dramatically and approached levels similar to those prior to 1994. However, once Hylsa obtained a zero cash deposit rate subsequent to the completion of the 96-97 Administrative Review, sales and export volumes again rose dramatically, with sales in the latter half of 1999 at over 60 times the level of sales in either the proposed comparison period or the second administrative review.<sup>11</sup> Since Hylsa's sales and export pattern for OCTG changed dramatically

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<sup>10</sup> Hylsa's exports to the United States increased throughout 1994 and 1995 until the imposition of the antidumping duty order, with exports to the United States increased four-fold in the last six months of 1994, compared to the first six months of 1994 (the period corresponding to the POI). In the first six months of 1995, exports increased by nearly 4½ times compared to the first six months of 1994. See Letter from Hylsa S.A. de C.V. to the Department of Commerce, Fourth Administrative Review on Oil Country Tubular Goods from Mexico (Prop. R. 1102, Fiche 103, Frame 89) (August 16, 2000) at Attachment 2 ("August 16, 2000, letter") at Attachment 2.

<sup>11</sup> For the fourth administrative review (see Oil Country Tubular Goods from Mexico: Final Results of Antidumping Review and Determination Not To Revoke in Part, 66 Fed. Reg. 15832 (March 21, 2001) ("98-99 Administrative Review"), covering sales through the end of July 1999, Hylsa's reported sales volume was below 400 tons, indicating that there were few

over time, based on the existence or absence of trade remedies and low cash deposit rates, it is not reasonable to conclude that Hylsa's sales levels prior to 1994, or its sales level in the first quarter of 1994, are indicative of normal, meaningful, long-term commercial sales activity of a company in the OCTG market.

For all of the reasons stated above, Hylsa's proposed comparison period is not a reasonable period to use for purposes of a revocation analysis.

### Revocation Analysis

The ability to sell to the United States market during three sequential years without dumping is normally deemed to be probative as to a company's future pricing practices. However, this assumes that the company participates meaningfully in the U.S. market during that period. As the Panel noted, the Department's regulations (19 CFR § 351.222(d)) state that "before revoking an order . . . the Secretary must be satisfied that, during each of the three . . . years, there were exports to the United States in commercial quantities." See First Decision at 14.

A particular company requesting revocation from a country-wide antidumping duty order must indicate that its sales of the subject merchandise are in commercial quantities, which together with an absence of dumping would indicate a lack of current or future injury. A

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sales in the first half of 1999 (i.e. during the review period). See First Redetermination at page 25, footnote 8. The Department completed the 96-97 Administrative Review on March 23, 1999, establishing a zero cash deposit rate for Hylsa. Based on information on the record, it is clear that Hylsa's shipment levels for the final two quarters of 1999 (i.e. after the completion of the 98-99 Administrative Review) increased dramatically. See Letter to Interested Parties, March 13, 2006, at Attachment E.

company's certification that it will not dump in the future, pursuant to 19 CFR 351.222(e)(1)(i), recognizes this fact and that protection from an order is ongoing, despite revocation, and that future injury through dumping may lead to the reinstatement of the order.

In this case, sales by Hylsa in the three years in question are characterized by a negligible number and volume of sales to the U.S. market, particularly sales in the 96-97 Administrative Review. As the Department stated in the First Redetermination, Hylsa's sales and export volume during the first period of review under consideration for revocation is extremely small. See First Redetermination at 28, 52 - 53. In absolute terms, regardless of the comparison period used, whether it is Hylsa's proposed period or the periods used by the Department, Hylsa's sales and export volume during this review period are so small that they cannot represent meaningful commercial participation in the U.S. market. The sales and export percentages, as a total of OCTG consumption in the United States, and either all sales of OCTG from Mexico prior to the imposition of the order or all imports of OCTG into the United States, is extremely small. Therefore, regardless of the comparison period used by the Department, it is not possible to find that Hylsa exported OCTG to the United States in commercial quantities during the 96-97 Administrative Review.

Therefore, the fact that Hylsa made these sales during the three administrative review periods without dumping does not have the same probative value it would otherwise have. In light of this fact, we find that Hylsa did not meaningfully participate in the marketplace and thus, because it has not sold the subject merchandise for three years in commercial quantities within the meaning of 19 CFR § 351.222(e), does not qualify for revocation.

With respect to the proper comparison period for the revocation analysis, it is clear that while the POI is the Department's preferred benchmark, it is not the only benchmark that may be used. Any reasonable period prior to the imposition of an order may be used. The facts of this case do not indicate that the original POI, or a derivation based on POI or 1994 sales, or a comparison period consisting of a combination of 1994 and 1995 sales until the order, are inappropriate benchmarks. Hylsa had sales and exports of subject merchandise and participated in the U.S. market in a commercially meaningful way during these periods. Hylsa's claims that its export experiences from 1984 to 1994 reflect its normal commercial practices are unavailing given the history of the pattern of exports through 1999, and the fact that Hylsa did not participate in the U.S. market in a commercially meaningful way prior to 1994. Thus, a time period prior to 1994 is not an appropriate benchmark period for comparison with Hylsa's exports after the imposition of the order.

#### Post-Draft Interested Party Comments

The Department received case briefs from Hylsa and U.S. Steel, and rebuttal briefs from Hylsa, U.S. Steel and Maverick. Below is a summary of the parties' comments and the Department's position.

#### Case Briefs

U.S. Steel believes that the Department's draft redetermination complies fully with the Panel's decision and instructions to the Department. See Letter from Skadden, Arps, Slate, Meagher & Flom LLP to the Secretary of Commerce, September 26, 2006, ("U.S. Steel's case

brief”) at page 2. However, U.S. Steel also believes that the Department should address the Panel’s decision with respect to the consideration of the finding of a dumping margin for Hylsa in the ninth administrative review, in light of the decision by the Court of International Trade (“CIT”) in Luoyang Bearing Corp. (Group) v. United States (“Luoyang”). U.S. Steel notes that the Department found a dumping margin of 1.48 percent for Hylsa in the ninth administrative review, and found a dumping margin in the tenth administrative review. Id. at 2 - 3. In advocating that the Department consider the final results from the ninth and tenth administrative reviews, U.S. Steel cites to the holding by the CIT in Luoyang that “Commerce may not ignore the evidence of continued dumping . . . even if such evidence is uncovered in a subsequent administrative review.” Id. at 3. The CIT, according to U.S. Steel, stated that a lack of consideration of such evidence by the Department undermines the remedial purpose of the antidumping duty laws. Id. U.S. Steel further states that because the results of the ninth and tenth reviews provide evidence that the order continues to be necessary to offset dumping, Hylsa’s request for revocation fails to satisfy the requirements of 19 CFR § 351.222. Id. at 4.

U.S. Steel states that the Panel’s reasoning for distinguishing the fact pattern in Luoyang from the instant case is not availing. U.S. Steel notes that the antidumping duty order on OCTG from Mexico applies to merchandise produced and sold by Hylsa. Additionally, U.S. Steel states that the remedial purpose of the antidumping duty law relates to the need to prevent or offset dumping in the future. Id. at 5. Because the “future” evidence (i.e. the ninth and tenth administrative reviews) demonstrates dumping by Hylsa, according to U.S. Steel, it is clear that the continued application of the order is necessary to offset dumping by Hylsa. Id. U.S. Steel argues that the fact that Hylsa has appealed the final results of the ninth administrative review is

of no moment, as the respondent in Luoyang had similarly appealed the review on which the CIT decided the case. Id. at 6. U.S. Steel concludes by reiterating its support of the Department's reasoning in the draft redetermination, but again urging the Department to incorporate the Luoyang decision in the redetermination as well.

Hylsa begins its comments by claiming that it was not able to retrieve its copy of the draft redetermination until the morning of September 25, 2006. See Letter from Preston, Gates, Ellis & Rouvelas, Meeds, LLP to the Secretary of Commerce, September 26, 2006, ("Hylsa's case brief") at page 2. Therefore, Hylsa asserts that it had only one day to comment and that such a short comment period was inadequate. Hylsa further claims that the Department's actions with respect to the comment period suggest that the Department will not take the comments seriously. Id.

Nevertheless, Hylsa raises a number of issues with respect to the Department's draft redetermination. First, Hylsa asserts that the Department's stated reason for the rejection of Hylsa's proposed benchmark period, i.e. the lingering effects of the VRA, has no basis in fact. Hylsa states that there is no evidence to indicate that Hylsa required two years to restart production of OCTG after the expiration of the VRAs. Id. at 3. Hylsa contrasts this supposed two-year inactivity in 1992 and 1993 due to the VRAs with the Department's assertion that Hylsa required only six months after the imposition of a zero cash deposit margin from the second administrative review to make massive exports.<sup>12</sup> Id. Such a contrast, according to Hylsa,

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<sup>12</sup> Hylsa also objects to the Department's use of shipment information that occurred after the completion of the fourth administrative review. See Hylsa's case brief at 3, footnote 4.

demonstrates that the Department's reasoning with respect to the effects of the VRAs is wrong. Id.

Next, Hylsa takes issue with the Department's definition of "commercial quantities" in the draft redetermination. Hylsa asserts that the Department's definition is based on the overall size of the U.S. OCTG market. Id. According to Hylsa, because the U.S. market is so large, Hylsa's sales of OCTG to the United States would not be deemed to be "commercial quantities" even if they represent an exporter's normal practice. Id. at 4. Hylsa asserts that the statute defines the term "commercial quantities" in terms of individual shipment quantities and not in terms of U.S. market share. Id. Furthermore, Hylsa states that the Department's past practice is not to define "commercial quantities" by market share, but by the historical experience of the company seeking revocation. Id. According to Hylsa, the use of a market-share test for commercial quantities is "contrary to principle and patently unfair to exporters who have traditionally supplied only small volumes to the United States." Id.

Hylsa concludes by arguing that the Department's draft redetermination "does not even make an effort" to demonstrate that the Department's original comparison periods were valid choices. Id. at 5. Hylsa further states that the Department has failed to explain why Hylsa should still be subject to the antidumping duty order when it has never been found dumping and when its pre-petition exports were always small. Id. Therefore, Hylsa states that the order should be revoked with respect to itself.

## Rebuttal Briefs

On September 28, 2006, Maverick submitted its rebuttal brief. See Letter from Schagrin Associates to the Secretary of Commerce, September 28, 2006 (“Maverick’s rebuttal brief”). In its rebuttal comments, Maverick states that the major issue of this case is not whether the Department selected the proper comparison period. Rather, Maverick believes that the controlling issue is whether Hylsa shipped in commercial quantities during the administrative review periods under consideration. See Maverick’s rebuttal brief at 2. Maverick asserts that the benchmark comparison period “is merely a tool to place a particular company’s export experience in perspective” and is not the only test to determine if a company shipped in commercial quantities. Id. Maverick provides an example to show that a simple comparison of pre- and post-order shipment volumes is not sufficient to determine if a company has made shipments in commercial quantities. Id. Rather, Maverick concurs with the Department’s statement that sales in “commercial quantities” must indicate participation in the U.S. market in a commercially meaningful way, and that sales that are small, either in absolute terms or in comparison to an appropriate benchmark period, are not indicative of commercially meaningful participation. Id. at 2 - 3. Maverick then cites Hylsa’s actual pre- and post-order shipments during the three administrative reviews under consideration and states that the shipment levels after the order are not in commercial quantities either by comparison or in absolute terms. Id. at 3 - 4. Maverick compares these shipment volumes to those by Hylsa after Hylsa obtained a zero cash deposit rate in 1999, indicating that sales in late 1999 were substantially higher than the three administrative review periods under consideration. Id. at 4.

Finally, Maverick takes issue with both Hylsa and the Panel with respect to Luoyang. Maverick, like U.S. Steel, asserts that the Department must adhere to the decision in Luoyang and cannot ignore the dumping findings for Hylsa in the ninth administrative review. Maverick concludes by stating that the evidence on the record does not indicate that Hylsa shipped subject merchandise in commercial quantities during the three administrative review periods under consideration.

Hylsa submitted a rebuttal brief on September 28, 2006. See Letter from Preston, Gates, Ellis & Rouvelas, Meeds, LLP to the Secretary of Commerce, September 28, 2006, (“Hylsa’s rebuttal brief”). In its rebuttal brief, Hylsa notes that U.S. Steel has raised the issue of Luoyang previously, and that Hylsa has previously responded to this argument. See Hylsa’s rebuttal brief at 2. However, according to Hylsa, the issue is not important as the Panel has made clear that it will not consider issues in a remand determination that it has already decided previously. Hylsa notes that the Panel invoked Rule 76 of the Rules of Procedure for Article 1904 Binational Panel Reviews in the Second Decision, and that the same logic applies to this issue. Id. at 2 - 3. Therefore, the request to reconsider Luoyang, according to Hylsa, is pointless.

U.S. Steel also submitted a rebuttal brief on September 28, 2006. See Letter from Skadden, Arps, Slate, Meagher & Flom LLP to the Secretary of Commerce, September 28, 2006, (“U.S. Steel’s rebuttal brief”). U.S. Steel contends that the Department fully complied with the Panel’s instructions and properly found that Hylsa does not qualify for revocation. See U.S. Steel’s rebuttal brief at 2. U.S. Steel states that Hylsa’s arguments regarding their proposed benchmark comparison period and the definition of “commercial quantities” are wrong. Id.

U.S. Steel notes that one of the reasons for not using Hylsa's proposed benchmark period are the lingering effects of the VRAs that expired in 1992. Id. at 3. U.S. Steel concurs with the Department's finding that it would take some time for Hylsa to re-establish itself in the OCTG market after the expiration of the VRAs, noting that Hylsa would have to re-establish a customer base and distribution network in the United States before selling OCTG. Id. at 3 - 5. U.S. Steel believes that Hylsa's export patterns support this contention. According to U.S. Steel, once Hylsa was re-integrated into the market it substantially increased production and shipments of OCTG to the United States beginning in 1994. Id. at 5. In other words, according to U.S. Steel, the lack of shipments between the expiration of the VRAs and 1994 reflect the time necessary for Hylsa to re-enter the U.S. market. Once it did so successfully, Hylsa recommenced exporting OCTG to the United States. Id. Therefore, using a period of time when Hylsa was not fully re-integrated into the U.S. market as a benchmark comparison period would not be reasonable, as it would not reflect the normal commercial activity of a company in the U.S. OCTG market. Id.<sup>13</sup>

Concerning the term "commercial quantities," U.S. Steel notes that the Panel has already upheld the Department's definition of "commercial quantities." Id. at 6. Furthermore, U.S. Steel states that the Department has consistently interpreted the term "commercial quantities" in the context of a respondent's aggregate sales in the United States, rather than the quantity of each individual sale. Id. at 7. Such a definition, according to U.S. Steel, is reasonable when making a revocation analysis, as opposed to calculating antidumping duty margins. Id. at 8.

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<sup>13</sup> U.S. Steel notes that Hylsa did not dispute any of the other reasons articulated by the Department for rejecting Hylsa's proposed benchmark comparison period. Id. at 3, footnote 5.

Finally, U.S. Steel takes issue with Hylsa's argument that the Department has not followed past practice in this revocation analysis. U.S. Steel notes that the Department did make an historical comparison between Hylsa's shipments during the relevant review periods and several reasonable pre-order benchmark periods. Id. at 9 - 10. Importantly, according to U.S. Steel, the Department examined Hylsa's sales both in absolute terms and relative to an appropriate benchmark period. Id. at 10. U.S. Steel contends that, in absolute terms, Hylsa's sales and exports of OCTG to the United States during the second and third review periods cannot be considered to be sales in commercial quantities in absolute terms. Id. at 11. Therefore, Hylsa cannot be said to have shipped in commercial quantities during the relevant periods, and the Department's analysis is correct.

#### Department's Position

With respect to Luoyang, the Department considered this matter in its first redetermination, in accordance with the CIT's holding in that case. While the Department respectfully disagrees with the Panel's decision regarding consideration of the results of the ninth administrative review, the Department has followed the instructions of the Panel and made its revocation analysis based solely on its consideration of commercial quantities. See Second Decision at 21.

With respect to Hylsa's objections regarding the time period for comment on the draft redetermination, the Department notes that the Department issued the draft to Hylsa at the end of the day on Friday, September 22, 2006, which Hylsa stated it received on the morning of September 25, 2006. Hylsa, and the other parties, had two business days for initial comment, i.e.

through the close of business Tuesday, September 26, 2006. Hylsa submitted both comments and rebuttal comments, as did other interested parties. No other parties objected to the duration of the comment period.

Concerning the revocation analysis, the Department has stated on numerous occasions that revocation determinations are done on a case-by-case basis and rely on the particular facts of the industry and company being analyzed. For Hylsa, two questions have arisen regarding our analysis that must be addressed. First, what is the proper benchmark comparison period to use for comparing Hylsa's pre- and post-order exports? Second, regardless of the benchmark comparison period, did Hylsa, in absolute terms, participate in the U.S. OCTG market in a meaningfully commercial manner during the review periods under consideration for revocation?

We disagree with Hylsa with respect to the effects of the VRAs and Hylsa's participation in the U.S. OCTG market. VRAs are unlike antidumping duty orders. A VRA puts an absolute cap on the amount of merchandise that can be exported to the United States, regardless of price. Based on Hylsa's export volumes during the VRA periods, it is clear that the VRA prevented Hylsa from exporting OCTG to the United States for a number of years. Therefore, all customers and distribution networks for Hylsa's OCTG would have been lost during that time. Absent evidence to the contrary, it would appear that Hylsa did indeed require nearly two years to re-establish those networks. Once established, Hylsa resumed OCTG exports to the United States, which occurred in 1994. Using a benchmark comparison period which incorporates a time prior to the establishment of customer and distribution networks is illogical, since it is impossible to state that the lack of sales during such a period of time are due to normal commercial activity.

Hylsa contrasts this two-year lack of sales subsequent to the VRA with the large increase of exports within months after the imposition of a zero cash deposit rate in 1999. See Hylsa's case brief at 3. Hylsa states that the Department's assumption that Hylsa required two years to begin re-exporting is "flatly inconsistent" with the exporting experience in 1999. Id. However, the Department believes that the two events are substantially different and therefore that the Department's analysis is not inconsistent. Prior to the imposition of the zero cash deposit rate in 1999, Hylsa made bona fide sales of OCTG to the United States for five years. While the level of sales varied, it is clear that the customer base and distribution network did not disappear subsequent to the imposition of the antidumping duty order. With the imposition of a zero cash deposit rate, it is reasonable to expect that Hylsa was able to increase sales more rapidly than was possible subsequent to the elimination of the VRAs.<sup>14</sup>

With respect to the definition of "commercial quantities," and as discussed in our first redetermination on remand, it is well established that the term is not dependant upon the size of individual sales. Rather, the Department has defined the term with respect to aggregate sales by a company during the relevant periods. See Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea, 66 FR 3540 (January 16, 2001), Issues and Decision Memorandum at

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<sup>14</sup> Hylsa objects to the Department's use of information "for a period after the final determination in the administrative review under consideration was issued." See Hylsa's case brief at 3, footnote 4. This shipment information for the last five months of 1999, which follows the end of the POR in the fourth administrative review, was used in the first sunset review of OCTG from Mexico and added to the record of these proceedings. The Department notes that it used this information to respond to Hylsa's proposed benchmark period, specifically addressing Hylsa's argument that the lack of shipments following the end of the VRA was normal commercial activity.

Comment 9.<sup>15</sup> In examining the aggregate volume of sales by a company, the Department's practice is to examine a number of issues to determine if a company has participated in a commercially meaningful way in the U.S. market.

Thus, the Department's commercial quantities analysis could conceivably include the consideration of all or none of the aforementioned factors (i.e., market share, sales volume, and shipping volume). However, our commercial quantities analysis and practice has considered the relative importance of these factors, as applicable, on a case-by-case basis with a particular focus on the comparative sales volume during the PORs in question and the POI. Commercial quantities have not been found where aggregate sales are determined to be of an abnormally small quantity, either in absolute terms or in comparison to an appropriate benchmark period, because there was not a sufficient breadth of information regarding a company's normal commercial practice.

Id.

Clearly, the Department's past practices with respect to revocation analyses demonstrates that there is not a formulaic comparison of sales volumes during the PORs with those of the POI. The overall market trend of a company's sales, and its comparison to the overall size of the market, are both important factors which may be used in a revocation analysis. As the Department demonstrated above, an examination of Hylsa's sales pattern, using all available information, indicates that it was not always a low-volume shipper of OCTG to the United States. Thus, Hylsa's pre-1994 export behavior cannot be considered reflective of normal commercial practices.

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<sup>15</sup> "We disagree with POSCO's assertion that the Department has defined commercial quantities as specifically referring to the size of individual sales (which is not included in the preamble of the Revocation Final Rule, the preamble of our Proposed Rule,(1) or codified in our past practice). On the contrary, absent an extraordinary occurrence which would cause the Department to consider other measures of commercial quantities (e.g., Professional Electric Cutting Tools From Japan, 64 FR 71411, 71416 (December 21, 1999) (final admin. review)), it has been the Department's practice to examine the aggregate volume of total sales to the United States (in absolute terms and in comparison with the POI or other appropriate benchmark period) in determining whether sales have been made in commercial quantities."

Additionally, Hylsa's overall sales volume in the second administrative review is too small, in absolute terms, to consider sales during this period to be reflective of the normal commercial practices of an OCTG producer active in the U.S. market. The sales volume is too small, relative either to the total U.S. OCTG market, the total imports of OCTG to the United States, or imports of OCTG from Mexico into the United States prior to the imposition of the order, to be considered commercially meaningful.

### Conclusion

Based on the Department's analysis, and mindful of the Panel's comments, the Department determines that Hylsa does not qualify for revocation from the antidumping duty order on OCTG from Mexico under 19 CFR 351.222(e)(1)(ii) and 19 CFR 351.222(d)(1).

If the Panel affirms this redetermination, we will publish a notice in the Federal Register in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (19 USC §1675(a)(1)).

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David M. Spooner  
Assistant Secretary  
for Import Administration

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(Date)

