



A-580-816
Administrative Review
POR: 8/1/11 – 2/14/12
Public Document
AD/CVD/O3: SM/CH

DATE: March 24, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman 
Senior Advisor
for Antidumping and Countervailing Duty Operations

RE: Certain Corrosion-Resistant Carbon Steel Flat Products from the
Republic of Korea

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Antidumping Duty Administrative Review: Certain Corrosion-
Resistant Carbon Steel Flat Products from the Republic of Korea;
2011 – 2012

I. Summary

We analyzed the case and rebuttal briefs submitted by interested parties. Based on our analysis of comments received, these final results do not differ from the *Preliminary Results*.¹ We recommend that you approve the positions provided below in the “Discussion of Comments” section of this Issues and Decision Memorandum.

II. Background

The Department of Commerce (the Department) initiated this administrative review of the antidumping duty (AD) order on certain corrosion-resistant carbon steel flat products (CORE) from the Republic of Korea (Korea) on August 30, 2012.² On September 9, 2013, the Department published the *Preliminary Results*, and invited interested parties to comment. On November 8, 2013, Dongbu Steel Co., Ltd., (Dongbu), Hyundai HYSCO (HYSCO), LG Hausys, Ltd. (Hausys), and Union Steel Manufacturing Co., Ltd. (Union) filed case briefs. On November 13, 2013, Nucor Corporation (Nucor) filed its rebuttal brief. On November 14, 2013, United

¹ See *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 55057 (September 9, 2013) (*Preliminary Results*).

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 77 FR 59168 (September 26, 2012).



States Steel Corporation³ filed a rebuttal brief, which was rejected by the Department as past the deadline for the submission of rebuttal briefs.⁴

III. Period of Review

The POR covered by this review is August 1, 2011, through February 14, 2012. As a result of the determination by the International Trade Commission (ITC) that revocation of this AD order would not be likely to lead to continuation or recurrence of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Tariff Act of 1930, as amended (the Act), the Department revoked the AD order on CORE from Korea.⁵ Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is February 14, 2012 (*i.e.*, the fifth anniversary of the effective date of publication in the *Federal Register* of the previous continuation of this order).⁶ As stated in the *Revocation Notice*, the Department will complete all pending or requested administrative reviews of the order covering entries prior to February 14, 2012.⁷ Accordingly, the period covered by the instant review is abbreviated from the initiated-upon 12 month administrative review period to reflect the effective date of revocation.

IV. Scope of the Order

The order covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in the order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process including products which have been beveled or rounded at the edges (*i.e.*, products which have been "worked after rolling"). Excluded from the

³ Petitioners are United States Steel Corporation and Nucor Corporation.

⁴ See Memorandum to the File through Eric Greynolds, Program Manager, Office 3, AD/CVD Operations from Christopher Hargett, International Trade Compliance Analyst, Office 3, AD/CVD Operations, titled "Rejection of Rebuttal Brief," dated November 20, 2013.

⁵ See *Corrosion-Resistant Carbon Steel Flat Products From Germany and the Republic of Korea: Revocation of Antidumping and Countervailing Duty Orders*, 78 FR 16832 (March 19, 2013) (*Revocation Notice*).

⁶ See *Continuation Pursuant to Second Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders: Certain Corrosion-Resistant Carbon Steel Flat Products from Germany and Korea*, 72 FR 7009 (February 14, 2007).

⁷ See *Revocation Notice*, 78 FR at 16832.

order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (terne plate), or both chromium and chromium oxides (tin-free steel), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from the order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from the order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

These HTSUS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

V. List of Comments

- Comment 1: Use of Dongbu's Costs for the Period August 1, 2011, to July 31, 2012
- Comment 2: Calculation of General and Administrative and Interest Expenses
- Comment 3: Application of Differential Pricing and Zeroing in Administrative Reviews
- Comment 4: Denial of Offsets with the Average-to-Transaction Method

VI. Analysis of Comments

Comment 1: Use of Dongbu's Costs for the Period August 1, 2011, to July 31, 2012

Dongbu's, Union's and LG Hausys's Arguments

- The Department used a truncated sales database for Dongbu from August 1, 2011, through February 14, 2012 to reflect the shortened POR as a consequence of the ITC's sunset determination. However, the Department improperly compared these sales to Dongbu's annual costs for the period August 1, 2011, through July 31, 2012.
- The review period is no longer August 1, 2011, through July 31, 2012, and the Department must, accordingly, bring its decision into compliance with the law by requesting and using, in the cost recovery test, a cost database for the revised POR (*i.e.*, August 1, 2011, through February 14, 2012).
- Although the ITC's negative sunset determination was published over five months before the *Preliminary Results*, the Department did not request that Dongbu submit revised sales or cost databases, as it has done in prior cases in which the POR was shortened due to the revocation of an antidumping duty order following a sunset review.⁸ Nor did the

⁸ See Dongbu's case brief at 4 – 5 citing to *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea; Notice of Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 47163, 47164 (September 11, 2001) (*CORE 1999-2000*) (noting that cold-rolled order revoked effective January 1, 2000 and that "the Department instructed all interested parties to revise their submissions to reflect the new POR for cold-rolled products.")

Department formally indicate that it was going to modify the POR until the *Preliminary Results*.

- The Statement of Administrative Action (SAA) provides that “{t}he determination of cost recovery is based on an analysis of actual weighted-average prices and costs during the period of investigation or review.”⁹
- The Court of International Trade (CIT), in *SeAH Steel I*¹⁰ held that the statute requires the use of a single average POR cost for the cost recovery test, stating therein that the language “does not give Commerce discretion to compare prices to a weighted-average per unit cost for a different time span” than the POR. Thus, the annual average costs used by the Department in its margin program are not “the weighted average per unit cost of production for POR” as required by the statute.
- The Department violated the cost recovery provision of the statute because it did not test Dongbu’s sales against the weighted-average costs for the revised POR, *i.e.*, costs for the August 1, 2011, to February 14, 2012, POR. Rather, the Department tested Dongbu’s sales against the weighted-average per unit cost for the August 1, 2011, through July 31, 2012, period. These annual costs, however, are not representative of “the weighted average per unit cost of production” for the POR as required by section 773(b)(2)(D) of the Act. Respondents cite to *SeAH Steel II* to support their contention that the Department must use costs for the revised POR in conducting the cost recovery test.¹¹
- The legal consequence of the revocation is that Dongbu’s imports of CORE that were entered after February 14, 2012, are no longer subject to any antidumping duty order. Thus, there is thus no legal basis for the Department to use cost information for the five and a half months after revocation in the calculation of Dongbu’s dumping margin.
- In order to comply with the law, the Department should request revised cost data to reflect the shortened POR, which Dongbu stands ready to provide, and recalculate Dongbu’s margin in the final results.

Nucor’s Argument

- Respondents fail to point to any deficiency in Dongbu’s full-year cost data that would undermine its validity or render the data otherwise distortive. Further, there is no requirement that Dongbu’s costs tie precisely to sales that are only contained in the company’s sales database, nor has Dongbu pointed to any such requirement.
- Dongbu’s reliance on *SeAH Steel* for the proposition that the Department must use costs for the revised POR in conducting the cost recovery test is unpersuasive. In that case, the Court considered whether the Department’s quarterly indexing methodology violates the plain language of the cost recovery test. Here, by contrast, the Department specifically concluded that application of its quarterly cost methodology was inappropriate.
- A truncated cost database for Dongbu would introduce additional distortions into the Department’s calculation of the company’s COP because steel producers, such as Dongbu, often incur charges (*e.g.*, allowance for doubtful account, research and development expenses, insurance, and taxes) that may not be finalized until the end of the year, but are properly allocable across an entire review period. Therefore, limiting

⁹ See Statement of Administrative Action (SAA), H.R. Rep. No. 103-316 (1994) at 832, reprinted in 1994 U.S.C.C.A.N. 4040, 4170 (emphasis added by Dongbu).

¹⁰ See *SeAH Steel v. United States*, 704 F. Supp.2d 1353.

¹¹ See *SeAH Steel Corporation v. United States*, 764 F. Supp.2d 1322, 1333 (Ct. Intl Trade 2011) (*SeAH Steel II*).

Dongbu's cost database to a seven-month period could prevent such costs from being properly considered by the Department.

Department's Position: In February 2013 (before we revoked the CORE AD order as a result of the ITC's sunset determination), Dongbu submitted its original sections B through D questionnaire responses to the Department's November 19, 2012 antidumping duty questionnaire.¹² Both the sales and cost data submitted by Dongbu were based on the original 12-month POR, as initiated on by the Department.¹³ For the *Preliminary Results*, the Department truncated the full year U.S. sales databases submitted by Dongbu and HYSCO and only examined in its margin calculations U.S. sales made prior to the effective date of the revocation (*i.e.*, February 14, 2012). The Department, however, in keeping with its normal practice and preference of using a full year's cost data,¹⁴ continued to use the cost files submitted by both respondents covering the original POR. We never raised the issue of the reporting period for the submitted cost data, nor did either of the two mandatory respondents up until the filing of the case briefs in November 2013. In its case brief, filed nearly eight months after the revocation notice was published shortening the U.S. sales reporting period, Dongbu, for the first time during this administrative review, raised the issue of the appropriate cost reporting period, arguing that the Department must solicit and use a revised cost file reflecting the shortened POR. We disagree with Dongbu.

Dongbu relies on *CORE 1999-2000* to support its argument that our practice following the revocation of an order is to use cost data for the shorter POR. However, we disagree that this case provides definitive guidance as to an established practice following the revocation of an order. A review of the facts specific to that case reveals that the cost reporting periods for the different respondents were inconsistent. For Dongbu (also a respondent in that proceeding), we used cost data covering a shortened period for the sales-below-cost and cost-recovery tests. However, for the other two respondents we relied on their 12-month POR cost data as originally submitted for the sales-below-cost test and the cost-recovery test.¹⁵

We find that the use of the 12-month average cost data is reasonable and appropriate in this situation. Our long-standing practice is normally to calculate a respondent's costs for use in the sales-below-cost test using annual average costs.¹⁶ The use of annual average cost data results in an approach that smoothens out fluctuations in production volumes and costs that occur during a company's normal annual cost reporting cycle, with the goal being to derive a cost that reasonably reflects a normalized COP for sales made throughout the year.¹⁷ Moreover, as Nucor notes, using a full year's cost data ensures that sporadic fixed overhead costs, such as repairs and

¹² See Dongbu's initial questionnaire response Sections B through D dated February 8, 2013.

¹³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 59168 (September 26, 2012).

¹⁴ See, *e.g.*, *Antidumping Methodologies for Proceedings that Involve Significant Cost Changes Throughout the Period of Investigation (POI)/Period of Review (POR) that May Require Using Shorter Cost Averaging Periods; Request for Comment*, 73 FR 26364 (May 9, 2008).

¹⁵ See *CORE 1999-2000*, 66 FR at 47168.

¹⁶ See *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35248 (June 5, 2013), and accompanying Issues and Decision Memorandum at Comment 6.

¹⁷ See section 773(f)(1)(A) of the Act.

maintenance, and certain provisions or accruals recorded only at year's-end, are appropriately considered for inclusion in COP. The exceptions to this established practice of using annual average costs for the sales-below-cost test are limited to situations involving (1) products experiencing significant cost of production changes during the POI/POR, (2) high inflation economies, (3) high-tech products such as semi-conductors, where prices and cost have historically decreased steadily over the POI/POR, and (4) perfectly hedged commodity products (e.g., products in which the market players have taken financial positions to ensure against potential losses) such as the market for brass sheet and strip.¹⁸ In each of these exceptions, we calculate the average cost using a period less than one year. In all other instances, our normal practice is to use an annual average cost calculation period. Here, the revocation of the CORE order does not meet any of the above conditions that would warrant a departure from our established practice, nor does Dongbu allege that any of these exceptions apply. Further, we do not consider the revocation of the CORE order, and the consequent shortening of the POR, to be a sufficient reason for deviation from our normal annual average cost method.

With regard to this latter point, we acknowledge that as a result of the revocation of the CORE AD order, the annual cost reporting period (i.e., August 1, 2011, through July 31, 2012) does not precisely match with the universe of U.S. sales reviewed in the margin calculations (i.e., August 1, 2011, through February 14, 2012). However, absent any of the above-noted exceptions that would warrant a departure from our longstanding practice, or any argument that any of these conditions are present, there is no reason to believe that the annual-average cost data is unsuitable or otherwise unrepresentative for use in the sales-below-cost and cost-recovery tests. In fact, for the reasons noted above, we consider the annual average cost data, which includes the full six and one-half month period for which US sales were reported, is a better reflection of the average COP associated with the reported sales, than a six month cost reporting period mirroring the US sales reporting period.

Dongbu asserts that the Department's use in the *Preliminary Results* of the company's annual average cost data is in violation of the cost recovery provision of the statute. Section 773(b)(2)(D) of the Act provides that sales which are below the COP at the time of sale will be considered to provide for the recovery of costs, if they are above the weighted-average cost for the POI or POR. This provision of the statute recognizes that during certain times in a given year, companies may sell their merchandise at prices that are below its current cost of production. However, as long as those prices recover the company's cost of production over a longer period of time, such sales are deemed to have recovered costs and will not be disregarded in the dumping analysis. In a normal case, we calculate the COP in the same way for use in the sales-below-cost and cost-recovery tests, based on the annual weighted-average cost during the POI or POR. The cost-recovery test becomes relevant when we use a cost calculation period of less than one year in performing the sales-below-cost test. In these instances, sales found to be

¹⁸ See, e.g., *Certain Pasta From Italy: Notice of Final Results of 15th Antidumping Duty Administrative Review, Final No Shipment Determination and Revocation of Order, in Part; 2010-2011*, 78 FR 9364 (February 8, 2013), and accompanying Issues and Decision Memorandum at Comment 3 (significant cost of production changes over the period); *Certain Pasta From Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 47876, 47878 (August 6, 2004), unchanged in *Certain Pasta from Turkey: Final Results of Antidumping Duty Administrative Review*, 70 FR 6834 (February 9, 2005) (high inflation); and *Brass Sheet and Strip From Germany: Amended Final Results of Antidumping Duty Administrative Review*, 75 FR 66347 (October 28, 2010), and accompanying Issues and Decision Memorandum at Comment 1 (perfectly hedged commodity).

priced below cost when compared to a less-than-one-year average cost (as, for example, in shorter cost-averaging periods where costs fluctuate significantly throughout the POI or POR), are compared to an average cost for the longer POI/POR to determine whether sales were made at prices that permit recovery of costs.¹⁹ Dongbu's argument that the Department should use a cost recovery period that is shorter than the normal sales-below-cost period runs counter to the logic of the cost recovery provision, which establishes a longer period of time over which a company's sales prices may be considered to have recovered production costs.²⁰ In this case, we calculated the weighted-average cost used in the recovery of cost test using an annual average that fully captures all costs incurred during the POR. Dongbu, in effect, wants the Department to rely on the very unusual facts of this case, ignore our normal practice and the reasonableness of such practice, and apply the cost recovery provision of the statute in a counterintuitive way. An annual-average cost period provides a better, more accurate measure of whether home market sales prices were, in fact, able to recover Dongbu's production costs, given that the shorter averaging period may reflect erratic production levels throughout the year, and improperly result in the exclusion of certain expenses only recorded sporadically during the year. The fact that we did not review any U.S. sales after revocation does not render a shorter cost calculation period somehow more appropriate or representative.

Further, we note that Dongbu did not raise this issue until the filing of its case brief, which is too late for us to consider it.²¹ The information required to conduct the analysis requested by Dongbu is not currently on the record, nor can it be derived from the annual cost data that is on the record. Furthermore, it is not only Dongbu's cost data file that would need to be revised. If we were to agree with Dongbu, which we do not, we would also need to request a completely new database from HYSCO, the other mandatory respondent in this proceeding. Dongbu could have raised this issue at any point in time after the ITC's sunset determination and prior to the *Preliminary Results*.

Requesting and obtaining a completely new cost file after the filing of the case briefs poses numerous administrative difficulties for the Department at this late juncture. We would need to: (1) require both respondents to report entirely new product-specific cost files, (2) analyze the

¹⁹ See *Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Final Results of Antidumping Duty Administrative Review*, 76 FR 76939 (December 9, 2011), and accompanying Issues and Decision Memorandum at Comment 2 (where we note that the respondent's sales which were below the quarterly-average costs were tested for recovery "over the POR").

²⁰ See *SeAH Seel I*. In that case, we performed the sales-below-cost test using quarterly average costs. The Court held that Commerce was required to perform the recovery of cost test using the longer annual average POR cost period.

²¹ See, e.g., *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 108 (January 2, 2014), and accompanying Issues & Decision Memorandum at comment 13A (*Citric Acid from the PRC*) (declining to reopen the administrative record at a late stage in the proceeding to include additional data because to do so would impede Department's ability to complete the administrative review within the statutorily prescribed deadline); *Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 29113 (May 17, 2013), and accompanying Issues & Decision Memorandum at "Targeted Dumping Allegation" (*CTL Plate from Korea*) (declining to consider a targeted dumping allegation filed 38 days after the Department issued its preliminary results of review because it was such a late stage of the proceeding; the company had "ample opportunity" to file its allegation prior to the preliminary results and certainly prior to its case brief).

revised cost data, (3) issue supplemental questionnaires seeking additional clarification of the newly reported information (if needed), (4) allow a new round of case and rebuttal briefs on the new data, and (5) address all comments contained in the newly filed case and rebuttal briefs prior to issuing our final results. Administrative review case schedules, fully extended, span about 18 months from the date of initiation to the date of the final results.²² This long period provides the Department and all interested parties with adequate time to obtain and fully analyze the voluminous data associated with each case. To foist an entirely new filing of cost data into a relatively short, post-case brief timeline is unreasonable, inappropriate, and would impede the Department's ability to complete this administrative review within the statutorily prescribed deadline.²³

Therefore, for these final results, we continue to use the full year's cost data for Dongbu in the sales-below-cost test and cost recovery tests. We find that Dongbu had ample time to raise this issue for consideration before the filing of its case briefs. Moreover, our use of the annual-average cost data is reasonable, follows our long-established practice, and is in accordance with the intent and inherent logic of the cost recovery provision of the statute. Finally, using the full year's cost data for Dongbu accords with our treatment of the other mandatory respondent in this proceeding, HYSCO.

Comment 2: Calculation of General and Administrative and Interest Expenses

Dongbu's, Union's and LG Hausys's Argument

- Given the revised POR, the Department must also base its general and administrative (G&A) and interest expense (INTEX) components of Dongbu's cost of production (COP) on Dongbu's 2011 financial statements, and not the 2012 financial statements, which only include sales from January 1, 2012 to February 14, 2012.
- The Department's stated practice with respect to the calculation of G&A and INTEX is to base them on audited fiscal year financial statements for the fiscal year that most closely corresponds to the POR.²⁴

Nucor's Argument

- Nucor did not comment on this issue.

Department's Position: We disagree with the respondents and made no changes with respect to the G&A or financial expense rates for Dongbu. As noted above in Comment 1, for these final results we continue to find that the use of the full year's cost data is appropriate and reasonable. The full year's cost data submitted by Dongbu covers the period August 1, 2011, through July 31, 2012. The G&A and financial expense ratios used for the *Preliminary Results* are based on the calendar year 2012 audited financial statements of the company. These financial statements

²² See section 751(a)(3)(A) of the Act.

²³ See *Citric Acid from the PRC* at comment 13A; *CTL Plate from Korea* at "Targeted Dumping Allegation."

²⁴ See *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fifteenth Administrative Review*, 75 FR 13490 (March 22, 2010) (*CORE 2007-2008*), and accompanying Issues and Decision Memorandum at 42 – 43, dated March 15, 2010.

cover the majority, *i.e.*, seven months, of the cost reporting period.²⁵ The use of the 2012 financial statements for the G&A and financial expense ratios is therefore appropriate and in line with our preference, as they most closely correspond to the annual average cost reporting period in this case of August 1, 2011, through July 31, 2012.²⁶

Comment 3: Application of Differential Pricing and Zeroing in Administrative Reviews

HYSCO's arguments

- The Department does not have the statutory authority to consider an alternative comparison method in administrative reviews under section 777A(d)(2) of the Act.
- Section 777A(d) of the Act only allows for an alternative comparison method in less-than-fair-value investigations.
- Congress' silence on this issue demonstrates its intention not to provide an alternative comparison method in administrative reviews and the Department cannot overcome this lack of statutory authority.
- The Department should not consider an alternative comparison method for the final results.
- The Department should continue to use the average-to-average method without zeroing for calculating HYSCO's weighted-average dumping margin in the final results.

Nucor's arguments

- Section 777A(d)(1) of the Act covers investigations and allows for three comparison methods; average-to-average, transaction-to-transaction and average-to-transaction.
- Section 777A(d)(2) of the Act does not provide a specific list of acceptable comparison methods, but states that where the Department uses the average-to-transaction method in a review, it should "limit its averaging of prices to a period not exceeding the calendar month that corresponds most closely to the calendar month of the individual export sale."
- The statute is silent on the matter of whether and under what circumstances the Department may apply an alternative comparison method in reviews.
- The Department, correctly and consistently with the Act and Department practice, considered an alternative comparison method for both HYSCO and Dongbu in the instant review.

Department's Position: In the *Preliminary Results* and for these final results, the Department applied the standard average-to-average method to calculate a weighted-average dumping margin for Dongbu and HYSCO. Because the Department determined that HYSCO did not engage in

²⁵ In a typical case, the annual cost reporting period and the POR are one and the same. Due to the unusual facts of this case, we are using a cost reporting period that is different from the POR. In this instance, we find it more relevant for the financial statements used to calculate the G&A and interest expense rates to match the cost reporting period as opposed to the POR.

²⁶ See *CORE 2007-2008*, and accompanying Issues and Decision Memorandum at Comment 16 ("the Department's standard practice in calculating the G&A expense ratio is to use the full-year G&A expense and cost of goods sold reported in the company's unconsolidated, audited fiscal year financial statements for the fiscal year that most closely corresponds to the period of investigation or period of review.")

differential pricing, the Department did not consider an alternative comparison method in this review. Therefore, these arguments are moot.^{27, 28}

Comment 4: Denial of Offsets with the Average-to-Transaction Method

HYSCO's arguments

- The Department is barred from using the “zeroing” methodology when making average-to-transaction comparisons.
- If the Department applies the average-to-transaction methodology for calculating HYSCO’s rate in the final results, it should not zero out the comparison results for non-dumped sales.

Nucor's arguments

- The courts have specifically affirmed the Department’s use of zeroing when applying the average-to-transaction method.
- It is appropriate for the Department to prohibit negative comparison results from offsetting or reducing the sum of positive comparison results with applying the average-to-transaction method.

Department’s Position: In the *Preliminary Results* and for these final results, the Department applied the standard average-to-average method to calculate a weighted-average dumping margin for Dongbu and HYSCO. Because the Department determined that HYSCO did not engage in differential pricing, the Department applied the standard comparison methodology and did not apply zeroing in this review. Therefore, these arguments are moot.

²⁷ See *Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012*, 79 FR 4875 (January 30, 2014), and accompanying Issues and Decision Memorandum at Comment 4.

²⁸ Regardless, the CIT recently articulated in well-reasoned dicta that section 777A(d)(2) of the Act is “completely silent as to how Commerce should conduct its determination of less than fair value in reviews, leaving Commerce substantial discretion as to the methodologies it wishes to employ.” See *Timken Co. v. United States*, slip op. 2014-24 at 12 n.7 (Ct. Int’l Trade February 27, 2014). The *Timken* Court reasoned that “[i]n the light of this broad discretion, Commerce acted reasonably and did not abuse its discretion by basing its practice in reviews on its practice in investigations, which includes the use of the targeted dumping analysis.” *Id.* Although *Timken* was decided in the context of upholding the Department’s ability to apply an alternate comparison methodology and a *targeted dumping* analysis pursuant to section 777A(d)(1)(B) of the Act in the context of an administrative review by looking to its practice in investigations, the Court’s rationale applies equally to application of a differential pricing analysis, which derives from the same statutory provision.

VII. Recommendation:

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results in the *Federal Register*.

Agree Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

24 MARCH 2014

Date