71 FR 28659, May 17, 2006

A-549-817
POR: 11/01/03-10/31/04
Public Document
AD/CVD Operations 7: SMB

May 8, 2006

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review, Partial Revocation of Antidumping Duty Order and Partial Rescission of Antidumping Duty Administrative Review of Certain Hot-Rolled Carbon Steel Flat Products from Thailand

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Summary

We have analyzed the comments and rebuttals from interested parties in the administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products (hot-rolled steel) from Thailand. See Notice of Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 59562 (November 29, 2001) (Hot-Rolled Steel Order). We recommend that you approve the positions developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this review for which we received comments from interested parties:

Comment 1: Revocation
Comment 2: Excluded Sales
Comment 3: Calculation of General and Administrative and Interest Expenses
Comment 4: Level of Trade
Comment 5: Variable Cost of Manufacture

Background

On November 29, 2001, the Department published the antidumping duty order on hot-rolled steel from Thailand. See Hot-Rolled Steel Order, 66 FR 59562 (November 29, 2001). On November 1, 2004, the Department published the opportunity to request an administrative review of hot-rolled steel from Thailand. See Antidumping or

Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 69 FR 63359 (November 1, 2004). Pursuant to 19 CFR 351.213(b)(1) parties requested and the Department granted, an administrative review for the period of November 1, 2003, through October 31, 2004. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 69 FR 77181 (December 27, 2004).

On December 9, 2005, we published the preliminary results of this antidumping duty administrative review. See Certain Hot-Rolled Carbon Steel Flat Products From Thailand; Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke and Rescind in Part, 70 FR 73197 (December 9, 2005) (Preliminary Results).

We invited parties to comment on our Preliminary Results. We received case briefs from respondent Sahaviriya Steel Industries Public Company Limited (SSI), United States Steel Corporation (petitioner) and domestic interested party Nucor Corporation (Nucor) on February 7, 2006. We received rebuttal briefs from SSI, petitioner and Nucor on February 14, 2006. At the request of the Department, on January 18, 2006, SSI submitted post-POR financial information. On January 25, 2006, petitioner and Nucor filed joint comments on SSI's post-POR financial information submission. On January 31, 2006, SSI filed rebuttal comments to petitioner's and Nucor's January 25, 2006, comments regarding its post-POR financial information. No public hearing was held.

Because the Department determined that it was not practicable to complete the final results of this review within the original time period, the Department extended the time limit for completion of the final results of this administrative review in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act). See Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review, 71 FR 14682 (March 23, 2006).

Discussion of the Issues

Comment 1 – Revocation

Case Briefs

Petitioner

Petitioner argues that information from the period of review (POR) and post-POR period (after October 31, 2004) shows that there have been changes in the financial conditions facing SSI since the end of the POR that will cause SSI to sell hot-rolled steel at ever decreasing prices and resume dumping, if it has not done so already. Petitioner maintains these changes provide substantial, positive evidence that continuation of the antidumping order with respect to SSI is necessary to offset dumping.

First, petitioner maintains that SSI's rebuttal comments submitted January 31, 2006, (relating to the post-POR period) contain two incorrect contentions: 1) that petitioner's

January 25, 2006 submission presents the same allegations as those presented by Nucor in its July 21, 2005 submission, which were rejected by the Department in the Preliminary Results and 2) petitioner's allegations are neither dispositive nor credible evidence that SSI will resume dumping if the order is removed. See Certain Hot-Rolled Carbon Steel Flat Products From Thailand; Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke and Rescind in Part, 70 FR 73197 (December 9, 2005) (Preliminary Results).

Petitioner argues that the post-POR financial information it presented on January 25, 2006 was not available at the July 21, 2005 deadline for revocation arguments, and the Department did not consider any of this information in its Preliminary Results, contrary to SSI's claim that the Department considered and rejected the evidence.

Petitioner notes that section 351.222(b)(2)(i)(C) of the Department's regulations require the Department to determine whether continuation of the order is necessary to offset dumping. Petitioner argues that even though a respondent seeking revocation may submit the required certifications, has not sold the subject merchandise at less than normal value for a period of at least three years, and ships in commercial quantities, it does not, as SSI alleges, create a strong and virtually irrefutable presumption by the Department that continued application of the antidumping order is otherwise unnecessary to offset dumping.

Petitioner argues that even though the Department presumes that an antidumping duty order is not necessary after the respondent has satisfied the statutory requirements of 351.222(b)(2) and (e), the burden of presumption and production shifts back to respondent when a party submits positive evidence indicating that dumping may occur if the order were revoked. Petitioner maintains that the Department does not employ a strong, virtually insurmountable presumption in favor of revocation in the current proceeding. Rather, petitioner contends that it has the burden to present evidence that an antidumping order must be maintained, which it argues it did in its January 25, 2006, comments by arguing that SSI experienced increased and excess capacity, rising inventories, changes in cost, declining profitability, and falling prices.

Petitioner contends, contrary to SSI's claim in its January 31, 2006, rebuttal comments, the post-POR financial information it provided the Department on January 18, 2006, is dispositive and credible evidence that revocation of the order would lead to continued dumping. Petitioner argues that the Department has repeatedly determined that it must reach its revocation decision based on the totality of the record evidence, not based on each of the factors considered separately and individually as SSI argues. Petitioner maintains that all factors taken together show that the continued application of the antidumping duty order is necessary to offset dumping. Petitioners argue that the Department has determined not to revoke antidumping duty orders when similar evidence has been presented in other revocation cases before the Department. See Certain Cut-to-Length Carbon Steel Plate From Ukraine; Final Results of Administrative Review of the Suspension Agreement and Determination Not To Terminate, 68 FR 35626 (June 16, 2003) (CTL Plate from Ukraine); Notice of Final Results of Antidumping Duty

Administrative Review and Determination Not To Revoke Order In Part: Dynamic Random Access Memory Semiconductors of One Megabyte or Above From the Republic of Korea, 62 FR 39809 (July 24, 1997) (DRAMS from Korea); and Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 61 FR 49727 (September 23, 1996) (Brass from Germany).

Petitioner argues that SSI brought new hot-rolled steel production capacity on line following the POR, increasing from an existing capacity of 2.4 million metric tons (MT) during the POR to 4 million MT in the first quarter of 2005. Petitioner contends that SSI's argument in its January 31, 2006, rebuttal comments - that it increased its capacity with the introduction of its pickling and oiling line in 2004 and did not dump during this time - is misleading. Petitioner contends that adding the pickling and oiling line merely enhanced the value of hot-rolled steel already produced, but did not constitute an increase in hot-rolled production. Therefore, petitioner contends that SSI did not previously experience an increase in production capacity during the POR and has no benchmark to judge whether it will dump as the result of this latest production capacity increase.

Petitioner maintains that SSI's increase in production capacity has led to an increase in excess capacity. Petitioner contends that SSI's excess capacity increased forty-two percent in the post-POR period from the highest excess capacity level of the POR. Petitioner argues that SSI's excess capacity increased from a range of 33,628 MT to 299,858 MT during the POR, to 465,680 MT and 424,583 MT in the second and third quarters of 2005, respectively. Petitioner maintains that SSI's excess capacity will likely lead to dumping as SSI will be under pressure to sell this excess capacity at low prices in order to sell its excess subject merchandise.

Moreover, petitioner argues that SSI's hot-rolled steel inventories increased after the POR, from 132,770 MT in the third quarter of 2004, to 303,848 MT at the end of the third quarter of 2005, which, petitioner contends, is likely to increase pressure on SSI to sell at low prices, i.e., at dumped prices. Petitioner claims that SSI failed to address this increase. Petitioner contends that rather than address this increase, SSI merely compared its post-POR third quarter 2004 hot-rolled inventory of 132,770 MT, to the hot-rolled steel inventory levels during the POR - 200,439 MT in the fourth quarter of 2003 and 208,772 MT in the first quarter of 2004 - in arguing that inventory levels post-POR were lower than POR levels. Petitioner maintains that SSI completely failed to address hot-rolled steel inventory in the post-POR period, which increased approximately fifty percent in the post-POR period. Petitioner argues that SSI's increased hot-rolled steel inventory levels will increase pressure on SSI to sell at dumped prices.

Petitioner argues that SSI's slab inventories and slab in transit nearly quadrupled after the POR, increasing from 287,043 MT in the third quarter of 2004, to 886,289 MT, 1,199,388 MT, and 1,137,786 MT in the first, second and third quarters of 2005, respectively. Petitioner maintains that SSI has never experienced this build-up of slab inventories and has failed to address this increase in slab inventories. Petitioner contends that even though the post-POR third quarter 2004 slab inventory level is smaller than

levels during POR 1 and POR 2, POR 1 and POR 2 levels are still only roughly half of the slab inventory levels in the post-POR period.[1] Petitioner argues that this increase will put pressure on SSI to increase production and in turn sell subject merchandise at less than fair value.[2]

Petitioner alleges that SSI's cost of production has increased by roughly 41 percent during the post-POR period, a point which, petitioner contends, SSI has failed to rebut. Petitioners maintain that SSI's higher cost is evidence of the kind of deteriorating market conditions that make it likely that SSI has engaged or will engage in sales below cost and eventually sell subject merchandise at dumped prices.

Petitioner also contends that declining profits led SSI to experience a net loss in the third quarter of 2005, the result of a deteriorating financial condition in the post-POR period. Petitioner contends that SSI incurred a net loss of 657 million baht in the third quarter of 2005, compared with a net profit of 1,143.2 million baht in the third quarter of 2004. Petitioner acknowledges that SSI is correct when it argued in its January 31, 2006, financial information rebuttal comments that it incurred a loss in POR 1 and was not found to be dumping. However, petitioner argues that the loss of 630 million baht in POR 1 was for the entire fiscal year of 2001, and not comparable to SSI's 657 million baht loss incurred in the third quarter of 2005. Therefore, petitioner contends that SSI's argument that it sold at non-dumped prices when it incurred losses is misleading. Petitioner argues that SSI's losses in the post-POR period will also generate pressure on SSI to increase sales of subject merchandise and lead to dumping.[3]

Petitioner argues the SSI's prices for hot-rolled steel declined by nearly $200 MT in the second quarter of 2005, demonstrating that prices have been affected by the above-mentioned factors and that SSI is likely to dump if the order were revoked. Petitioner maintains that while the Department did analyze the prices reported in Purchasing Magazine and their effect on the likelihood of future dumping in the Preliminary Results, the Department did not have post-POR shipment data to analyze for the Preliminary Results. Petitioner argues that the Department should analyze post-POR shipments from SSI and compare prices to the cost of production petitioner calculated in its January 25, 2006, submission, which it argues will likely show that sales are being made at prices below cost. Petitioner asserts that below cost prices demonstrate that SSI sold subject merchandise in the post-POR period at dumped prices.

Nucor

Nucor argues that the record of this proceeding shows that SSI has expanded its hot-rolled production capacity, accumulated inventories of hot-rolled steel and slab, suffered

[1] POR 1 was May, 2001 through October, 2002 and POR 2 was November, 2002 through October, 2003.
[2] The Department notes that specific figures for SSI's production capacity, slab inventory and hot-rolled inventory are taken from SSI's Janaury 18, 2006, Quarterly Results of Business Operations and exhibit 1 of petitioner's and Nucor's combined January 25, 2006, submission.
[3] Petitioner further maintains that the Department should obtain and review either SSI's 2005 financial statements or the Kim Eng Securities report for SSI, both of which would allow the Department to calculate SSI's net profit or loss for the fourth quarter of 2005.

a net loss and instituted the largest single-quarter price reduction in its history, all of which will, it argues, likely lead to a resumption of dumping. Nucor maintains that SSI has plans to expand capacity, despite the reduced demand in the Chinese market. Nucor contends that this could have a negative impact on U.S. prices. Finally, Nucor contends that SSI has failed to satisfy two of the three prongs required by the Department to revoke an antidumping order by failing to sell in commercial quantities for three consecutive years.

With regard to commercial quantities, Nucor contends that Department regulations require a respondent to demonstrate no dumping for three consecutive years. Nucor maintains that the commercial quantities requirement of 19 CFR § 351.222(b)(2)(i)(A) should be interpreted to mean full twelve-month periods, not administrative review periods that can sometimes last more than a year. Nucor argues that using a period of review longer than a year allows a respondent to ship in smaller quantities for a longer period of time, making it appear that shipment volumes for the total period of review are high. Nucor maintains that in the Preliminary Results, the Department specified that meaningful participation in the U.S. market must have occurred "during each of the three years at issue." See Preliminary Results 70 FR at 73202. Nucor further maintains that in an administrative review of oil country tubular goods from Mexico, the Department annualized imports from a six-month period of investigation in order to make a year-long comparison with the subsequent periods of review. See Oil Country Tubular Goods From Mexico: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 66 FR 15832, March 21, 2001 (OCTG from Mexico). Using an annualized shipment volume for the POI, Nucor maintains that SSI's POR 1 shipments will account for only one-fourth of POI shipments, a quarter less than the volume determined by the Department in the Preliminary Results. Nucor argues that this low shipment volume in POR 1 is not due to low U.S. demand, but rather demonstrates that regardless of the strength of the U.S. market, SSI did not make sales to the United States in commercial quantities.[4] Nucor contends that a respondent must not be allowed to make selective forays into the U.S. market when market conditions are most favorable, but must instead demonstrate that it can sell in commercial quantities over an extended period of time in different market conditions.

Nucor argues that in the present review, because POR 1 covers 18 months, the Department cannot base its determination on aggregate sales data for each of the three POR's and still adhere to the plain meaning of the Department's regulations requiring three consecutive years of sales in commercial quantities. Nucor maintains that the Department must analyze sales patterns within the 42 total months of all three POR's to determine if SSI made sales in commercial quantities over a full 36 month window, with total POR quantities compared to the period of investigation (POI) (October 1999 through September 2000) on an annualized basis.

[4] Nucor contends that Thailand's share of U.S. consumption declined from .6 percent to .2 percent between the POI and POR 3 following a drop in imports to the United States from SSI. See Nucor's July 21, 2005 submission at exhibit 3.

Nucor argues that SSI was absent from the U.S. market for two twelve-month periods during the 42 months of the three administrative POR's. Nucor contends that SSI made sporadic shipments or no shipments to the U.S. during POR 1, representing only 50 percent of sales made during the POI. Nucor argues that SSI did not make any sales during the first twelve months of POR 1 when prices for hot-rolled steel were at their lowest. Nucor further argues that SSI did not make a sale to the United States between May 2001 and May 2002 (when sale date is based on invoice date) and did not ship subject merchandise to the United States between May 2001 and July 2002. Accordingly, Nucor argues that SSI has satisfied the regulatory requirement that it sell in commercial quantities because it failed to sell subject merchandise at not less than fair value over three consecutive 12-month periods.

Nucor contends that in order to be eligible for revocation, the Department's regulation require respondents to make sales in commercial quantities during intervening years of an antidumping duty order, and in a way that is characteristic of that company or industry for the duration of the specific period. Additionally, Nucor argues that a respondent that fails to demonstrate this weakens the assumption that it will not dump in the future.

Nucor argues that the Department should consider whether the patterns of shipments or sales during the revocation window are characteristic of that company or industry in periods when there is no dumping order. Using this analysis, Nucor contends that comparing POI sales to the 42 months of the three POR's demonstrates that SSI made sporadic sales to the United States, only doing so when prices for hot-rolled steel were relatively high. Nucor contends that using sale date, SSI made sales in more months of the POI than during the three POR's of the order. Nucor also contends that using shipment date, SSI made sales in only one less month of the POI than during the three POR's of the order, demonstrating that SSI made sales in more months of the POI than all the months of the POR's combined. Nucor argues that this shows that SSI's sales during all PORs were far more sporadic than the pattern of sales during the POI and, therefore, are not indicative of how SSI would sell subject merchandise to the United States without the discipline of the antidumping duty order.

Nucor contends that prior to 1989, the Department's regulations only required two consecutive years of zero or de minimis dumping margins for revocation to occur, with the Department performing an administrative review of sales during the period after the second review (i.e., "gap period"). See Antidumping Duties, 54 FR 12742 (March 28, 1989). Nucor claims that the Department changed its revocation practice to review a three-year period, and decided that revocation would be based on a commercial quantities requirement for the intervening year because shipments are an indicator of price discrimination. Nucor maintains that SSI's absence from the U.S. market during POR 1, along with the other periods of no U.S. sales, prevents its revocation from the antidumping duty order because sales were not made for three twelve-month periods.

Nucor maintains that the Department's analysis of SSI's sales of subject merchandise in this review was based on a general comparison, which did not take into account the volatility of hot-rolled prices. Nucor argues that SSI was not able to sell at non-dumped

prices to the United States for a majority of the PORs, only during aberrational price peaks. Nucor alleges that SSI did not sell to the United States when hot-rolled prices were low, and therefore SSI would have to sell hot-rolled steel at dumped prices in the future in order to participate in the U.S. market during market downturns. Nucor contends that the Department failed to consider SSI's planned capacity expansions and the impact of weak demand in Asia relative to capacity increases in that region, factors which indicate the antidumping duty order is necessary to offset dumping.

Nucor argues that petitioner provided information to the Department concerning: Thai competition with Chinese imports, which led to an increase in Thai exports of hot-rolled steel to the United States; higher fixed costs due to SSI's investment program; SSI's high inventory and slab costs; and SSI's participation in the Asian market. Nucor contends that SSI is also facing competition from domestic steel producers that will force SSI to reduce inventories, which could result in increased export sales. Nucor maintains that all of these factors demonstrate that continued application of the antidumping duty order is necessary to offset dumping.

Nucor argues that even though steel pricing data from Purchasing Magazine shows that U.S. prices have recovered since August 2005, Asian and world supply and demand have been impacted by Chinese production. Nucor cites to the International Trade Commission's (ITC) recent sunset review of the antidumping orders on Certain Hot-Rolled Flat-rolled Carbon-Quality Steel Products From Brazil, Japan, and Russia, which reports that Chinese domestic steel-producing capacity has increased to the point where China is, as of the fourth quarter of 2004, a net exporter rather than a net importer of steel. Nucor further cites to the ITC to argue that increased Chinese production will lead exporters to seek alternative markets for exports formerly directed to China. See Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil, Japan and Russia, Inv. Nos. 701-TA-384 and 731-TA-806-808 USITC Pub. No. 3767 (April 2005).

Nucor maintains that the ITC found that the temporary imbalance in global production and consumption caused by Chinese demand led to improvement in the U.S. industry's financial performance in 2004. Nucor notes that the ITC further found that raw material costs were increasing, while excess Chinese demand was moderating due to large increases in capacity, with U.S. prices consequently declining. Nucor argues that declining market conditions in Asia will lead to reduced prices for hot-rolled steel. Nucor contends that dumping could result if SSI's hot-rolled prices drop quicker than SSI's variable costs.

SSI
SSI argues that it has satisfied Department regulations with respect to revocation by providing the required certifications, not selling at dumped prices for three POR's (including an intervening year in which a review is not required), and by selling in commercial quantities during the three PORs. SSI contends that even though its volume of subject merchandise dropped from the POI to POR 1, the volume was still relatively high and increased from POR 1 through POR 3. SSI contends further that the Department determined in the Preliminary Results that SSI sold in commercial quantities regardless of how high or low prices were in the United States, thereby participating meaningfully in the U.S. market. SSI argues that by meeting these requirements, it has created a strong presumption that continued application of the antidumping duty order is not otherwise necessary to offset dumping.

SSI argues that there must be compelling evidence showing that continued application of the antidumping duty order is necessary to offset dumping. SSI contends that Nucor and U.S. Steel both failed to rebut this presumption in the Preliminary Results and have only repackaged their allegations for these final results. SSI maintains that petitioner's January 25, 2006, financial information comments are speculative, and based on SSI's actual participation in the market, and the Department should continue to find that the antidumping duty order, with respect to SSI, should be revoked.

SSI argues that petitioner's claim of SSI's expanded capacity, higher inventories, increased costs, losses incurred since the end of the POR, and SSI's reduction of hot-rolled prices were rejected by the Department in the Preliminary Results and should be rejected for the final results. Even if the Department were to consider petitioner's allegations, SSI maintains that there is no evidence that it will resume dumping if the order is revoked.

SSI argues that in the current POR it increased its theoretical capacity by introducing its pickling and oiling line, and the Department preliminarily determined that SSI did not sell subject merchandise at dumped prices. Therefore, SSI argues that simply expanding production does not mean dumping will occur in the future, as dumping did not occur when the oiling and pickling line was introduced.

SSI argues that rising hot-rolled inventory levels is not evidence of future dumping. SSI claims that hot-rolled inventory levels during the POR (200,439 MT and 208,772 MT in the fourth quarter of 2003 and the first quarter of 2004, respectively) were higher than the third quarter 2004 level of 132,770 MT and the Department preliminarily determined that SSI had a de minimis dumping margin. SSI contends, accordingly, that high inventory levels of subject merchandise did not lead to dumping during the POR and will not lead to dumping in the future. SSI makes a similar argument with respect to slab inventories, comparing post-POR slab inventory levels to higher slab inventory levels during POR 1 and POR 2. SSI argues that there was no dumping margin for POR 1 and POR 2,[5] even

[5] The POR 2 administrative review was rescinded because U.S. Steel Corporation and Nucor Corporation both withdrew their review requests.

with "significant" slab inventories and, accordingly, SSI contends high slab inventories in the future will not lead to dumping. [6]

SSI argues that it incurred a net financial loss in POR 1 of 630 million baht. However, the Department calculated a zero dumping margin. Therefore, SSI argues that it can sell at prices not less than normal value despite incurring a financial loss.

SSI contends that the Department analyzed and rejected petitioner's argument that SSI's $200 MT reduction in price for hot-rolled steel will lead to dumping. SSI notes that in the Preliminary Results the Department determined that SSI was able to sell subject merchandise at prices not less than normal value when hot-rolled prices have been both high and low. SSI therefore concludes that its past behavior demonstrates that whether prices are high or low, it can sell in the United States without dumping.

Rebuttal Briefs

Petitioner contends that SSI is incorrect when it argues that there is a "strong presumption" that continued application of the antidumping order is not necessary when a respondent satisfies the no-dumping for three consecutive years, commercial quantities and certification requirements of 351.222(b)(2)(i)(C). Petitioner argues that the Department employs a shifting burden of proof with regard to revocation. Petitioner acknowledges that when the requirements of 351.222(b)(2)(i)(C) are satisfied, the burden shifts to petitioner to present evidence of the likelihood of future dumping. However, petitioner contends that if they in fact present this evidence, the respondent is then required to rebut this evidence. Petitioner argues that the evidence it has presented to the Department in this case (increased and excess capacity, rising inventories, changes in cost, declining profitability, and falling prices) is similar to evidence used in previous cases by the Department to deny revocation, thereby satisfying its burden of presenting positive evidence that the order is necessary to offset dumping. See Petitioner's February 14, 2006, Rebuttal Brief.

Petitioner maintains that the arguments it makes are not "speculative allegations" or "repackaged arguments" as SSI alleges, but rather are based on SSI's Financial Statements and Quarterly Results of Business Operations for the second and third quarters of 2005. Petitioner argues that this information is proof that during the post-POR period SSI: 1) expanded its hot-rolled steel capacity from 2.4 to 4 million MT; 2) developed excess capacity that was forty-two percent higher than the highest level during the POR; 3) experienced an increase in hot-rolled steel; 4) built up inventories of slab that almost quadrupled from 287,043 MT at the close of the POR to 1,137,786 MT in the third quarter of 2005; 5) experienced an increase in its cost of production; 6) suffered a net loss of 657 million baht in the third quarter of 2005; and 7) reduced its price for hot-rolled steel by nearly $200 MT. Petitioner argues that this information is not speculative but rather evidence that SSI is likely to dump in the future.

[6] See page 8 of SSI's February 14, 2006 Rebuttal Briefs.

Petitioner argues that SSI's contention that it has previously experienced capacity expansion during the antidumping duty order and not dumped is erroneous. Petitioner contends that SSI expanded capacity during the first quarter of 2005, after the close of the current POR and not during the antidumping duty order. Petitioner also contends that SSI's inventory comparisons for both slab and hot-rolled steel does not address the fact that slab and hot-rolled inventories in the post-POR period were higher than any time during the POR. Petitioner further contends that SSI has failed to address its increase in costs in the post-POR period.

Petitioner argues that the Department should ascertain whether SSI made shipments in the post-POR period and compare the prices of these goods to the cost of production petitioner calculated in its January 25, 2006 submission, to determine whether SSI is dumping in the post-POR period.

SSI argues that a revocation determination is based primarily on an absence of dumping for three consecutive years, which occurred during this antidumping duty order and which petitioners (Nucor and U.S. Steel) do not contest. SSI contends that petitioner's arguments (i.e., increased capacity, excess slab and hot-rolled inventories, net loss and price reduction) are attempted diversions intended to frustrate the Department's analysis. SSI maintains that if the Department conducts a POR 4 review of entries, it would find a de minimis margin again as these entries have already been reviewed in POR 3.

SSI argues that the commercial quantities requirement of the Department's regulations only seek to confirm meaningful participation in the U.S. market during each of the consecutive periods of no dumping. SSI contends that by performing its analysis on a review-period basis, the Department correctly ensures that an exporter cannot achieve revocation by shipping only minimal quantities in any of the three periods. SSI contends that using sale, invoice, or shipment date, it has satisfied the Department's revocation requirements by shipping in commercial quantities of approximately 50 percent, 65 percent and 80 percent of the POI volume in the three respective PORs of this order. SSI maintains that because it has shipped in commercial quantities and has not dumped for three consecutive years, there exists a strong presumption in favor of revocation.

SSI argues that the Department has revised its revocation regulations to attain "predictive assurances" and to conform to World Trade Organization obligations under the Antidumping Agreement. In so doing, the Department has established a presumption favoring revocation when respondent has met the requirements of 19 CFR § 351.222(b)(2)(i)(A). SSI contends that respondents are no longer required to prove they are "not likely" to dump when they have met the criteria for revocation, and continuation of the antidumping duty order must be demonstrated based on the evidence adduced.

When respondent has sold in commercial quantities at zero or de minimis margins for three years, SSI argues that petitioner must provide positive evidence, and not mere speculation, to indicate that the antidumping duty order is necessary to offset dumping. SSI contends that the Department will weigh all evidence on the record working under the continued presumption that the antidumping order is not necessary to offset dumping.

SSI maintains that the Department cannot deny revocation based on an "unspoken burden" to prove the negative because petitioners have put "some evidence" on the record to offset the presumption established by respondent. It is not, as SSI argues, the respondent's burden to disprove petitioner's evidence. See SSI's Rebuttal Brief at 6. Instead, SSI argues that a petitioner must affirmatively convince the Department that continuation of the antidumping order is necessary to offset dumping and if it fails to do so, the order must be revoked.

SSI contends that petitioners in other reviews often have not been able to demonstrate that continuation of the antidumping duty order is necessary to offset dumping based on speculation about post-POR events. SSI argues that in Salmon From Chile and PET Film From Chile the Department considered post-POR speculation of costs, capacity utilization, pricing levels, the specific country economic situation and U.S. pricing and profitability trends, and still revoked the antidumping order. See Notice of Final Results of Antidumping Duty Administrative Review, Final Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon From Chile, 68 FR 6878 (February 11, 2003) (Salmon from Chile); and see Polyethylene Terephthalate Film, Sheet and Strip From Korea: Final Results of Antidumping Duty Administrative Review, 66 FR 57417 (November 15, 2001).

Department's Position: We have determined to revoke the antidumping duty order with respect to SSI. The Department "may revoke, in whole or in part, an antidumping duty order upon completion of a review" pursuant to section 751 of the Act. The Department has developed procedures for revocation that are described in 19 CFR 351.222. The Department's regulations require that each exporter or producer covered by the order submit 1) a certification that the company has sold subject merchandise at not less than normal value (NV) in the current review period and that the company will not sell at less than normal value in the future; and 2) a certification that the company sold the subject merchandise in each of the three consecutive years forming the basis of the request in commercial quantities. 19 CFR 351.222(e)(1). In determining whether to revoke an antidumping duty order in part, the Department will consider whether 1) one or more exporters or producers covered by the order have sold subject merchandise at not less than NV for a period of three consecutive years; and 2) the continued application of the antidumping duty order is otherwise necessary to offset dumping. 19 CFR 351.222(b)(2)(i) and (ii). Based on SSI's submissions and certifications, the Department continues to find that SSI has satisfied the requirements of 19 CFR 351.222(e)(i) and 19 CFR 351.222(b)(2).

The Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders notes that when a respondent has demonstrated the absence of dumping for three consecutive years, and has shipped in commercial quantities, without evidence to the contrary, the Department will presume that an antidumping duty order is not necessary to offset dumping. See Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders, 64 FR 51236, 51238 (September 22, 1999). If a party raises an issue relating to the necessity of the order, the Department may seek additional information relevant to that issue. Id.

In the present case the Department has determined that SSI shipped to the United States in commercial quantities during POR 1 and POR 3 (November 2003 through October 2004), with POR 2 an intervening year that falls within the meaning of §355.222(d)(1). Accordingly, SSI has satisfied the requirements of §355.222(b)(2),

As discussed in the Preliminary Results, the Department found that the volume of merchandise, based on either shipment date or sale invoice date, sold to the United States during POR 1 was approximately 50 percent of the volume sold during the POI. The volume sold increased during POR 2 to approximately 65 percent of the volume sold during the POI. Finally, during POR 3, the volume sold represented approximately 58 percent of the volume sold during the POI.[7] See Preliminary Results, at 73203. While the volume of sales dropped after the POI, we consider the volume of sales shipped in the three PORs to be a relatively high percentage of the POI volume of sales. SSI's sales volumes during any one of the three PORs never dropped to below 41 percent of POI volume when using shipment date or invoice date to compare volumes. Moreover, based on shipment date, the volume of hot-rolled steel SSI sold to the United States between POR 1 and POR 2 increased and remained relatively consistent for POR 3. Accordingly, there exists a presumption that continuation of the antidumping duty order is not necessary to offset dumping.

The Department disagrees with SSI that there exists a "strong presumption" that the order is not necessary to offset dumping when a respondent has satisfied the Department's revocation requirements of 19 CFR 351.222(e)(i) and 19 CFR 351.222(b)(2). Once a respondent has satisfied the statutory requirements for revocation, there is simply a presumption that the order is not necessary to offset dumping. Petitioner may then provide evidence that rebuts this presumption.[8] If no evidence is presented, the Department will presume the order is not necessary to offset dumping and will revoke the order with respect to that respondent. To rebut this presumption, petitioner must come forward with information demonstrating that the maintenance of the order is necessary to offset dumping in the future. Id. The Department will then consider all evidence submitted on the record in making its determination. As the Department's regulations state, "All parties may be in a position to provide information concerning trends in prices and costs, currency movements, and other market and economic factors that may be relevant to the likelihood of future dumping." See Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders, 64 FR 51236, 51238 (September 22, 1999).

With regard to the necessity of the order to offset dumping, the Department believes the evidence presented by petitioner and Nucor does not demonstrate that the order is necessary to offset dumping. Petitioner cites CTL Plate from Ukraine to support its argument that excess production or increased production is likely to lead to dumping. In

[7] The Department notes that based on its decision to exclude from the analysis certain sales that entered after the POR, the volume of subject merchandise during POR 3 declined.

[8] "The absence of dumping for three consecutive years" is sufficient evidence to shift the burden of production to the petitioners. See Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders, 64 FR 51236, 51238 (September 22, 1999).

CTL Plate from Ukraine, the Department determined, based on record evidence, that dumping was likely to continue given the Ukrainian producers inability to meet their existing quota despite steadily falling reference prices, and the Ukraine's under-utilization of its existing capacity and inability to sell significant quantities of steel in the home market and its attendant shift towards export markets. 68 FR 35626 at Comment 1. In the present case, the Department has no such record evidence demonstrating the inability to sell significant quantities or a shift towards selling subject merchandise in export markets. Additionally, not only is there no record evidence suggesting a shift towards the export market for SSI, but the Department considers SSI's presence in the U.S. market as relatively small. As demonstrated in exhibit 3 of Nucor's July 21, 2005 submission, SSI's share of imports (compared to all other exporters or producers of subject merchandise) of hot-rolled steel in the United States never passed 2.3 percent (POI) and went to as low as 1.4 percent (POR 3). In addition, SSI's share of U.S. apparent consumption was even less, representing less than one percent of total U.S. apparent consumption during the POI and each POR. [9]

With regard to hot-rolled steel inventories, under the circumstances of the present review, the Department does not consider increased hot-rolled inventories as an indicator that SSI is likely to dump in the future.[10] A review of SSI's hot-rolled inventory levels for the third quarter of 2005 shows that SSI had roughly a one-month's supply of hot-rolled inventory, for which SSI incurred a loss. See petitioner's January 25, 2006, submission at exhibit 1. A review of SSI's hot-rolled inventory levels for the fourth quarter of 2003 and first quarter of 2004 (the first two months of POR 3) also shows that SSI had roughly a one-month supply of hot-rolled inventory, but during this period SSI did not incur a loss. Therefore, it is apparent that SSI usually maintains a roughly one-month hot-rolled inventory level that correlates with production, whether SSI has realized a profit or incurred a loss. Accordingly, the Department does not consider an increase in hot-rolled inventory as it occurred in this case to be indicative of whether SSI is likely to sell at dumped prices in the future.

With regard to slab inventory, the Department believes that SSI's slab inventories have increased in anticipation of increased production in a made-to-order market such as hot-rolled steel. Using exhibit 1 of petitioner and Nucor's January 25, 2006, submission, the Department compared slab inventory to capacity.[11] During the fourth quarter of 2004, when SSI was the most profitable, slab inventory was 61 percent of production capacity. Comparing fourth quarter 2004 to third quarter 2005, when SSI incurred a net loss, slab inventory accounted for 71 percent of production capacity, a difference of only ten percent. Therefore, we conclude that SSI's slab inventory accounted for roughly the same amount of production capacity when SSI realized a relatively large profit and when SSI incurred a loss. Although slab inventories increased in the post-POR period, we find

[9] The Department notes that USITC Dataweb statistics do not provide company-specific information and therefore includes other exporters or producers from Thailand.
[10] The Department notes that petitioner's estimated 3rd quarter hot-rolled inventory is based on an estimate of SSI's 2nd quarter inventory and is not an actual inventory figure.
[11] The Department notes that it took into consideration only slab inventory, and not slab in transit in its analysis due to the inaccuracy of using a transit figure.

this increase to be minor given that slab inventories as a percentage of production capacity remained at a 1-2 month supply throughout the POR and post-POR period.

With regard to SSI's net loss in the third quarter of 2005, the Department notes that this loss was based on a market decline (under the lower of the cost or market inventory valuation accounting principle), and subsequent revaluation of raw material and finished goods. See note 14 of SSI's third quarter 2005 Financial Statements. The Department notes that this revaluation occurs infrequently, resulting in the replacement cost (i.e., through purchase or reproduction) being less then the cost of manufacturing recorded in SSI's books and records. The difference is recognized by a charge to income in the current period. The purpose of reducing inventory to the lower of cost or market is to accurately reflect the income of the period. This loss, along with other miscellaneous losses, would most likely be reported in the category general and administrative expense since it is not an element of current production cost. The Department notes that the loss was the result of a downturn in the hot-rolled market, and as such, is a one-time event, not dispositive of a future trend for the company.[12]

Additionally, the Department does not analyze individual quarters when analyzing the POR financial situation of a particular company. The Department does not consider an individual quarter to be a meaningful representation of a company's long-term business experience. Fluctuations during a fiscal year or twelve-month period of review may potentially skew an analysis. As stated in the Preliminary Results, the Department's normal practice is to use the weighted average costs of the company for a 12-month period to calculate product specific costs. Although we do not have an entire fiscal year on the record, by analyzing the first three quarters of the post-POR period of January through September 2005 in the aggregate, the most up-to-date information on the record, we note that SSI has a net profit from January through September 2005.

With regard to SSI's price reduction, the hot-rolled market has experienced price fluctuations during the three years of the antidumping duty order based on the supply and demand for hot-rolled steel. See exhibit 4 of Nucor's July 21, 2005, submission. Hot-rolled steel prices climbed by over $600 per MT from POR 1 to POR 3, with prices as low as $231 MT in POR 1 and as high as $860 MT in POR 3.[13] For each POR of the antidumping duty order, SSI continued to sell at not less than normal value, even when prices were at their lowest. Accordingly, the Department does not find that SSI's price reduction is evidence that it will dump in the future.

With regard to analyzing SSI's shipping patterns and year-long periods to determine commercial quantity, the Department's regulation at §351.213(e)(1) provide that an administrative review normally covers, as appropriate, entries, exports, or sales of subject merchandise during the twelve months preceding the most recent anniversary month. 19 CFR 351.213(e)(1). Nucor's interpretation of the Department's regulations unreasonably

[12] The Department also notes that the per metric ton cost of unused, re-valued slab would be lower than the current cost if it is carried over into the following fiscal year at its market value under the lower of cost or market accounting principle.
[13] See exhibit 3 of Nucor's July 21, 2005, submission.

requires that a respondent would have to make representative shipments or sales in each month of the administrative review to satisfy the requirement of shipping for three consecutive years without dumping. The Department's regulations do not require or support such an interpretation, and notably, Nucor does not cite to any authority for its proposition.

With regard to declining Asian demand, the Department disagrees with Nucor that this will lead SSI to dump in the future. Although demand for Thai steel in China dropped in 2005, the demand for steel in China continues to grow, with Chinese domestic consumption forecast to rise between 28 to 36 million tons in 2005 from 291 million tons in 2004.[14] Nucor's argument that Thai competition with Chinese imports led to an increase in Thai exports to the United States is unfounded, and indeed its own submission supports an opposite conclusion. Exhibit 3 of Nucor's July 21, 2006, submission shows that U.S. imports of hot-rolled steel from Thailand decreased between POR 2 and the post-POR period (November 2004 through May 2005), with Thailand's share of U.S. hot-rolled steel imports dropping from 2.3% to 1.7% between the POI and the post-POR period. Furthermore, it is potentially inaccurate to use a steel figure that aggregates multiple types of steel, as Nucor does, to argue that China is a net importer of steel, as hot-rolled is a specific product with different import and export patterns compared to other types of steel included in the total trade figures. With regard to prices, even though prices in Asia dropped to a range of $440-$480 MT in June 2005 from $550 MT earlier in 2005, as discussed above hot-rolled steel prices have fluctuated significantly during the three years of this antidumping duty order.[15] Despite the market's fluctuation during the life of the order, SSI has continued to sell at not less than normal value.

Petitioner cites to CTL Plate from Ukraine, DRAMS from Korea, and Brass from Germany as similar cases where the Department found that respondents failed to satisfy the "no likelihood of future dumping" criteria and maintained the antidumping duty order. However, each case is distinguishable from the present review. In CTL Plate from Ukraine, a trade agreement between the United States and Ukraine included a quota provision, setting a cap for shipments of subject merchandise to the United States. The Department found that respondent did not meet its shipment quota for any period during the agreement and shipped in declining levels during the life of the agreement, both of which led the Department to determine that respondent could not sell in the United States without dumping. However, these factors do not apply in the present case. Shipment volumes from SSI decreased between the POI and POR 1, but increased between POR 1 and POR 2. While there was another decrease between POR 2 and POR 3, SSI maintained shipment volumes in commercial quantities and did not sell at dumped prices, demonstrating that SSI has been able to sell in the United States during the life of the antidumping duty order. Additionally, the Department found in CTL Plate from Ukraine that the respondent had increased its share of export sales worldwide, from 700,000 tons shipped in 1996 representing 54% of production, to 1.16 million tons in 2001, representing 62% of production. The Department determined that this was evidence of Ukraine's shrinking home market demand, demonstrating an export-oriented industry. In

[14] See page 27 of exhibit 16 of Nucor's July 21, 2006 submission.
[15] See page 10 of Steel Markets Monthly of exhibit 16 of Nucor's July 21, 2006 submission.

the present case, petitioner has argued that SSI's shipments to the United States have actually decreased during the three PORs. Further, in the present case there is no record evidence to show that SSI's home market sales have decreased or that SSI is readying itself for increased export sales on this basis.

Further, in DRAMS from Korea, the Department determined to not revoke an antidumping duty order where it identified three years of price fluctuations in a highly cyclical market that correlated to dumping of subject merchandise. 62 FR 39809, affirmed by Hyundai Electronics Co., Ltd., et al., v. United States, 53 F. Supp 2d. 1334, 1339-41 (CIT 1999). In DRAMS from Korea, the Department did not base its "not likely" decision on the mere fact that subject merchandise was sold in a cyclical market, but rather the Department considered the company's historical selling and pricing behavior in addition to other market conditions. Id. In the present case, SSI has sold in the United States at non-dumped prices when market prices have been low and high. Also, spot prices for hot-rolled steel in the United States are higher in the post-POR period than at any point in POR 1, POR 2 or the first five months of POR 3. As the Department noted in the Preliminary Results, prices had halted their relatively slight downward trend and stabilized as of November 2005. See Preliminary Results at 73204. Moreover, SSI has not sold at dumped prices at any time during the three POR's, whether the price for subject merchandise was as low as $300 or as high as $714 per-net ton. The Department does not find that price fluctuation influenced the respondent's participation in the market. Accordingly, the Department does not consider price fluctuations an indicator of whether the antidumping duty order is otherwise necessary to offset dumping.

In DRAMS from Korea, the Department used company cost information supplied by respondents to calculate a post-POR per-unit cost, which they compared to post-POR prices.[16] Using this comparison, petitioner argued that there were sales below cost, which were likely to lead to dumping. In the present case, SSI has not submitted and is not required to submit post-POR cost data. Additionally, we find petitioner's allegation that future SSI sales may occur at below cost prices, based on higher per-unit costs predictions, unpersuasive because of deficiencies in petitioner's methodology. Instead of using SSI's production as the denominator in the cost of sales calculation, petitioner and Nucor used SSI's shipments. Using SSI's shipments instead of production fails to capture the production cost during the period because sales quantities do not equate to production quantities and lead to an overstatement of SSI's cost of sales. See figure 1 of exhibit 2 of petitioner and Nucor's January 25, 2006, submission. Additionally, petitioner and Nucor calculated one cost for all products, a methodology that does not account for differences in physical characteristics. For these reasons, the Department

[16] In DRAMS from Korea, respondent was required to submit sales and cost information for the two months following the POR to ensure that the proper cost test and contemporaneous sales comparisons could be made. Petitioner took the respondent's actual reported costs for the third administrative review and projected these costs through the year using the same rate of decline experienced in the industry during 1995, which the Department found reasonable due to the tendency for costs to decline over time in the dynamic random access memory semiconductors industry. See DRAMS from Korea at 39817.

does not consider petitioner and Nucor's per-unit cost methodology reasonable for determining whether SSI will sell at dumped prices in the post-POR period.

However, even if the Department were to consider petitioner's methodology, the per-unit MT cost is still below SSI's prices, Purchasing Magazine and American Metal Market prices for hot-rolled steel. See exhibit 4 of Nucor's July 21, 2006, submission.

In Brass from Germany, respondent sold to the United States in declining volumes, with the most recently reviewed volume being less than one-thousandth of the volume before the order went into effect. The Department determined that decreasing volumes and the low shipment volume demonstrated that respondent had difficulty selling subject merchandise in the United States and would have to sell at dumped prices in order to stay in the U.S. market. In the present case, SSI has sold in commercial quantities during the three POR's of the antidumping duty order. Even though SSI's shipment volumes during the three POR's are lower than those shipped during the POI, volumes never dropped below 41 percent of the volume shipped during the POI. Accordingly, the volume of SSI's shipments demonstrates that SSI has not experienced difficulty selling in the United States during the antidumping duty order and would not have to dump in order to sell in the United States. Additionally in Brass from Germany, the Department determined that the continued strengthening of the German Deutsche Mark against the U.S. dollar was more likely to increase the home market-selling price of subject merchandise, increasing the likelihood of dumping. There is no such correlation in the present case as there is no record evidence that the Thai baht is gaining strength against the U.S. dollar.

Therefore, for the reasons stated above, the Department continues to find that SSI has met its statutory requirements for revocation.

Comment 2 – Excluded Sales

SSI contends that the Department should not exclude certain sales from the current 2003-2004 administrative review that entered the United States after the POR. SSI argues that 19 CFR §351.213(e)(1) gives the Department discretion whether to review entries, exports, or sales of the subject merchandise. Based on date of sale, SSI argues that the Department should include sales entered during the 2004-2005 POR in the present 2003-2004 POR. SSI requests the Department to depart from its normal practice of reviewing entries during the POR rather than review sales.

SSI cites Frozen Concentrated Orange Juice from Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 66 FR 51008 (Oct. 5, 2001) (Orange Juice from Brazil) to support its argument that sales verified in a previous administrative review need not be reviewed in the following review. SSI maintains that it is a waste of government resources for the Department to review sales a second time that have previously been reviewed and generated no margin.

SSI contends that the Department's reliance on the decision in certain oil country tubular goods from Mexico to remove the sales in question from the current 03-04 review is

misplaced. See the Department's January 25, 2006, Memorandum to the File, from Richard Weible, Director, AD/CVD Operations Office 7 and Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Oil Country Tubular Goods from Mexico, 70 FR 60492 (Oct. 18, 2005) (OCTG from Mexico) and Issues and Decision Memorandum, at Comment 1. SSI maintains that in OCTG from Mexico, the respondent had knowledge of and reported the entry date for its export price (EP) sales, which is not the issue in the present review. SSI contends that it knows the contract, invoice and shipment dates, but does not know and can only approximate the entry date. SSI based its approximation of entry date, for its 04-05 entry, on U.S. Census Bureau data compared to its own U.S. sales data. Accordingly, SSI argues that the decision in OCTG from Mexico is inapplicable to the facts of this review.

SSI argues that the Department's decision to only review entered sales in an EP situation makes it likely that respondents can manipulate the analysis. SSI contends that a respondent with sales towards the end of the POR could determine the entry date from an affiliate only for those sales that are below normal value, and move them forward into the next administrative review and avoid a margin in the current proceeding.

SSI argues that in certain preserved mushrooms from the People's Republic of China, the Department determined to review a shipment in which the sale date was within the POR and the entry date was outside the POR. SSI contends that the Department made this decision because, among other reasons, the entry information for the sale was part of the administrative record, the Department exercised its discretion to review the sale under section 351.213(e) of the Department's regulations, and the Department was able to tie the entry in question to the sale and issue entry-specific liquidation instructions. See Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China, 66 FR 31204 (June 11, 2001) (Mushrooms from China) and Issues and Decision Memorandum, at Comment 10. SSI argues that the present review is similar to Mushrooms from China. SSI contends that the entries in question were sold during POR 3. Therefore, SSI argues that in accordance with Mushrooms from China, the Department should issue entry-specific liquidation instructions for SSI that include the 04-05 POR entries in the 03-04 POR.

Petitioner and Nucor did not comment on this issue.

Department Position: The Department disagrees with SSI. Section 751(a)(2)(A) of the Act provides that the Department shall determine the normal value and export price of each entry of subject merchandise. Department regulations allow flexibility to calculate margins based on entries, exports, or sales of the subject merchandise. See §351.213(e)(i) of the Department's regulations. The Department's practice has been to calculate margins based on entry date, but it may depart from this practice when circumstances warrant. See the Department's section C Questionnaire at page C-1, issued January 6, 2005. For EP sales, when the respondent is unable to provide the entry dates during the POR, the Department will normally request the respondent to report shipment or sale date during the POR. This methodology comports with the

Department's standard administrative review questionnaire, which instructs respondents to report such sales of merchandise, which entered for consumption during the POR. This methodology is also consistent with that used in other antidumping duty administrative reviews. See, e.g., Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands, 69 FR 33630 (June 16, 2004) and Circular Welded Non-Alloy Steel Pipe from the Republic of Korea, 63 FR 39071 (July 21, 1998).

SSI claimed it was unable to provide entry date during the POR and based its universe of sales on date of sale. However, for certain sales at the end of the POR, SSI was able to provide entry date. In its January 17, 2006, letter to the Department, SSI requested that the Department rescind the 04-05 administrative review. SSI argued that while it had an entry in the 04-05 review period, the sales related to this entry occurred during the 03-04 review period. See page 2 of SSI's January 17, 2006 submission. SSI then submitted the entry date for these sales to the current administrative review record in its January 18, 2006 letter and in so doing made the Department aware that the sales in question entered in the 04-05 review period.

SSI cites Orange Juice from Brazil to argue that sales reported and verified in a previous administrative review may not be reviewed again. Orange Juice from Brazil involved a single entry that was released from a bonded warehouse during the relevant POR (May 1, 1999 – April 30, 2000). The entry was placed in the bonded warehouse two years previous, during the 1997-1998 administrative review period. The final results for the 1997-1998 administrative review, which therefore covered the entries in question, were completed and published on August 11, 1999. Because the entry in question was previously reviewed, the Department decided not to review this entry. See Orange Juice from Brazil and see Frozen Concentrated Orange Juice From Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 64 FR 43650 (August 11, 1999). In the present case, the entries in question have not been reviewed as part of any final results, as the Department was made aware of the entry date after the Preliminary Results but prior to the issuance of these final results. Therefore, the sales in question, while they have been verified, have not been reviewed.

In addition, SSI's interpretation of OCTG from Mexico is not accurate. SSI argues that the respondent in OCTG from Mexico knew the entry date for its EP sales, and therefore the Department used the entry date provided rather than the sale date. OCTG from Mexico, 70 FR at comment 1 (emphasis added). The Department in OCTG from Mexico did not base its finding on knowledge, but rather found that because respondent reported the entry date for EP sales, the Department used entry date for the sales in question. Id. Here, SSI reported the entry date. Moreover, SSI arguably "knew" the entry date as evidenced by its January 18, 2006, submission. Therefore, consistent with the Department's practice, we have determined to remove the sale in question from the 2003-2004 POR, and place the sale into the 2004-2005 POR on the basis of reported entry date.

SSI argues that the Department should place the 2004-2005 POR entry in the 2003-2004 POR based on its decision in Mushrooms from China. The Department's normal practice for sales that occurred prior to importation has been to use the date of entry. This

methodology comports with the Department's standard administrative review questionnaire, which instructs respondents to report sales of merchandise, which entered for consumption during the POR. See the Department's section C Questionnaire at page C-1, issued January 6, 2005. This methodology is also consistent with that used in other antidumping duty administrative reviews. See e.g., Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands, 69 FR 33630 (June 16, 2004). Therefore, to maintain consistency with Department practice, we continued to use entry date.

Accordingly, pursuant to the Department's practice, as evidenced by the Department's decision in OCTG from Mexico, the Department will remove the sales related to these entries in question from the 2003-2004 administrative review for these final results.

Comment 3 – Calculation of general and administrative and interest expenses

SSI asserts that the Department should not alter its existing methodology and should allow revenue earned on the sale of scrap to offset general and administrative (G&A) expenses, and should also include the cost of scrap in the denominator of both the G&A and financial expense ratio calculations. SSI argues that the exclusion of scrap cost from the cost of goods sold (denominator) would misstate the cost for the merchandise under consideration. SSI contends that the revenue from actual scrap sales exceeds the cost of scrap sold and that the profit should be used as an offset to G&A expenses. In addition, SSI notes that the revenue earned from the early redemption of a bond should be included in the numerator of the G&A expense ratio calculation. SSI states that the reported methodology used in calculating the cost of the merchandise under consideration is the most accurate measure because both coil and scrap incur G&A and financial expenses.

SSI further argues that the Department should not deviate from the methodology used in previous reviews for calculating G&A and financial expense ratios. SSI states that the Department did not alter either calculation for the investigation or subsequent review (POR 1) and should not do so for this review period. SSI cites Cultivos Miramonta S.A. v. United States, Slip Op. 97-132 (CIT 1997) (Miramonta) and Shikoku Chems. Corp. v. United States, 16 CIT 382, 388-89, 795 F. Supp. 417 (1992), as examples that the Department must support a change in its position with adequate explanation.

Petitioner argues that the Department appropriately disallowed the additional revenue from scrap sales in the numerator of the G&A expense calculation. Petitioner argues that SSI's scrap revenue does not relate to expenses from the general operations of the company, and, therefore, such revenue has nothing to do with its G&A expenses. Petitioner asserts that SSI should have adjusted the cost of goods sold for the revenue earned from the scrap sales in the denominator of the G&A expense calculation because the cost of scrap was included in the cost of goods sold amount used in the denominator.

Petitioner argues that the Department appropriately excluded the gain on the early redemption of a bond in the numerator of the G&A expense calculation. Petitioner argues that the gain on the early redemption of a bond should be disallowed as an offset in the numerator of the G&A expense calculation because it is related to SSI's

management of debt. Petitioner cites Final Results of Antidumping Duty Administrative Review: Stainless Steel Wire Rod from Korea, 67 FR 6685 (February 13, 2002) (Wire Rod) and Issues and Decision Memorandum at Comment 4C as an example of the Department excluding the gain on the redemption of a corporate bond in the G&A expense calculation.

Petitioner further argues that the Department properly adjusted both the G&A and financial expense calculations by using all revenue from the sale of scrap as an offset to the cost of goods sold denominators in both calculations. Petitioner points out that SSI's scrap revenue does not relate to the general operations of the company as a whole and should not be included in the G&A expense calculation. Petitioner cites Notice of Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin from Indonesia, 70 FR 13456 (March 21, 2005) and Issues and Decision Memorandum at Comment 14, as an example of the Department offsetting the cost of goods sold denominators used in both the G&A and financial expense calculations by the reported scrap revenue. Petitioner concludes that the Department normally treats scrap revenue as a deduction from the cost of goods sold denominators in both G&A and financial expense, which is the same methodology that the Department should continue to utilize in this proceeding.

Petitioner argues that the Department has a well-established practice and ability to change its position from prior proceedings if an explanation is provided for the change. Petitioner cites Elemental Sulfur from Canada: Final Results of Antidumping Duty Administrative Review, 64 FR 37737, 37740 (July 13, 1999) (Elemental Sulfur) at Comment 2, and Static Random Access Memory Semiconductors from Taiwan: Final Results of Antidumping Duty Administrative Review, 65 FR 55005 (September 12, 2000) and Issues and Decision Memorandum at Comment 6, as examples of the Department changing its position from prior proceedings.

Nucor did not comment on this issue.

Department Position: The Department disagrees with SSI. SSI's submitted costs included an offset to cost of manufacture (COM) for the estimated value of the scrap generated in production. At the end of the year, SSI calculated the difference between the estimated value of scrap and the actual value of scrap generated in production and included the difference as an offset to G&A in its G&A rate computation. While the Department agrees that the difference between the estimated value of scrap and the actual value of the scrap should be included as an offset to COM, because the sale of scrap is not associated with SSI's G&A expenses, we disagree that it should be treated as an offset to G&A. The difference between the estimated and actual scrap revenue should be treated the same way SSI itself treated the estimated value of scrap in SSI's submitted costs (i.e., an offset to COM). See Stainless Steel Sheet and Strip in Coils from Mexico: Notice of Final Determination of Sales at Less Than Fair Value, 64 FR 30790 (June 8, 1999) at Comment 26, where the Department found revenue from the sale of scrap is an appropriate offset to COM. Thus, for the final results we have offset COM and not the numerator in the G&A expense ratio, by the difference between the estimated and actual

scrap revenue. We also consider it appropriate for the COGS (denominator) used to compute the G&A and interest expense ratios to be on the same basis as the COM to which it is applied. See Notice of Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin from Indonesia, 70 FR 13456 (March 21, 2005) and Issues and Decision Memorandum at Comment 14. SSI reported direct material costs in the COM, net of the scrap revenue offset; thus, the COGS used in the denominator of the G&A and interest expense ratios must also be net of the offset.

We disagree with SSI that we should allow the gain on the early redemption of a bond as an offset to the G&A expense calculation. We consider long-term bond purchases and the related gains or losses on the sale to be investment-related activities, not related to the general operations of the company. See Notice of Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin from Indonesia, 70 FR 13456 (March 21, 2005) and Issues and Decision Memorandum at Comment 16. Therefore, for the final results we excluded the gain on the early redemption of a bond as an offset to G&A.

Further, we disagree with SSI's argument that because we have accepted their methodology for calculating both G&A and financial expenses in the prior review and investigation, we should continue to do so in this proceeding. If we recognize our past treatment was in error, we are compelled to correct the error. Although the Department has accepted SSI's G&A and financial expense calculations in a prior review and investigation, the Department may change its position on a specific issue taken in prior proceedings as long as it provides an explanation for the change. See Elemental Sulfur. Thus, for the final results, we will continue to calculate both the G&A and financial expense ratios using the methodology from the Preliminary Results.

Comment 4 – Level of Trade

SSI argues that the Department incorrectly included the level of trade (LOT) analysis in its programming, thus excluding certain sales from the margin analysis that would have otherwise been included. SSI contends that the LOT analysis should not have been included in the program because the Department determined there existed a single LOT for both EP sales and home market sales. See Preliminary Results at 73201.

Petitioner and Nucor did not comment on this issue.

Department Position: We agree with SSI. The Department's computer programs in the Preliminary Results failed to reflect the Department's findings that the LOT for SSI's EP sales is the same as the LOT for all sales in the home market. Accordingly, for the final results, we have adjusted our computer programs to reflect one LOT in both the home and U.S. markets.

Comment 5 – Variable Cost of Manufacture

SSI argues that the Department double-counted hot-finishing costs in its calculation of variable cost of manufacturing. SSI contends that even though it reported two sets of costs related to its hot-finishing line and reported both in total cost of manufacture in the cost of production and constructed value database, the Department incorrectly included these costs in the calculation of variable cost of manufacture (VCOM).

Petitioner and Nucor did not comment on this issue.

Department Position: We agree with SSI. The Department double-counted hot finishing costs in its programs in the Preliminary Results. We have therefore excluded one set of hot finishing costs from our build up of VCOM in our programs for the final results.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the margin calculation accordingly. If these recommendations are accepted, we will publish the final results of this administrative review and the final dumping margins in the Federal Register.

AGREE _____ DISAGREE _____

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David M. Spooner
Assistant Secretary
for Import Administration

_____
Date